

**WASHINGTON STATE**  
**B A R A S S O C I A T I O N**

**Board of Governors Meeting**  
**Meeting Materials**

**March 19-20, 2020**  
**Hotel RL**  
**Olympia, Washington**



**Board of Governors Meeting  
Hotel RL  
Olympia, WA  
March 19-20, 2020**

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

**PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE**

**ALL ITEMS ON THIS AGENDA ARE POTENTIAL ACTION ITEMS**

To participate remotely: dial 1.866.577.9294, access code 528100#

**THURSDAY, March 19, 2020**

**9:00 AM – CALL TO ORDER**

**CONSENT CALENDAR & STANDING REPORTS**

**WELCOME**

**CONSENT CALENDAR**

A governor may request that an item be removed from the consent calendar without providing a reason and it will be discussed immediately after the consent calendar. The remaining items will be voted on *en bloc*.

- Review & Approval of January 16-17, 2020 BOG Meeting Minutes..... 6
- Review & Approval of January 17, 2020 BOG Meeting Minutes..... 14
- Review & Approval of January 28, 2020 BOG Meeting Minutes..... 15
- Client Protection Board Gift Recommendations ..... 17

**PRESIDENT’S REPORT**

**INTERIM EXECUTIVE DIRECTOR’S REPORT ..... 18**

**MEMBER AND PUBLIC COMMENTS (30 minutes reserved)**

Overall public comment is limited to 30 minutes and each speaker is limited to 3 minutes. The President will provide an opportunity for public comment for those in the room and participating remotely. Time will be kept on the clock above the webcast booth. Public comment will also be permitted at the beginning of each agenda item at the President’s discretion.

**REPORTS OF STANDING OR ONGOING BOG COMMITTEES**

Committees may “pass” if they have nothing to report. Related agenda items will be taken up later on the agenda. Each committee is allocated, on average, 3-4 minutes.

- Executive Committee, Pres. Rajeev Majumdar, Chair
- APEX Awards Committee, Gov. Russell Knight, Chair
- Personnel Committee, Gov. Alec Stephens, Chair
- Legislative Committee, Gov. Kyle Sciuchetti, Chair
- Nominations Review Committee, Gov. Jean Kang & Pres-elect Kyle Sciuchetti, Co-Chairs
- Diversity Committee, Gov. Jean Kang, Co-Chair
- Long-Range Planning Committee, Gov. Paul Swegle, Chair
- Member Engagement Workgroup, Govs. Kim Hunter and Dan Clark, Co-Chairs..... 168

- Budget & Audit Committee, Treas. Dan Clark, Chair ..... 170

<b>SPECIAL REPORTS</b>
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- REPORTS OF TASK FORCES, WORK GROUPS, LIAISONS, AND OTHER WSBA ENTITIES**
  - ABA Mid-Year Meeting Report, WSBA ABA Delegate Kaustuv M. Das ..... 176
- GOVERNOR LIAISON REPORTS**  
This is an opportunity for Governors to make reports related to their liaison assignments.
- REPORT OF AD HOC COMMITTEE TO INVESTIGATE ALTERNATIVES TO MANDATORY MALPRACTICE INSURANCE**, Pres-elect Kyle Sciuchetti

**11:00AM – RECESS**

**12:00PM – LUNCH**

<b>AGENDA ITEMS &amp; UNFINISHED BUSINESS</b>
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- BUDGET & AUDIT COMMITTEE MATTERS**, Treas. Dan Clark, Chair
  - Proposal to Sunset the APEX Awards Dinner, Chief Communications Officer Sara Niegowski....196
  - FIRST READ: Proposed Amendment to WSBA Bylaws Article III.I.5 Re License Fee Exemptions Due to Hardship, Chief Regulatory Counsel Jean McElroy..... 200
  - Recommendation to Maintain Two Legal Research Tools as Member Benefits, Interim Director of Advancement Kevin Plachy..... 205
- PERSONNEL COMMITTEE MATTERS**, Gov. Alec Stephens, Chair and Director of Human Resources Felix Neals
  - Proposed Process for Evaluation of Interim Executive Director ..... 209
- LEGISLATIVE COMMITTEE MATTERS**, Gov. Kyle Sciuchetti and Outreach and Legislative Affairs Manager Sanjay Walvekar
  - Legislative Session Report
  - Recommendation Re: Proposed Policy Re: Legislative Activity of Sections, Gov. Carla Higginson .
- PROPOSED AMENDMENTS TO WSBA BYLAWS**
  - SECOND READ: Article III Re: Judicial Status, Gov. Kim Hunter and Chief Regulatory Counsel Jean McElroy ..... 216
- PROPOSED COMMENT TO SUGGESTED CHANGES TO CrR 3.1, CrRLJ 3.1, and JuCR 9.2 Re: Death Penalty**, Council on Public Defense Vice-Chair Travis Stearns and Equity & Justice Manager Diana Singleton ..... 223
- WASHINGTON STATE BAR FOUNDATION TRUSTEE APPOINTMENTS**, President Kristina Larry.. 225

**5:15 PM – RECESS**

**FRIDAY, March 20, 2020**

**1:00 PM – RESUME MEETING**

**NEW BUSINESS**

- GOVERNOR ROUNDTABLE** (Governors’ issues of interest)
  - Communications received in Districts – Gov. advance notice, Gov. Higginson
  - WSBA activities and connection to policies, Gov. Higginson
  - Proactive Management Based Regulation, Pres-elect Kyle Sciuchetti
- PROPOSED REVISIONS TO MEMBER ENGAGEMENT WORKGROUP CHARTER**, Gov. Kim Hunter, Chair and Interim Director Advancement Kevin Plachy ..... 233
- TEMPORARY AUTHORIZATION FOR RESPONSE TO COVID-19**, Interim Executive Director Terra Nevitt
- PRESIDENTIAL RECOGNITION OF IMPROBABLE FEAT OF SERVICE**
- ANNOUNCE BASIS FOR EXECUTIVE SESSION PURSUANT TO RCW 42.30.110(1)(i) (if needed)**

**EXECUTIVE SESSION (IF NEEDED)**

**PUBLIC SESSION CONTINUED**

**3:00 PM – ADJOURN**

**INFORMATION**

- Monthly Financial Statements ..... 238
- General Information ..... 278



## 2019-2020 Board of Governors Meeting Issues

### APRIL (Seattle)

#### Standing Agenda Items:

- Financials (Information)
- Office of Disciplinary Counsel Report (ED Report)
- Editorial Advisory Committee Report

### MAY (Bellingham)

#### Standing Agenda Items:

- Legislative Report/Wrap-up
- Council on Public Defense Report
- Interview/Selection of WSBA At-Large Governor
- Interview/Selection of the WSBA President-elect
- WSBA APEX Awards Committee Recommendations
- Financials (Information)
- FY2020 Third Quarter Outreach & Perception Survey Update (ED Report)
- Office of Disciplinary Counsel Report (ED Report)

### JULY (Stevenson)

#### Standing Agenda Items:

- Draft WSBA FY2021 Budget
- WSBA Treasurer Election
- Court Rules and Procedures Committee Report and Recommendations
- WSBA Committee and Board Chair Appointments
- BOG Retreat
- Financials (Information)
- Office of Disciplinary Counsel Report (ED Report)

### AUGUST (Spokane)

#### Standing Agenda Items:

- Financials (Information)
- Diversity Committee Report
- Office of Disciplinary Counsel Report (ED Report)
- FY2020 Third Quarter Outreach & Perception Survey Update (ED Report)

### SEPTEMBER (Seattle)

#### Standing Agenda Items:

- Final FY2021 Budget
- 2021 Keller Deduction Schedule
- WSBF Annual Meeting and Trustee Election
- ABA Annual Meeting Report
- Legal Foundation of Washington Annual Report
- Washington Law School Deans
- Editorial Advisory Committee Report
- Chief Hearing Officer Annual Report
- Professionalism Annual Report
- Report on Executive Director Evaluation
- Financials (Information)
- WSBA Annual Awards Dinner

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS MEETING

Minutes

Seattle, WA

January 16-17, 2020

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Rajeev D. Majumdar on Thursday, January 16 at 9:00 AM at the offices of the Washington State Bar Association, Seattle, Washington. Governors in attendance were:

Hunter M. Abell

Sunitha Anjilvel

Daniel D. Clark

Peter J. Grabicki

Carla J. Higginson

Kim Hunter

Jean Y. Kang

Russell Knight

Bryn Peterson

Kyle D. Sciuchetti

Alec Stephens

Paul Swegle

Judge Brian Tollefson (ret.)

Also in attendance were Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Financial Officer Jorge Perez, Director of Human Resources Felix Neals, Chief Communications and Outreach Officer Sara Niegowski, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Interim Director of Advancement Kevin Plachy, and Executive Administrator Shelly Bynum. Also present and signed in as attending were Nancy Hawkins (WSBA Family Law Executive Committee Liaison), Jennifer Ortega (LLLT Board), James E. Macpherson (Washington Defense Trial Lawyers), and Maureen Mitchell.

### Consent Calendar

Gov. Abell moved approval of the consent calendar. Motion passed unanimously. Gov. Higginson was not present for the vote.

### Executive Director's Report

Interim Executive Director Nevitt referred to her written report and took questions from the Board about utilization of the Keller deduction and the legal research tools WSBA offers as a free member benefit.

### President's Report

Pres. Majumdar reported on Board engagement with the members around the state, including dinner with QLaw the evening before.

### Member and Public Comments

The Board received public comment from James MacPherson, Kevin Whatley, and Jennifer Ortega.

### Reports of Standing or Ongoing BOG Committees

#### *Executive Committee*

Pres. Majumdar reported on the most recent Executive Committee meeting.

#### *APEX Awards Committee*

Gov. Knight reported that WSBA is seeking APEX Award nominations and the Committee is exploring a proposal to change the manner in which the awards are presented.

#### *Personnel Committee*

Gov. Stephens reported that the Personnel Committee is discussing the compensation system and the design of the evaluation for the Executive Director.

#### *Legislative Committee*

Gov. Sciuchetti reported on the joint meeting of the BOG Legislative Committee and the Legislative Review Committee. Discussion followed.

#### *Nominations Review Committee*

Gov. Sciuchetti reported on the Nominating Committee meeting held earlier in the day.

#### *Diversity Committee*

Gov. Kang reported that the Committee met yesterday and is discussing recruitment for the Committee, the Board of Governors, and sections. She also reported on the IL mentorship event the Committee recently completed as well as upcoming projects, including a Legal Lunchbox CLE and Beyond the Dialogue forum.

#### *Long-Range Planning Committee*

Gov. Swegle reported that the Committee has met and shared his vision for the Committee's work this year.

#### *Member Engagement Work Group*

Gov. Hunter reported that the Workgroup is examining its charter and the committee's vision for engaging with the members this year.

Gov. Stephens requested that we examine our most recent strategic plan with an eye toward developing a new strategic plan in the future. Pres. Majumdar asked that Gov. Swegle and the Long-Range Planning Committee consider that suggestion.

#### *Budget & Audit Committee*

Treas. Clark referred to his written report. Chief Financial Officer Perez presented on the financial audits and the budget reforecast processes. Discussion followed. CFO Perez also presented a budget request to purchase budgeting software. Pres. Majumdar set a special meeting for Friday, January 17, 2020, at 4PM to take up the budget request.

#### Reports of Task Forces, Work Groups and Liaisons

##### *ABA Mid-Year Meeting Preview*

WSBA ABA Delegate Maureen Mitchell reported on some of the issues the ABA House of Delegates has taken up in the past and provided a preview of issues that will be addressed at the upcoming meeting, including resolutions related to gun safety, voting rights, federal election security, regulation of unmanned vehicles, and the Violence Against Women's Act. Discussion followed.

##### *Client Protection Fund (CPF) Annual Report*

Acting Chair Carrie Umland presented the Client Protection Fund's annual report as provided in the materials. Umland and Assistant General Counsel Nicole Gustine took questions. Discussion followed.

#### Governor Liaison Reports

Gov. Abell reported that he has been in close contact with the Indian Law Section and passed on concerns about potential changes in the University of Washington Native American Law Center. Gov. Stephens reported that he participated in the Civil Rights Section's annual retreat.

#### Personnel Committee Matters

##### *Second Read: Partial Proposed Amendment to WSBA Bylaws*

Gov. Stephens presented the Bylaw proposal for second read as provided in the materials. The Board heard public comment from Jim MacPherson. Interim Executive Director Nevitt provided comment and then excused herself for the discussion. Discussion followed. Gov. Grabicki moved to table to proposal for the Personnel Committee to start over. Motion failed 8-5. Gov. Swegle moved to amend the proposal to add to Article IV, B.6 at end of the sentence: “No individual shall serve as Executive Director for more than ten years, except that the Board may extend the

contracts for the Executive Director past that period in its discretion by a 66% supermajority vote for increments of two-year periods.” Motion to amend passed 10-3. Gov. Swegle moved the proposal as amended. Motion passed 8-5.

#### Proposed Technical Amendments to APR 8(b)

Chief Regulatory Officer McElroy presented the proposed amendments to Admission to Practice Rule 8(b) as provided in the materials. Discussion followed. Gov. Abell moved for adoption. Motion passed unanimously.

#### Legislative Committee Matters

##### *Legislative Session Report*

Outreach and Legislative Affairs Manager Sanjay Walvekar provided a report on the current legislative session as provided in the materials. Walvekar took questions and discussion followed.

##### *Legislative Review Committee Policies & Procedures*

Gov. Sciuchetti presented the proposed changes to the Legislative Review Committee's policies and procedures as provided in the materials. Discussion followed. Gov. Sciuchetti moved for passage of the proposal as set forth in the materials. Motion passed unanimously.

#### Appointment to the Client Protection Board

Pres. Majumdar introduced the topic, noting that appointments are made by the President-Elect and approved by the Board. President-Elect Sciuchetti requested a motion. Gov. Swegle moved the appointment. Motion passed unanimously with Gov. Kang abstaining.

#### Proposed Amendments to WSBA Bylaws

##### *Second Read: Article II RE: Definition of Quorum*

Pres. Majumdar introduced the proposal as provided in the materials. Gov. Stephens moved for adoption. Motion passed unanimously.

##### *Second Read: Article IV & VI RE: Board Terms, Composition, and Elections*

Gov. Knight introduced the revised amendment as provided in the materials. The Board heard public comment from Jordon Couch, Jim MacPherson, Crystal Lambert (LLLT Board), Kevin Whatley, and Jean Cotton. Discussion followed. Gov. Knight moved to amend and adopt the proposal to change all references to "new and young lawyer" to "Young Lawyer," which is a defined term in the Bylaws and to add language to clarify that if the BOG adds names, the vote is still by only those members who are Young Lawyers and not the entire membership.

b. Young Lawyer At Large Governor: The Washington Young Lawyers Committee shall forward at least three candidates to the BOG who qualify as Young Lawyers as defined by Article XII(B) of these Bylaws as of December 31 in the year of the election. The BOG shall then place all candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these bylaws. If the Washington Young Lawyers Committee forwards less than three candidates the BOG may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these bylaws.

Discussion followed. Gov. Abell moved to sever the question into three parts (1) term limits, (2) number and composition of board members, and (3) how at-large positions are filled. Motion passed 11-2.

The Board took up discussion of term limits and voted on the severed motion, which passed unanimously. Gov. Swegle was not present for the vote.

The Board took up the discussion of the number and composition of board members. Gov. Higginson called the question. Motion passed unanimously. The severed motion on this topic passed unanimously.

The Board took up the discussion of the at-large positions. The Board heard public comment from Jordan Couch, Jim MacPherson, and Kevin Whatley. Discussion followed. Gov. Higginson called the question. Motion passed 12-1. The severed motion on this topic passed 12-1.

*Second Read: Article VII RE: Executive Committee Composition*

Gov. Swegle moved the proposal as provided in the materials. Motion passed unanimously.

*Second Read: Article XI RE: Sections*

Gov. Higginson presented the recommendation of the Ad-Hoc Advisory Committee on the Form of the Proposal for a Bylaw Re: Sections and Public Positions that a Bylaw proposal is not required. Gov. Higginson presented her alternate proposed policy as provided in the materials. The Board took public comment from Nancy Hawkins and Jean Cotton. Discussion followed. Gov. Higginson moved that the policy be adopted as an initial draft to be submitted to the Legislative Committee, which will reach out to the Sections for input and report back to the Board. Motion was not seconded. Gov. Swegle moved to amend the policy where it details the basis for the GR 12 reasoning to merely state that the Section provide a good faith reason under GR 12. Motion was not seconded. Gov. Swegle moved to approve the policy. Motion was not seconded. Gov.

Stephens moved to refer the policy to the Legislative Committee for further work. Gov. Higginson offered a friendly amendment to approve the policy in the materials as a draft. Gov. Stephens did not accept. Gov. Peterson offered a friendly amendment that after the Legislative Committee reworks the draft, the policy be circulated to sections for feedback. This amendment was accepted. Motion passed unanimously. Gov. Swegle was not present for the vote. Pres. Majumdar directed that this item be put on the agenda for the March BOG Meeting.

*First Read: Article III Re: Judicial Status*

Gov. Hunter introduced the proposal as provided in the materials. Chief Regulatory Counsel McElroy provided further detail on the proposed amendments. Discussion followed. Pres. Majumdar noted that the matter was not on for action and would be taken up at the March meeting.

Update on Mandatory Malpractice Insurance

Pres. Majumdar presented his request for the Board's endorsement on his proposed approach as provided in the materials to addressing the proposed court rule related to mandatory malpractice insurance. The Board heard public comment from Kevin Whatley (Equal Justice Washington) and Jim MacPherson. Gov. Higginson moved the proposal. Motion passed unanimously.

Presentation on Office of General Counsel's Role in Disciplinary Proceedings

General Counsel Shankland presented on the Office of General Counsel's role in the Washington State legal discipline system.

Proposed Amendments to WSBA Bylaws (continued)

*Second Read: Article XI RE: Sections (continued)*

Pres. Majumdar introduced the bylaw change as provided in the materials. Gov. Swegle provided background on the reason for the moved the proposal. Motion passed unanimously.

Proposed Rulemaking Re: Civil Arrests in Connection with Judicial Proceedings

Vanessa Torres Hernandez, Director of Advocacy at the Northwest Justice Project, Annie Benson, Senior Directing Attorney at the Washington Defender Association, and Enoka Herat, Police Practices and Immigration Counsel of the ACLU of Washington provided the background and rationale for the proposed rulemaking.

Committee on Professional Ethics Chair Don Curran deferred to Committee Members Asel Neutze and Pamela Anderson to present the committee's position on the proposed rulemaking.

The Board heard public comment from Kevin Whatley. Discussion followed. It was pointed out that because both proposed rules are on an expedited 60-day comment period, the deadline for submission of comments is February 3. Gov. Swegle moved to recommend to the Court adoption of GR 38 as appearing on page 304 of the materials. Gov. Abell proposed that we request an extension for time to comment on the proposed amendment to Comment 4 to RPC 4.4. Pres. Majumdar indicated that there was already a motion on the table relating to GR 38, which the Board would resolve first. There was no second to Gov. Abell's proposal. The underlying motion passed 11-1. Gov. Peterson was not present for the vote.

Discussion followed regarding the proposed amendment to Comment 4 to RPC 4.4. Gov. Abell moved that WSBA request additional time from the Supreme Court to comment sufficient to encompass the next meeting of the Committee on Professional Ethics. Motion passed 9-4. Pres. Majumdar requested that the Committee consider meeting sooner to resolve the matter quickly so that the Board can comment before expiration of the February 3 deadline.

#### Proposed Policy Re: Process for Bringing Matters to the BOG

Interim Executive Director Nevitt presented the proposed policy as presented in the materials. Discussion followed. Gov. Abell moved for adoption. Gov. Knight moved to amend to add language that it doesn't limit President or any Governors authority under the bylaws to put things on the agenda. Motion passed unanimously. Underlying motion passed unanimously.

#### Governor Roundtable

Gov. Abell reported on efforts to move forward on the Rural Practice Initiative.

#### Announce Basis for Executive Session Pursuant to RCW 42.30.110(1)(i)

Pres. Majumdar announced that the Board will meet in Executive Session as permitted by RCW 42.30.110(i)-to discuss with legal counsel representing WSBA potential litigation to which WSBA is likely to become a party.

The Board recessed to executive session at 1:50 PM for advice from legal counsel about potential litigation and resumed the meeting at 2:30 PM.

#### LLLT Candidate Education

Interim Executive Director Nevitt introduced the proposal as provided in her Interim Executive Directors Report. The Board took public comment from Nancy Hawkins. Discussion followed. Gov. Higginson moved that the WSBA take no action to provide LLLT education at this time. Motion passed 11-1 with Gov. Stephens abstaining.

### **ADJOURNMENT**



There being no further business, the meeting was adjourned at 2:51 PM on Friday, January 17, 2020.

Respectfully submitted,

Terra Nevitt  
WSBA Interim Executive Director & Secretary

DRAFT

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS MEETING

Minutes  
Seattle, WA  
January 17, 2020

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Rajeev D. Majumdar on Friday, January 17 at 4:00 PM at the offices of the Washington State Bar Association, Seattle, Washington. Governors in attendance were:

Hunter M. Abell  
Sunitha Anjilvel  
Daniel D. Clark  
Peter J. Grabicki  
Carla J. Higginson  
Jean Y. Kang  
Russell Knight  
Bryn Peterson  
Kyle D. Sciuchetti  
Paul Swegle  
Judge Brian Tollefson (ret.)

Also in attendance were Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Financial Officer Jorge Perez, and Executive Administrator Shelly Bynum.

### FY20 Budget Request: Budgeting Software

Gov. Grabicki moved to approve the request as provided in the materials. Motion passed unanimously.

### ADJOURNMENT

There being no further business and no need for an executive session, the meeting was adjourned at 4:04 PM on Friday, January 17, 2020.

Respectfully submitted,

Terra Nevitt  
WSBA Interim Executive Director & Secretary

# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS MEETING

Minutes

Seattle, WA

January 28, 2020

At 12:00 PM, President Majumdar announced to the public that there would be a five-minute delay to the start of the meeting. The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Rajeev D. Majumdar on Tuesday, January 28 at 12:05 PM at the offices of the Washington State Bar Association, Seattle, Washington. Governors in attendance were:

Hunter M. Abell

Sunitha Anjilvel

Daniel D. Clark

Peter J. Grabicki

Jean Y. Kang

Russell Knight

Bryn Peterson

Kyle D. Sciuchetti

Alec Stephens

Paul Swegle

Judge Brian Tollefson (ret.)

Also in attendance were Immediate Past President William D. Pickett, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Financial Officer Jorge Perez, Chief Disciplinary Counsel Doug Ende, Executive Administrator Shelly Bynum, and Enoka Herat (ACLU-WA).

### Review Endorsement of Proposal for Comment to RPC 4.4

Chair Don Curran of the Committee on Professional Ethics presented the recommendation of the Committee as presented in the materials. He noted that per his phone conversation with the proponents, the revised language was agreeable. He also noted that the Committee's suggestion that WSBA request that the Supreme Court extend the comment period for the rule change was not agreeable to the proponents. Gov. Grabicki moved to endorse the proposed comment to RPC 4.4 as revised and to pass it on to the Supreme Court. There was no public comment.

Discussion followed. Motion passed 6-2 with Governors Peterson and Swegle abstaining. Gov. Sciuchetti was not present for the vote.

CPE Request to the Supreme Court to Extend Comment Time

Rule proponent Enoka Herat, Police Practices and Immigration Counsel at the ACLU of Washington, provided comment against the request to extend comment time. Gov. Tollefson moved to request an extension of time for other stakeholders to make comment. Discussion followed. Motion passed 6-4. Gov. Sciuchetti was not present for the vote.

Amended Meeting Schedule Resolution

Pres. Majumdar presented the amended meeting schedule resolution as provided in the materials. Gov. Grabicki moved for its adoption. Motion passed unanimously.

**ADJOURNMENT**

There being no further business and no need for an executive session, the meeting was adjourned at 1:40 PM on Tuesday, January 28, 2020.

Respectfully submitted,

Terra Nevitt  
WSBA Interim Executive Director & Secretary

# WASHINGTON STATE BAR ASSOCIATION

Office of General Counsel

Nicole Gustine, Assistant General Counsel

**TO:** WSBA Board of Governors  
**FROM:** Nicole Gustine, Assistant General Counsel  
**DATE:** March 4, 2020  
**RE:** Confidentiality of Client Protection Board Recommendations

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Previously, Client Protection Board (CPB) recommendations have been provided to the Board of Governors (BOG) for consideration and action during executive session. Since the requirements of the Open Public Meetings Act will not allow for CPB recommendations to be considered in executive session going forward, the BOG will consider and act on the recommendations in public session. However, per Court Rule, all of the materials, reports, and deliberations shall not be public. (APR 15 Procedural Regulations, Regulation 13(b)).

## **APR 15 CLIENT PROTECTION FUND PROCEDURAL REGULATIONS 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.

The following report of CPB recommendations contains only pre-approved applications, and is therefore provided to you as a Trustee, confidentially. The report will not appear in the BOG meeting's public session materials. Please take the time to review the materials thoroughly prior to the BOG public session meeting. **Please do not discuss any details regarding the matters, including the names or amounts related to the matter, at the public session meeting.** If you have questions about the recommendations that you wish to bring up during public session, please use anonymous identifiers (i.e., use "Client A," etc., or refer to the matter by number). If you have in depth questions that cannot be addressed without referring to a specific client or gift amount, or you wish to act other than as recommended by the Client Protection Board, you may individually contact the Secretary of the CPB (Nicole Gustine) prior to the meeting, and, if necessary, the matter will be brought back for action at a subsequent BOG meeting.



**TO:** WSBA Board of Governors  
**FROM:** Interim Executive Director Terra Nevitt  
**DATE:** March 10, 2020  
**RE:** Executive Director's Report

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#### Coronavirus Planning & Prevention

The Executive Management Team is closely monitoring the impact of COVID-19 in King County, including recommendations from the Centers for Disease Control and the Washington State Department of Health. Currently we are encouraging employees that are able to work remotely to do so and making use of our existing technology to encourage remote participation for events and meetings.

#### 2020 Licensing Complete

The standard annual licensing process for 2020 began on November 1, 2019 and ended on Monday February 3, 2020, when the late licensing period started. As of February 4, 2020, 88% of members had paid the full license fee and we had collected \$14,435,630. The percentage of members claiming the Keller deduction is 15%, which is the same percentage as last year. Utilization of the hardship exemption continues to trend downward with 43 members taking it this licensing season, compared to 71 last year. On the other hand, use of the payment plan continues to trend upward with 74 members utilizing it this year, compared to 73 last year. As part of the licensing process, 15% of members made a voluntary contribution to the Campaign for Equal Justice for a total of \$282,471 and 12% gave to the Washington State Bar Foundation for a total of \$227,990.

In terms of mandatory continuing legal education, 95.3% of members are currently compliant, a light decrease from the compliance rate of 97.6% at this time last year.

#### Successful Winter Bar Exam

The winter bar exam was held at the Greater Tacoma Convention Center on February 25 and 26. Limited License Legal Technician and Limited Practice Officer licensing exams were held in the same place on Monday, February 24. All of the exams went smoothly and grading is underway. Results will be posted on the website April 11.

#### Draft Rules for Discipline and Incapacity Complete and Under Review

In July 2017, the Supreme Court approved in concept a proposed model for a substantially modified discipline system. Core objectives of the initiative were development of extensive improvements to the functionality of all discipline and incapacity procedures, merger of the existing systems for the three separate license types, and the creation of a partly professionalized adjudicative system. A graphic representation of the remodeled system is attached. Since that time, an internal workgroup of WSBA employees from the Office of Disciplinary Counsel, Office of General Counsel, and Regulatory Services Department have focused on creating a comprehensive draft of a new set of disciplinary procedural rules. Drafting was completed in January 2020, at which time representatives of a variety of external stakeholders (including Governor Hunter Abell) were convened to review the rules and provide substantive feedback and commentary. The first stakeholder review meeting was held on March 5, 2020. Once stakeholder review is complete, it is anticipated the rules will be presented to the BOG in spring 2020, followed by eventual submission of a set of suggested rules to the Supreme Court under GR 9.

### Supplemental Audit Complete

As the Supplemental Audit has come to completion we are waiting for Clark Nuber to produce the first preliminary report out for the work team, which includes myself, Jorge Perez, Julie Shankland, and Dan Clark. To date no significant finding has been reported. The meeting is scheduled for mid-March.

### WSBA Policy Clean-up

Over the next few months, a small group of WSBA employees will be working to identify and centrally store all WSBA policies and procedures. The team will review each document to ensure they are up to date, and develop a system to catalog, maintain, and retire policies. This work team includes Assistant General Counsel Nicole Gustine, Associate Director for Regulatory Services Bobby Henry, Volunteer Specialist Pam Inglesby, and Operations & Strategy Manager Ana LaNasa-Selvidge.

### “Washington State Bar News” Rolls Out with April/May Issue

As previously reported, the bar’s magazine staff created a comprehensive plan to change the publication’s name back to “Washington State Bar News” after the board’s vote in November. We are on track to roll out the new name and masthead in the April/May issue (going to press in late March). The timespan between the board’s directive and actual switchover on the printed magazine has allowed the bar to work with our professional ad sales team to notify current advertisers, honor existing ad contracts, and create a new media kit; register and receive new International Standard Serial Numbers from the Library of Congress for both the print and online editions; register a new URL ([wabarnews.wsba.org](http://wabarnews.wsba.org)) for the online version of the magazine; migrate all of the content on the existing online platform to the new URL and change those links; create a new masthead; and execute a roll out notification plan for members with alerts in the magazine, online, and in TakeNote. We are very pleased that all of these efforts have led to a relatively seamless transition for the upcoming issue.

### Legal Directory Update & Expanded Data Fields

We have begun exploring a more user-friendly format for the online WSBA Legal Directory. The current layout is essentially a list of every search field available to the user. In an overdue update, we are considering a cleaner and more modern presentation of the search fields grouped to help our two main user groups: those who want a quick search based on the name or license number of a legal professional and those who are looking for a legal professional based on practice area and location. Please note: the basic functionality and search options for the legal directory will not change, and we are making it a high priority to do testing with current high-frequency users of the directory to ensure any new design meets their needs. Apart from the design, we also want to expand the search fields in two areas: past judicial experience and past WSBA volunteer service.

### WSBA Insurance Marketplace – Open Enrollment Update

The WSBA Insurance Marketplace launched on November 1, 2018 and is administered by Member Benefits Inc. Annual open enrollment for health insurance closed on Dec. 15, 2019. This year, we saw a noteworthy increase in enrollment and benefits, including an additional insurance coverage option (private and/or public) in all 39 counties in Washington. Open enrollment for dental and long-term disability coverage took place in February 2020. Throughout the year, WSBA works closely with the marketing team at Member Benefits Inc., to promote product offerings in the WSBA Insurance Marketplace. In addition, Member Benefits, Inc. continues to work towards adding and increasing marketplace opportunities and benefits in compliance with Washington state law.

The most recent open enrollment (for 2020) and overall performance numbers are as follows:

	Individual Product Enrollments*	Employer Group Enrollments*	Overall Performance	
Medical	242	126	<b>1.1.2020</b>	<b>851</b>
Dental	123	15	10.1.2019	578
Vision	75	16	7.1.2019	445
Disability	25	3	4.1.2019	277
Life/AD&D	0	2	1.1.2019	200
Telemedicine	82	-		
<b>Total</b>	<b>641</b>	<b>182</b>		
<b>Enrollments</b>		<b>31 Groups</b>		

\*does not include dependent enrollment figures.

#### Limited License Legal Technician (LLLT) Practice Area Education Update

Late in July 2019, we learned that the University of Washington’s continuing education program would not offer a new series of the family law practice area courses until at least fall 2020. These courses are required prior to sitting for the LLLT admissions exam. UW was the only provider of these courses from the time they were first offered in 2014. The practice area courses are comprised of three parts, which the UW has historically offered one at a time. UW last offered Family Law I in winter 2019, Family Law II in spring 2019, and Family Law III just completed for fall 2019.

Whatcom Community College has now committed to offering the practice area education courses through its continuing education programs, to begin the week of April 7, with all three classes due to be completed by the end of 2020. To date, 21 students have applied for and been approved by the LLLT Board to take Family Law I and 11 more have indicated a desire to take the courses to refresh their previous learning and help them prepare to take the licensing exam.

In addition, it is WSBA staff’s understanding that Whatcom Community College is intending to offer the practice area courses as part of the community college “for credit” curriculum starting in the fall of 2020, and it is possible that other schools will also be interested in offering these courses as well. This would be helpful for potential students because it would make it possible for students to apply for financial aid for the courses.

#### Rural Outreach Project

Several members of the Board of Governors and WSBA staff have been working together to explore how WSBA might be more supportive of rural practice. The project is the early phases of awareness/conception and problem identification. In order to better understand the issue the project team developed letters to rural practitioners in counties with populations under 30,000 and to the local bars of counties with populations from 30,000 to 50,000. The letters were signed by President Majumdar and Interim Executive Director Terra Nevitt. Questions included: Do you consider your community a ‘legal desert’? What are the common legal issues in your community? What are the barriers, if any, limiting access to legal services in your community? What can or should the WSBA do to address or mitigate these issues? Similar questions were asked of associations. The next step of the project is to distribute an electronic survey to rural practitioners that seeks to gather more detailed information. All of this information will be reviewed by the project team with the goals of identifying the problem and ideating how WSBA might address the problem. Governors participating in the project team to date include Paul Swegle, P.J. Grabicki, and Hunter Abell. WSBA staff leading the initiative include Member Services & Engagement Paris Eriksen and Member Services & Engagement Specialist Julianne Unite. Additional staff have provided input and support for the effort including Bobby Henry, Association Director of Regulatory Services Department, Renata Garcia, Innovative Licensing Program



Manager, Kevin Plachy, Interim Director of Advancement and Jean McElroy, Director of Regulatory Services Department.

#### FY20 First Quarter Member Survey & Outreach Highlights

Attached is the first quarter WSBA Member Survey and Outreach Report. In reviewing prior quarterly reports, it appears that the overall perception of WSBA is trending more positively after a dip in the third quarter of FY19. This data is gathered through a random phone survey of WSBA members conducted each quarter. The WSBA Outreach Highlights are meant to illustrate some of the activities that WSBA Board members and staff and undertaken during the quarter to connect with members. During the first quarter of this fiscal year we highlighted 48 outreach activities. You can find prior reports on our website at <https://www.wsba.org/for-legal-professionals/member-support/surveys>.

#### Board for Judicial Administration

As you may know, the WSBA President and Executive Director serve as non-voting members of the Board for Judicial Administration, which is administered by the Administrative Office of the Courts and whose mission is to provide leadership and develop policy to enhance the judiciary's ability to serve as an equal, independent, and responsible branch of government. The BJA has a number of task forces and committees that carry out its mission. I attended the BJA meeting on February 21 where discussion topics included the Gender and Justice Commission's model anti-harassment policy for courts and next iteration of its periodic gender and justice study, updating GR 11 to broaden the Interpreter Commission's scope to address language access, funding for court security, and budget development. If you would like more detail about any of these topics, please let me know.

#### 2020-2021 Board of Governor Elections

Five seats on the Board of Governors are open for the term beginning October 2020: four district seats and one at-large. Please join me in congratulating Brent Williams-Ruth who has been declared the winner in district 8. WSBA members in districts 3, 6 and 7-North will vote between March 13-April 1 on these candidates: District 3 – John Bachofner, Lauren Boyd, D. Angus Lee; District 6 – Jean Cotton, Brett Purtzer; District 7-North – Matthew Dresden, Mercedes Donchez, Andrew Pollom. We held a Candidate Forum on March 4, moderated by former board member Elijah Forde. A recording of the candidate forum will be available on the WSBA website at <https://www.wsba.org/about-wsba/who-we-are/board-elections>.

The At-Large Governor, and the 2020-21 President-elect, will be elected by the Board at its May 14-15 meeting. The at-large position represents licensed legal professionals whose membership has historically been underrepresented in governance. The application deadline for both positions is April 20. For further information, see [www.wsba.org/elections](http://www.wsba.org/elections). Bylaw changes made by the Board in January are anticipated to go into effect with the next election cycle. Under the new rules the at-large position will be elected by the membership and incumbent Board members will be eligible to serve an additional term.

[Discipline System Structure \(attached\)](#)

[Litigation Update \(attached\)](#)

[Media Contacts Report \(attached\)](#)

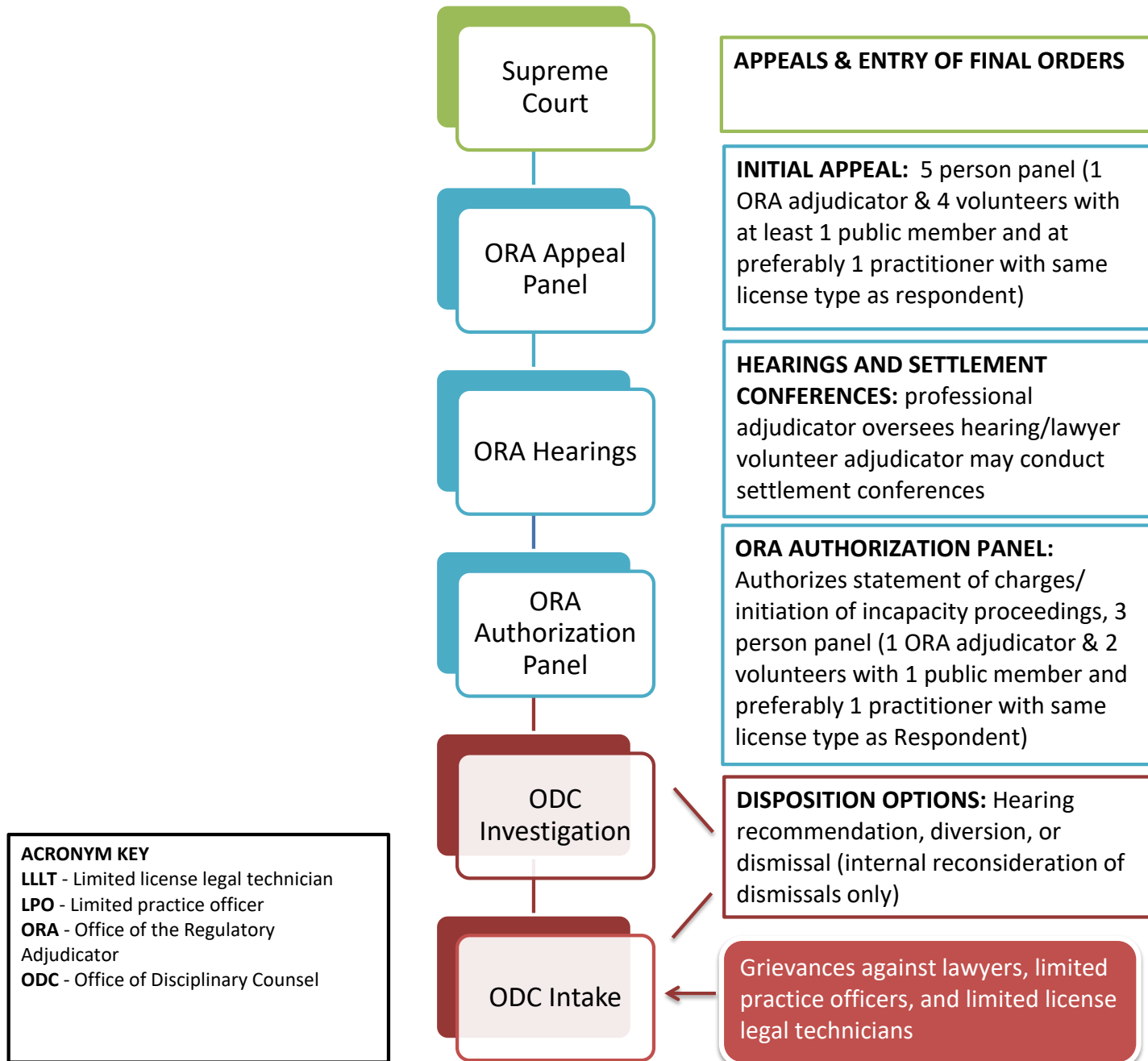
[FY19 Fourth Quarter Discipline Report](#)

[FY20 First Quarter Member Survey & Outreach Highlights \(attached\)](#)

[WSBA Demographics Report \(attached\)](#)

[Correspondence and Other Informational Items \(attached\)](#)

## APPENDIX D: STRUCTURE OF DISCIPLINE AND INCAPACITY SYSTEM



# WASHINGTON STATE BAR ASSOCIATION

Office of General Counsel

To: The President, President-elect, Immediate Past-President, and Board of Governors  
 From: Julie Shankland, General Counsel  
 Lisa Amatangel, Associate Director, OGC  
 Date: March 3, 2020  
 Re: Litigation Update

**PENDING LITIGATION:**

No.	Name	Brief Description	Status
1.	<i>Small v. WSBA</i> , No. 19-2-15762-3 (King Sup. Ct.)	Former employee alleges discrimination and failure to accommodate disability.	On 07/17/19, WSBA filed an answer. Discovery ongoing.
2.	<i>Beauregard v. WSBA</i> , No. 19-2-08028-1 (King Sup. Ct.)	Alleges violations of WSBA Bylaws (Section VII, B “Open Meetings Policy”) and Open Public Meetings Act; challenges termination of former ED.	On 08/27/19, the Supreme Court granted direct discretionary review. On 09/26/19, WSBA filed a Designation of Clerk’s Papers with the Superior Court, and a Statement of Arrangements with the Supreme Court. On 11/21/19, Justice Yu recused herself from the case. WSBA filed a report of proceedings with the Supreme Court on 11/25/19. WSBA filed its opening brief on 02/10/20. Respondent filed his response on 02/28/20.
3.	<i>O’Hagan v. Johnson et al.</i> , No. 18-2-00314-25 (Pacific Sup. Ct.)	Allegations regarding plaintiff’s experiences with legal system.	Motion to Dismiss granted on 08/05/19; on 08/28/19 plaintiff circulated a Notice of Intent to Appeal.
4.	<i>Scannell v. WSBA et al.</i> , No. 18-cv-05654-BHS (W.D. Wash.)	Challenges bar membership, fees, and discipline system in the context of plaintiff’s run for the Washington Supreme Court.	On 01/18/19, the court granted WSBA and state defendants’ motions to dismiss; plaintiff appealed. WSBA responded to plaintiff’s opening brief on 09/30/19.
5.	<i>Block v. WSBA et al.</i> , No. 18-cv-00907 (W.D. Wash.) (“ <i>Block II</i> ”)	See <i>Block I</i> (below).	On 03/21/19, 9th Cir. stayed <i>Block II</i> pending further action by the district court in <i>Block I</i> . On 12/17/19, Block filed a status report with the Ninth Circuit informing the Court of the <i>Block I</i> Court’s reimposition of the vexatious litigant pre-filing order against Block.



6.	<i>Eugster v. WSBA, et al.</i> , No 18201561-2, (Spokane Sup. Ct.)	Challenges dismissal of <i>Spokane County 1</i> (case no. 15-2-04614-9).	Dismissal order signed 01/06/20. On 01/16/20, WSBA filed a supplemental brief on fees under CR 11 and RCW 4.84.185. Fee award of \$28,586 granted on 02/14/20; Eugster filed a notice of appeal on 03/02/20. Awaiting the Court of Appeals to issue a schedule.
7.	<i>Block v. WSBA, et al.</i> , No. 15-cv-02018-RSM (W.D. Wash.) (" <i>Block I</i> ")	Alleges conspiracy among WSBA and others to deprive plaintiff of law license and retaliate for exercising 1st Amendment rights.	<p>On 02/11/19, 9th Cir. affirmed dismissal of claims against WSBA and individual WSBA defendants; the Court also vacated the pre-filing order and remanded this issue to the District Court.</p> <p>On 12/09/19, the United States Supreme Court denied plaintiff's Petition of Writ of Certiorari.</p> <p>On 12/13/19, the District Court reimposed the vexatious litigant pre-filing order against Block; Block filed a notice of appeal regarding this order on 01/14/20. Block's opening brief is due 03/16/20.</p>
8.	<i>Eugster v. Littlewood, et al.</i> , No. 17204631-5 (Spokane Sup. Ct.)	Demand for member information in customized format.	Dismissed (GR 12.4 is exclusive remedy) and fees awarded; Eugster appealed. Merits appeal briefing completed; awaiting disposition. On 01/15/20, WSBA filed its supplemental brief on fee appeal; Eugster's reply brief due 03/14/20.
9.	<i>Eugster v. WSBA, et al.</i> , No. 18200542-1 (Spokane Sup. Ct.)	Alleges defamation and related claims based on briefing in <i>Caruso v. Washington State Bar Association, et al.</i> , No. 2:17-cv-00003-RSM (W.D. Wash.)	Dismissed based on absolute immunity, collateral estoppel, failure to state a claim. Briefing complete on appeal and cross-appeal on fees. Case transferred to Division II. Oral argument heard on 10/22/19. On 01/07/20, the Court affirmed dismissal and reversed fee denial. Awaiting issuance of mandate for remand on fees, set for 03/10/20.

10.	<i>Caruso v. Washington State Bar Association, et al.</i> , No. 2:17-cv-00003-RSM (W.D. Wash.) (“ <i>Caruso</i> ”).	Challenges bar membership, fees, and discipline (on behalf of other lawyers).	Dismissed for failure to state a claim; fee award and pre-filing order granted. 9th Circuit affirmed dismissal and fee award, vacated pre-filing order and remanded for entry of narrower order. Revised order entered on 04/29/19.  On 10/28/19, Eugster filed a Rule 60 motion for relief from judgment, which was rejected the same day. Eugster appealed the denial, filing an opening brief on 02/12/20. WSBA’s reply in support of summary dismissal is pending.
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**MEMO**

**To:** Board of Governors

**From:** Sara Niegowski, Chief Communications and Outreach Officer  
Jennifer Olegario, Communication Strategies Manager

**Date:** Mar. 4, 2020

**Re:** Summary of Media Contacts, Jan. 2 – Mar. 4, 2020

	<b>Date</b>	<b>Journalist and Media Outlet</b>	<b>Inquiry</b>
1.	Jan. 6	Graeme Wood, Business in Vancouver (Glacier Media Group, Canada)	Sought information regarding license status and disciplinary information for Faiyaz A. Dean. Sent standard response regarding confidentiality of bar grievances.
2.	Jan. 7	Andy Giegerich, <i>Portland Business Journal</i>	Sought Vancouver-area limited license legal technician to discuss their career experience and why they chose that path; including their thoughts about the possibility of Oregon having a similar license.
3.	Jan. 21	Lyle Moran, <i>ABA Journal</i>	Inquired whether Bar Structure Work Group webpage was the best place to find the most up-to-date information on the work group the WA Supreme Court set up to review the structure of the State Bar.
4.	Jan. 22	Shelby Thom, <i>Global Okanagan News</i>	Sought information regarding license status and disciplinary information for Shawn Bertram Jensen. Sent standard response regarding confidentiality of bar grievances.
5.	Jan. 24	Annie Knox, <i>Deseret News</i>	Inquired whether the LLLT license still only encompasses the family law practice area; she is writing an article about Utah's new paralegal practitioner program.

6.	Jan. 29	Peter Maxwell, KHQ Spokane	Inquired why it appears legislator Matt Shea seems to be in violation of certain RPCs and whether WSBA could comment on that and if WSBA was investigating Shea. Sent standard response regarding confidentiality of bar grievances.
7.	Feb. 3	Chad Sokol, <i>Spokesman-Review</i>	Inquired whether WSBA is able to provide legal analysis involving conflict of interest for a legal courier of a state representative (Matt Shea).
8.	Feb. 3	Emry Dinman, <i>Columbia Basin Herald</i>	Asked how to find information on wsba.org about disciplinary history regarding an attorney running for judge.
9.	Feb. 10	Caroline Spiezio, Reuters	Interested in speaking with someone about what impact LLLTs have had since Washington began allowing them to practice, in light of a coming vote on an ABA resolution that could encourage other states to try similar regulatory innovations. Interview w/Steve Crossland and Renata Garcia on Feb. 11.
10.	Feb. 14	Rebecca Monahan, <i>Willamette Week</i>	Inquired whether there were any grievances against Jennifer Williamson but her name was not found in the legal directory.
11.	Feb. 20	Lyle Moran, <i>ABA Journal</i>	Writing a story on current state of LLLT license in WA state, including inquiries about board actions. Interview with Rajeev Majumdar and Jean McElroy on Mar. 9.
12.	Mar. 2	Chris Dolmetsch, Bloomberg News	Asked whether Seattle-area WSBA members have seen disruptions in their workdays (delayed depositions, etc.) due to coronavirus.

**MEMO**

To: Terra Nevitt, WSBA Interim Executive Director

From: Douglas J. Ende, WSBA Chief Disciplinary Counsel & Director of the Office of Disciplinary Counsel

Date: March 2, 2020

Re: Quarterly Discipline Report, 4<sup>th</sup> Quarter (October – December 2019)

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**A. Introduction**

The Washington Supreme Court’s exclusive responsibility to administer the lawyer discipline and disability system is delegated by court rule to WSBA. See GR 12.2(b)(6). The investigative and prosecutorial function is discharged by the employees in the Office of Disciplinary Counsel (ODC), which is responsible for investigating allegations and evidence of lawyer misconduct and disability and prosecuting violations of the Washington Supreme Court’s Rules of Professional Conduct.

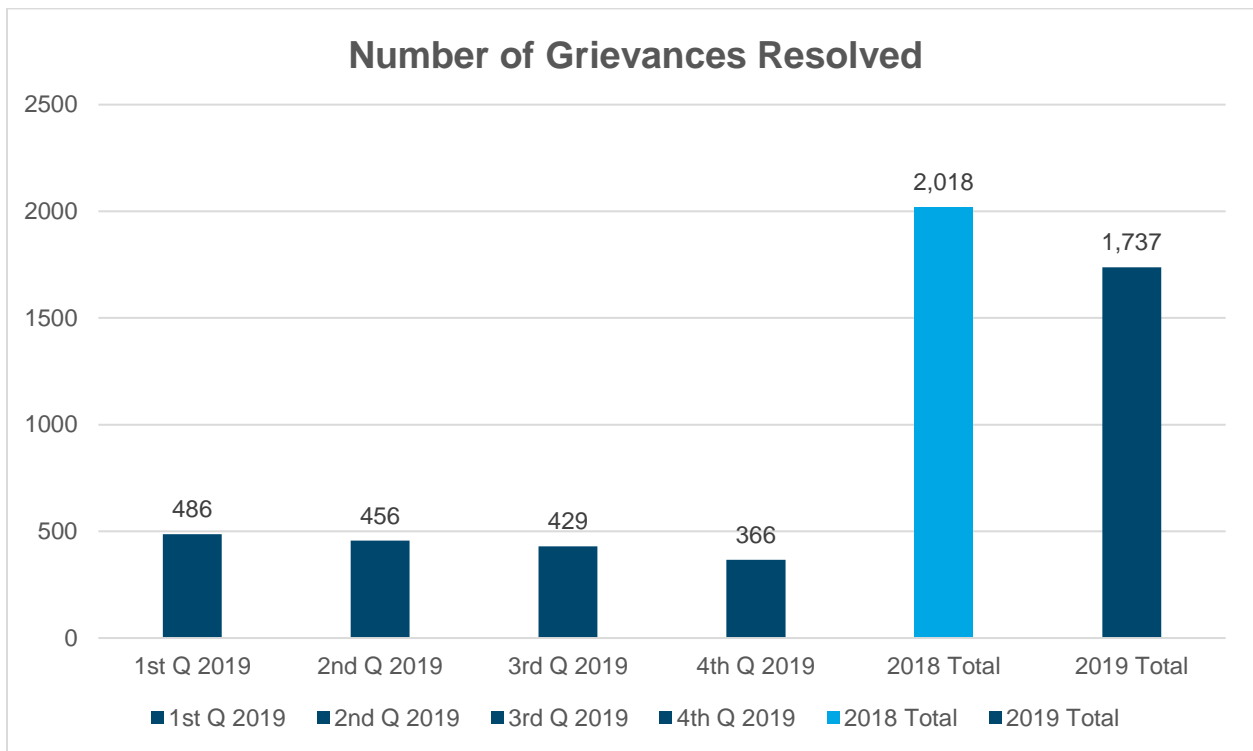
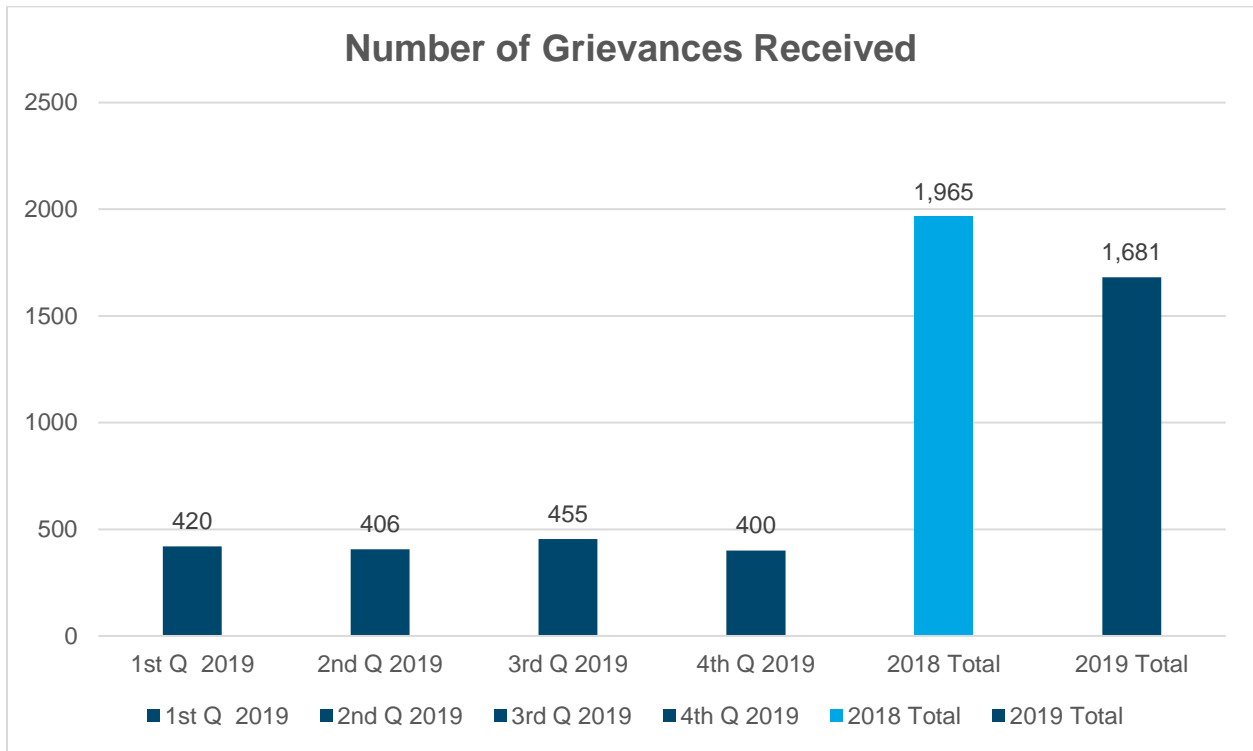
The Quarterly Discipline Report provides a periodic overview of the functioning of the Office of Disciplinary Counsel. The report graphically depicts key discipline-system indicators for 4<sup>th</sup> Quarter 2019. Note that all numbers and statistics herein are considered tentative/approximate. Final figures will be issued in the 2019 Discipline System Annual Report.

**B. Recent Supreme Court Opinions & Other Accomplishments**

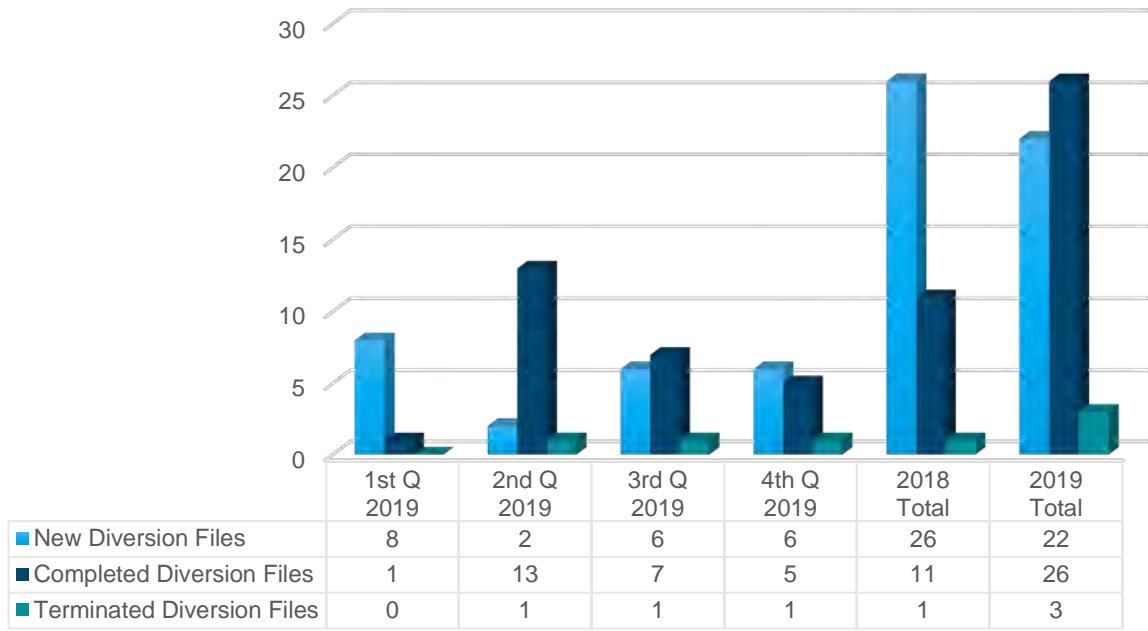
- **Annual Summary of Speaking Engagements.** Attached to this report as Appendix 1 is ODC’s annual summary of speaking engagements. In 2019, ODC lawyers and auditors appeared as speakers in 25 programs around the state, at national conferences, and in webinars and webcasts, educating approximately 1,120 lawyers, law students, and legal professionals on topics of legal ethics, trust account recordkeeping and compliance, and the lawyer discipline system.



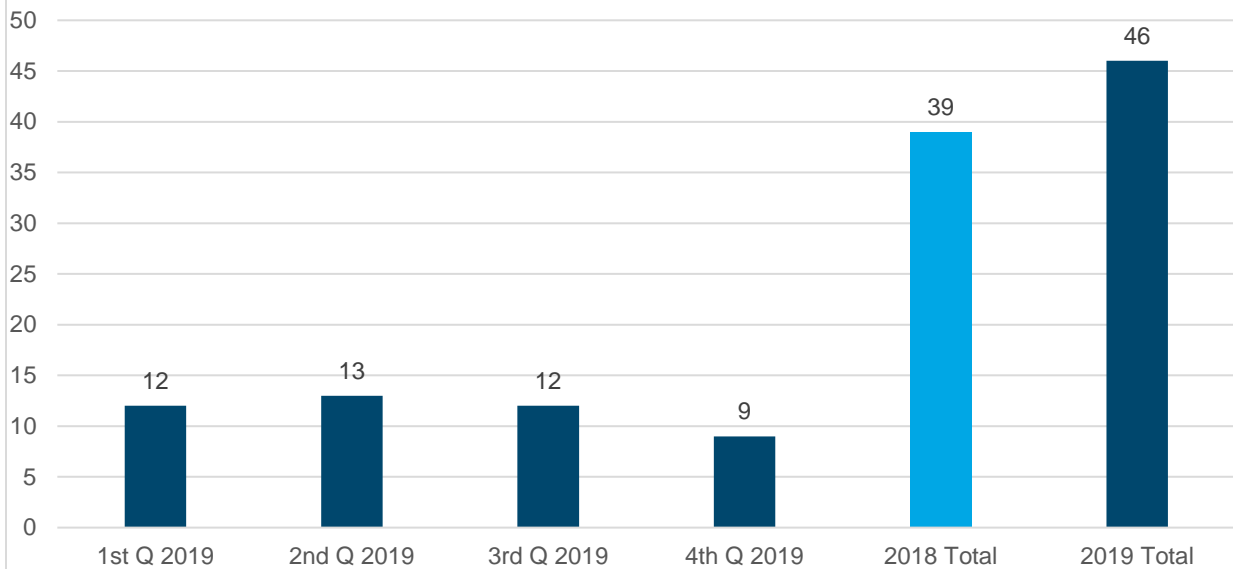
**C. Grievances and Dispositions**

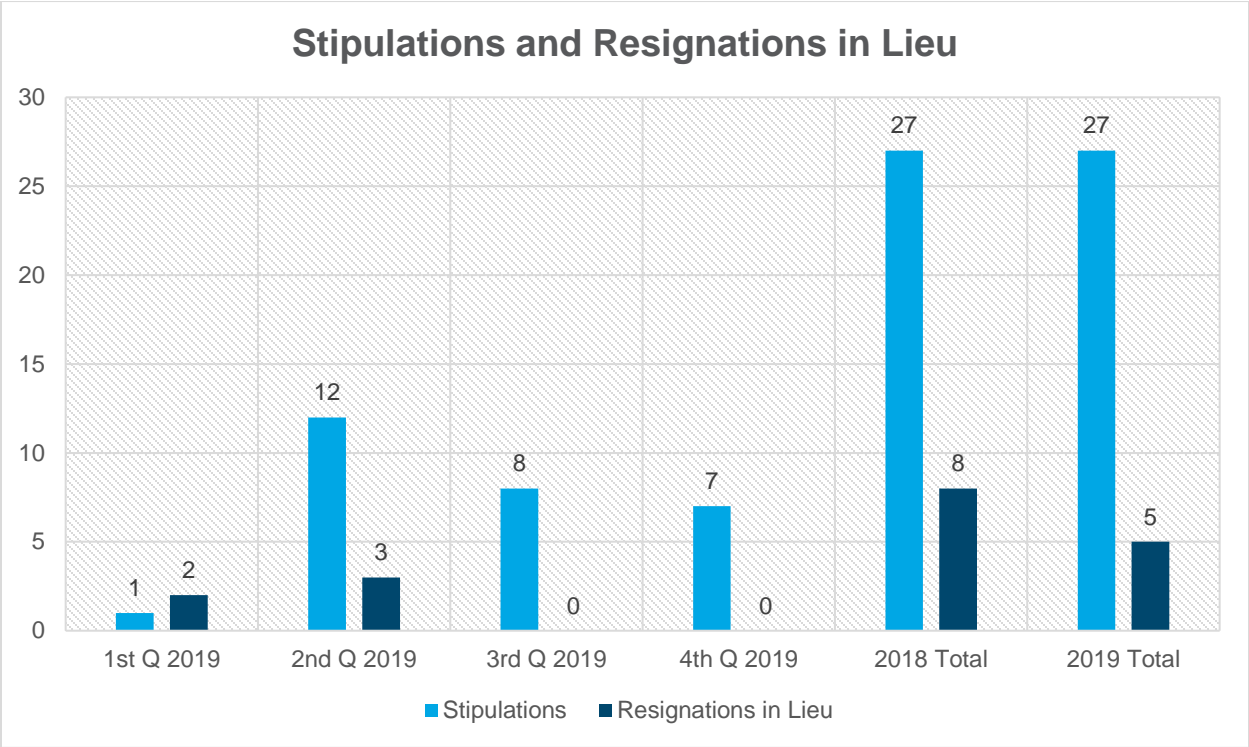
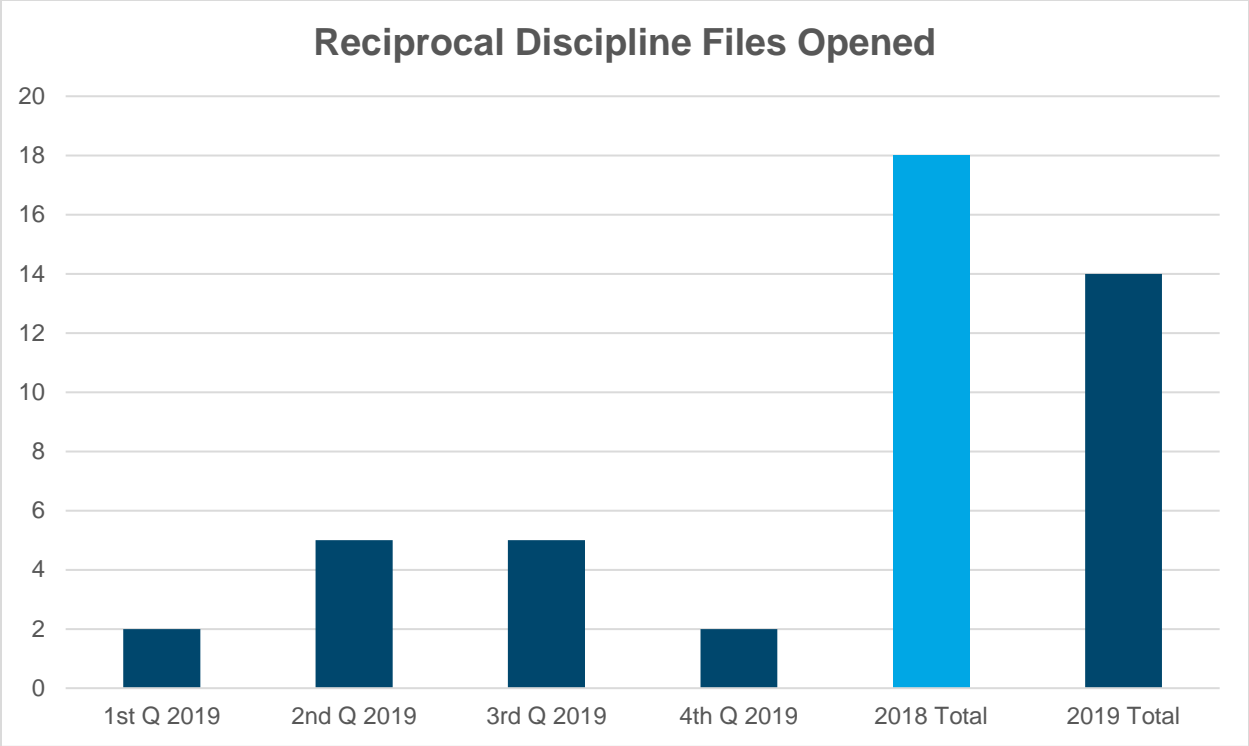


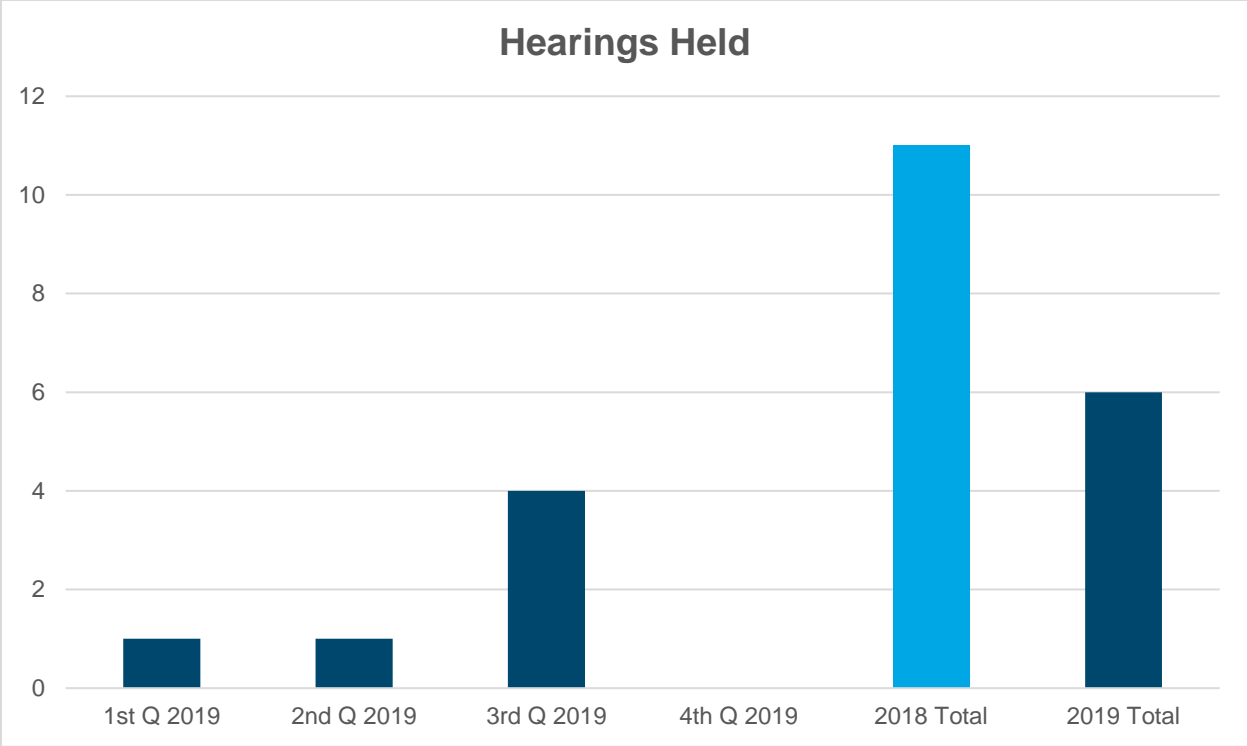
## Diversion Statistics



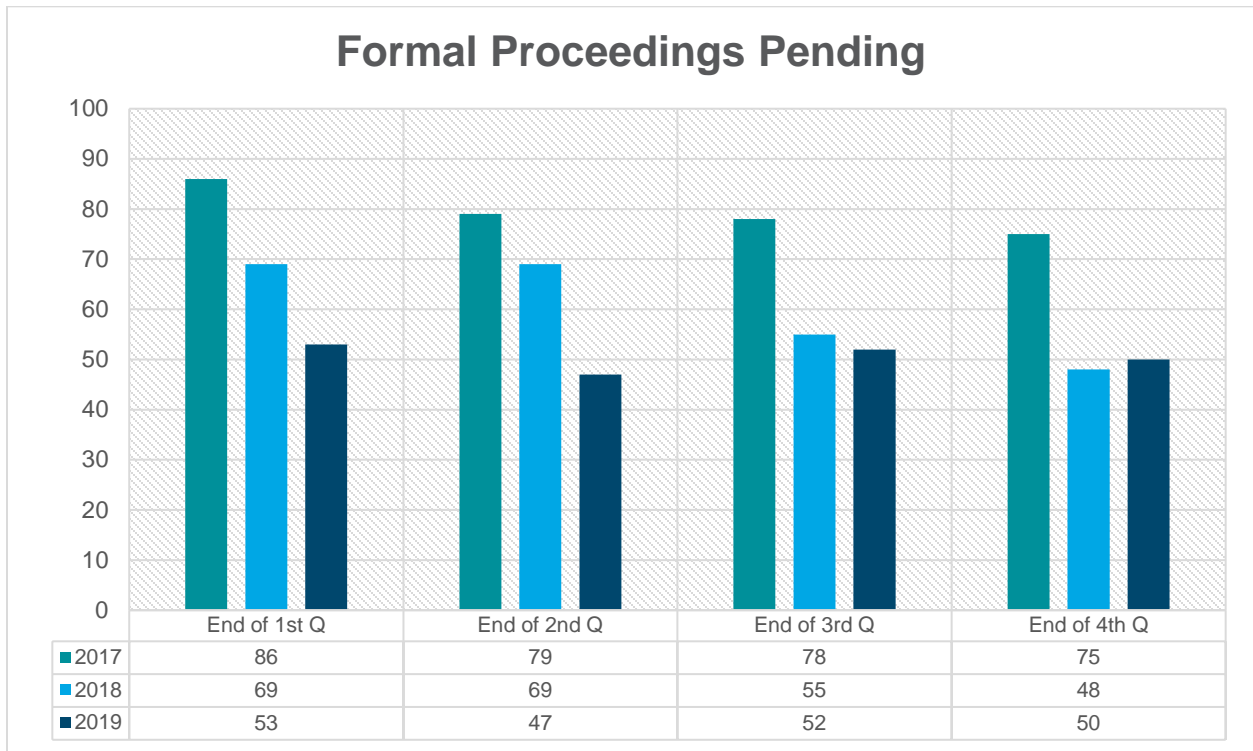
## Formal Complaints Filed







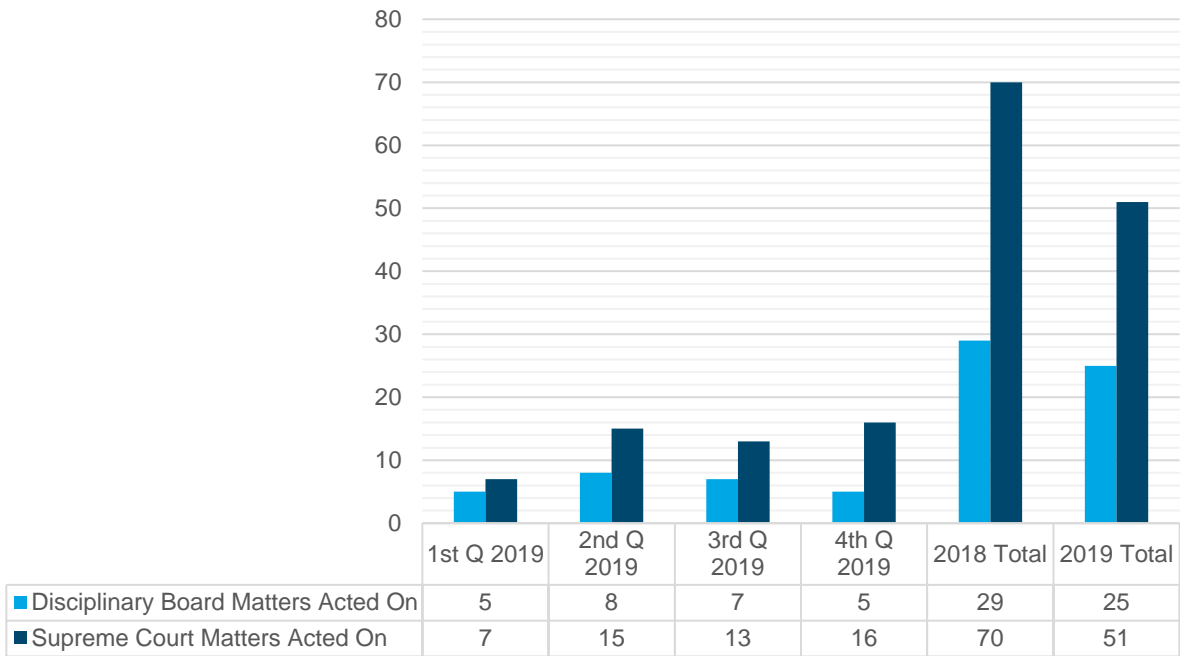
**D. Pending Proceedings<sup>1</sup>**



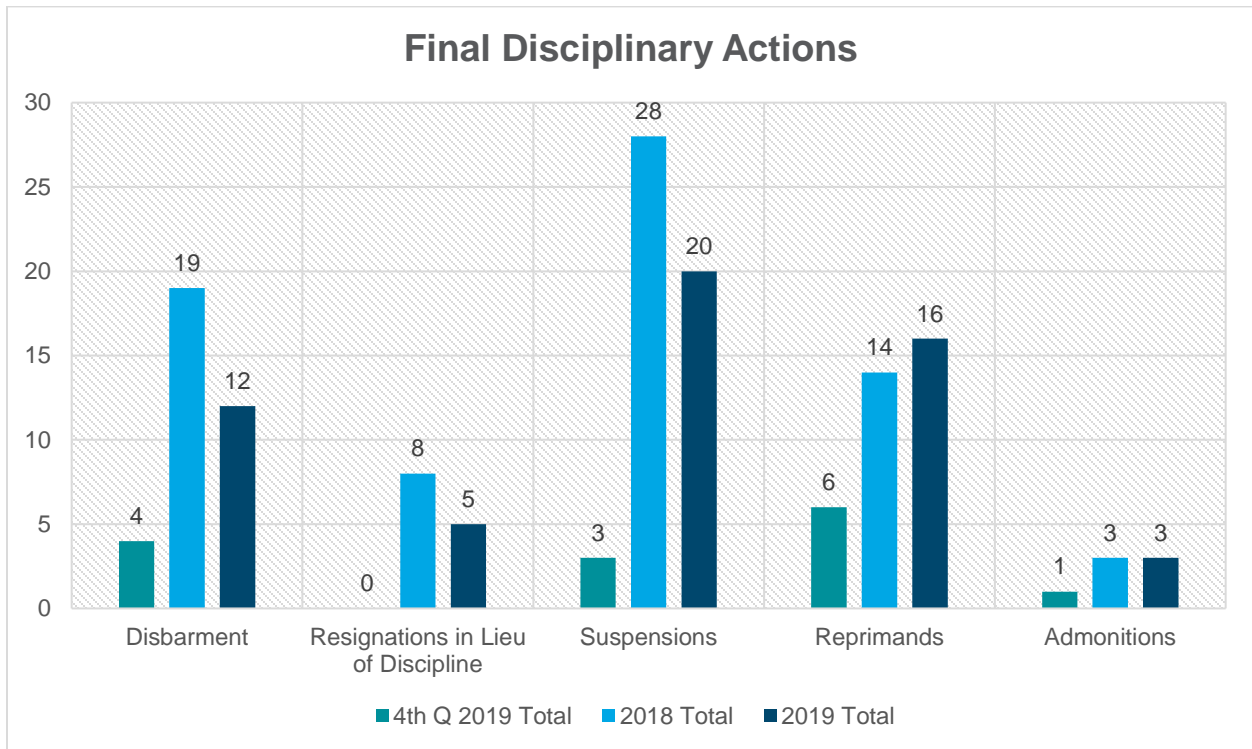

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<sup>1</sup> In the second table in this section, the Disciplinary Board numbers reflect Board orders on stipulations and following review after an appeal of a hearing officer’s findings.

### Matters Acted on by Reviewing Bodies



### E. Final Disciplinary Actions



**F. Disability Inactive Transfers**

<b>Disability Inactive Transfers</b>	<b>Quarter Total</b>
<b>1<sup>st</sup> Quarter 2019</b>	0
<b>2<sup>nd</sup> Quarter 2019</b>	0
<b>3<sup>rd</sup> Quarter 2019</b>	5
<b>4<sup>th</sup> Quarter 2019</b>	0
<b>2018 Total</b>	8
<b>2019 Total</b>	5

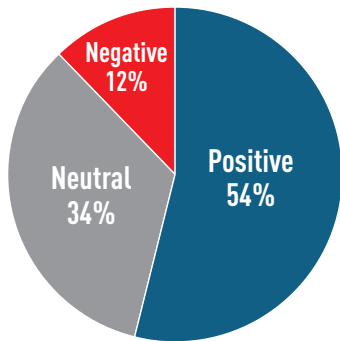
**G. Discipline Costs<sup>2</sup>**

<b>Quarterly Discipline Costs Collected</b>	<b>Total</b>
<b>1<sup>st</sup> Q 2019</b>	\$17,386.49
<b>2<sup>nd</sup> Q 2019</b>	\$22,401.04
<b>3<sup>rd</sup> Q 2019</b>	\$18,364.76
<b>4<sup>th</sup> Q 2019</b>	\$35,338.92
<b>2018 Total</b>	<b>\$75,784.40</b>
<b>2019 Total</b>	<b>\$93,491.21</b>

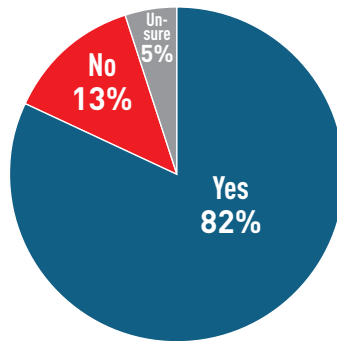
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<sup>2</sup> The cost figures may vary from amounts indicated in previous quarterly reports, statistical summaries, and annual reports, owing to discrepancies in the data available at the time of issuance of these quarterly reports and the final cost figures available after Accounting closes the monthly books.

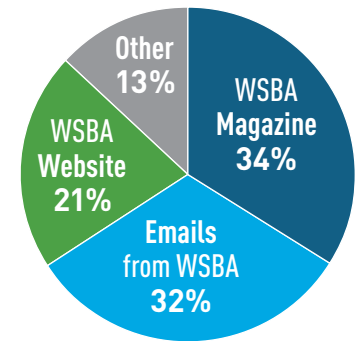
What is your perception of the WSBA?



Do you know the ways you can be involved with the WSBA?



What is your main source of information about the WSBA?



How members grade the WSBA

WSBA REPORT CARD	FY19 Q2	FY19 Q3	FY19 Q4	FY20 Q1
✓ Upholding high-quality standards for Washington’s legal profession	A	A-	A-	A
✓ Providing high-quality CLEs	A	B+	A	A
✓ Supporting diversity and inclusion in the legal profession	A-	A	A-	A
✓ Providing high-quality professional programs and services	A-	B+	A-	A-
✓ Helping members expand access to justice in their communities	B+	A-	B+	B+
✓ Preparing the legal profession for changes in the future	B+	A-	B	B+

Sample comments and themes:

“I think (the WSBA) provides good CLEs and a good legal research platform. It’s my sole source of legal research.”

“The Ethics line is practical and helpful. I appreciate that someone who has done research calls me back to answer questions, and provides written follow-up.”

“At times it feels like an elite organization, better to be more inclusive.”

## Member Survey Participants

SIZE OF LAW FIRM			
Solo	26	100+	4
2-5	7	Govt/Public	14
6-10	5	In-house	5
11-20	3	Retired	1
21-100	7	Other	5

MEMBER’S CONGRESSIONAL DISTRICT					
District 1	5	District 5	10	District 8	4
District 2	4	District 6	5	District 9	5
District 3	4	District 7S	13	District 10	8
District 4	5	District 7N	7	Out-of-state	7

## Explanation of member survey

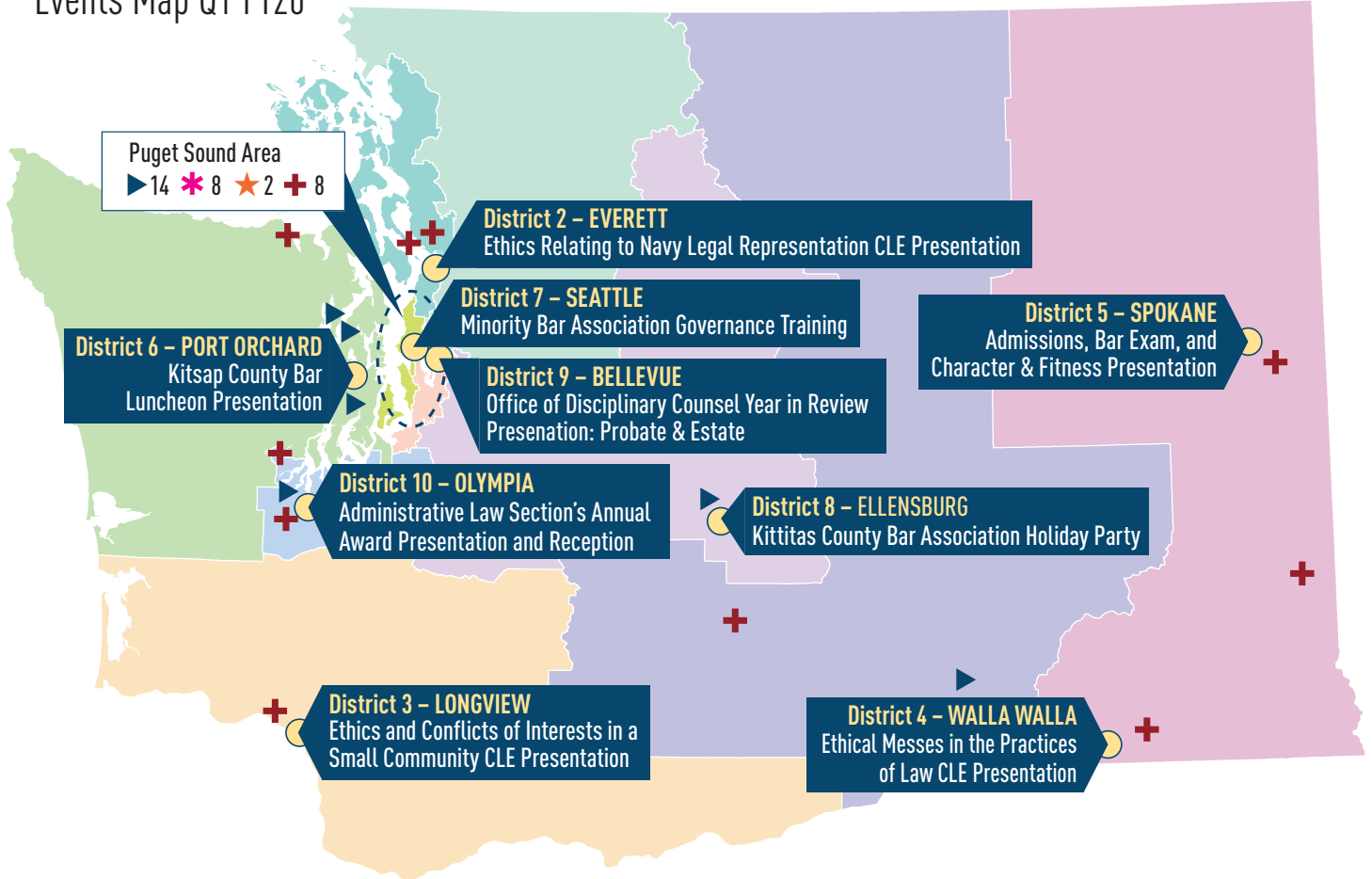
This phone survey will be conducted each quarter by randomly selecting members from the full membership and conducting 10-minute phone calls with them.

The goal for each quarter is to speak to 105 different members. 105 members constitutes a statistically significant sample. Our response rate for Q1 was 13%.



# WSBA Outreach Highlights

## Events Map Q1 FY20



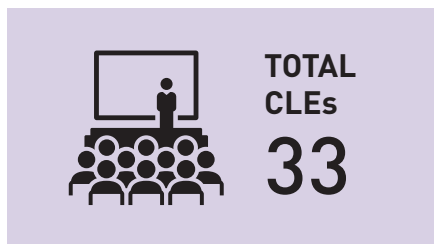
### Select Highlights

Every quarter, WSBA aims to host an outreach event in each of Washington’s ten Congressional districts.

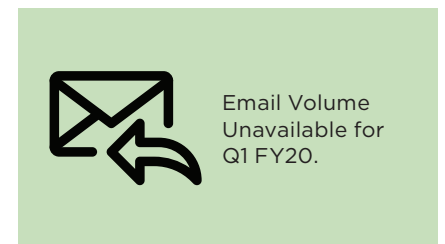
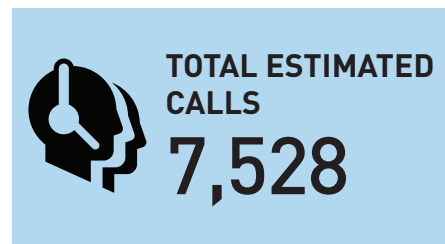
### Events

	Q1 FY20
▶ WSBA Ambassadorship	20
* Diversity & Inclusion	8
★ Professional Programs	2
+ Ethics/Substantive Law Education	18

## CLEs provided by WSBA Q1 FY20



## WSBA Call Center Volume\* Q1 FY20



\*Other groups and teams at WSBA have significant numbers of direct contacts with members that are not reflected in the call center volume.

## WSBA Member\* Licensing Counts 3/2/20 10:13:53 AM GMT-08:00

Member Type	In WA State	All
Attorney - Active	26,098	32,677
Attorney - Emeritus	108	114
Attorney - Honorary	312	359
Attorney - Inactive	2,587	5,784
Judicial	619	651
LLLT - Active	38	38
LLLT - Inactive	4	4
LPO - Active	816	829
LPO - Inactive	146	164
	30,728	40,620

By District		
	All	Active
0	4,112	3,180
1	2,875	2,370
2	2,092	1,679
3	2,081	1,745
4	1,370	1,159
5	3,160	2,550
6	3,324	2,770
7N	5,059	4,297
7S	6,559	5,404
8	2,226	1,871
9	4,848	4,085
10	2,914	2,434
	40,620	33,544

By State and Province	
Alabama	28
Alaska	201
Alberta	9
Arizona	354
Arkansas	18
Armed Forces Americas	4
Armed Forces Europe, Middle East	29
Armed Forces Pacific	15
British Columbia	97
California	1,823
Colorado	245
Connecticut	49
Delaware	6
District of Columbia	335
Florida	252
Georgia	86
Guam	14
Hawaii	136
Idaho	450
Illinois	157
Indiana	34
Iowa	27
Kansas	29
Kentucky	25
Louisiana	50
Maine	18
Maryland	114
Massachusetts	86
Michigan	72
Minnesota	97
Mississippi	5
Missouri	64
Montana	163
Nebraska	16
Nevada	151
New Hampshire	12
New Jersey	65
New Mexico	70
New York	255
North Carolina	78
North Dakota	10
Northern Mariana Islands	5
Nova Scotia	1
Ohio	75
Oklahoma	26
Ontario	15
Oregon	2,686
Pennsylvania	81
Puerto Rico	5
Quebec	1
Rhode Island	12
South Carolina	26
South Dakota	8
Tennessee	58
Texas	367
Utah	179
Vermont	17
Virginia	266
Virgin Islands	1
Washington	30,728
Washington Limited License	1
West Virginia	6
Wisconsin	46
Wyoming	23

By WA County		By Admit Yr	
Adams	14	1946	1
Asotin	25	1947	2
Benton	396	1948	2
Chelan	246	1949	2
Clallam	159	1950	7
Clark	884	1951	15
Columbia	6	1952	19
Cowlitz	141	1953	17
Douglas	38	1954	22
Ferry	11	1955	12
Franklin	55	1956	34
Garfield	3	1957	24
Grant	120	1958	30
Grays Harbor	109	1959	30
Island	154	1960	28
Jefferson	112	1961	26
King	16,627	1962	32
Kitsap	802	1963	32
Kittitas	89	1964	36
Klickitat	23	1965	53
Lewis	112	1966	60
Lincoln	13	1967	59
Mason	102	1968	86
Okanogan	88	1969	95
Pacific	28	1970	101
Pend Oreille	15	1971	105
Pierce	2,297	1972	165
San Juan	78	1973	254
Skagit	283	1974	241
Skamania	20	1975	308
Snohomish	1,583	1976	377
Spokane	1,937	1977	375
Stevens	55	1978	418
Thurston	1,573	1979	453
Wahkiakum	11	1980	472
Walla Walla	112	1981	500
Whatcom	580	1982	488
Whitman	72	1983	523
Yakima	460	1984	1,121
		1985	578
		1986	787
		1987	751
		1988	655
		1989	707
		1990	890
		1991	859
		1992	832
		1993	936
		1994	886
		1995	840
		1996	818
		1997	926
		1998	905
		1999	915
		2000	920
		2001	923
		2002	1,025
		2003	1,076
		2004	1,103
		2005	1,129
		2006	1,203
		2007	1,281
		2008	1,113
		2009	986
		2010	1,088
		2011	1,071
		2012	1,100
		2013	1,249
		2014	1,374
		2015	1,624
		2016	1,338
		2017	1,420
		2018	1,335
		2019	1,394
		2020	252

Misc Counts	
All License Types **	40,951
All WSBA Members	40,620
Members in Washington	30,728
Members in western Washington	25,655
Members in King County	16,627
Members in eastern Washington	3,778
Active Attorneys in western Washington	21,771
Active Attorneys in King County	14,521
Active Attorneys in eastern Washington	3,156
New/Young Lawyers	6,277
MCLE Reporting Group 1	11,237
MCLE Reporting Group 2	10,719
MCLE Reporting Group 3	11,156
Foreign Law Consultant	19
House Counsel	302
Indigent Representative	10

By Section ***	All	Previous Year
Administrative Law Section	212	236
Alternative Dispute Resolution Section	304	314
Animal Law Section	78	94
Antitrust, Consumer Protection and Unfair Business Practice	191	208
Business Law Section	1,195	1,258
Cannabis Law Section	84	103
Civil Rights Law Section	140	175
Construction Law Section	493	499
Corporate Counsel Section	1,050	1,116
Creditor Debtor Rights Section	433	466
Criminal Law Section	351	407
Elder Law Section	607	624
Environmental and Land Use Law Section	743	793
Family Law Section	923	1,035
Health Law Section	376	383
Indian Law Section	302	327
Intellectual Property Section	851	875
International Practice Section	225	225
Juvenile Law Section	127	165
Labor and Employment Law Section	953	997
Legal Assistance to Military Personnel Section	62	75
Lesbian, Gay, Bisexual, Transgender (LGBT) Law Section	108	102
Litigation Section	983	1,018
Low Bono Section	48	71
Real Property Probate and Trust Section	2,192	2,293
Senior Lawyers Section	220	239
Solo and Small Practice Section	833	908
Taxation Section	591	625
World Peace Through Law Section	121	108

\* Per WSBA Bylaws 'Members' include active attorney, emeritus pro-bono, honorary, inactive attorney, judicial, limited license legal technician (LLLT), and limited practice officer (LPO) license types.

\*\* All license types include active attorney, emeritus pro-bono, foreign law consultant, honorary, house counsel, inactive attorney, indigent representative, judicial, LPO, and LLLT.

\*\*\* The values in the All column are reset to zero at the beginning of the year (Jan 1). The Previous Year column is the total from the last day of the prior year (Dec 31). WSBA staff with complimentary membership are not included in the counts.

By Years Licensed	
Under 6	8,534
6 to 10	5,586
11 to 15	5,619
16 to 20	4,673
21 to 25	4,108
26 to 30	3,636
31 to 35	2,946
36 to 40	2,431
41 and Over	3,087
<b>Total:</b>	<b>40,620</b>

By Age	All	Active
21 to 30	1,837	1,752
31 to 40	9,285	8,288
41 to 50	9,867	8,151
51 to 60	8,766	6,882
61 to 70	7,626	5,706
71 to 80	2,738	1,769
Over 80	501	129
<b>Total:</b>	<b>40,620</b>	<b>32,677</b>

By Gender	
Female	12,366
Male	16,815
Non-Binary	14
Not Listed	20
Selected Mult Gender	17
Transgender	1
Two-spirit	3
<b>Respondents</b>	<b>29,236</b>
<b>No Response</b>	<b>11,384</b>
<b>All Member Types</b>	<b>40,620</b>

By Disability	
Yes	1,161
No	20,038
<b>Respondents</b>	<b>21,199</b>
<b>No Response</b>	<b>19,421</b>
<b>All Member Types</b>	<b>40,620</b>

By Sexual Orientation	
Asexual	20
Gay, Lesbian, Bisexual, Pansexual, or Queer	409
Heterosexual	4,018
Not Listed	79
Selected multiple orientations	16
Two-spirit	3
<b>Respondents</b>	<b>4,545</b>
<b>No Response</b>	<b>36,075</b>
<b>All Member Types</b>	<b>40,620</b>

By Ethnicity	
American Indian / Native American / Alaskan Native	241
Asian-Central Asian	23
Asian-East Asian	198
Asian-South Asian	48
Asian-Southeast Asian	57
Asian—unspecified	1,149
Black / African American / African Descent	641
Hispanic / Latinx	694
Middle Eastern Descent	14
Multi Racial / Bi Racial	972
Not Listed	205
Pacific Islander / Native Hawaiian	63
White / European Descent	23,645
<b>Respondents</b>	<b>27,950</b>
<b>No Response</b>	<b>12,670</b>
<b>All Member Types</b>	<b>40,620</b>

Members in Firm Type	
Bank	23
Escrow Company	57
Government/ Public Sector	5,048
House Counsel	3,008
Non-profit	310
Title Company	115
Solo	5,036
Solo In Shared Office Or	1,346
2-5 Members in Firm	4,170
6-10 Members in Firm	1,646
11-20 Members in Firm	1,253
21-35 Members in Firm	768
36-50 Members In Firm	544
51-100 Members in Firm	595
100+ Members in Firm	1,847
Not Actively Practicing	1,411
<b>Respondents</b>	<b>27,177</b>
<b>No Response</b>	<b>13,443</b>
<b>All Member Types</b>	<b>40,620</b>

By Practice Area	
Administrative-regulator	2,176
Agricultural	222
Animal Law	106
Antitrust	303
Appellate	1,620
Aviation	180
Banking	422
Bankruptcy	864
Business-commercial	5,125
Cannabis	84
Civil Litigation	727
Civil Rights	1,026
Collections	511
Communications	208
Constitutional	630
Construction	1,312
Consumer	742
Contracts	4,187
Corporate	3,505
Criminal	3,698
Debtor-creditor	903
Disability	603
Dispute Resolution	1,230
Education	475
Elder	849
Employment	2,780
Entertainment	300
Environmental	1,245
Estate Planning-probate	3,317
Family	2,609
Foreclosure	457
Forfeiture	96
General	2,587
Government	2,784
Guardianships	803
Health	918
Housing	297
Human Rights	296
Immigration-naturaliza	995
Indian	561
Insurance	1,634
Intellectual Property	2,249
International	890
Judicial Officer	406
Juvenile	786
Labor	1,113
Landlord-tenant	1,226
Land Use	832
Legal Ethics	271
Legal Research-writing	762
Legislation	419
Lgbtq	63
Litigation	4,559
Lobbying	164
Malpractice	721
Maritime	313
Military	381
Municipal	897
Non-profit-tax Exempt	605
Not Actively Practicing	2,022
Oil-gas-energy	221
Patent-trademark-copyr	1,278
Personal Injury	3,179
Privacy And Data Securit	240
Real Property	2,586
Real Property-land Use	2,098
Securities	761
Sports	164
Subrogation	116
Tax	1,282
Torts	2,009
Traffic Offenses	596
Workers Compensation	705

By Languages Spoken	
Afrikaans	5
Akan /twi	5
Albanian	2
American Sign Language	17
Amharic	20
Arabic	48
Armenian	7
Bengali	10
Bosnian	13
Bulgarian	12
Burmese	2
Cambodian	6
Cantonese	101
Cebuano	6
Chamorro	5
Chaozhou/chiu Chow	1
Chin	1
Croatian	21
Czech	6
Danish	18
Dari	3
Dutch	23
Egyptian	2
Farsi/persian	62
Fijian	1
Finnish	7
French	690
French Creole	1
Fukienese	3
Ga/kwa	2
German	414
Greek	31
Gujarati	14
Haitian Creole	3
Hebrew	37
Hindi	96
Hmong	1
Hungarian	16
Ibo	4
Icelandic	2
Ilocano	8
Indonesian	12
Italian	160
Japanese	209
Javanese	1
Kannada/canases	4
Kapampangan	1
Khmer	2
Korean	233
Lao	5
Latvian	6
Lithuanian	3
Malay	4
Malayalam	8
Mandarin	371
Marathi	6
Mien	1
Mongolian	2
Navajo	1
Nepali	4
Norwegian	35
Not_listed	41
Oromo	4
Persian	19
Polish	32
Portuguese	118
Portuguese Creole	1
Punjabi	60
Romanian	21
Russian	226
Samoan	7
Serbian	19
Serbo-croatian	13
Sign Language	20
Singhalese	2
Slovak	2
Spanish	1,812
Spanish Creole	3
Swahili	5
Swedish	52
Tagalog	68
Taishanese	4
Taiwanese	20
Tamil	11
Telugu	3
Thai	10
Tigrinya	4
Tongan	1
Turkish	14
Ukrainian	42
Urdu	40
Vietnamese	88
Yoruba	10
Yugoslavian	4

\* Includes active attorneys, emeritus pro-bono, honorary, inactive attorneys, judicial, limited license legal technician (LLLT), and limited practice officer (LPO).

February 19, 2020

The Honorable Charles K. Wiggins  
Washington Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Re: Draft new discipline-system rules

Dear Justice Wiggins:

As you know, on a number of occasions the Disciplinary Advisory Round Table has been provided with information on the ongoing project of revising Washington State's disciplinary procedural rules. Because a milestone has been reached, we wanted to update you on the current status of that project.

There is now a comprehensive first draft of the new procedural rules, which we are calling the Rules for Discipline and Incapacity (RDI). See enclosed. The Rules were drafted by staff from the WSBA's Office of Disciplinary Counsel (ODC), the Office of General Counsel (OGC), and the Regulatory Services Department (RSD) with the goal of identifying and recommending modifications to the discipline system intended to create efficiencies and improve outcomes.

As approved in concept by the Washington Supreme Court in July 2017, the WSBA drafting workgroup developed a model of a single-portal, multi-license-type discipline and appeals system. During the preliminary drafting phase of the project, substantial effort was made to streamline the rules and create system efficiencies while retaining meaningful volunteer involvement. Key drafting objectives included establishing one set of disciplinary procedural rules for all license types and laying the groundwork for a professionalized adjudicative system. The Rules for Enforcement of Lawyer Conduct (ELC) served as the template for rule drafting, and much of the language and structure of the draft RDI is drawn from the ELC. However, the ELC have been substantially rewritten to improve efficiency of process and ease of use.

If the new RDI are adopted, conforming amendments will be needed to other sets of rules that either cross-reference or give effect to the ELC or other rules rendered obsolete by the new system. These amendments are largely technical in nature, although some are substantive. See enclosed for the draft conforming amendments to other rules.





For additional information on the substance of the rules, see the enclosed document entitled Summary of Rule Changes, which provides a summary of each title to the RDI and lists the substantive rule changes from the ELC.

We are currently entering into an informal stakeholder review phase of the project, with a view towards presenting the draft rules for consideration by the WSBA Board of Governors later this year.

Please let us know if you have any questions or if you would like to receive electronic copies of the enclosed.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Ende", with a long horizontal flourish extending to the right.

Douglas J. Ende  
Chief Disciplinary Counsel

Enclosures

cc: Terra Nevitt, WSBA Executive Director

# RULES FOR DISCIPLINE AND INCAPACITY (RDI)

(February 2020)

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## TITLE 1 – SCOPE, JURISDICTION, DEFINITIONS, AND DUTIES

### RULE 1.1 SCOPE OF RULES

**(a) Purpose.** These Rules are adopted by the Washington Supreme Court to govern the discipline and incapacity procedures and related processes for licensed legal professionals.

**(b) Persons Subject to These Rules.** The following persons are subject to these Rules regardless of the person’s residency or authority to practice law in this jurisdiction:

- (1) any licensed legal professional admitted, licensed, or authorized to practice law in this jurisdiction regardless of where the licensed legal professional’s conduct occurs;
- (2) any licensed legal professional admitted, licensed, or authorized to practice law in any other jurisdiction who provides or offers to provide any legal services in this jurisdiction; and
- (3) any person previously admitted, licensed, or authorized to practice law as a licensed legal professional in this jurisdiction if the conduct occurred while admitted, licensed, or authorized to practice law.

**(c) Exception for Judges.** A lawyer serving as a judge or justice is subject to these Rules only to the extent provided by Rule 8.5(c) of the Rules of Professional Conduct.

**(d) Disciplinary Authority.** A licensed legal professional is subject to discipline for violations of the rules of professional conduct applicable to that licensed legal professional’s license type.

**(e) Authority; Multiple Jurisdictions.** A licensed legal professional may be subject to the rules governing disciplinary and incapacity matters of both this jurisdiction and another jurisdiction for the same conduct.

### RULE 1.2 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts submitting a complaint, initiating an investigation, or commencing a proceeding under these Rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any sanction or remedy is warranted.

### RULE 1.3 DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these Rules have the following meanings:

**(a)** “Bar” means the Washington State Bar Association.

**(b)** “Bar counsel” means a staff lawyer, other than disciplinary counsel, employed by the Bar.

**(c)** “Clerk” when used alone means the Clerk to the Office of the Regulatory Adjudicator.

**(d)** “Clerk’s file” means the pleadings, motions, rulings, decisions, and other documents filed with or by the Clerk in a proceeding or investigation under these Rules, which may include public and nonpublic information.

**(e)** “Complainant” means a person or entity who submits a complaint under Title 5 of these Rules, except for a confidential source under Rule 5.2(d).

**(f)** “Conviction” means a finding of a defendant’s guilt of a crime in any jurisdiction, regardless of the pendency of an appeal, either (1) upon entry of a plea of guilty or nolo contendere, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn; or (2) upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

**(g)** “Counsel” when used as a noun means a lawyer authorized to practice law in Washington State.

**(h)** “Hearing transcript” means a verbatim report of proceedings from a disciplinary or incapacity hearing.

**(i)** “Licensed legal professional” means a lawyer, limited license legal technician, limited practice officer, or other individual, who is admitted, licensed, or authorized to practice law in Washington State or any other jurisdiction.

**(j)** “Party” means the Office of Disciplinary Counsel or respondent, unless these Rules specify otherwise.

**(k)** “Supreme Court” or “Court” when used alone means the Washington Supreme Court.



(l) "Suspension" means a court-ordered temporary loss of authorization to practice law.

#### **RULE 1.4 ACRONYMS**

Acronyms used in these Rules have the following meanings:

- (a) "APR" means the Admission and Practice Rules adopted by the Washington Supreme Court.
- (b) "CR" means the Superior Court Civil Rules adopted by the Washington Supreme Court.
- (c) "GR" means the General Rules adopted by the Washington Supreme Court.
- (d) "LLLT" means limited license legal technician.
- (e) "LLLT RPC" means the Limited License Legal Technician Rules of Professional Conduct adopted by the Washington Supreme Court.
- (f) "LPO" means limited practice officer.
- (g) "LPORPC" means the Limited Practice Officer Rules of Professional Conduct adopted by the Washington Supreme Court.
- (h) "ORA" means the Office of the Regulatory Adjudicator.
- (i) "RAP" means the Rules of Appellate Procedure adopted by the Washington Supreme Court.
- (j) "RCW" means the Revised Code of Washington.
- (k) "RPC" means the Rules of Professional Conduct for lawyers adopted by the Washington Supreme Court.

#### **RULE 1.5 WORDS OF AUTHORITY**

- (a) "May" means "has discretion to" or "is permitted to."
- (b) "Must" means "is required to."
- (c) "Should" means recommended but not required.

#### **RULE 1.6 DUTIES IMPOSED BY THESE RULES**

A licensed legal professional must comply with the duties imposed by these Rules. Failure to comply may subject the licensed legal professional to discipline for violating RPC 8.4(l), LLLT RPC 8.4(l), or LPORPC 1.10(f) or may be considered an aggravating factor in determining the appropriate sanction for misconduct in any disciplinary proceeding. Duties imposed by these Rules include but are not limited to the following duties:

- (a) furnish authorization for release of medical records, Rule 2.12(d);
- (b) comply with orders, Rule 2.12(c), 10.1(d);
- (c) maintain confidentiality, Rule 3.1(d);
- (d) respond to any inquiries or requests made under Title 5;
- (e) comply with any subpoenas from disciplinary counsel under these Rules;
- (f) pay noncooperation costs, Rule 5.9;
- (g) report being convicted of a felony, Rule 7.2(d);
- (h) comply with conditions of a stipulation, Rule 9.1(j);
- (i) report being disciplined, placed in incapacity inactive status or its equivalent, or resigning in lieu of discipline or its equivalent, in another jurisdiction, Rule 9.3(a);
- (j) file an answer to a statement of charges or to an amended statement of charges, Rule 10.5(a);
- (k) cooperate with discovery, Rule 10.10(f);
- (l) attend a hearing and bring materials requested by disciplinary counsel, Rule 10.12;
- (m) respond to subpoenas and comply with orders enforcing subpoenas, Rule 10.12(g);
- (n) comply with conditions of probation, Rule 13.6;
- (o) pay restitution, Rule 13.7;
- (p) pay costs and expenses, Rule 13.8;
- (q) notify clients and others of inability to act, Rule 14.1;

- (r) discontinue practice, Rule 14.2;
- (s) serve a declaration of compliance, Rule 14.3;
- (t) cooperate with an examination of books and records, Rule 15.2; and
- (u) notify the Office of Disciplinary Counsel of a trust account overdraft, Rule 15.4(d).

## TITLE 2 – ORGANIZATION AND STRUCTURE

### RULE 2.1 WASHINGTON SUPREME COURT

The Washington Supreme Court has exclusive responsibility to administer the Washington discipline and incapacity system for licensed legal professionals and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual discipline and incapacity cases. Persons carrying out the functions set forth in these Rules act under the Supreme Court’s authority and supervision.

### RULE 2.2 WASHINGTON STATE BAR ASSOCIATION

**(a) Function.** The Washington State Bar Association:

- (1) through the Bar’s Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel, the Office of the Regulatory Adjudicator, and other Bar staff and appointees under these Rules to perform the functions specified by these Rules; and
- (2) performs other functions and takes other actions necessary and proper to carry out the duties specified in these Rules or delegated by the Supreme Court.

**(b) Limitation of Authority.** The Bar officers, Executive Director of the Bar, Board of Governors, LLLT Board, and Limited Practice Board have no authority to direct the investigations, prosecutions, appeals, or discretionary decisions made under these Rules, or to alter the decisions or recommendations of regulatory adjudicators or adjudicative panels. A violation or attempted violation of this section may subject the entity or person to an action for contempt of the Supreme Court. If the person is a licensed legal professional, the violation may also be grounds for discipline.

**(c) Restrictions.** Bar officers, the Executive Director, and Board of Governors members cannot serve as regulatory adjudicators or special conflicts disciplinary counsel during their terms or until three years have expired after departure from office.

### RULE 2.3 OFFICE OF THE REGULATORY ADJUDICATOR

**(a) Function.** The Office of the Regulatory Adjudicator (ORA) performs the adjudicative functions set forth in these Rules and the APR, delegated by the Supreme Court, or necessary and proper to carry out its duties.

**(b) Regulatory Adjudicator.** Regulatory adjudicators, or regulatory adjudicators pro tempore, act as adjudicators on all matters under these Rules and perform other duties as authorized by these Rules and the APR, or as delegated by the Chief Regulatory Adjudicator.

**(c) Chief Regulatory Adjudicator and Staff.** The Bar must employ or contract with a lawyer member of the Bar to serve as the Chief Regulatory Adjudicator and employ or contract with other individuals, including regulatory adjudicators pro tempore or settlement officers, as necessary to carry out the functions of the ORA.

**(d) Hearing Adjudicator.** A regulatory adjudicator is referred to as the hearing adjudicator when assigned to preside over disciplinary hearings under Title 10 or incapacity hearings under Title 8.

### RULE 2.4 ADJUDICATIVE PANELS

**(a) Panels in General.** The Chief Regulatory Adjudicator convenes and administers adjudicative panels and assigns adjudicative matters under these Rules to the appropriate panel as required by these Rules. A regulatory adjudicator must serve as chair of each adjudicative panel. The Chief Regulatory Adjudicator

assigns volunteer adjudicators from the volunteer adjudicator pool to fill the remaining positions of each panel.

**(b) Authorization Panel.** An Authorization Panel considers, and orders appropriate action on, matters assigned to it under these Rules including but not limited to requests for orders authorizing disciplinary counsel to file a statement of charges or to initiate incapacity proceedings. An Authorization Panel consists of the chair and two individuals assigned from the volunteer adjudicator pool, including an individual who has never been licensed to practice law and one member of the Bar. When practicable, the Chief Regulatory Adjudicator should assign to the Authorization Panel a member of the Bar who has the same license type as the respondent.

**(c) Appeal Panel.** An Appeal Panel adjudicates appeal and review proceedings as specified in these Rules. An Appeal Panel consists of the chair and four individuals assigned from the volunteer adjudicator pool, including an individual who has never been licensed to practice law and three members of the Bar. When practicable, the Chief Regulatory Adjudicator should assign to the at least one member of the Bar who has the same license type as the respondent.

#### **RULE 2.5 VOLUNTEER SELECTION BOARD**

**(a) Duties.** The Volunteer Selection Board makes recommendations to the Supreme Court for the appointment and removal of volunteer adjudicators, and special conflicts disciplinary counsel. Information about the conduct or performance of a volunteer adjudicator, or special conflicts disciplinary counsel received by the Volunteer Selection Board, and deliberations of the Volunteer Selection Board, are confidential.

**(b) Composition.** The Volunteer Selection Board consists of five voting members and the Chief Regulatory Adjudicator as a non-voting member. The voting members are appointed by the Supreme Court and must include four active members of the Bar and one individual who has never been licensed to practice law. Voting members serve staggered three-year terms ending on September 30 of the applicable year. The Supreme Court appoints one of the voting members of the Board to serve as chair. No member may be appointed to serve more than two consecutive full terms.

**(c) Restrictions.** Volunteer Selection Board members cannot serve as regulatory adjudicators or special conflicts disciplinary counsel until three years have expired after departure from office.

**(d) Expenses.** The Bar reimburses Volunteer Selection Board members for actual, necessary, and reasonable expenses according to the Bar's expense policy.

#### **RULE 2.6 VOLUNTEER ADJUDICATOR POOL**

**(a) Function.** The volunteer adjudicator pool consists of volunteers who perform the functions of the adjudicative panels and of settlement officers as set forth in these Rules.

(1) *Adjudicative Function.* The Chief Regulatory Adjudicator assigns volunteer adjudicators to one or more of the adjudicative panels.

(2) *Settlement Officer Function.* The Chief Regulatory Adjudicator may assign volunteer adjudicators to serve as settlement officers under Rule 10.11(h).

**(b) Composition.** The volunteer adjudicator pool consists of at least 15 lawyer members of the Bar, three LLLT members of the Bar, three LPO members of the Bar, and three individuals who have never been licensed to practice law. The Supreme Court, upon recommendations from the Volunteer Selection Board, appoints individuals to the volunteer adjudicator pool.

**(c) Terms.** Appointments to the volunteer adjudicator pool are for staggered three-year terms ending on September 30 of the applicable year.

**(d) Qualifications.** Members of the Bar serving as volunteer adjudicators must be active members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceeding pending, have no disciplinary proceedings pending or imminent, and have no other active role in Washington's discipline

and incapacity system or regulatory system.

**(e) Expenses.** The Bar reimburses volunteer adjudicators for actual, necessary, and reasonable expenses according to the Bar's expense policy.

#### **RULE 2.7 DIVERSITY**

The Court, the Board of Governors, and the Volunteer Selection Board must consider diversity when appointing volunteers, including but not limited to diversity in gender, ethnicity, disability status, sexual orientation, geography, area of practice, and practice experience.

#### **RULE 2.8 REGULATORY ADJUDICATOR CONDUCT**

**(a) Application of Code of Judicial Conduct.** The integrity and fairness of the adjudicative system established by these Rules requires that regulatory adjudicators, including volunteer adjudicators, observe high standards of conduct. The Code of Judicial Conduct (CJC) applies to a regulatory adjudicator and volunteer adjudicator to the same extent as the CJC applies to a judge pro tempore as set forth in the CJC Application section III, except that a regulatory adjudicator must comply with CJC 3.3 (Acting as a Character Witness), and need not comply with CJC 2.14 (Disability and Impairment) or CJC 2.15 (Responding to Judicial and Lawyer Misconduct).

**(b) Restriction on Reviewing Own Decision.** A regulatory adjudicator is prohibited from reviewing the regulatory adjudicator's own decision or order in any matter under these Rules or the APR, except for motions for reconsideration permitted under these Rules.

#### **RULE 2.9 OFFICE OF DISCIPLINARY COUNSEL**

**(a) Definition and Function.** The Office of Disciplinary Counsel consists of the Chief Disciplinary Counsel and other staff employed under section (c) of this Rule. The Office of Disciplinary Counsel and its staff perform investigative, prosecutorial, and other functions under these Rules.

**(b) Disciplinary Counsel.** Disciplinary counsel acts as counsel on all matters under these Rules and performs other duties as authorized by these Rules or as delegated by the Chief Disciplinary Counsel.

**(c) Chief Disciplinary Counsel and Staff.** The Bar must employ a lawyer member of the Bar as Chief Disciplinary Counsel and employ disciplinary counsel and other staff as necessary to perform the functions and duties set forth in these Rules.

#### **RULE 2.10 SPECIAL CONFLICTS DISCIPLINARY COUNSEL**

**(a) Function.** When a matter is referred to special conflicts disciplinary counsel, special conflicts disciplinary counsel performs the duties of disciplinary counsel under these Rules.

**(b) Referral of Matters.**

(1) The Chief Disciplinary Counsel refers a matter to be handled by a special conflicts disciplinary counsel when the respondent is one of the following: a licensed legal professional employed by the Bar; a judicial officer of, or licensed legal professional employed by, the Supreme Court; a governor or governor-elect of the Board of Governors; a regulatory adjudicator; a volunteer adjudicator; an adjunct disciplinary counsel; a special conflicts disciplinary counsel; or counsel appointed under Title 8.

(2) The Chief Disciplinary Counsel may refer a matter to be handled by a special conflicts disciplinary counsel when in the Chief Disciplinary Counsel's discretion it appears appropriate to promote the appearance of impartiality or to serve the ends of justice.

**(c) Appointment and Qualifications.**

(1) The Supreme Court, upon recommendation from the Volunteer Selection Board, appoints individuals to a pool to serve as special conflicts disciplinary counsel. Special conflicts disciplinary counsel are appointed for staggered three-year terms ending on September 30 of the applicable year.

(2) Special conflicts disciplinary counsel must be active lawyer members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system or regulatory system.

**(d) Independence.** It is the responsibility of a special conflicts disciplinary counsel to make decisions about the objectives for and appropriate disposition of an assigned matter, independently of the Office of Disciplinary Counsel and the Bar. A special conflicts disciplinary counsel may consult with disciplinary counsel or bar counsel about disciplinary and incapacity processes and procedural matters.

**(e) Access to Disciplinary Information.** Special conflicts disciplinary counsel have access to any confidential disciplinary information necessary to perform the duties required by these Rules. Special conflicts disciplinary counsel must return any files and documents to the Bar promptly upon completion of the duties required by these Rules and must not retain copies.

**(f) Expenses.** The Bar reimburses special conflicts disciplinary counsel for actual, necessary, and reasonable expenses according to the Bar's expense policy.

**(g) Compensation.** The Bar may provide compensation to special conflicts disciplinary counsel at a level established by the Bar.

**(h) Restriction on Representing or Advising Respondents or Complainants.** Special conflicts disciplinary counsel are subject to the restrictions set forth in Rule 2.14(c).

#### **RULE 2.11 ADJUNCT DISCIPLINARY COUNSEL**

**(a) Function.** When a matter is assigned to adjunct disciplinary counsel, adjunct disciplinary counsel performs the duties of disciplinary counsel under these Rules as directed by disciplinary counsel.

**(b) Assignment of Matters.** The Chief Disciplinary Counsel assigns adjunct disciplinary counsel to any matter under these Rules when in the Chief Disciplinary Counsel's discretion it appears the appointment will assist the Office of Disciplinary Counsel in performing its duties under these Rules.

**(c) Appointment and Qualifications.**

(1) Upon the recommendation of the Chief Disciplinary Counsel, the Board of Governors appoints individuals to a pool to serve as adjunct disciplinary counsel. Adjunct disciplinary counsel are appointed for staggered three-year terms ending on September 30 of the applicable year.

(2) The Chief Disciplinary Counsel has discretion to appoint an individual to serve as an adjunct disciplinary counsel pro tem for purposes of a particular matter when it would advance the just and efficient administration of the discipline system.

(3) Adjunct disciplinary counsel must be active lawyer members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system or regulatory system.

**(d) Access to Disciplinary Information.** Adjunct disciplinary counsel have access to any confidential disciplinary information necessary to perform the duties required by these Rules. Adjunct disciplinary counsel must return any files and documents to the Bar promptly upon completion of the duties required by these Rules and must not retain copies.

**(e) Expenses.** The Bar reimburses adjunct disciplinary counsel for actual, necessary, and reasonable expenses according to the Bar's expense policy.

**(f) Restriction on Representing or Advising Respondents or Complainants.** Adjunct disciplinary counsel are subject to the restrictions set forth in Rule 2.14(d).

#### **RULE 2.12 RESPONDENT**

**(a) Respondent.** A respondent is a licensed legal professional who is the subject of a complaint, investigation, or proceeding under these Rules.

**(b) Representation by Counsel.** A respondent may be represented by counsel during any stage of a complaint, investigation, or proceeding under these Rules.

**(c) Duty to Comply with Orders.** A respondent must comply with all orders issued by the ORA or the Court.

**(d) Duty to Provide Authorization for Release of Medical Records.** If requested, a respondent must provide written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the investigation or proceedings, subject to a motion to the ORA to limit the scope of the requested releases and authorizations for good cause shown. In proceedings under Title 8, this duty is governed by Rules 8.2(d), 8.3(f), 8.4(e), and 8.11(a)(2).

**(e) Restriction on Charging Fee to Respond to Complaint.** A respondent may not seek to charge a complainant a fee or recover costs from a complainant for responding to a complaint.

## **RULE 2.13 PRIVILEGES**

**(a) Communications Privileged.** Communications to the Court, Bar, Board of Governors, adjudicative panels, regulatory adjudicators, Clerk, disciplinary counsel, special conflicts disciplinary counsel, adjunct disciplinary counsel, Bar staff, or any other individual or entity acting under authority of these Rules are absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant, witness, or other person providing information.

**(b) Attorney-Client Privilege and Duty of Confidentiality.** A licensed legal professional may not assert the attorney-client privilege or other prohibitions on revealing information relating to the representation of a client as a basis for refusing to provide information that the licensed legal professional is obligated to provide under these Rules, including information made confidential by any applicable rules of professional conduct, except as permitted by Rules 5.6(b) and 5.7(c). Providing information to disciplinary counsel or a regulatory adjudicator under these Rules is not prohibited by RPC 1.6 or 1.9 or LLLT RPC 1.6 or 1.9 and does not waive any attorney-client privilege.

**(c) Bar's Duty of Confidentiality.**

- (1) If a licensed legal professional provides and identifies specific information that is privileged and requests that it be treated as confidential under these Rules, the Bar must maintain the confidentiality of the information.
- (2) Disciplinary counsel receives, reviews, and holds attorney-client privileged and other confidential client information provided by a licensed legal professional under and in furtherance of the Supreme Court's authority to regulate the practice of law.
- (3) No information identified as confidential under this Rule may be disclosed or released under Title 3 absent authorization under section (f) of this Rule unless the client or former client consents, which includes consent under Rule 5.2(a).

**(d) Licensed Legal Professional's Own Confidential Information.** Nothing in these Rules waives or requires waiver of a licensed legal professional's own privilege or other protection as a client against the disclosure of information relating to the representation.

**(e) Privilege Against Self-Incrimination.** A licensed legal professional's duty to cooperate and testify under these Rules is subject to the licensed legal professional's proper exercise of the privilege against self-incrimination.

**(f) Disclosure of Confidential Information.**

- (1) Disciplinary counsel may move for authorization to disclose information identified as confidential client information under this Rule or Rule 3.1(b). The motion must clearly state the information that has been identified as confidential and the use for which disciplinary counsel seeks authorization. The procedures set forth in Rule 10.8 apply to motions under this Rule.
- (2) In considering a motion to authorize disciplinary counsel to disclose information identified as confidential client information under this Rule, the regulatory adjudicator should consider factors including:
  - (A) the relevance and necessity of the disclosure of the information;

- (B) the sensitivity of the information and potential impact on the client of the disclosure, including the client's right to effective assistance of counsel; and
- (C) the expressed desires of the client.
- (3) When deemed necessary by the regulatory adjudicator considering the motion, the regulatory adjudicator may conduct an in camera review of confidential client information.
- (4) The regulatory adjudicator may grant or deny the motion in whole or in part, and may establish terms or conditions for the use of specific information. A ruling may take the form of, or may accompany, a protective order under Rule 3.4.
- (5) Review of a ruling under this Rule may be sought under Rule 11.10.

#### **RULE 2.14 RESTRICTIONS ON REPRESENTING OR ADVISING INDIVIDUALS UNDER THESE RULES**

**(a) Current Bar Officials and Adjudicators.** Bar officers, the Bar Executive Director, Board of Governors members, regulatory adjudicators, and volunteer adjudicators cannot knowingly advise or represent individuals regarding pending or likely matters under these Rules, other than advising a person of the availability of complaint procedures or to secure the services of a lawyer.

**(b) Former Bar Officials.** After leaving office, Bar officers, the Bar Executive Director, and Board of Governors members cannot represent individuals in pending or likely matters under these Rules until three years have expired after departure from office.

**(c) Special Conflicts Disciplinary Counsel.** Special conflicts disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this Rule during the term of their appointment.

**(d) Adjunct Disciplinary Counsel.** Adjunct disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this Rule only while assigned to a matter under Rule 2.11.

#### **RULE 2.15 REMOVAL OF APPOINTEES**

The power granted by this Title to any person or entity to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform the duties of the appointment, or for any other cause, and to fill the resulting vacancy.

### **TITLE 3 – DISCIPLINARY AND INCAPACITY INFORMATION**

#### **RULE 3.1 CONFIDENTIALITY**

**(a) General.** Matters and information made confidential under these Rules are held by the Bar under the authority of the Supreme Court. Confidential information must not be disclosed or released except as authorized by these Rules. The complainant, respondent, or any witness may disclose any information in their possession regarding a disciplinary or incapacity matter except as prohibited by Rule 3.4, court order, or other law.

**(b) Client Information.** When a licensed legal professional provides information to the Bar and identifies that information as privileged or confidential client information under Rule 2.13(c), that information may not be released under this Title unless the client consents, including consent under Rule 5.2(a), or disciplinary counsel obtains an order authorizing such disclosure under Rule 2.13(f).

**(c) Information Not Subject to Subpoena.** Information made confidential under these Rules is not subject to a subpoena or order requiring disclosure in any civil, criminal, or other proceeding except by leave of the Supreme Court upon a showing of compelling need.

**(d) Wrongful Release.** Disclosure or release of information made confidential by these Rules, except as permitted by these Rules, may subject a person to an action for contempt of the Supreme Court. If the person is a licensed legal professional, wrongful disclosure or release may also be grounds for discipline.

### **RULE 3.2 PUBLIC AND CONFIDENTIAL EVENTS**

**(a) Open to the Public.** Except as otherwise provided in these Rules or as ordered by a regulatory adjudicator or the Supreme Court, the following events in disciplinary proceedings are open to the public:

- (1) hearings and motion hearings; and
- (2) oral arguments before an Appeal Panel.

**(b) Closed to the Public.** Except as otherwise provided in these Rules or as ordered by the Supreme Court, all events that are not open to the public under section (a) of this Rule are closed to the public, including but not limited to the following:

- (1) ORA adjudicative panel deliberations;
- (2) Volunteer Selection Board deliberations;
- (3) hearings, motions, and conferences before a regulatory adjudicator in incapacity proceedings;
- (4) oral arguments before an Appeal Panel in incapacity proceedings;
- (5) motion hearings and oral arguments on interlocutory review prior to an order authorizing the filing of statement of charges;
- (6) review of material breach determination in diversion matters;
- (7) oral presentations regarding a stipulation;
- (8) motion hearings appointing custodian;
- (9) settlement conferences; and
- (10) any event or portion of an event subject to a protective order.

**(c) Supreme Court Proceedings.** Except as otherwise provided in these Rules or by order of the Supreme Court, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings.

### **RULE 3.3 PUBLIC AND CONFIDENTIAL INFORMATION**

**(a) Public Information.** The following information is public, subject to limitation by protective order, other provisions in these Rules, other applicable laws, order of a regulatory adjudicator, or court order:

- (1) statements of concern and any related filed documents made public under Rule 3.7;
- (2) orders of an Authorization Panel authorizing the filing of a statement of charges;
- (3) pleadings, orders, notices, and documents filed with the Clerk in disciplinary proceedings;
- (4) after a stipulation under Title 9 is approved by the ORA, (A) the record submitted to the ORA, (B) the order approving the stipulation, and (C) the stipulation;
- (5) resignations in lieu of discipline under Rule 9.2;
- (6) pleadings, orders, and documents filed with the Supreme Court, except in incapacity proceedings or information identified as confidential under Rules 7.3(c) and 7.4;
- (7) orders appointing and discharging custodians under Rule 16.1, including the appointed custodian's name and contact information;
- (8) the fact that a complainant has been determined to be a vexatious complainant and the order under Rule 5.5(g);
- (9) the fact that a proceeding under Title 8 is pending or that a disciplinary proceeding has been stayed pending the outcome of a proceeding under Title 8;
- (10) the fact that a licensed legal professional's license has been placed in incapacity inactive status or interim incapacity inactive status;
- (11) the fact that a licensed legal professional's license has been suspended on an interim basis under Title 7;
- (12) the fact that a matter has been diverted from disciplinary proceedings after an Authorization Panel has authorized the filing of a statement of charges; and
- (13) the fact that a sanction or remedy has been imposed under Title 13.



**(b) Confidential Information.** All information not defined as public under section (a) of this Rule is confidential, including but not limited to:

- (1) information made confidential by a protective order, other provisions in these Rules, other applicable laws, an order of a regulatory adjudicator, or a court order;
- (2) discipline imposed under prior rules of this state that was confidential when imposed. A record of confidential discipline may be kept confidential during proceedings under these Rules, or in connection with a stipulation under Rule 9.1, through a protective order under Rule 3.4;
- (3) information identified by a licensed legal professional under Rule 2.13(c) to the Bar as privileged or confidential client information, unless disciplinary counsel obtains an order authorizing disclosure under Rule 2.13(f) or the client consents;
- (4) information regarding matters under Title 5, except as identified in section (a) of this Rule;
- (5) information regarding incapacity proceedings under Title 8, except as identified in section (a) of this Rule; and
- (6) information regarding vexatious complainant proceedings under Rule 5.5, except as identified in section (a) of this Rule.

#### **RULE 3.4 PROTECTIVE ORDERS**

**(a) Purpose.** To protect a compelling interest and for good cause shown, upon motion, a regulatory adjudicator may enter a protective order prohibiting or limiting disclosure or release of specific information, documents, or pleadings and directing other actions necessary to implement the order.

**(b) Motion.** A motion for a protective order must comply with the procedures for written motions under Rule 10.8.

**(c) Review.** An Appeal Panel reviews decisions granting or denying a protective order or relief from a protective order if a written request for review is filed and served within five days of service of the decision. When a written request for review is filed, the Chief Regulatory Adjudicator assigns the matter to an Appeal Panel and establishes the timeline and terms for any additional briefing and oral argument.

**(d) Relief from a Protective Order.** A regulatory adjudicator may grant specific relief from a protective order on a showing of compelling need, provided the individual seeking relief establishes that reasonable efforts have been made to notify any person affected by the order.

**(e) Disclosure Prohibited While Motion Pending.** The filing of a motion for a protective order prohibits disclosure or release of the materials or information sought to be protected until an order deciding the motion is final. An order deciding the motion is final after the time for filing a request for review has expired or after a decision on review is filed and served.

#### **RULE 3.5 RELEASE OF CONFIDENTIAL INFORMATION WITHOUT NOTICE**

**(a) Release upon Written Waiver.** Upon written waiver by the licensed legal professional, the Bar may, without further notice to the licensed legal professional, release confidential disciplinary or incapacity information to any person or entity authorized by the licensed legal professional to receive the information.

**(b) Investigative Release.** Except as otherwise prohibited by these Rules, an order entered under Rule 3.4, court order, or other applicable law, the Bar may, without notice to a licensed legal professional, release confidential disciplinary and incapacity information as reasonably necessary to conduct an investigation, recruit counsel, or to keep a complainant advised of the status of a matter.

**(c) Other Release.** Except as otherwise prohibited by these Rules, an order entered under Rule 3.4, court order, or other applicable law, when it appears the information will assist the recipient in performing the recipient's duties, the Bar may release confidential disciplinary or incapacity information related to a licensed legal professional or respondent without notice to that person as follows:

- (1) to the Client Protection Board;

- (2) to the Practice of Law Board;
- (3) to the Character and Fitness Board;
- (4) to other counsel performing duties under these Rules, including special conflicts disciplinary counsel, adjunct disciplinary counsel, and appointed incapacity counsel;
- (5) to custodians appointed under Rule 16.1;
- (6) to the Volunteer Selection Board;
- (7) to the Bar's Board of Governors or officers, as deemed reasonably necessary by Chief Disciplinary Counsel;
- (8) to any state, federal, or tribal court judicial officer if the information is relevant to the licensed legal professional's conduct before the court or to a judicial officer's reporting obligation under the Code of Judicial Conduct or other law;
- (9) to authorities in any jurisdiction authorized to investigate alleged unlawful activity;
- (10) to authorities in any jurisdiction authorized to investigate judicial or licensed legal professional misconduct or incapacity; or
- (11) to any lawyer representing the Bar in any matter.

**(d) Duty to Maintain Confidentiality.** Any recipient of information under sections (c)(1)-(7) of this Rule must maintain the confidentiality of that information. Any recipient of information under sections (c)(8)-(11) must be notified of the Bar's confidentiality obligations under these Rules.

### **RULE 3.6 RELEASE OF CONFIDENTIAL INFORMATION WITH NOTICE**

**(a) Discretionary Release.** Except as prohibited by Rule 3.4, the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information when it appears necessary to:

- (1) protect the interests of clients or other persons, the public, or the integrity of the disciplinary process or the Bar;
- (2) respond to specific inquiries about matters that are in the public domain; or
- (3) correct a false or misleading public statement.

**(b) Notice.** A respondent must be given notice of a decision to release information under this Rule before its release unless the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or would be detrimental to the integrity of the disciplinary process or the Bar. Notice must be given seven days before release and must include a description of the information that will be released.

**(c) Finality.** A respondent may serve and file a motion for protective order under Rule 3.4 before the information is released. Otherwise, a decision to release information under this Rule is not subject to further review.

**(d) Inability to Act.** When the Chief Disciplinary Counsel is unable to act, or upon the request of the Chief Disciplinary Counsel, decisions under this Rule will be made by the Executive Director or a special conflicts disciplinary counsel assigned to the matter.

### **RULE 3.7 PUBLIC STATEMENT OF CONCERN**

**(a) Authority.** To protect members of the public from a substantial threat, the Chief Disciplinary Counsel may file a proposed statement of concern with the Clerk based on information from a pending investigation into a respondent's apparent ongoing serious misconduct not otherwise made public by these Rules. The proposed statement must not disclose information protected by Rule 3.4.

**(b) Procedure.**

- (1) A copy of the proposed statement of concern must be served on the respondent who is the subject of the statement of concern.
- (2) The respondent may file an objection with the Clerk within seven days of the service of the pro-

posed statement of concern. The respondent must serve the objection on the Office of Disciplinary Counsel.

(3) If a timely objection is filed, the Chief Regulatory Adjudicator determines the procedure for prompt consideration of the objection. The proposed statement of concern becomes a public statement of concern only if the Chief Regulatory Adjudicator so orders. The Chief Regulatory Adjudicator's decision is not subject to further review.

(4) If no timely objection is filed, the proposed statement of concern becomes a public statement of concern seven days after service.

**(c) Withdrawal.** The Chief Disciplinary Counsel may withdraw a public statement of concern at any time by filing a notice of withdrawal with the Clerk. The respondent may at any time request that the Chief Regulatory Adjudicator order the public statement of concern withdrawn. The Chief Regulatory Adjudicator determines the procedure for prompt consideration of the request. If withdrawn, the public statement of concern is removed from the website maintained by the Bar for public information.

**(d) Confidentiality.** A proceeding under this Rule, including a proposed statement of concern and any documents filed in the proceeding, is confidential unless the proposed statement of concern is made public under section (b)(3) or (b)(4).

### **RULE 3.8 NOTICE OF DISCIPLINARY ACTION, RESIGNATION IN LIEU OF DISCIPLINE, INTERIM SUSPENSION, OR PLACEMENT IN INCAPACITY INACTIVE STATUS**

**(a) Notices.** The Clerk must notify and send appropriate documentation to the following entities of the imposition of a disciplinary sanction, a placement of the respondent's license in incapacity inactive status, a resignation in lieu of discipline, or the filing of a statement of concern made public under Rule 3.7:

- (1) the Supreme Court and the discipline authority or highest court in any jurisdiction where the licensed legal professional is believed to be admitted to practice law;
- (2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit, as appropriate for the license type;
- (3) the presiding judge of the superior court of the county in which the licensed legal professional maintained a practice, as appropriate for the license type; and
- (4) the American Bar Association National Lawyer Regulatory Data Bank.

**(b) Bar Publication and Website Notice.**

- (1) *Notice.* Notice of the imposition of any disciplinary sanction, resignation in lieu of discipline, interim suspension, information ordered published under Rule 9.3(b)(3), placement of a respondent's license in incapacity inactive status, or a statement of concern made public under Rule 3.7 must be published in the official publication of the Bar and on a website maintained by the Bar for public information. Notices should include sufficient information to adequately inform the public and the members of the Bar about any misconduct found, rules violated, and disciplinary sanction imposed. For a placement of a respondent's license in incapacity inactive status, no reference may be made to the specific incapacity. For an interim suspension, the basis of the interim suspension must be stated.
- (2) *Publication.* Notices published in the official publication of the Bar and posted on the Bar website may not be removed following publication, unless ordered by the Supreme Court or otherwise set forth in these Rules.

### **RULE 3.9 MAINTENANCE OF RECORDS**

**(a) Permanent Records.** The Clerk's file, admitted exhibits, and transcripts of the proceedings are permanent records in any matter in which:

- (1) the filing of a statement of charges was authorized,
- (2) an incapacity proceeding was authorized or commenced,

- (3) a sanction was imposed,
- (4) a placement of a respondent's license in incapacity inactive status was ordered,
- (5) the respondent resigned in lieu of discipline under Rule 9.2,
- (6) a statement of concern was made public under Rule 3.7, or
- (7) a custodian was appointed under Rule 16.1.

**(b) Retention and Destruction of Complaint and Investigative Files.** Except as specified below, file materials that are not permanent records under section (a) of this Rule may be destroyed three years after the matter is closed. File materials on a matter closed after a diversion may be destroyed no sooner than five years after the closure. File materials that are not permanent records must be destroyed on the schedule set forth above on the respondent's request unless the file materials are being used in an ongoing investigation or other good cause exists for retention. File materials related to records made permanent under section (a) of this Rule, including investigative files, may be retained indefinitely in disciplinary counsel's discretion.

**(c) Retention and Destruction of Random Examination Files.** In any random examination matter under Rule 15.1 that was concluded without an investigation being ordered, the file materials relating to the matter may be destroyed three years after the matter was concluded. For any random examination matter resulting in an ordered investigation, the materials related to the random examination matter will be made part of the disciplinary investigative file. A record, limited to the name of the lawyer, LLLT, LPO, law firm, or closing firm examined or re-examined under Rule 15.1, together with the date the examination or re-examination was concluded, will be maintained for a period of seven years for the purpose of determining prior examinations under Rule 15.1(c).

#### **RULE 3.10 NO RETROACTIVE EFFECT**

These Rules do not modify the public or confidential nature of information or pleadings made public or confidential under disciplinary or incapacity procedural rules in effect prior to enactment of these Rules.

### **TITLE 4 – GENERAL PROCEDURAL RULES**

#### **RULE 4.1 SERVICE OF PAPERS**

**(a) General.** Whenever these Rules require service of papers or documents, service must be accomplished as provided in this Rule.

**(b) Methods of Service.**

(1) *Electronic Service.*

- (A) The parties may consent in writing to electronic service of all papers or documents unless these Rules specifically provide for a different means of service. Electronic service is complete on transmission when made prior to 5:00 p.m. Pacific Time on a day that is not a Saturday, Sunday, or legal holiday. Service made on a Saturday, Sunday, legal holiday, or after 5:00 p.m. Pacific Time on any other day is deemed complete on the first day thereafter that is not a Saturday, Sunday, or legal holiday. If properly made, electronic service is presumed effective.
- (B) The address for electronic service is as follows:
  - (i) If service is on the Office of Disciplinary Counsel, to the assigned disciplinary counsel's email address on file with the Bar, unless a different email address is designated by disciplinary counsel;
  - (ii) If service is on respondent or any lawyer representing the respondent, to the email address on file with the Bar, unless a different email address is provided in an answer to a statement of charges or in a notice of appearance by counsel.
- (C) If a party agrees to electronic service under this Rule, the email address specified in section (b)(1)(B) of this Rule must be sufficient to receive electronic transmission of information and

electronic documents.

(D) Consent to electronic service does not preclude service by other means.

(2) *Service by Mail.*

(A) If the parties do not consent to electronic service under section (b)(1) of this Rule, all papers and documents must be served by mail unless these Rules specifically provide for a different means of service. Service by mail may be accomplished by postage-prepaid mail. If properly made, service by mail is complete on the date of mailing. Service by mail 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) If service is on the Office of Disciplinary Counsel, directed to the assigned disciplinary counsel at the address of the Bar, unless a different address is designated;

(ii) If service is on respondent or any lawyer representing the respondent, to the address on file with the Bar, unless a different address is provided in an answer to a statement of charges or in a notice of appearance by counsel.

(3) *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.

(4) *Personal Service.* If personal service is required under these Rules, it must be 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 the respondent's last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Bar, or to the respondent's resident agent whose name and address are on file with the Bar under APR 13(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 on Guardian.** If there is a court-appointed guardian or guardian ad litem for a respondent, service under sections (a) and (b) of this Rule above must also be made on the guardian or guardian ad litem.

**(d) Proof of Service.**

(1) If service is accomplished electronically or by mail, proof of service may be made by a certificate of service.

(2) If personal service is required, proof of service may be made by affidavit or declaration of service, sheriff's return of service, or a signed acknowledgment of service.

(3) Proof of service in all cases must be filed but need not be served.

**RULE 4.2 FILING; ORDERS**

**(a) Filing Generally.** Except in matters before the Supreme Court, whenever filing is required under these Rules, the document must be filed with the Clerk. Filing of documents for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(1) *Timing.* Any document is timely filed only if it is received by the Clerk within the time permitted for filing. A document received by the Clerk after 5:00 p.m. Pacific Time or on a Saturday, Sunday, or legal holiday is deemed filed on the first day thereafter that is not a Saturday, Sunday, or legal

holiday.

(2) *Signing.* Documents filed with the Clerk must be signed by the party or person filing the document or the attorney of record for the party or person filing the document.

(3) *Electronic Filing.* The parties should file electronically. Electronic filing may be accomplished by email or an electronic system approved by the Clerk.

(4) *Refusal by Clerk.* The Clerk may refuse to accept for filing any document not in compliance with these Rules and must notify the parties of the refusal and the reason for the refusal.

**(b) Filing of Orders.** Any written order, decision, or ruling of the ORA must be filed with the Clerk.

**(c) Service of Orders.** The Clerk must serve any written order, decision, or ruling of the ORA on disciplinary counsel and the respondent or any lawyer representing the respondent. Unless the ORA orders otherwise, service by the Clerk should be made electronically as set forth in Rule 4.1(b)(1)(B).

**(d) Respondents Who Are Not Bar Members.** If a respondent is not licensed to practice law in Washington and does not have a mailing address or an email address on file with the Bar, the respondent must provide the disciplinary counsel or the Clerk with a mailing address and an email address to receive service of papers. In the absence of a mailing address or email address provided by the respondent, disciplinary counsel or the Clerk may serve the respondent at any reasonably ascertainable address where it appears the respondent receives mail or email.

#### **RULE 4.3 PAPERS AND DOCUMENTS IN PROCEEDINGS**

Except as otherwise provided in Titles 11 or 12, all pleadings, documents, or other papers filed in proceedings must be legibly written or typed using no smaller than 12-point font and prepared on 8½ by 11 inch paper or the electronic equivalent.

#### **RULE 4.4 COMPUTATION OF TIME**

CR 6(a) and (e) govern the computation of time under these Rules.

#### **RULE 4.5 EXTENSION OR REDUCTION OF TIME IN PROCEEDINGS**

In any proceeding, except for notices of appeal or matters pending before the Supreme Court, the ORA may, on its own initiative or on motion of a party, enlarge or shorten the time within which an act must be done in a particular case for good cause.

#### **RULE 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION**

Upon a showing of good cause, disciplinary counsel or a regulatory adjudicator may issue a subpoena to compel the attendance of witnesses or production of documents in this state for use in disciplinary or incapacity proceedings in another jurisdiction. The person seeking the subpoena must certify that the subpoena has been approved or authorized under the law or disciplinary rules of the other jurisdiction. Service, enforcement, and challenges to a subpoena issued under this Rule are governed by the provisions of these Rules.

#### **RULE 4.7 ENFORCEMENT OF SUBPOENAS**

Any person who fails, without adequate excuse, to obey a subpoena served upon that person under these Rules may be deemed in contempt of the Washington Supreme Court. To enforce subpoenas issued under these Rules, a party must file a petition for an order to show cause with the Supreme Court. The petition must (1) be accompanied by a copy of the subpoena and proof of service; (2) state the specific manner of the lack of compliance; and (3) specify the relief sought. The Court determines the procedure for its consideration of the petition.

#### **RULE 4.8 SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION**

Service and filing of papers under these Rules by an inmate confined in an institution must conform to the requirements of GR 3.1.

#### **RULE 4.9 REDACTION OR OMISSION OF PERSONAL IDENTIFIERS**

The filing party is responsible for redacting or omitting from all publicly filed exhibits, documents, and pleadings the following personal identifiers: social security numbers, financial account numbers, and driver's license numbers. When it is not feasible to redact or omit a personal identifier, the filing party must seek a protective order under Rule 3.4 to have the document filed under seal.

### **TITLE 5 – REVIEW, INVESTIGATION, AND COMPLAINT PROCEDURES**

#### **RULE 5.1 INVESTIGATIVE AUTHORITY**

**(a) Authority.** Disciplinary counsel may take appropriate steps to investigate any alleged or apparent misconduct by, or incapacity to practice law of, a licensed legal professional whether disciplinary counsel learns of it by complaint or otherwise.

**(b) Submitting a Complaint.** Any person or entity may submit to the Office of Disciplinary Counsel a written complaint concerning the misconduct or incapacity to practice law of a licensed legal professional. Disciplinary counsel must review the information to determine whether an investigation or further action is warranted.

#### **RULE 5.2 COMPLAINANT CONSENT TO DISCLOSURE AND EXCEPTIONS**

**(a) Consent to Disclosure.** By submitting a complaint, the complainant consents to the following:

- (1) all information the complainant submits may be disclosed to the respondent or to any person eligible to receive information under these Rules; and
- (2) the respondent or any other licensed legal professional contacted by the complainant may disclose to disciplinary counsel any information relevant to the investigation.

**(b) Consent Does Not Extend to Other Forums.** Consent to disclosure under this Rule does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

**(c) Withholding Information.** Disciplinary counsel has discretion to withhold information in whole or in part from the respondent or an individual otherwise eligible to receive it when disciplinary counsel deems it necessary to protect a privacy, safety, or other compelling interest of a complainant or other person.

**(d) Confidential Source.** If a person or entity submits a complaint and asks to be treated as a confidential source, the person's identity may not be disclosed during an investigation or proceeding unless ordered by a regulatory adjudicator as necessary for the respondent to conduct a proper defense. A confidential source is not entitled to the notification required under Rule 5.12.

#### **RULE 5.3 REQUEST FOR PRELIMINARY RESPONSE**

Disciplinary counsel may request a written preliminary response from a respondent to information obtained under Rule 5.1. If disciplinary counsel requests only the respondent's written preliminary response and does not request specific information or specific records, files, or accounts, the request is not subject to objection under Rule 5.6(b).

#### **RULE 5.4 DEFERRAL BY DISCIPLINARY COUNSEL**

**(a) Deferral.** Disciplinary counsel may defer action under Rule 5.1(b) or investigation under this Title:

- (1) if it appears that the allegations are related to pending civil or criminal litigation;
- (2) if it appears that the respondent lacks the physical or mental capacity to respond;
- (3) if an incapacity proceeding under Title 8 is pending; or

(4) for other good cause.

When making a deferral decision, disciplinary counsel considers whether deferral will endanger the public.

**(b) Notice and Review.** Disciplinary counsel must inform the respondent and may inform the complainant of a deferral decision. A deferral decision is not subject to review.

#### **RULE 5.5 VEXATIOUS COMPLAINANTS**

**(a) Definition.** A “vexatious complainant” is a complainant who has engaged in a frivolous or harassing course of conduct relating to the submission of complaints that so departs from a reasonable standard of conduct as to render the complainant’s conduct abusive to the disciplinary system or participants in the disciplinary system.

**(b) Motion.** Either disciplinary counsel or a respondent may file a motion with the ORA to declare the complainant vexatious. The filing of a motion does not suspend a respondent’s duties under these Rules.

**(c) Requirements of Motion.** The motion must set forth with particularity the facts establishing that the complainant’s conduct is vexatious and identify the relief sought.

**(d) Service.** The moving party must serve a copy of the motion on the complainant. If the motion is filed by a respondent, the motion must also be served on disciplinary counsel. Disciplinary counsel may notify any current or former respondent against whom a complaint has been filed by the alleged vexatious complainant of the motion.

**(e) Response to Motion.** The complainant or disciplinary counsel may file a written response no later than 20 days after service of the motion.

**(f) Temporary Order.** During the pendency of the motion, the ORA may issue a temporary order stating that disciplinary counsel need not accept, acknowledge, review, or investigate complaints from the alleged vexatious complainant.

**(g) Order.** If the ORA finds that the complainant’s conduct is vexatious, the ORA must issue findings of fact and a separate order relieving disciplinary counsel of the obligation to accept, acknowledge, review, or investigate complaints from the vexatious complainant and any other necessary and proper relief. The relief ordered must be no broader than necessary to prevent the harassment and abuse found. If the ORA finds that the complainant’s conduct is not vexatious, the ORA must issue an order denying the motion.

**(h) Confidentiality.** The fact that a complainant has been determined to be a vexatious complainant and the order are public information. All other proceedings and documents related to a motion under this Rule are confidential.

**(i) Review by Court.** The moving party, the complainant, or disciplinary counsel may seek review of the ORA’s order by filing a petition for discretionary review under the procedures set forth in Rule 12.4. No other appeal of the order is allowed. Information made confidential under these Rules remains confidential in any Supreme Court proceeding.

#### **RULE 5.6 INVESTIGATIVE INQUIRIES AND OBJECTIONS**

**(a) General Investigative Inquiries.** Upon inquiry or request by disciplinary counsel, any licensed legal professional must:

- (1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;
- (2) permit inspection and copying of requested records, files, and accounts;
- (3) furnish copies of requested records, files, and accounts;
- (4) furnish written releases or authorizations if needed to obtain documents or information from third parties, including requests directed to a respondent under Rule 2.12(d); and
- (5) comply with investigatory subpoenas under Rule 5.7.

**(b) Objections.** Within 30 days of service of a written investigative inquiry or request under section (a) of this Rule, a licensed legal professional may serve a written objection on disciplinary counsel. An objection is reviewed by the ORA under Rule 5.8.



## **RULE 5.7 INVESTIGATIVE SUBPOENAS AND DEPOSITIONS**

**(a) Procedure.** Before filing a statement of charges, disciplinary counsel may issue a subpoena for a deposition or to obtain documents without a deposition. CR 30 and 31 provide guidance for depositions under this Rule. The respondent need not be given notice of a subpoena issued under section (b) of this Rule.

**(b) Subpoenas.** Disciplinary counsel may issue a subpoena to compel a respondent or a witness to (1) attend a deposition; (2) produce books, documents, or other evidence at a deposition; or (3) produce books, documents, or other evidence without a deposition. CR 45 provides guidance for subpoenas issued under this Rule, but the notice required by CR 45(b)(2) need not be given. Subpoenas may be enforced as set forth in Rule 4.7.

**(c) Objections to Subpoenas and Deposition Requests or Inquiries.**

- (1) *Objections.* For good cause, the subject of a subpoena may object to an investigative subpoena or a request or inquiry by disciplinary counsel during a deposition under this Rule. Any such objection must be in writing or on the record and is reviewed under Rule 5.8.
- (2) *Timeliness of Objections.* An objection to a subpoena under this Rule is timely if made prior to the date specified for production or the date of the deposition. An objection to a request or inquiry made by disciplinary counsel during the course of a deposition is timely only if made in response to the request or inquiry during the deposition. A timely objection suspends any duty to respond to the subpoena or to the request or inquiry until a ruling has been made.

## **RULE 5.8 REVIEW OF OBJECTIONS**

**(a) Review Authorized.** On motion, the ORA may hear the following matters:

- (1) Objections to written investigative inquiries under Rule 5.6 and
- (2) Objections to investigative subpoenas or disciplinary counsel inquiries or requests made at a deposition under Rule 5.7.

**(b) Procedure.**

- (1) The person objecting must file a motion seeking review of the objection within 15 days of the date of the objection. If no motion is filed within 15 days, the objection is deemed abandoned.
- (2) A motion seeking review of an objection must clearly and specifically set out what is being objected to and the basis for the objection.
- (3) In considering an objection to a written investigative inquiry, subpoena, or disciplinary counsel inquiry or request made at a deposition under this Rule, the ORA should consider the following factors:
  - (A) the relevance and necessity of the information to the investigation;
  - (B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;
  - (C) the availability of the information from other sources;
  - (D) the sensitivity of the information and potential impact on a client, including the client's right to effective assistance of counsel;
  - (E) the expressed desires of a client;
  - (F) whether the objection was made before the due date of the request or inquiry; and
  - (G) whether the burden of producing the requested information outweighs the likely utility of the information to the investigation.
- (4) In ruling on an objection under this Rule, the ORA may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. When appropriate, a ruling may take the form of, or may accompany, a protective order under Rule 3.4.

(5) Review of a ruling under this Rule may be sought under Rule 11.10.

#### **RULE 5.9 COOPERATION**

**(a) Duty to Respond.** A licensed legal professional, whether or not a respondent as defined in Rule 2.12(a), must promptly respond to requests, inquiries, and subpoenas from disciplinary counsel, subject to Rules 2.13, 5.6, and 5.7.

**(b) Noncooperation Deposition.** If a licensed legal professional has not complied with any request made under this Title for more than 30 days from the date of the request, disciplinary counsel may notify the licensed legal professional that failure to comply within 10 days may result in the licensed legal professional's deposition or subject the licensed legal professional to interim suspension under Rule 7.2. Ten days after this notice, disciplinary counsel may serve the licensed legal professional with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the licensed legal professional's continued failure to cooperate may be conducted at any place in Washington State.

**(c) Costs and Expenses.**

(1) A licensed legal professional who has been served with a subpoena under this Rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, the cost of transcribing the deposition if ordered by disciplinary counsel, and a reasonable attorney fee of \$750.

(2) The procedure for assessing costs and expenses is as follows:

(A) Disciplinary counsel applies to the ORA by itemizing the costs and expenses and stating the reasons for the deposition.

(B) The licensed legal professional has 10 days to respond to disciplinary counsel's application.

(C) The ORA by order assesses appropriate costs and expenses. The order assessing costs and expenses is not subject to further review.

**(d) Grounds for Discipline.** A licensed legal professional's failure to cooperate fully and promptly with any requests, inquiries, or subpoenas as required by these Rules is also grounds for discipline.

#### **RULE 5.10 REPORTING INVESTIGATIONS TO AN AUTHORIZATION PANEL**

**(a) Request to an Authorization Panel.** Disciplinary counsel may file a request for an order authorizing the filing of a statement of charges or the initiation of incapacity proceedings. The request must set forth the basis for the disciplinary or incapacity proceeding. Disciplinary counsel must file the request with the Clerk and serve the request on the respondent.

**(b) Response.** A respondent may file with the Clerk a written response to disciplinary counsel's request within 15 days of service of the request. The respondent must serve any response on disciplinary counsel.

**(c) Reply.** Disciplinary counsel may file with the Clerk a reply to the respondent's response within five days of service of the response. Disciplinary counsel must serve any reply on the respondent.

**(d) Standard.** An Authorization Panel must authorize the filing of a statement of charges if, based on existing law or a good faith argument for an extension of existing law, sufficient information exists whereby a reasonable trier of fact could find one or more of the alleged rule violations by a clear preponderance of the evidence, even if that evidence is disputed. The standard for authorization to initiate incapacity proceedings is set forth in Rule 8.2(a).

**(e) Order.** After considering materials filed by disciplinary counsel and the respondent under this Rule, an Authorization Panel issues an order:

(1) authorizing the filing of a statement of charges or the initiation of incapacity proceedings, as requested by disciplinary counsel;

(2) denying the request to file a statement of charges, with prejudice; or

(3) denying the request to file a statement of charges or to initiate incapacity proceedings, without

prejudice to the filing of a subsequent request based on the presentation of additional information.

An order denying the request must include an explanation of the reasons for the denial and the determination on prejudice. Any order denying the request with prejudice must be transmitted by the Clerk to the Court.

**(f) Finality.** The Authorization Panel's order is not subject to review.

#### **RULE 5.11 CLOSURE BY DISCIPLINARY COUNSEL**

**(a) Closure Without Investigation.** Disciplinary counsel may close a complaint after a determination that no investigation or further action is warranted.

**(b) Closure of Investigation.** Disciplinary counsel may close an investigation and any related complaints after a determination that no further action is warranted.

**(c) Finality.** Closure under section (a) or (b) of this Rule is not subject to review. If disciplinary counsel receives information about a closed matter, disciplinary counsel may consider that information to determine what, if any, action is appropriate.

**(d) Closure Not Required.** None of the following alone requires disciplinary counsel to close a complaint or investigation: the unwillingness of a complainant to cooperate with disciplinary counsel, the withdrawal of a complaint, a compromise between the complainant and the respondent, or restitution by the respondent.

#### **RULE 5.12 NOTIFICATION**

**(a) Closing.** Disciplinary counsel must notify the respondent and complainant after a complaint or an investigation has been closed under Rule 5.11.

**(b) Other Notification.** Disciplinary counsel must notify the respondent and complainant after the results of an investigation have been reported to an Authorization Panel under Rule 5.10(a). Disciplinary counsel must notify the respondent and may notify the complainant that a matter has been deferred under Rule 5.4. Disciplinary counsel must notify the complainant after a matter has been diverted under Title 6 or resolved without a hearing under Title 9.

### **TITLE 6 – DIVERSION**

#### **RULE 6.1 GENERAL**

**(a) Definition.** Diversion is a process that may resolve a matter without further investigation or proceedings and without a public disciplinary sanction. Disciplinary counsel may offer diversion to a respondent who commits a less serious violation of the applicable rules of professional conduct. Disciplinary counsel and respondent enter into a contract setting forth conditions that respondent must satisfy. Successful completion of a diversion contract results in closure of a matter with no further action.

**(b) Timing.** Disciplinary counsel may offer diversion to a respondent any time before serving a statement of charges and no later than 60 days after serving the statement of charges.

#### **RULE 6.2 LESS SERIOUS MISCONDUCT**

Less serious misconduct is conduct not warranting a sanction that restricts a respondent's license to practice law. Conduct is not ordinarily considered less serious misconduct if the misconduct:

**(a)** involves the misappropriation of funds;

**(b)** results in or is likely to result in substantial prejudice to a client or other person;

**(c)** is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;

**(d)** involves dishonesty, deceit, fraud, or misrepresentation;

- (e) constitutes a felony as defined in Rule 1.3(f);
- (f) is part of a pattern of similar misconduct; or
- (g) involves knowing and repeated practice outside the scope of the respondent's license to practice law.

### **RULE 6.3 FACTORS FOR DIVERSION**

If the misconduct is less serious misconduct under Rule 6.2, disciplinary counsel considers the following factors in determining whether to offer diversion to a respondent:

- (a) whether the sanction for the alleged violations is likely to be no more severe than a reprimand;
- (b) whether participation in diversion is likely to improve the respondent's future professional conduct and protect the public; and
- (c) whether the respondent previously participated in diversion.

### **RULE 6.4 DIVERSION CONTRACT**

(a) **Negotiation.** Disciplinary counsel and the respondent negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) **Requirements.** A diversion contract must:

- (1) be signed by the respondent and disciplinary counsel;
- (2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a monitor and the monitor's responsibilities. If a monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;
- (3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disciplinary matters. Except as specifically authorized by the Rules for Discipline and Incapacity or by agreement, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract";
- (4) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;
- (5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the matter to be diverted;
- (6) include a specific acknowledgment that a material violation of a term of the contract may result in termination of the contract under Rule 6.7(b); and
- (7) include a specific acknowledgment that the diversion contract and the supporting declaration are subject to release under Rule 3.6.

(c) **Optional Terms.** Diversion may include:

- (1) fee arbitration;
- (2) arbitration;
- (3) mediation;
- (4) office management assistance;
- (5) assistance programs for licensed legal professionals;
- (6) psychological and behavioral counseling;
- (7) monitoring;
- (8) restitution;
- (9) continuing legal education programs;
- (10) a plan for the respondent to transition out of practice;
- (11) ethics consultation; or

(12) any other program or corrective course of action agreed to by disciplinary counsel and the respondent to address the respondent's misconduct.

**(d) Limitations.** A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties, or liabilities outside of those stated in the diversion contract or provided by this Title.

**(e) Amendment.** The contract may be amended at any time by written agreement of the respondent and disciplinary counsel.

#### **RULE 6.5 DECLARATION SUPPORTING DIVERSION**

A diversion contract must be supported by a declaration approved by disciplinary counsel and signed by the respondent setting forth the respondent's misconduct related to the matter or matters to be diverted.

#### **RULE 6.6 STATUS OF INVESTIGATION OR PROCEEDINGS DURING DIVERSION**

After the respondent and disciplinary counsel execute a diversion contract, the investigation or proceeding is stayed pending completion of diversion.

#### **RULE 6.7 COMPLETION OR TERMINATION OF DIVERSION**

**(a) Successful Completion.** Upon disciplinary counsel's determination that diversion has been successfully completed, any investigation that was stayed pending completion of diversion must be closed under Rule 5.11. Any proceeding that was stayed pending completion of diversion must be dismissed by order of a regulatory adjudicator upon notice from disciplinary counsel that the diversion was successfully completed. A proceeding dismissed under this Rule becomes final without entry of a final order under Rule 13.1(a). A respondent who successfully completes diversion cannot be disciplined based solely on the same facts and violations set forth in the diversion contract and respondent's declaration.

**(b) Termination for Material Breach.** If disciplinary counsel determines that a respondent has materially breached the contract, disciplinary counsel may terminate the diversion. Disciplinary counsel must notify the respondent of termination from diversion. Unless review is sought under section (c) of this Rule, disciplinary counsel resumes any matter that was stayed.

**(c) Review by the ORA.** A regulatory adjudicator reviews disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Clerk within 15 days of notice to the respondent of the determination for which review is sought. A timely request for review stays further action on the matter until the regulatory adjudicator rules on the request. Determinations by a regulatory adjudicator under this section are not subject to further review.

#### **RULE 6.8 CONFIDENTIALITY**

Absent consent of the respondent, the fact of diversion and the diversion documents are confidential and must not be disclosed except as follows:

**(a) Notification to Complainant.** After disciplinary counsel and the respondent execute a diversion contract, disciplinary counsel must notify the complainant that a matter has been diverted.

**(b) Notification to Persons Providing Services under the Contract.** The diversion contract and declaration may be disclosed to individuals or entities who will provide services or administration in connection with the diversion contract.

**(c) Following Material Breach.** If diversion is terminated due to a material breach, the diversion contract and declaration are admissible into evidence in any disciplinary or incapacity proceeding regarding the matter that had been diverted.

**(d) Discretionary Release.** Release of the diversion contract and supporting declaration may be authorized under Rule 3.6 provided that the respondent is given notice of the decision to make a discretionary

release and a reasonable opportunity to seek a protective order under Rule 3.4.

## TITLE 7 – INTERIM SUSPENSION

### RULE 7.1 DEFINITION

An interim suspension is a suspension for an indefinite period of time for one or more of the reasons set forth in Rule 7.2. An interim suspension remains in effect until terminated as provided in Rule 7.5. An interim suspension is not a disciplinary sanction.

### RULE 7.2 GROUNDS FOR INTERIM SUSPENSION

**(a) Risk to Public.** During the pendency of any disciplinary investigation or proceeding, disciplinary counsel may petition the Court for, and the Court may order, an interim suspension if it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public.

**(b) Recommendation for Disbarment.** Following entry of an Appeal Panel decision recommending a respondent's disbarment, disciplinary counsel must petition the Court for an interim suspension unless the decision recommending disbarment is not appealed and becomes final, or the respondent is otherwise suspended. The Court must order an interim suspension unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

**(c) Failure to Cooperate.** When a licensed legal professional has failed, without good cause, to comply with an obligation to appear or provide information or documents under Rules 5.3, 5.6, 5.7, 5.9, 8.2(d), 8.2(f)(6), 8.4(e), 8.4(f)(6), or 15.2, disciplinary counsel may petition the Court for an interim suspension. The Court may order an interim suspension pending compliance with the unfulfilled obligation. If a timely objection under Rule 5.8 to an inquiry, request, or subpoena has been asserted or a timely motion for review of an objection is pending, a petition for interim suspension under this section may not be filed until the decision is final.

**(d) Conviction of a Felony.** If a licensed legal professional is convicted of a felony, disciplinary counsel must petition the Court for an interim suspension. A petition to the Supreme Court for interim suspension under this Rule must include a copy of any available document establishing the fact of the conviction. The Court must order an interim suspension unless the Court finds that the crime did not constitute a felony or that the respondent is not the individual convicted.

(1) *Definition of Conviction.* Conviction for the purposes of this section is defined in Rule 1.3(f).

(2) *Definition of Felony.* Felony means (A) any crime denominated as a felony in the jurisdiction in which it is committed or (B) any crime that would be classified as a felony in Washington State even if not denominated as a felony in the jurisdiction where the crime was committed.

(3) *Reporting of Felony Conviction.* When a licensed legal professional is convicted of a felony, the licensed legal professional must report the conviction to the Office of Disciplinary Counsel within 30 days of the conviction.

(4) *Statement of Charges.* Disciplinary counsel must also file a statement of charges regarding the licensed legal professional's felony conviction. A petition for interim suspension under this section may be filed before the statement of charges.

**(e) Failure to Comply with Probation.** When a licensed legal professional has failed, without good cause, to comply with an obligation imposed by a probation order under Rule 13.6, disciplinary counsel may petition the Court for an interim suspension. The Court may order an interim suspension pending compliance with the unfulfilled probation obligation.

### RULE 7.3 INTERIM SUSPENSION PROCEDURE

**(a) Petition.** An interim suspension proceeding commences when disciplinary counsel files a petition

for interim suspension with the Court. A petition must set forth the grounds for the interim suspension and may be supported by argument, documents, and declarations filed with the petition. A petition may be based on one or more of the grounds set forth in Rule 7.2. A copy of the petition must be personally served on the respondent and proof of service filed with the Court.

**(b) Answer to Petition and Reply.** The respondent may file an answer to the petition. An answer may be supported by argument, documents, and declarations filed with the answer. The answer must be filed with the Court and served on disciplinary counsel within 10 days of service of the petition. Disciplinary counsel's reply, if any, must be filed with Court and served on the respondent within 7 days of service of the answer. Proof of service must be filed with the Court.

**(c) Confidentiality.** When a party identifies information or documents that are otherwise confidential under these Rules, the Court must take appropriate measures to maintain the confidentiality of the information or documents.

**(d) Consideration.** The Supreme Court decides a petition without oral argument, unless the Court orders otherwise. Either party may request oral argument at the time the petition or answer is filed. If a request for oral argument is granted, the Supreme Court Clerk will notify disciplinary counsel and the respondent. The argument will be held on the date and time directed by the Supreme Court Clerk.

**(e) Expedited Review.** Petitions seeking interim suspension under this Title receive expedited consideration, ordinarily no later than seven days from the deadline for filing of an answer or, if oral argument is ordered under section (d) of this Rule, the date set for an oral argument.

**(f) 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 Associate Chief Justice, or the senior Justice under SAR 10 may rule on the petition for interim suspension, subject to review by the full Court on motion for reconsideration.

**(g) Order.** The Court decides a petition by an order granting or denying an interim suspension. An order granting interim suspension must state the conditions under which the interim suspension may terminate. An interim suspension is effective on the date of the Supreme Court's order unless the Court orders otherwise.

**(h) Duties on Interim Suspension.** A licensed legal professional whose license is suspended under this Rule is subject to all the duties and restrictions in Title 14 of these Rules.

#### **RULE 7.4 STIPULATION TO INTERIM SUSPENSION**

At any time, a respondent and disciplinary counsel may stipulate to an interim suspension of the respondent's license during the pendency of any investigation or proceeding. A stipulation must set forth a factual basis for the interim suspension for one or more of the reasons set forth in Rule 7.2. A stipulation is filed with the Supreme Court for expedited consideration and entry of an appropriate interim suspension order. Stipulations under this Rule are public upon filing with the Court except that information or documents identified as confidential under these Rules remain so and the Court must take appropriate measures to maintain the confidentiality of the information or documents.

#### **RULE 7.5 TERMINATION OF INTERIM SUSPENSION**

##### **(a) Petition by Respondent.**

- (1) *Petition and Response.* A respondent may at any time petition to terminate an interim suspension on a showing that the basis for the interim suspension no longer exists or for other good cause. Disciplinary counsel may file a response to the petition.
- (2) *Court Action.* The procedures for filing, service, and consideration of a petition to terminate an interim suspension are governed by RAP 17.4.

**(b) Notification from Disciplinary Counsel.** Upon notice from disciplinary counsel that the conditions for termination of the interim suspension have been satisfied or that the basis for the interim suspension no

longer exists, the Court may issue an order terminating the interim suspension.

**(c) Agreed Terminations.** If the respondent and disciplinary counsel agree to termination of an interim suspension, the Court may issue an order terminating the interim suspension upon the filing of a joint request for termination.

**(d) Order of Termination.** The Court's order terminating an interim suspension must state that reinstatement is conditioned upon compliance with the procedures for reinstatement from suspension as set forth in the Bar's Bylaws or applicable court rules.

## **TITLE 8 – INCAPACITY PROCEEDINGS**

### **RULE 8.1 INCAPACITY INACTIVE STATUS**

**(a) Definition.** A respondent's license may be placed in incapacity inactive status following an adjudicative determination that a respondent lacks the mental or physical capacity to practice law, respond to a disciplinary investigation, or defend a disciplinary proceeding, or for any of the reasons specified in Rule 8.5. Placement in incapacity inactive status is not discipline.

**(b) Supreme Court Final Order.** The Supreme Court's final order in an incapacity proceeding is an order or opinion that places a respondent's license in incapacity inactive status, dismisses the matter, or otherwise concludes the proceeding. Except as otherwise provided in these Rules, upon entry of the Court's final order, the matter is not subject to further review under these Rules. A placement of a respondent's license on incapacity inactive status is effective on the date of the Supreme Court's order or opinion. After the final order is issued, the ORA or the Court may hear and decide post-judgment issues authorized by these Rules.

### **RULE 8.2 INCAPACITY PROCEEDINGS WHEN NO DISCIPLINARY INVESTIGATIONS OR PROCEEDINGS PENDING**

**(a) Incapacity Proceedings Ordered by Authorization Panel.** Unless Rule 8.5 applies, when disciplinary counsel obtains information that a licensed legal professional may lack the mental or physical capacity to practice law, disciplinary counsel reviews and may investigate the matter. If, after an investigation, there is evidence sufficient to warrant an adjudicative determination of the respondent's capacity to practice law, then disciplinary counsel reports the matter to an Authorization Panel using the procedures set forth in Rule 5.10. Subject to Rules 5.2(d) and 3.4, the respondent and any guardian or guardian ad litem appointed for the respondent must be provided with a complete copy of disciplinary counsel's report. The Authorization Panel must issue an order authorizing disciplinary counsel to initiate an incapacity proceedings if it appears there is reasonable cause to believe that the respondent lacks the mental or physical capacity to practice law.

**(b) Initial Pleadings.**

- (1) *Statement of Alleged Incapacity.* Disciplinary counsel files a statement of alleged incapacity after the Authorization Panel issues an order authorizing the initiation of incapacity proceedings. The statement of alleged incapacity must set forth facts sufficient to inform the respondent of the basis for the allegation of incapacity and state that the issue to be decided is whether the respondent lacks the mental or physical capacity to practice law. The incapacity proceedings commence upon the filing of the statement of alleged incapacity. The statement of alleged incapacity must be personally served on the respondent or any guardian or guardian ad litem.
- (2) *Response to Statement of Alleged Incapacity.* Any response to the statement of alleged incapacity must be filed within 20 days after service or after counsel is appointed under Rule 8.6, whichever is later.

**(c) Placement in Interim Incapacity Inactive Status.**



- (1) *Procedure.* When an Authorization Panel authorizes the initiation of incapacity proceeding, disciplinary counsel must file with the Supreme Court a petition to place the respondent's license in interim incapacity inactive status unless the respondent's license has already been placed in this status. The procedures of Rule 7.3 govern the proceedings under this section, except that the respondent must be represented by counsel.
- (2) *Standard.* The Court must order that the respondent's license be placed in interim incapacity inactive status unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.
- (3) *Duration of Interim Incapacity Inactive Status.* Unless the Supreme Court orders otherwise, when a respondent's license is placed in interim incapacity inactive status under this Rule, the license remains in that status until a hearing decision becomes final under Rule 8.1(b) or until after all appellate proceedings have concluded, whichever is later.

**(d) Health Records, Releases, and Examination.**

- (1) *Duty to Provide Release and Records.* Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.
- (2) *Order Limiting Scope.* Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations for good cause shown.
- (3) *Independent Medical Examination.* Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses, to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

**(e) Failure to Appear or Cooperate.** If a respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may petition the Supreme Court for the respondent's interim suspension under Rule 7.2(c). The procedures of Title 7 apply.

**(f) Procedures for Incapacity Hearing.**

- (1) *Not Disciplinary Proceedings.* Incapacity proceedings under this Title are not disciplinary proceedings.
- (2) *Procedural Rules.* Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.
- (3) *Case Caption.* The respondent's initials are to be used in the case caption rather than the respondent's full name.
- (4) *Scheduling Conference.* By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.
- (5) *Burden and Standard of Proof.* Disciplinary counsel has the burden of proof by a clear preponderance of the evidence.
- (6) *Duty to Appear.* The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for interim suspension.

**(g) Hearing Decision.** A hearing adjudicator's decision must be in the form of written findings of fact,

conclusions of law, and recommendation. If the hearing adjudicator finds that the respondent lacks the capacity to practice law, the hearing adjudicator recommends that the respondent's license be placed in incapacity inactive status. If the hearing adjudicator finds the evidence is insufficient to prove the respondent lacks the capacity to practice law, the hearing adjudicator recommends dismissal of the incapacity proceeding. Except as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

**(h) Transmittal to the Court.** If no party files a notice of appeal of a hearing decision under section (g) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

### **RULE 8.3 INCAPACITY PROCEEDINGS DURING COURSE OF DISCIPLINARY INVESTIGATIONS OR PROCEEDINGS BASED ON RESPONDENT'S ASSERTION**

**(a) Incapacity Proceeding Ordered after Respondent's Assertion.** If, during the course of a disciplinary investigation or proceeding, a respondent asserts a lack of mental or physical capacity to respond to the disciplinary investigation or defend the disciplinary proceeding, or to assist counsel in responding to the disciplinary investigation or defending the disciplinary proceeding, a regulatory adjudicator or the Supreme Court must order the initiation of incapacity proceedings.

**(b) Method of Assertion.** The respondent must serve a written assertion on disciplinary counsel or make the assertion on the record at a deposition or hearing. The assertion must be filed with the Clerk or, if the matter is pending before the Supreme Court, with the Court.

**(c) Contents of Order; Advisement; Effective Date; Notice.**

- (1) *Contents of Order.* The order under section (a) of this Rule must state that the issues to be determined are whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding.
- (2) *Advisement.* The order must include a written advisement substantially in the following form:
  - (A) that making the assertion will result in placement of the respondent's license in interim incapacity inactive status on the effective date of the order and the respondent will be ineligible to practice law;
  - (B) that the respondent will be required to provide medical documentation to support the assertion within 30 days of the effective date of the order for incapacity proceedings;
  - (C) that the respondent may be required to furnish written releases and authorizations for additional medical, psychological, or psychiatric records relevant to the assertion;
  - (D) that the respondent may be required to submit to an independent medical examination;
  - (E) that the respondent will have the burden of proving the incapacity in the proceeding;
  - (F) that any disciplinary proceeding pending against the respondent will be stayed during the incapacity proceeding;
  - (G) that disciplinary counsel has the discretion to defer any pending disciplinary investigation; and
  - (H) that counsel will be appointed for the respondent for the incapacity proceeding and any disciplinary investigation that is not deferred while incapacity proceedings are pending, and that the respondent will be deemed to have consented to appointment of counsel at the Bar's expense.
- (3) *Effective Date of Order.* An order commences the incapacity proceeding and is effective seven days after the date of the order, unless the Court or regulatory adjudicator orders an earlier effective date.
- (4) *Notice to Respondent.* The order serves as notice to respondent of the issues to be adjudicated. Disciplinary counsel need not file a statement of alleged incapacity.

**(d) Effect of Incapacity Proceeding on Pending Disciplinary Matters.** Pending the outcome of the incapacity proceeding, the regulatory adjudicator or the Supreme Court must stay any disciplinary proceeding pending against the respondent. Disciplinary counsel may defer action as provided in Rule 5.4.

**(e) Interim Incapacity Inactive Status.**

(1) *Immediate Placement.*

(A) *Order Entered by Regulatory Adjudicator.* When a regulatory adjudicator orders an incapacity proceeding, disciplinary counsel must transmit the order to the Supreme Court after the order becomes effective under section (c)(3) of this Rule. On receipt of the order, the Court must order that the respondent's license be placed in interim incapacity inactive status.

(B) *Order Entered by Supreme Court.* When the Supreme Court orders an incapacity proceeding, it also must order that the respondent's license be placed in interim incapacity inactive status as of the effective date of the order.

(2) *Duration of Interim Incapacity Inactive Status.* Unless the Supreme Court orders otherwise, a respondent whose license is placed in interim incapacity inactive status under this Rule remains in that status until the incapacity proceeding is terminated under section (g) of this Rule, a hearing decision becomes final under Rule 8.1(b).

**(f) Health Records, Releases, and Examination.**

(1) *Duty to Provide Records within 30 Days.* The respondent must provide disciplinary counsel with medical, psychological, or psychiatric records sufficient to reasonably support the assertion within 30 days of the effective date of the order for incapacity proceedings.

(2) *Duty to Provide Release and Records on Request.* Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(3) *Order Limiting Scope.* Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations for good cause shown.

(4) *Independent Medical Examination.* Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses, to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

**(g) Failure to Appear or Cooperate.** If the respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may file a motion to dismiss the incapacity proceeding and resume any disciplinary proceedings that have been stayed. The hearing adjudicator must grant the motion absent compelling justification for the failure to appear or cooperate. An order granting the motion is without prejudice to initiation of incapacity proceedings under Rules 8.2(a) or 8.4(a).

**(h) Procedures for Incapacity Hearing.**

(1) *Not Disciplinary Proceedings.* An incapacity proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules.* Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption.* The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference.* By order entered on the initiative of the hearing adjudicator or on motion

of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

- (5) *Burden and Standard of Proof.* Respondent has the burden of proof by a preponderance of the evidence.
- (6) *Duty to Appear.* The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for dismissal of the incapacity proceeding under section (g) of this Rule.

**(i) Hearing Decision.**

- (1) *Respondent Has Capacity to Respond or Defend.* If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding without the assistance of counsel, the hearing adjudicator recommends that the incapacity proceedings be dismissed and that any pending disciplinary investigations or proceedings resume without appointment of counsel.
- (2) *Respondent Requires the Assistance of Counsel.* If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding but requires the assistance of counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary investigations or proceedings resume, and (C) counsel be appointed for any pending disciplinary investigation or proceedings.
- (3) *Respondent Lacks Capacity to Respond or Defend and Lacks the Capacity to Assist Counsel.* If the hearing adjudicator finds that the respondent lacks the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding and lacks the capacity to assist counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings be stayed, and (C) any pending disciplinary investigations be deferred.

**(j) Transmittal to the Court.** If no party files a notice of appeal of a hearing decision under section (i) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

**RULE 8.4 INCAPACITY PROCEEDINGS DURING COURSE OF DISCIPLINARY INVESTIGATIONS OR PROCEEDINGS WITHOUT RESPONDENT'S ASSERTION**

**(a) Order by Regulatory Adjudicator or Supreme Court.** On motion by disciplinary counsel or on its own initiative, the Supreme Court, or a regulatory adjudicator when not serving as a settlement officer, must order an incapacity proceeding if it determines that there is reasonable cause to believe that the respondent lacks the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. When a regulatory adjudicator is serving as a settlement officer, Rule 10.11(h)(4)(D) applies.

**(b) Contents of Order; Statement of Alleged Incapacity; Response.**

- (1) *Contents.* The order must state that the issues to be determined are whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. It must also set forth the factual basis for the determination under section (a) of this Rule that an incapacity proceeding is warranted.
- (2) *Statement of Alleged Incapacity.* Disciplinary counsel files a statement of alleged incapacity after the order under section (a) of this Rule. The statement of alleged incapacity must set forth facts sufficient to inform the respondent of the basis for the allegation of incapacity and state that the issue to be decided is whether the respondent has the mental or physical capacity to respond to

a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. The incapacity proceeding commences upon the filing of the statement of alleged incapacity. The statement of alleged incapacity must be personally served on the respondent or any guardian or guardian ad litem.

- (3) *Response to Statement of Alleged Incapacity.* Any response to the statement of alleged incapacity must be filed within 20 days after service or after counsel is appointed under Rule 8.6, whichever is later.

**(c) Effect of Incapacity Proceeding on Pending Disciplinary Matters.** Pending the outcome of the incapacity proceeding, the regulatory adjudicator or the Supreme Court must stay any disciplinary proceeding pending against the respondent. Disciplinary counsel may defer action as provided in Rule 5.4.

**(d) Interim Incapacity Inactive Status.**

- (1) *Procedure.*

(A) *Order Entered by Regulatory Adjudicator.* When a regulatory adjudicator orders incapacity proceedings under this Rule, disciplinary counsel must file with the Supreme Court a petition to place the respondent's license in interim incapacity inactive status unless the respondent's license has already been placed in this status. Unless the Court orders otherwise, Rule 7.3 governs the proceedings under this section, except that the respondent must be represented by counsel.

(B) *Order Entered by Supreme Court.* When the Supreme Court orders incapacity proceedings under this Rule, the Court must issue an order to show cause why respondent's license to practice law should not be placed in interim incapacity inactive status. The Court sets the procedures for the show cause proceeding. The respondent must be represented by counsel in the show cause proceeding.

- (2) *Standard.* The Court must order that the respondent's license be placed in interim incapacity inactive status under this Rule unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

- (3) *Duration of Interim Incapacity Inactive Status.* Unless the Supreme Court orders otherwise, a respondent's license that is placed in interim incapacity inactive status under this Rule remains in that status until a hearing decision becomes final under Rule 8.1(b).

**(e) Health Records, Releases, and Examination.**

- (1) *Duty to Provide Release and Records.* Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

- (2) *Order Limiting Scope.* Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations for good cause shown.

- (3) *Independent Medical Examination.* Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

**(f) Failure to Appear or Cooperate.** If a respondent fails to appear or cooperate with any order or duty

under this Rule, disciplinary counsel may petition the Supreme Court for the respondent's interim suspension under Rule 7.2(c). The procedures of Title 7 apply.

**(g) Procedures for Incapacity Hearing.**

- (1) *Not Disciplinary Proceedings.* An incapacity proceeding under this Title is not a disciplinary proceeding.
- (2) *Procedural Rules.* Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.
- (3) *Case Caption.* The respondent's initials are to be used in the case caption rather than the respondent's full name.
- (4) *Scheduling Conference.* By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.
- (5) *Burden and Standard of Proof.* Disciplinary counsel has the burden of proof by a clear preponderance of the evidence.
- (6) *Duty to Appear.* The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for interim suspension.

**(h) Hearing Decision.**

- (1) *Respondent Has Capacity to Respond or Defend.* If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding without the assistance of counsel, the hearing adjudicator recommends that the incapacity proceedings be dismissed and that any pending disciplinary investigations or proceedings resume without appointment of counsel.
- (2) *Respondent Requires the Assistance of Counsel.* If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding but requires the assistance of counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings resume, and (C) counsel be appointed for any pending disciplinary investigation or proceedings.
- (3) *Respondent Lacks Capacity to Respond or Defend and Lacks the Capacity to Assist Counsel.* If the hearing adjudicator finds that the respondent lacks the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding and lacks the capacity to assist counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings be stayed, and (C) any pending disciplinary investigations be deferred.

**(i) Transmittal to the Court.** If no party files a notice of appeal of a hearing decision under section (h) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

**RULE 8.5 PLACEMENT IN INCAPACITY INACTIVE STATUS BASED ON ADJUDICATED GROUNDS**

**(a) Adjudicated Grounds.** The Court must order that a licensed legal professional's license to practice law be placed in incapacity inactive status upon receipt from the Bar of a certified copy of the judgment, order, or other appropriate document demonstrating that the licensed legal professional currently lacks the mental or physical capacity to practice law because the person:

- (1) was found to be incapable of assisting in the person's own defense in a criminal action;
- (2) was acquitted of a crime based on insanity;
- (3) has a guardian, but not a limited guardian, appointed for the person's estate or person on a judicial finding of incapacity; or

(4) was involuntarily committed to a mental health facility for more than 14 days under RCW 71.05.

**(b) Notice.** The Court must notify the incapacitated licensed legal professional and any guardian or guardian ad litem of the order that the respondent's license be placed in incapacity inactive status. Notice must also be provided under Rule 3.8.

#### **RULE 8.6 REPRESENTATION BY COUNSEL**

**(a) Representation by Counsel.** All respondents in incapacity proceedings under Rules 8.2, 8.3, 8.4, and 8.11 must be represented by counsel throughout the proceeding and for purposes of compliance with Title 14.

**(b) Appointment of Counsel.** Upon entry of an order under Rule 8.2(a), 8.3(a), 8.4(a), or 8.11(b), the Chief Regulatory Adjudicator must promptly appoint an active lawyer member of the Bar as counsel for the respondent in any proceeding ordered under this Title and any disciplinary matters that are not deferred while the incapacity proceeding is pending. An order appointing counsel under this Rule constitutes authority to act on behalf of the respondent in any incapacity or related proceeding whether or not the respondent expressly consents to the representation. If other counsel appears, the appointment will be rescinded.

**(c) Compensation of Counsel.** The Bar administers compensation for counsel appointed under this Rule.

**(d) Withdrawal of Appointed Counsel.** Counsel appointed under this Rule may withdraw only upon authorization from the Chief Regulatory Adjudicator upon a showing of good cause, or when substitute counsel has appeared. If the Chief Regulatory Adjudicator authorizes appointed counsel to withdraw for good cause and substitute counsel has not appeared, the Chief Regulatory Adjudicator must appoint new counsel unless section (e) applies.

**(e) When Appointment of New Counsel Found Futile.**

(1) *Application.* This section applies to counsel appointed to represent respondents in proceedings under Rules 8.2 and 8.4.

(2) *Findings and Order Required.* If the Chief Regulatory Adjudicator determines that appointment of counsel would be futile because there is no reasonable chance that other counsel will be able to effectively represent the respondent, the Chief Regulatory Adjudicator may issue an order recommending that the respondent's license be placed in interim incapacity inactive status and that any proceeding under this Title be stayed. The proceeding will be stayed until such time as counsel appears or can be appointed. The order must be accompanied by findings with a factual basis to support the conclusion that appointment of counsel would be futile.

(3) *Review by Appeal Panel.* An Appeal Panel must review the Chief Regulatory Adjudicator's order without further briefing or argument based solely on the record before the Chief Regulatory Adjudicator. It may affirm the order, direct that new counsel be appointed and that the proceeding not be stayed, set conditions for the appointment of new counsel in the future, or enter any other appropriate order.

(4) *Transmittal to Supreme Court.* If the Appeal Panel affirms the order of the Chief Regulatory Adjudicator, the Clerk must transmit the order to the Supreme Court. On receipt of the order, if the respondent's license is not already in interim incapacity inactive status, the Court must order that the respondent's license be placed in interim incapacity inactive status.

(5) *Duration of Interim Incapacity Inactive Status.* Unless the Supreme Court orders otherwise, when a respondent's license is placed in interim incapacity inactive status under this Rule, the license remains in that status until the incapacity proceeding has been concluded.

**(f) Protective Action under RPC 1.14.** Nothing in this Title precludes respondent's counsel from taking reasonably necessary protective action under RPC 1.14.

## **RULE 8.7 APPEAL TO AN APPEAL PANEL**

**(a) Procedures for Appeal.** Either party may appeal a hearing decision under Rule 8.2(g), 8.3(i), or 8.4(h) by filing a notice of appeal with the Clerk within 30 days of service of the hearing decision. There is no right of appeal of other orders or decisions entered under Title 8, except as specified in Rule 8.11. For procedural purposes, the provisions of Title 11 govern the appeal. Interlocutory review of orders or decisions not appealable as a matter of right under this Rule is governed by Rule 11.10.

**(b) Transmittal to Court.** If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rule 8.8, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

## **RULE 8.8 APPEAL TO THE SUPREME COURT**

**(a) Procedures for Appeal.** Either party may appeal an order of the Appeal Panel under Rule 8.7 to the Supreme Court within 30 days of service of the Appeal Panel's decision. There is no other right of appeal. The procedures of Title 12 that are applicable to an appeal of disciplinary suspension or disbarment recommendations govern the appeal.

**(b) Petition for Interim Incapacity Inactive Status.** If a respondent appeals the decision of the Appeal Panel, disciplinary counsel must petition the Supreme Court for an order that the respondent's license be placed in interim incapacity inactive status for the duration of the proceedings. The Court must order that the respondent's license be placed in interim incapacity inactive status unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public. If the Panel's decision is not appealed and becomes final, or if the respondent's license is already in interim incapacity inactive status, the petition need not be filed or, if filed, may be withdrawn. The procedures of Rule 7.3 govern such a petition, except that the respondent must be represented by counsel.

**(c) Petition for Discretionary Review.** Respondent or disciplinary counsel may seek discretionary review of Appeal Panel decisions under Rule 8.7 not subject to appeal under section (a) of this Rule. The procedures of Rule 12.4 apply to petitions under this Rule.

## **RULE 8.9 STIPULATIONS**

**(a) Parties May Stipulate.** At any time, the parties may stipulate that the respondent's license be placed in incapacity inactive status. Stipulations to interim incapacity inactive status are governed by section (i) of this Rule.

**(b) Respondent Must Be Represented by Counsel.** Respondent must be represented by counsel to negotiate and enter into a stipulation under this Rule. If the respondent is not represented by counsel, disciplinary counsel must file a motion to appoint counsel for the respondent for the purpose of negotiating and entering into the stipulation. The provisions of Rule 8.6 apply to appointed counsel under this Rule.

**(c) Requirements for Stipulations to Incapacity Inactive Status.** Stipulations to placement of a respondent's license in incapacity inactive status must:

- (1) state that the stipulation is not binding on the parties as a statement of all existing facts relating to the incapacity of the respondent and that any additional existing facts may be proved in a subsequent incapacity proceeding;
- (2) fix any costs and expenses and any interest thereon to be paid by the respondent;
- (3) include the signature of the respondent, respondent's counsel, and disciplinary counsel;
- (4) state the nature of the respondent's incapacity, supported by medical, psychological, or psychiatric evidence; and
- (5) state the nature of any pending disciplinary proceedings that will be stayed and any disciplinary



investigation that will be deferred as a result of the placement of a respondent's license in incapacity inactive status.

**(d) Review of Stipulations to Incapacity Inactive Status.**

- (1) *Process.* Stipulations to incapacity inactive status under this Rule must be reviewed by a regulatory adjudicator. A regulatory adjudicator reviews a stipulation based solely on the record agreed to by the parties and enters an appropriate order.
- (2) *Standards.* A regulatory adjudicator must approve a stipulation where the stipulated facts provide a factual basis for the stipulated resolution.
- (3) *Possible dispositions.* A regulatory adjudicator may approve or reject a stipulation. An order rejecting a stipulation must state the reason for the rejection.

**(e) Reconsideration.** Within 14 days of service of an order rejecting a stipulation, the parties may file a joint motion for reconsideration, which may include a request to make an oral presentation in support of the motion.

**(f) Effect of Rejection.** A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

**(g) Transmittal to Court.** After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

**(h) Applicability to Respondents Only.** This Rule applies only to respondents as defined by Rule 2.12(a). Placement in incapacity inactive status for licensed legal professionals who are not respondents as defined by Rule 2.12(a) is governed by APR 30.

**(i) Stipulations to Interim Incapacity Inactive Status.** At any time, a respondent and disciplinary counsel may stipulate to placement of the respondent's license in interim incapacity inactive status during the pendency of any incapacity proceeding. Stipulations to placement of a respondent's license in interim incapacity inactive status must state that an incapacity proceeding has been ordered and that the respondent's license will remain in interim incapacity inactive status until the incapacity proceeding is final absent other order from the Court. A stipulation to interim incapacity inactive status is filed with the Supreme Court for expedited consideration and entry of an appropriate order.

#### **RULE 8.10 COSTS IN INCAPACITY PROCEEDINGS**

When a proceeding under this Title is final, costs and expenses may be assessed in accordance with the procedures set forth in Rule 13.8.

#### **RULE 8.11 RETURN FROM INCAPACITY INACTIVE STATUS**

**(a) Petition.** To return to a different license status, a licensed legal professional whose license was placed in incapacity inactive status under this Title or APR 30 must file a petition with the Clerk and serve it on disciplinary counsel. This Rule does not apply to interim incapacity inactive status ordered under this Title.

- (1) *Content of Petition.* The petition must be in writing and include the following information:
  - (A) a signed statement by a physician or by a mental health professional as defined by RCW Title 71 that specifically (i) identifies the basis for the placement of the respondent's license in incapacity inactive status and addresses how the incapacity has been resolved and (ii) expresses that the respondent has the current capacity to practice law. The statement must be signed by the physician or mental health professional no more than three months before the date the petition is filed;
  - (B) a list of all physicians and mental health professionals as defined by RCW Title 71 who have treated or evaluated the respondent for the incapacity since the date of the placement; and
  - (C) copies of the written authorizations referenced in section (a)(2) of this Rule.
- (2) *Waiver of Privilege and Authorization for Release of Records.* By filing a petition, the respondent:

- (A) waives any privilege as to any medical, psychological, or psychiatric treatment, information, or records reasonably related to the respondent's capacity or incapacity to practice law; and
- (B) must provide a written authorization for each physician and mental health professional as defined by RCW Title 71 who treated or evaluated the respondent for the incapacity since the placement, or within the last five years, whichever is shorter, to provide information and records reasonably related to the respondent's capacity or incapacity to practice law.

**(b) Appointment of Counsel.** On receipt of a petition, the Chief Regulatory Adjudicator must appoint counsel for the respondent in accordance with the procedures set forth in Rule 8.6 unless counsel has already appeared.

**(c) Review and Action by the Chief Regulatory Adjudicator.** The Chief Regulatory Adjudicator reviews the petition to determine whether it contains the information required under section (a) of this Rule. If the petition does not contain the required information, the Chief Regulatory Adjudicator enters an order dismissing the petition or requesting additional information from respondent's counsel. If the petition does contain the required information, the Chief Regulatory Adjudicator:

- (1) orders that a hearing be held on whether the respondent has the current capacity to practice law; and
- (2) assigns a hearing adjudicator to conduct the hearing.

**(d) Stipulation.**

- (1) *Parties May Stipulate.* After counsel appears or is appointed for the respondent, disciplinary counsel and the respondent may enter into a stipulation that the petition be granted. Any stipulation must be supported by medical, psychological, or psychiatric evidence that the respondent has the current capacity to practice law.
- (2) *Review of Stipulations.*
  - (A) *Review by a Regulatory Adjudicator.* A regulatory adjudicator reviews the stipulation based solely on the record agreed to by the parties.
  - (B) *Possible Dispositions.* The regulatory adjudicator may either approve or reject the stipulation. An order rejecting a stipulation must state the reason for the rejection and should set forth any changes to the stipulation that would result in the stipulation's approval.
  - (C) *Effect of Rejection.* A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.
- (3) *Transmittal to Court.* After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of an order approving or rejecting the stipulation or providing other appropriate relief.

**(e) Hearing on Petition.**

- (1) *Not Disciplinary Proceedings.* A proceeding under this Title is not a disciplinary proceeding.
- (2) *Procedural Rules.* Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.
- (3) *Case Caption.* The respondent's initials are to be used in the case caption rather than the respondent's full name.
- (4) *Scheduling Conference.* On the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.
- (5) *Burden and Standard of Proof.* Respondent has the burden of proof by a preponderance of the evidence.
- (6) *Independent Medical Examination.* Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health

condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses to disciplinary counsel and the respondent's counsel. The report is admissible at the hearing under this Rule. The Bar pays the expenses of an independent medical examination and reports ordered under this Rule.

- (7) *Failure to Appear or Cooperate.* If the respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may file a motion to dismiss the proceedings on the petition. The hearing adjudicator must grant the motion absent compelling justification for the failure to appear or cooperate.
- (8) *Hearing Decision.* The hearing adjudicator determines whether the respondent has the current capacity to practice law.
  - (A) *Current Capacity Proven.* If the hearing adjudicator finds that the respondent has the current capacity to practice law, the hearing adjudicator must enter an order recommending that the petition be granted.
  - (B) *Current Capacity Not Proven.* If the hearing adjudicator finds that the respondent does not have the current capacity to practice law, the hearing adjudicator must enter an order recommending that the petition be denied and the proceeding be dismissed.
- (9) *Transmittal to the Court.* If no party files a notice of appeal of a hearing decision under this Rule within the time permitted by Rule 11.2, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of an order approving or rejecting the hearing decision or another appropriate order.

**(f) Appeal to an Appeal Panel.** Either party may appeal a hearing decision under section (e)(8) of this Rule by filing a notice of appeal with the Clerk within 30 days of service of the hearing decision. For procedural purposes, the provisions of Title 11 govern the appeal. Interlocutory review of orders or decisions not appealable as a matter of right under this Rule is governed by Rule 11.10.

**(g) Appeal to the Court.** Either party may appeal an order of the Appeal Panel under section (f) of this Rule to the Supreme Court within 30 days of service of the Appeal Panel's order. There is no right of appeal to the Supreme Court of other orders or decisions entered under this Rule. The procedures of Title 12 that are applicable to appeal of disciplinary suspension or disbarment recommendations govern the appeal.

**(h) Transmittal to Court.** If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rules 12.3 and 12.4, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of an order approving or rejecting the appellate decision or another appropriate order.

**(i) Petition Granted.** Following a final order granting a petition or approving a stipulation and the respondent's compliance with the procedures for status changes as set forth in the Bar's Bylaws, applicable court rules, and section (j) of this Rule, the Bar restores the respondent's license to its most recent status other than incapacity inactive status. If a respondent's most recent license status was active, then the license status may be changed to inactive status at the respondent's request. If a disciplinary proceeding has been stayed or a disciplinary investigation has been deferred because of the placement of the respondent's license in incapacity inactive status, the proceeding or investigation resumes.

**(j) Client Protection Fund Certification.** If the Client Protection Fund paid an applicant based on the respondent's conduct, the respondent must obtain a certification from Bar counsel that respondent has paid restitution to the Client Protection Fund or is current with a periodic payment plan. Disputes regarding payment plans are resolved under the procedures set forth in Rule 13.7(c)(2).

## TITLE 9 – RESOLUTIONS WITHOUT HEARING

### RULE 9.1 STIPULATIONS

**(a) Scope and Timing.** Any disciplinary matter or proceeding may be resolved by stipulation at any time subject to approval under section (d) or (g) of this Rule.

**(b) Form.** A stipulation must include the following:

- (1) the respondent's current license status;
- (2) sufficient stipulated facts about the respondent's particular acts or omissions to permit a regulatory adjudicator or the Court to make a determination under section (d) or (g) of this Rule;
- (3) the respondent's prior record of discipline or its absence;
- (4) an analysis of the sanction using the American Bar Association *Standards for Imposing Lawyer Sanctions*, including the presumptive sanction for the misconduct and the effect of any aggravating and mitigating factors;
- (5) the stipulated disposition or discipline, and for stipulations to disciplinary suspension or disbarment, any conditions for reinstatement;
- (6) a statement that the stipulation is not binding on either party as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding;
- (7) any costs, expenses, and restitution and any interest thereon to be paid by the respondent; and
- (8) terms of probation or other provisions, if appropriate.

The stipulation also may include other terms as agreed to by the parties.

**(c) Stipulation to Allegations in Lieu of Admissions.** With consent of disciplinary counsel, a respondent may agree to stipulate to alleged facts or violations in lieu of admitting to facts or violations. A respondent who enters into such a stipulation must agree that (1) there is a substantial likelihood that disciplinary counsel would be able to prove the alleged facts and violations by a clear preponderance of the evidence, and (2) the facts and violations will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

**(d) Review of Stipulations.**

- (1) *Process.* Except as provided in section (g) of this Rule, all stipulations under this Rule must be reviewed by a regulatory adjudicator. A regulatory adjudicator reviews a stipulation based solely on the record agreed to by the parties. The parties may jointly request, or the regulatory adjudicator may order, an oral presentation regarding the stipulation.
- (2) *Standards.* A regulatory adjudicator must approve a stipulation where the stipulated facts provide a factual basis for the agreed violation(s) and the agreed sanction or resolution is consistent with the *ABA Standards for Imposing Lawyer Sanctions* and Rules 13.1-13.5.
- (3) *Possible Dispositions.* A regulatory adjudicator may approve or reject a stipulation. An order rejecting a stipulation must state the reason for the rejection and should set forth any changes to the sanction or remedies that would result in the stipulation's approval.

**(e) Reconsideration.** Within 14 days of service of an order rejecting a stipulation, the parties may file a joint motion for reconsideration, which may include a request to make an oral presentation in support of the motion.

**(f) Transmittal to Court.** After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of a final order under Rule 13.1(a) or other appropriate order.

**(g) Matters Pending Before the Supreme Court.** When a matter is pending before the Court, any stipulation to resolve the matter must be submitted to the Court. The Court considers the stipulation and enters an order under such procedures as the Court deems appropriate.

**(h) Effect of Rejection.** A rejected stipulation has no force or effect and neither it nor the fact of its

execution is admissible in evidence in any proceeding under these Rules.

**(i) Costs.** A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of Rule 13.8 and is not subject to further review.

**(j) Failure to Comply.** A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

#### **RULE 9.2 RESIGNATION IN LIEU OF DISCIPLINE**

**(a) Grounds.** A respondent who chooses not to contest or defend against allegations of misconduct may, with disciplinary counsel's approval, permanently relinquish the respondent's license to practice law and permanently resign from the practice of law in Washington in lieu of further disciplinary proceedings. If a disciplinary investigation or proceeding is pending, resignation in lieu of discipline under this Rule is the only available means to resign from the practice of law.

**(b) Process.** Respondent notifies disciplinary counsel that the respondent seeks to resign in lieu of discipline. If disciplinary counsel approves, disciplinary counsel prepares a statement of alleged misconduct, 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 alleged misconduct.
- (2) Respondent's statement that the respondent is aware of the allegations in the statement of alleged misconduct and that, rather than defend against the allegations, the respondent chooses to relinquish permanently the respondent's license to practice law and permanently resign from the practice of law in Washington.
- (3) Respondent's acknowledgment that the resignation is permanent, including the statement:  
"I understand that my resignation is permanent and that I can never apply for admission or reinstatement to the practice of law in Washington. If the Washington 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 submit 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 licensed 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 licensed;
  - (C) to acknowledge that the resignation could be treated as a disbarment by all other jurisdictions;
  - (D) to refrain from seeking a license to practice law in any other jurisdiction;
  - (E) to notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent's license to practice law of the resignation in lieu of discipline;
  - (F) to seek to relinquish any professional license that is predicated on the respondent's license to practice law;
  - (G) to disclose the resignation in lieu of discipline when applying for any employment or license in response to any question regarding disciplinary action or the status of the respondent's license to practice law;
  - (H) to pay expenses under Rule 13.8(c) in the amount of \$3,000 or consent to entry of an order assessing expenses in the amount of \$3,000 under Rule 13.8(e);

- (I) to pay any restitution or costs and any interest thereon as agreed or as ordered by a regulatory adjudicator under section (f) of this Rule;
- (J) to be subject to all restrictions that apply to a disbarred licensed legal professional under Title 14; and
- (K) to provide disciplinary counsel with copies of any notifications required under this Rule and any responses.

**(c) Public Filing.** A resignation that meets the requirements set forth above and that is approved by disciplinary counsel will be filed by disciplinary counsel with the Clerk as a public and permanent record of the Bar. The Clerk must notify the Supreme Court of a resignation under this Rule.

**(d) Effect.** A resignation under this Rule is effective upon its filing with the Clerk and becomes final without entry of a final order under Rule 13.1(a). Upon filing, the respondent's license to practice law is terminated. All disciplinary proceedings against the respondent terminate, although disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances in order to create a record of the respondent's conduct. Upon filing of the resignation, the respondent must comply with the same duties as a disbarred licensed legal professional under Title 14 and comply with all restrictions that apply to a disbarred licensed legal professional. The notices under Rule 3.8 must be made for resignations in lieu of discipline.

**(e) Resignation Is Permanent.** Resignation under this Rule is permanent. A respondent who has resigned under this Rule will never be eligible for any license to practice law in Washington.

**(f) Order for Costs and Restitution.** Within one year of filing of the resignation, disciplinary counsel or Bar counsel may file with the Chief Regulatory Adjudicator any claims for restitution or for costs not resolved by agreement under section (b) of this Rule. Within 30 days of service of the claim upon the respondent, a respondent may file a written objection and serve it on counsel who filed the claim. An objection is reviewed as provided in Rule 13.8(f). The Chief Regulatory Adjudicator's order is not subject to further review, is the final assessment of restitution or costs for the purposes of Rules 13.7 and 13.8, and may be enforced as any other order for restitution or costs. The record before the ORA is public information under Rule 3.3(a).

### **RULE 9.3 RECIPROCAL DISCIPLINE, RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE, AND RECIPROCAL PLACEMENT IN INCAPACITY INACTIVE STATUS**

**(a) Duty to Self-Report, Timing.** Within 30 days of being publicly disciplined, resigning in lieu of discipline or its equivalent, or placement of a license in incapacity inactive status or its equivalent in another jurisdiction, a licensed legal professional admitted to practice in this state must inform the Office of Disciplinary Counsel of the public discipline, resignation in lieu of discipline, or placement of the license in incapacity inactive status. For purposes of this Rule:

- (1) "Public discipline" means a public order of discipline or probation in another jurisdiction.
- (2) "Jurisdiction" means any court or body authorized to conduct disciplinary proceedings against licensed legal professionals in the United States or any other country, including any state, province, territory, or commonwealth of the United States or any other country; any federal court; the District of Columbia; any administrative agency or tribal government; or the United States Armed Forces.

**(b) Reciprocal Discipline, Reciprocal Placement of a License in Incapacity Inactive Status, or Publication**

- (1) Reciprocal discipline may be imposed whenever a licensed legal professional has been disbarred or suspended in another jurisdiction unless the period of disciplinary suspension is fully stayed. For purposes of this Rule, resignation in lieu of discipline or its equivalent in another jurisdiction is treated as an order of disbarment from that jurisdiction. For purposes of this Rule, a disciplinary suspension is fully stayed when there is no period of actual suspension.
- (2) Reciprocal placement of a license in incapacity inactive status may be imposed when a license has

been placed in incapacity inactive status or its equivalent in another jurisdiction.

- (3) For all other public discipline, including fully stayed suspensions or probation, the Court may order that information about the discipline in the other jurisdiction be published under Rule 3.8(b).

**(c) Obtaining and Filing Order.** Upon notification from any source that a licensed legal professional admitted to practice in Washington State was publicly disciplined or resigned in lieu of discipline or its equivalent, or whose license was placed in incapacity inactive status or its equivalent in another jurisdiction, disciplinary counsel must obtain a copy of the order or resignation. Disciplinary counsel files the order or resignation with the Supreme Court except in circumstances set forth in section (l) of this Rule.

**(d) Consent to Reciprocal Discipline or Publication.** Notwithstanding the procedures set forth below, a respondent may consent to the imposition of reciprocal discipline under section (b)(1) of this Rule or publication of information under section (b)(3) of this Rule without the need for an order to show cause under section (e). The respondent must communicate such consent to the Court and disciplinary counsel in writing. If that occurs, the Court enters an appropriate order.

**(e) Order to Show Cause.** Upon receipt of a copy of an order demonstrating that a respondent has been subject to public discipline, a resignation in lieu of discipline or its equivalent, or an order of placement of the respondent's license in incapacity inactive status or its equivalent in another jurisdiction, the Court issues an order to show cause. Disciplinary counsel must personally serve the following on the respondent under Rule 4.1(b)(4): the order to show cause, a copy of the order or resignation from the other jurisdiction, and a copy of this Rule.

- (1) For disbarments, disciplinary suspensions other than fully-stayed suspensions, and placement of a respondent's license in incapacity inactive status or its equivalent in another jurisdiction, the order directs the respondent to show cause why the Court should not impose the same or equivalent sanction or suspension or placement of the respondent's license in incapacity inactive status.
- (2) For resignations in lieu of discipline or its equivalent in another jurisdiction, the order directs the respondent to show cause why the Court should not impose the sanction of disbarment.
- (3) For all other cases, the order directs the respondent to show cause why the Court should not order publication of information about the discipline under section (b)(3) of this Rule.
- (4) Notwithstanding the above, on the request of disciplinary counsel, the order may direct disciplinary counsel to show cause why the sanction imposed should be greater than that imposed in the other jurisdiction.

**(f) Response to Order to Show Cause.** The party responding to the order to show cause must respond within 30 days of service of the order.

**(g) Reply.** The other party may reply to the response to the order to show cause within 30 days of service of the response.

**(h) Burden.** The burden is on the party seeking a different result in Washington State to demonstrate that imposing the same or equivalent sanction or suspension under section (b)(1), ordering the equivalent placement in incapacity inactive status under section (b)(2) of this Rule, or ordering publication under section (b)(3) of this Rule, is not appropriate given the factors set forth in sections (i)(1) or (i)(2) of this Rule.

**(i) Supreme Court Action.**

- (1) The Court must enter an order imposing reciprocal discipline or reciprocal placement of a respondent's license in incapacity inactive status, or order for publication as set forth in section (b) of this Rule, unless the Court finds that it clearly appears on the face of the record on which the public discipline or placement of a respondent's license in incapacity inactive status is based that:
  - (A) the procedure so lacked notice or opportunity to be heard that it denied due process;
  - (B) the proof of misconduct or incapacity was so infirm that the Court is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or incapacity;

- (C) the imposition of the same or equivalent discipline or placement in incapacity inactive status would result in grave injustice;
  - (D) the established misconduct warrants substantially different discipline in this state;
  - (E) the reason for the original placement of the respondent's license in incapacity inactive status or its equivalent no longer exists; or
  - (F) appropriate discipline has already been imposed in Washington State for the misconduct.
- (2) For resignations in lieu of discipline or their equivalent, the Court enters an order disbarring the respondent unless the Court finds that disbarment would result in grave injustice and a disposition other than disbarment will not place the public at risk.
  - (3) If the Court determines that any of the factors under sections (i)(1) or (i)(2) of this Rule exist, it enters an appropriate order.
  - (4) If the Court orders further proceedings to determine if the respondent's license should be placed in incapacity inactive status, the provisions of Rule 8.6 as to appointment of counsel will apply.

**(j) Effective Date.** The effective date of the reciprocal discipline or placement of the respondent's license in incapacity inactive status is the date set by the Court's order, which ordinarily will be seven days after the date of the order. If no date is set, the effective date is seven days after the date of the Court's order. When the reciprocal discipline sanction is suspension, a respondent may file a written request, served on disciplinary counsel, asking the Court to stay the portion of the suspension from the effective date of the suspension in the other jurisdiction to the effective date of the Washington Supreme Court order reciprocating discipline. The Court may grant such a request only if the respondent timely self-reported the discipline under section (a) of this Rule and the request is accompanied by the respondent's declaration, under penalty of perjury, that the respondent has not practiced law in Washington State at any time following the effective date of the discipline ordered by the other jurisdiction.

**(k) Conclusive Effect.** Except as this Rule otherwise provides or the Court orders, a final adjudication in another jurisdiction that a respondent committed misconduct or that the respondent's license should be placed in incapacity inactive status or its equivalent conclusively establishes the misconduct or the incapacity for purposes of a disciplinary or incapacity proceeding in Washington State.

**(l) Prior Matter in Washington.** No action will be taken against a licensed legal professional under this Rule when the licensed legal professional has been the subject of discipline, resignation in lieu of discipline, placement of the licensed legal professional's license in incapacity inactive status, or other final disposition of a complaint, disciplinary proceeding, or incapacity proceeding in Washington State arising out of the same circumstances that are the basis for discipline, resignation in lieu of discipline, or placement of the licensed legal professional's license in incapacity inactive status in another jurisdiction.

**(m) Expenses.** In any matter under this Rule resulting in reciprocal discipline and requiring briefing at the Supreme Court, costs and expenses may be assessed in favor of the Bar under the procedures of RAP Title 14, except that "costs" as used in that Title means any costs and expenses allowable under Rule 13.8. Expenses assessed under this Rule may equal the actual expenses incurred by the Bar, but in any case cannot be less than \$3,000.

## TITLE 10 – HEARING PROCEDURES

### RULE 10.1 GENERAL PROCEDURE

**(a) Commencement of Proceedings.** A disciplinary proceeding commences when the statement of charges is filed.

**(b) Hearing Adjudicator Authority.** In addition to the powers specifically provided in these Rules, the hearing adjudicator may make any ruling that appears necessary and appropriate to ensure a fair and orderly proceeding. In making any ruling, the hearing adjudicator should consider that disciplinary pro-



ceedings are neither civil nor criminal but are sui generis proceedings governed by these Rules. If appropriate and not inconsistent with these Rules, the Superior Court Civil Rules (CR) may provide guidance.

**(c) Cooperation of the Parties.** All parties and their counsel should reasonably cooperate with each other and the ORA in all matters. These Rules should be construed and administered consistently with this principle to secure the just, speedy, and inexpensive determination of every action.

**(d) Failure to Comply with Hearing Adjudicator Orders.** The parties must comply with all orders made by a hearing adjudicator. A hearing adjudicator may draw adverse inferences as appear warranted by any failure to comply.

#### **RULE 10.2 HEARING ADJUDICATOR ASSIGNMENT**

**(a) Assignment.** The Chief Regulatory Adjudicator assigns a hearing adjudicator from those eligible under Rule 2.3.

**(b) Disqualification.**

- (1) *Disqualification for Cause.* Either party may move to disqualify any assigned hearing adjudicator for good cause. A motion under this section must be filed and served promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.
- (2) *Decision.* The Chief Regulatory Adjudicator decides all disqualification motions unless the hearing adjudicator whose disqualification is sought is the Chief Regulatory Adjudicator. In such a case, another regulatory adjudicator decides the motion. The decision on a motion to disqualify is not subject to interlocutory review. After disqualification of the assigned hearing adjudicator, the adjudicator deciding the motion assigns a replacement.

#### **RULE 10.3 FILING OF CHARGES**

**(a) Statement of Charges.**

- (1) *Filing.* Disciplinary counsel files a statement of charges with the Clerk after the Authorization Panel issues an order authorizing the filing of a statement of charges.
- (2) *Service.* Disciplinary counsel must personally serve the statement of charges on the respondent with a notice to answer in the form prescribed by Rule 10.4.
- (3) *Content.* The statement of charges must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the charges and counts of misconduct, which must include one or more charged rule violations. Disciplinary counsel must sign the statement of charges, but it need not be verified.

**(b) Consolidation, Joinder, and Severance.**

- (1) *Consolidation.* After disciplinary counsel has filed statements of charges in two or more proceedings against the same respondent, a party may move for the proceedings to be consolidated.
- (2) *Joinder.* After disciplinary counsel has filed statements of charges in proceedings against two or more respondents and the matters arise from the same or related underlying facts, a party may move for the proceedings to be joined into a single proceeding.
- (3) *Severance.* After disciplinary counsel has filed a statement of charges, a party may move for separate hearings on counts of misconduct alleged in the statement of charges.
- (4) *Consideration of Motion.* The Chief Regulatory Adjudicator considers motions for consolidation, joinder, or severance under this section and should grant a motion if, in the Chief Regulatory Adjudicator's discretion, it will promote a fair and efficient determination of the issues or is necessary to avoid prejudice to a party.
- (5) *Effect of Order.* An amended statement of charges resulting from any consolidation, joinder, or severance ordered under this Rule is not subject to a motion to strike under Rule 10.7(c).

**RULE 10.4 NOTICE TO ANSWER**

The notice to answer must be substantially in the following form:

BEFORE THE OFFICE OF THE REGULATORY ADJUDICATOR  
UNDER THE WASHINGTON SUPREME COURT'S  
RULES FOR DISCIPLINE AND INCAPACITY

In re ) NOTICE TO ANSWER;  
 ) NOTICE OF DEFAULT PROCEDURE  
\_\_\_\_\_, )  
[license # and type].)

To: The above named respondent:

A[n] [amended] statement of charges has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the [amended] statement of charges within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Office of the Regulatory Adjudicator, [insert address] and by serving a copy on disciplinary counsel at the address[es] given below. Requirements for the answer are set forth in Rule 10.5 of the Rules for Discipline and Incapacity (RDI). Failure to file an answer may result in the entry of an order of default under RDI 10.6 and the imposition of disciplinary sanctions or remedies against you.

**Notice of default procedure: Your default may be entered for failure to file a written answer to this [amended] statement of charges within 20 days of service as required by RDI 10.6. THE ENTRY OF AN ORDER OF DEFAULT WILL RESULT IN THE ALLEGED FACTS AND COUNTS OF MISCONDUCT IN THE [AMENDED] STATEMENT OF CHARGES BEING DEEMED ADMITTED AND ESTABLISHED and sanctions and remedies being imposed or recommended based on the admitted counts of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under RDI 10.6(c). The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by RDI 10.6(b)(2).**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Disciplinary Counsel, Bar No.  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

**RULE 10.5 ANSWER; RESPONDENT'S MOTION TO DISMISS**

**(a) Time to Answer.** Within 20 days of service of a statement of charges or amended statement of charges and a notice to answer, the respondent must file and serve an answer. Failure to file an answer to a statement of charges or amended statement of charges may be grounds for discipline or for an order of default under Rule 10.6. The filing of a motion to dismiss under section (d) of this Rule stays the time for filing an answer until the motion is decided.

**(b) Content of Answer.** The answer must contain:

- (1) a specific denial or admission of each alleged fact and count of misconduct in the statement of charges in a manner similar to that described in CR 8(b). Alleged facts and counts of misconduct in the statement of charges are admitted when not denied in the answer;
- (2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition;
- (3) a statement as to whether respondent consents to service by email under Rule 4.1; and
- (4) an address or, if respondent consents to service by email, an email address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent when personal service is not required under these Rules.

**(c) Filing and Service of Answer.** The answer must be filed and served under Rules 4.1 and 4.2.

**(d) Motion to Dismiss on Face of Statement of Charges.**

- (1) *Grounds for Motion.* A respondent may move to dismiss one or more charged rule violations in a statement of charges on grounds that the facts alleged in the statement of charges, if deemed to be true, would be insufficient to establish the charged rule violations.
- (2) *Timing.* A motion to dismiss under this section must be filed within the time for filing of the answer to a statement of charges or amended statement of charges, and may be filed in lieu of filing an answer.
- (3) *Procedure.* Rule 10.8 applies to motions under this Rule. No factual materials outside the statement of charges may be presented or considered.
- (4) *Partial Dismissal.* If the hearing adjudicator dismisses one or more but not all of the charged rule violations, either party may request review within 10 days of service of the order. If review is requested under this section, the Chief Regulatory Adjudicator must assign the matter to an Appeal Panel for review, specify the issue or issues as to which review is granted, and establish the timeline and terms for any additional briefing and oral argument.
- (5) *Dismissal of All Counts.* If the hearing adjudicator dismisses all counts, the order of dismissal is treated as a hearing decision under Rule 10.15.
- (6) *Filing Answer After Decision.* If the motion does not result in the dismissal of all counts of misconduct, the respondent must file and serve an answer to the remaining alleged facts and counts of misconduct within 10 days of service of the ruling on the motion, unless either party has requested review under section (d)(4) of this Rule or filed a motion for interlocutory review under Rule 11.10 of an order denying the motion. After review, the respondent must file and serve an answer to any remaining alleged facts and counts of misconduct within 10 days of service of the Appeal Panel's decision.

**RULE 10.6 DEFAULT**

**(a) Entry of Default.**

- (1) *Timing.* If a respondent, after being served with a notice to answer as provided in Rule 10.4 or 10.7, fails to file an answer to a statement of charges or an amended statement of charges within the time provided by these Rules, disciplinary counsel may file a motion for an order of default.
- (2) *Motion.* The motion for an order of default must be served on the respondent and must include the following:
  - (A) the dates of filing and service of the notice to answer, the statement of charges, and any amended statement of charges;
  - (B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by Rule 10.5 and that disciplinary counsel seeks an order of default under this Rule;
  - (C) notice that upon entry of an order of default, the alleged facts and counts of misconduct in the statement of charges and any amended statement of charges will be deemed admitted

and established, and sanctions and remedies may be imposed or recommended based on the admitted facts and rule violations; and

(D) a copy of this Rule.

- (3) *Entry of Order of Default.* If the respondent fails to file a written answer to the statement of charges or amended statement of charges within seven days of service of the motion for entry of an order of default, the hearing adjudicator, on proof of service of the motion, must enter an order finding the respondent in default.
- (4) *Effect of Order of Default.* Upon entry of an order of default, the alleged facts and counts of misconduct in the statement of charges and any amended statement of charges are deemed admitted and established for the purpose of imposing discipline, and the respondent may not participate further in the proceedings unless the order of default is vacated under this Rule.

**(b) After Entry of an Order of Default.**

- (1) *Service.* The Clerk serves the order of default under Rule 4.2(c).
- (2) *No Further Notices.* Notwithstanding any other provision of these Rules, after entry of an order of default, no further notices, motions, documents, papers, or transcripts need be served on the respondent except for copies of the decisions of the hearing adjudicator, the Appeal Panel, and the Court.
- (3) *Hearing Adjudicator Decision on Default.* Within 20 days after entry of the order of default, disciplinary counsel may present additional evidence and briefing relevant to the sanction, restitution, or other remedies. Within 60 days of the filing of the order of default, the hearing adjudicator must enter findings of fact, conclusions of law, and recommendation based on the facts and rule violations established under section (a) of this Rule and any additional evidence submitted.

**(c) Vacating the Order of Default.**

- (1) *Motion To Vacate Order of Default.* Subject to the limitations in section (c)(2) of this Rule, a respondent may move to vacate the order of default and any decision of the hearing adjudicator arising from the default on the following grounds:
  - (A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
  - (B) a proceeding against a respondent who was, at the time of the default, incapable of conducting a defense due to incapacity;
  - (C) newly discovered evidence that by due diligence could not have been previously discovered;
  - (D) fraud, misrepresentation, or other misconduct in connection with the underlying disciplinary proceeding;
  - (E) the order of default is void;
  - (F) unavoidable casualty or misfortune preventing the respondent from defending; or
  - (G) any other reason justifying relief from the operation of the default.
- (2) *Time.* For grounds (c)(1)(A) and (C), the motion must be made within one year after entry of the default. For ground (c)(1)(B), the motion must be made within one year after the incapacity ceases. For all other grounds, the motion must be made within a reasonable time. If a matter is pending with or has been decided by the Supreme Court, the respondent must obtain leave from the Court before moving to vacate the order of default. A respondent seeking leave from the Court must provide notice to disciplinary counsel.
- (3) *Burden of Proof.* The respondent bears the burden of proving the grounds for vacating the order of default by a clear preponderance of the evidence.
- (4) *Service and Contents of Motion.* The motion to vacate the order of default must be filed and served under Rules 4.1 and 4.2 and be accompanied by a copy of the respondent's proposed answer to each statement of charges for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that the respondent asserts as mitigation. The motion must be supported by a declaration showing:

- (A) the date on which the respondent first learned of the entry of the order of default;
- (B) the grounds for vacating the order of default; and
- (C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) *Response to Motion.* Within 10 days of filing and service of the motion to vacate the order of default, disciplinary counsel may file and serve a written response.

(6) *Decision.* A hearing adjudicator decides a motion to vacate the order of default on the written record without oral argument. Pending a ruling on the motion, the hearing adjudicator may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing adjudicator has discretion to order appropriate conditions. If the respondent proves that the order of default was entered as a result of a mental or physical incapacity that made the respondent incapable of conducting a defense, the order of default must be vacated.

(7) *Review of Decision.* A party may seek review of a decision under this Rule using the procedures of Rule 11.10. If review under Rule 11.10 is denied, there is no further review.

**(d) Order of Default Not Authorized in Incapacity Proceedings.** The default procedure in this Rule does not apply to incapacity proceedings under Title 8.

#### **RULE 10.7 AMENDMENT OF STATEMENT OF CHARGES**

**(a) Amending the Statement of Charges.** Disciplinary counsel may file an amended statement of charges at any time.

**(b) Service.** Disciplinary counsel serves an amended statement of charges and the notice to answer on the respondent as provided in Rule 4.1. An amended statement of charges need not be personally served.

**(c) Motion to Strike.** The respondent may, within 10 days of service of the amended statement of charges, file a motion to strike any amendments to the statement of charges. A hearing adjudicator will consider the motion under the procedure provided by Rule 10.8. Such motions should only be granted upon a clear showing of prejudice to the respondent.

**(d) Answer.** The respondent must file an answer to the amended statement of charges under the procedures of Rule 10.5. Any part of a previous answer may be incorporated by reference. A timely filed motion under section (c) of this Rule stays the time for filing the answer until the motion is decided. Regardless of whether the respondent has filed an answer to any previous statement of charges, failure to file an answer to an amended statement of charges may be grounds for discipline or for an order of default of the entire proceeding under Rule 10.6.

#### **RULE 10.8 GENERAL RULES FOR MOTIONS**

**(a) Definition.** A motion is an application to the hearing adjudicator for an order or other relief. The motion, unless made during a hearing, must be in writing and state with particularity the grounds for the motion and the relief sought.

**(b) Filing and Service.** Motions must be filed and served as required by Rules 4.1 and 4.2.

**(c) Response.** The opposing party has 10 days from service of a motion to respond, unless the time is altered by the hearing adjudicator for good cause.

**(d) Reply.** The moving party has seven days from service of the response to reply unless the time for reply is altered by the hearing adjudicator for good cause.

**(e) Consideration of Motion.** Upon expiration of the time for reply, the hearing adjudicator should promptly rule on the motion, with or without argument at the hearing adjudicator's discretion. Argument on a motion may be heard by conference call or by other electronic means. At the request of a party or at the discretion of the hearing adjudicator, any hearing on the motion may be recorded as provided in Rule 10.12(h).

**(f) Ruling.** A ruling on a written motion must be in writing and filed with the Clerk.

**(g) Motion for Reconsideration.** Either party may file a motion for reconsideration of a hearing adjudicator's ruling on a motion. The motion must be filed and served no later than 10 days after service of the ruling on the moving party. Sections (a) through (f) of this Rule apply to motions for reconsideration. A party may not file a motion for reconsideration of a ruling that has already been reconsidered at the request of that party.

**(h) Chief Regulatory Adjudicator Authority.** Before the assignment of a hearing adjudicator, the Chief Regulatory Adjudicator may rule on any prehearing motion.

#### **RULE 10.9 SPECIFIC MOTIONS**

**(a) Motion for Finding of Misconduct on the Pleadings.** Within 30 days of the filing of the answer to a statement of charges or amended statement of charges, disciplinary counsel may move for an order finding misconduct based on the pleadings. No factual materials outside the statement of charges or amended statement of charges and the answer(s) may be presented or considered. In ruling on this motion, the hearing adjudicator may find that all or some of the charged rule violations in the statement of charges are established. A hearing will be held to determine any facts or violations not established and to determine the appropriate sanction.

**(b) No Summary Judgment.** A party may not move for summary judgment.

**(c) Collateral Estoppel.** Either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding.

**(d) Voluntary Dismissal.** Disciplinary counsel may move to dismiss the proceeding at any time. A hearing adjudicator must enter an order dismissing the proceeding without prejudice unless the hearing adjudicator finds good cause to dismiss with prejudice. An order of dismissal with prejudice is treated as a hearing decision under Rule 10.15.

**(e) Procedure.** Rule 10.8 applies to motions under this Rule.

#### **RULE 10.10 DISCOVERY AND PREHEARING PROCEDURES**

**(a) General.** The parties should reasonably cooperate in the mutual informal exchange of relevant non-privileged information to facilitate the expeditious, economical, and fair resolution of the case.

**(b) Discovery.** Formal discovery is available only by order of the hearing adjudicator or stipulation of the parties. Absent a stipulation, after a statement of charges is filed either party may file a motion under Rule 10.8 seeking authorization to conduct one or more of the methods of discovery available under the Superior Court Civil Rules. The hearing adjudicator has discretion to grant or deny the motion and may impose conditions or limitations on discovery to assure an expeditious, economical, and fair proceeding. The hearing adjudicator must consider the following factors:

- (1) the necessity of the information sought and whether it is available by other means;
- (2) the nature and complexity of the case;
- (3) the seriousness of the charges;
- (4) the formal and informal discovery that has already occurred;
- (5) the burden on the party or witness from whom the information is sought;
- (6) the possibility of unfair surprise;
- (7) the risk of undue expense or delay;
- (8) the effect of the requested discovery on the orderly and prompt conduct of the proceeding; and
- (9) the interests of justice.

**(c) Discovery of Hearing Preparation Materials.** When discovery has been authorized under section (b) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including a party's lawyer, investigator, consultant, surety, indemnitor, insurer, or agent)

only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing adjudicator must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a lawyer or other representative of a party concerning the litigation. In interpreting the provisions of this section, CR 26(b)(4) may be looked to for guidance.

**(d) Subpoenas.** When necessary to obtain discovery authorized under section (b) of this Rule, subpoenas may be issued as under CR 45. Subpoenas may be enforced under Rule 4.7.

**(e) Depositions Outside of State.** A certified copy of the order of a hearing adjudicator is sufficient to authorize a deposition outside Washington State.

**(f) Duty to Cooperate.** Parties must respond to authorized discovery requests and comply with the hearing adjudicator's orders regarding discovery. The hearing adjudicator may draw adverse inferences as appear warranted by the failure of either party to respond to authorized discovery.

#### **RULE 10.11 SCHEDULING OF HEARING**

**(a) Hearing Location.** Absent agreement of all parties and the hearing adjudicator, all disciplinary hearings must be held in Washington State, with a presumption that hearings will be held at the Bar offices. The ORA must make the arrangements for the hearing facilities.

**(b) Scheduling Conference.** No later than 30 days after the filing of the respondent's answer, the hearing adjudicator must convene an initial scheduling conference of the parties to discuss:

- (1) the hearing date, which must be within 180 days of the date of the initial scheduling conference unless good cause is shown to set the hearing at a later date or unless the hearing adjudicator has granted a motion under section (e) of this Rule;
- (2) any necessary prehearing deadlines;
- (3) the location of the hearing;
- (4) the expected length of the hearing;
- (5) the parties' expected discovery requests;
- (6) whether a settlement conference would be useful in resolving the matter;
- (7) whether the parties consent to electronic service; and
- (8) any other relevant issues.

**(c) Scheduling Order.** The hearing adjudicator must enter an order setting the date, time, and place of the hearing. The scheduling order should include any prehearing deadlines the hearing adjudicator deems required by the complexity of the case, as well as a determination regarding a settlement conference under section (h) of this Rule. The Scheduling Order generally should be in the following form with the following timelines:

##### SETTLEMENT CONFERENCE DETERMINATION:

[ ] The hearing adjudicator finds that this case may benefit from a settlement conference, and a settlement officer should be appointed.

##### ELECTRONIC SERVICE:

[ ] The parties consent to electronic service of papers or documents under Rule 4.1(b).

**IT IS ORDERED** that the hearing is set to begin at [time] on [Hearing Date (H)] and each day thereafter until adjourned by the hearing adjudicator, at [location], and the parties must comply with prehearing deadlines as follows:

1. **Witnesses.** A preliminary list of primary witnesses, including addresses and phone numbers, and a designation of whether the witness is a fact witness, character witness, or expert witness, must be filed and served by [H-12 weeks].
2. **Discovery.** Discovery authorized under Rule 10.10(b), if any, must be completed by [H-6

weeks].

3. **Motions.** Prehearing motions, other than motions to bifurcate under Rule 10.14, must be served by [H-4 weeks]. Absent agreement of the parties, an exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing adjudicator unless the motion concerns the exhibit's admissibility. The hearing adjudicator will advise the parties whether oral argument is necessary, and, if so, the date and time of the argument.
4. **Exhibits.** Lists of proposed exhibits must be exchanged by [H-3 weeks].
5. **Service of Exhibits.** Copies of proposed exhibits must be exchanged by [H-2 weeks]. The parties should redact the following personal identifiers from the proposed hearing exhibits: Social Security numbers, financial account numbers, and driver's license numbers
6. **Final Witness List.** A final witness list, including a final summary of the expected testimony of each witness, must be exchanged by [H-2 weeks]. A copy of the final witness list, excluding the summary of expected testimony, must be filed and served by [H-2 weeks].
7. **Objections.** Objections to proposed exhibits, including grounds other than relevancy, must be exchanged by [H-1 week].
8. **Briefs.** Any hearing brief must be filed and served by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing adjudicator before the hearing.

**(d) Failure to Comply with Scheduling Order.** If a party fails to comply with a provision of the scheduling order, the hearing adjudicator may exclude witnesses, testimony, exhibits, or other evidence, and take such other action as may be appropriate.

**(e) Motion for Hearing within 120 Days.** A respondent may move for a hearing date within 120 days of the initial scheduling conference under section (b) of this Rule. Such a motion may be made no later than the date of the initial scheduling conference convened under section (b) of this Rule. A motion under this Rule must be granted unless disciplinary counsel shows good cause for setting the hearing at a later date. Rule 10.8 applies to motions under this Rule, except that the motion may be made orally during the initial scheduling conference.

**(f) Notice.** Service of an order setting a date, time, and place for the hearing constitutes notice of the hearing.

**(g) Continuance.** Either party may move for a continuance of the hearing date. The hearing adjudicator has discretion to grant the motion for good cause shown.

**(h) Settlement Conference Process.**

- (1) *Order.* In all disciplinary proceedings under this Title, the hearing adjudicator should order a settlement conference unless it appears that such a conference would not be helpful. Settlement conferences may not be ordered in incapacity proceedings under Title 8.
- (2) *Assignment of Settlement Officer.* Following a hearing adjudicator's order for a settlement conference, the Chief Regulatory Adjudicator must assign a settlement officer to conduct the settlement conference. The Chief Regulatory Adjudicator may assign a regulatory adjudicator under Rule 2.3 or volunteer adjudicator under Rule 2.6(a)(2) to serve as a settlement officer. Following a settlement conference, the settlement officer who conducted the settlement conference may not serve as an adjudicator in the same disciplinary proceeding without the consent of all parties.
- (3) *Timing.* Unless agreed to by the parties, a settlement conference if ordered must be held no later than 45 days prior to the hearing date.
- (4) *Confidentiality*
  - (A) *Conference and Communications Confidential.* Settlement conferences are closed to the public. Except as provided in section (h)(4)(C) of this Rule, all communications relating to the settlement conference, whether oral or written and including pre- and post-settlement con-



ference conversations and exchanges of information, are confidential and may not be disclosed or released unless specifically authorized by the Chief Regulatory Adjudicator on a showing of compelling need and following notice to the participants. Statements of child or elder abuse or threats to commit future crimes or cause serious bodily injury are not subject to the foregoing restrictions on disclosure or release.

- (B) *Evidentiary Use of Settlement Conference Information.* Any statements or admissions made during the course of the settlement conference, or documents prepared solely for purposes of the settlement conference process, will not be admissible in evidence or used for impeachment in any disciplinary or other proceeding. Neither the parties nor the settlement officer may be subpoenaed or otherwise compelled to testify or produce information regarding the settlement conference in any disciplinary or other proceeding except as specifically authorized by the Chief Regulatory Adjudicator on a showing of compelling need and following notice to the participants.
- (C) *Settlement Agreement.* Any stipulation resulting from a settlement conference is subject to approval under Rule 9.1 and, if approved, becomes public under Rule 3.3. If the parties agree to the respondent's resignation in lieu of discipline following a settlement conference, Rule 9.2 governs the resignation. A resignation in lieu of discipline is public under Rule 3.3.
- (D) *Information Indicating Potential Incapacity.* Notwithstanding the provisions of sections (h)(4)(A) and (B), a settlement officer who has reasonable cause to believe that the respondent lacks the mental or physical capacity to defend a disciplinary proceeding or to assist counsel in defending a disciplinary proceeding must provide information from the settlement conference to the Chief Regulatory Adjudicator for further proceedings under Rule 8.4(a).

#### **RULE 10.12 HEARING**

**(a) Representation.** The respondent may be represented by counsel.

**(b) Respondent Must Attend.** A respondent given notice of a hearing under Rule 10.11(f) must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. A respondent who fails to attend the hearing, without good cause, forfeits any right to appeal the hearing decision except as to the issue of good cause.

**(c) Procedures If Respondent Fails to Attend.** If a respondent given notice of a hearing under Rule 10.11(f) fails to attend the hearing without good cause, the hearing may proceed, and the hearing adjudicator:

- (1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked of 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) the affidavit or declaration shows affirmatively that the witness could testify competently to the stated facts.

**(d) Respondent Must Testify if Called**

- (1) *Testimony Required.* A respondent given notice of a hearing under Rule 10.11(f) must testify if called as a witness by disciplinary counsel.
- (2) *Consequences of Refusal.* If a respondent refuses to testify, the hearing adjudicator may:
  - (A) draw an adverse inference from the respondent's refusal to testify as to any questions that might have been asked of the respondent; and
  - (B) consider the refusal an aggravating factor in determining the appropriate sanction for any misconduct found.

(3) *Subpoena Optional*. Disciplinary counsel may, but is not required to, issue a subpoena to compel the respondent's testimony.

(4) *Privilege Against Self-Incrimination*. This rule does not preclude the respondent's proper exercise of any privilege against self-incrimination.

**(e) Respondent Must Bring Requested Materials.** Disciplinary counsel may request 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 request must be in writing and served on the respondent at least three days before the hearing.

**(f) Witnesses at Hearing.** Except as provided in section (c)(2) of this Rule, witnesses must testify under oath. Testimony may be submitted by deposition, in the hearing adjudicator's discretion as guided by CR 32. If ordered by the hearing adjudicator, testimony may be taken by telephone or other contemporaneous electronic means. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

**(g) 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 adjudicator under this Rule. Subpoenas may be enforced under Rule 4.7.

**(h) Hearing Record.** Disciplinary hearings must be recorded in writing by a court reporter or recorded by electronic means. The ORA must make arrangements for recording the hearing. A court reporter must prepare and certify a hearing transcript and submit it to the Clerk. The Clerk files the hearing transcript and serves it on the parties. The hearing transcript is the official record of the hearing.

**(i) Prior Disciplinary Record.** The respondent's record of prior discipline, or the fact that the respondent has no prior discipline, must be made a part of the hearing record before the hearing adjudicator files a recommendation.

#### **RULE 10.13 EVIDENCE AND BURDEN OF PROOF**

**(a) Proceedings Not Civil or Criminal.** Hearing adjudicators should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis proceedings to determine if a respondent's conduct should have an impact on the respondent's license to practice law.

**(b) Burden of Proof.** Disciplinary counsel has the burden of establishing a charged rule violation by a clear preponderance of the evidence.

**(c) Proceeding Based on Criminal Conviction.** If a statement of charges alleges 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 that (1) the respondent is guilty of the crime, (2) the respondent violated the statute on which the conviction was based, and (3) all essential elements of the crime of which the respondent was convicted have been established.

**(d) Evidentiary Rules.** Except as provided in section (d)(4) of this Rule, the Washington Rules of Evidence (ER) do not apply, but the hearing adjudicator may consider them as guidance in making evidentiary rulings. The following evidentiary rules apply during disciplinary hearings:

- (1) evidence, including hearsay evidence, is admissible if it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs;
- (2) evidence may be excluded if it is irrelevant, immaterial, or unduly repetitious;
- (3) documents may be admitted in the form of copies or excerpts; and
- (4) a hearing adjudicator may take judicial notice of adjudicative facts as described in ER 201.

#### **RULE 10.14 BIFURCATED HEARINGS**

**(a) When Allowed.** Upon written motion filed no later than 60 days before the hearing date, either party

may request that the disciplinary proceeding be bifurcated. The hearing adjudicator must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to ensure a fair and orderly hearing because of the respondent's record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

**(b) Procedure.**

(1) *Violation Hearing.*

(A) A bifurcated proceeding begins with an initial violation hearing to make factual determinations and legal conclusions as to the charged rule violations, including the mental state necessary for the violations. During the violation hearing, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) Following the violation hearing, the hearing adjudicator files findings of fact and conclusions of law.

(i) If no violation is found, the hearing adjudicator enters findings of fact, conclusions of law, and a recommendation for dismissal, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under Rule 10.15(b), or after ruling on that motion, the findings of fact and conclusions of law as to those violations are not subject to reconsideration by the hearing adjudicator.

(2) *Sanction Hearing.* If any violation is found, a sanction hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings of fact and conclusions of law as to the violations found under section (b)(1)(B)(ii) of this Rule. At the conclusion of the sanction hearing, the hearing adjudicator files findings of fact and conclusions of law as to sanction and a recommendation, which, together with the previously filed findings of fact and conclusions of law, is the hearing decision of the hearing adjudicator.

(3) *Timing.* If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing adjudicator must set a date and place for the sanction hearing that should be no later than 60 days after the date set for the commencement of the violation hearing.

**RULE 10.15 HEARING DECISION**

**(a) Hearing Decision.** A hearing adjudicator's decision must be in the form of written findings of fact, conclusions of law, and recommendation. The hearing decision should be filed with the Clerk within 30 days after the hearing transcript is filed. Either party may file proposed findings of fact, conclusions of law, and recommendation within 20 days after the disciplinary hearing is concluded or as otherwise ordered by the hearing adjudicator.

**(b) Amendment.**

(1) *Timing of Motion.* Either party may move to modify, amend, or correct the hearing decision as follows:

(A) In a proceeding not bifurcated, within 15 days of service of the hearing decision;

(B) In a bifurcated proceeding, within 15 days of service of:

(i) the findings of fact and conclusions of law regarding violations; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings of fact or conclusions of law.

(2) *Procedure.* Rule 10.8 governs this motion. The hearing adjudicator should rule on the motion

within 15 days after the filing of a timely reply or after the period to file a reply under Rule 10.8(c) has expired. The ruling may deny the motion or may amend, modify, or correct the hearing decision.

(3) *Effect of Failure to Move.* Failure to move for modification, correction, or amendment does not affect any subsequent appellate review.

**(c) Appeal.** Rule 11.2 governs notices of appeal of a hearing decision.

**(d) Transmittal to Court.** If no party files a notice of appeal of a hearing decision within the time permitted by Rule 11.2, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 13.1(a) or other appropriate order.

## **TITLE 11 – APPEAL TO THE APPEAL PANEL**

### **RULE 11.1 SCOPE OF TITLE**

This Title provides the procedure for appeals of a hearing decision and interlocutory review of acts or rulings of a regulatory adjudicator. For purposes of this Title, the term “party” includes individuals seeking or responding to review under Rule 3.4. The Rules of Appellate Procedure serve as guidance for review under this Title except as to matters specifically dealt with in these Rules.

### **RULE 11.2 DECISIONS SUBJECT TO APPEAL**

**(a) Decision.** For purposes of this Title, “hearing decision” means:

- (1) the hearing adjudicator’s findings of fact, conclusions of law, and recommendation under Rules 8.2(g), 8.3(i), 8.4(h), and 10.15. If either party properly files a motion to amend under Rule 10.15(b), the “hearing decision” includes the ruling on the motion;
- (2) a decision dismissing all counts under Rule 10.5(d);
- (3) a decision dismissing the proceeding with prejudice under Rule 10.9(d); or
- (4) the hearing adjudicator’s decision on a petition to return from incapacity inactive status under Rule 8.11(e)(8).

**(b) Time to File Notice.** A notice of appeal must be filed with the Clerk within 30 days of service of the hearing decision on the parties.

**(c) Cross Appeal.** If a party files a timely notice of appeal and the other party wants relief from the hearing decision, the other party must file a notice of appeal with the Clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) within the time set forth in section (b) of this Rule for filing a notice of appeal.

### **RULE 11.3 RECORD ON APPEAL, DESIGNATION, AND PREPARATION**

**(a) Terminology.** By analogy to the RAP, the Appeal Panel is considered the appellate court, the Clerk is considered the trial court clerk, and documents in the Clerk’s file are considered the clerk’s papers.

**(b) Record on Appeal.** The record on appeal consists of documents from the Clerk’s file designated by the parties, exhibits designated by the parties, the hearing decision, and the hearing transcript.

**(c) Designation of Record.** A party must file its designation at or before the time it files its first brief.

**(d) No Additional Evidence.** Evidence not presented to the hearing adjudicator must not be designated by the parties or presented to the Appeal Panel.

**(e) Preparation of Record.** The Clerk prepares the record on appeal and distributes it to the Appeal Panel. The Clerk provides the parties with a copy of the index of the Clerk’s file documents and a cover sheet listing the exhibits.

### **RULE 11.4 BRIEFS**

**(a) Caption of Briefs.** The parties should caption briefs as follows:

[Name of Party] Opening Brief  
[Name of Party] Response  
[Name of Party] Reply

**(b) Content of Briefs.**

- (1) *Opening Brief.* The opening brief should contain under appropriate headings and in the order here indicated:
  - (A) *Title Page.* A title page, which is the cover.
  - (B) *Tables.* A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where cited.
  - (C) *Introduction.* A concise introduction. This section is optional. The introduction need not contain citations to the record or authority.
  - (D) *Statement of the Case.* A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.
  - (E) *Argument.* The argument section must identify the issues for review and present argument in support of the issues, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The parties should include a concise statement of the standard of review as to each issue.
  - (F) *Conclusion.* A short conclusion stating the precise relief sought.
  - (G) *Appendix.* An appendix to the brief if deemed appropriate by the party filing the brief. An appendix may not include evidence not presented to the hearing adjudicator.
- (2) *Response.* The response should conform to section (b)(1) of this Rule and answer the opening brief.
- (3) *Reply.* A reply brief should conform with sections (A), (B), (E), (F), and (G) of section (b)(1) of this Rule and be limited to a response to the issues in the response brief.

**(c) Timing of Briefs.**

- (1) *Opening Brief.* The party filing the notice of appeal must file an opening brief within 45 days of service on the parties of a copy of the transcript by the Clerk or the filing of the notice of appeal, whichever is later. Failure to file an opening brief within the required period constitutes an abandonment of the appeal.
- (2) *Response.* Any response of the opposing party must be filed within 30 days from service of the opening brief.
- (3) *Reply.* Any reply of the appealing party must be filed within 30 days of service of the response.

**(d) Procedure When Both Parties Appeal.** When both parties file notices of appeal, the party filing first is considered the appealing party. In these situations, the responding party may raise its own issues on appeal, and the appealing party has an additional five days to file the reply permitted by section (b)(3) of this Rule.

**(e) References to the Record.** Briefs filed under this Rule must specifically refer to the record if available, using the designations TR for transcript, EX for exhibit, and CF for Clerk's file document.

**(f) Formatting Requirements and Length of Briefs.** Briefs must conform with the formatting requirements of RAP 18.17, except that (1) the opening and response briefs must not exceed 8,750 words (word processing software) or 35 pages (typewriter or hand-written), and (2) the reply brief must not exceed 2,500 words (word processing software) or 10 pages (typewriter or hand-written). For compelling reasons, the Appeal Panel may grant a motion to file an over-length brief. The Clerk must return over-length briefs presented for filing without a motion. The Clerk must provide a copy of this Rule to the party with the original unfiled brief.

## **RULE 11.5 SUPPLEMENTING THE RECORD**

The record on appeal may be supplemented in the following ways:

- (a) As of Right.** A party may supplement its designation of the record before or with the filing of the party's last brief.
- (b) On Motion.** After a party files its last brief, a party may file a motion with the Appeal Panel to supplement the record. Leave to supplement the record should be freely granted.
- (c) Sua Sponte.** With notice to the parties, the Appeal Panel may supplement the record with any portion of the record before the hearing adjudicator.

## **RULE 11.6 REQUEST FOR THE TAKING OF ADDITIONAL EVIDENCE**

**(a) Timing and Content of Request.** Any time prior to the deadline for filing of the party's last brief, a party by written motion may request the taking of additional evidence based on newly discovered evidence. The motion must be supported by a declaration describing in detail the additional evidence and any reasons why it was not presented at the hearing and must address the factors listed in section (b) of this Rule.

**(b) Remedy Limited.** The Appeal Panel may direct that additional evidence on the merits of the case be taken prior to the decision of the case on appeal if:

- (1) additional proof of facts is needed to fairly resolve the issues on appeal,
- (2) the additional evidence would probably change the hearing decision being appealed,
- (3) it is equitable to excuse a party's failure to present the evidence to the hearing adjudicator,
- (4) the appellate remedy of granting a new hearing is inadequate or unnecessarily expensive, and
- (5) it would be inequitable to decide the case solely on the evidence already taken by the hearing adjudicator.

**(c) Where Taken.** The Appeal Panel will ordinarily direct the hearing adjudicator to take additional evidence and find the facts based on that evidence.

**(d) Effect on Pending Appeal.** The pending appeal will be stayed if the Appeal Panel directs that additional evidence be taken.

## **RULE 11.7 APPELLATE DECISION**

**(a) Basis for Appellate Decision.** The Appeal Panel considers the hearing decision, the parties' briefs filed under Rule 11.4, and the record on appeal. Except as provided in section (b) of this Rule, the Appeal Panel will decide a case only on the basis of issues set forth by the parties in their briefs.

**(b) Issues Raised by the Appeal Panel.** If the Appeal Panel concludes that an issue that is not set forth in the briefs should be considered to properly decide a case, it may notify the parties and give them an opportunity to present written argument on the issue raised by the Appeal Panel.

**(c) Standards of Review.** The Appeal Panel reviews findings of fact for substantial evidence. It reviews conclusions of law and recommendations de novo. Evidence not presented to the hearing adjudicator cannot be considered by the Appeal Panel.

**(d) Oral Argument.**

- (1) *Request by Party or Panel.* The Appeal Panel hears oral argument if requested by a party who has filed a brief or if ordered by the Panel.
- (2) *Timing of Request.* A party's request must be filed no later than the deadline for that party to file its last brief, including a response or reply, under Rule 11.4.
- (3) *Setting and Notice of Argument.* Notice of oral argument issued by the Clerk sets the date, time, place, and terms for oral argument. The Clerk serves notice on the parties no later than 30 days before the scheduled argument.
- (4) *Rescheduling.* A request to reschedule oral argument must be made by motion filed with the Clerk within 15 days of receipt of the notice setting the date for oral argument, except upon a

showing of good cause.

(5) *Procedure.* Each party has 15 minutes to present oral argument. For compelling reasons, the Appeal Panel may grant a motion for additional oral argument time. The motion should be filed with the request for oral argument. If either party fails to appear for argument at the scheduled time, the Appeal Panel may consider the case without oral argument.

(6) *Record.* Arguments before the Appeal Panel must be recorded in writing by a court reporter or by electronic means. The ORA must make arrangements for recording the argument. Within 15 days of the conclusion of the argument, a verbatim report of proceedings must be prepared and certified by a court reporter and filed with the Clerk, who will serve it on the parties. The verbatim report is the official record of the argument.

**(e) Action by the Appeal Panel.** Consistent with the standards of review in section (c) of this Rule, the Appeal Panel may reverse, affirm, or modify the hearing decision on appeal and take any other action as the merits of the case and the interest of justice may require.

**(f) Appellate Decision.** The Appeal Panel must file an appellate decision in the form of a written order or opinion stating the reasons for its decision. The appellate decision must set forth the result favored by each panel member. Any dissent must set forth the result favored by the dissenting panel member(s). The Clerk serves the appellate decision on the parties.

**(g) Appeal or Review.** Rules 12.3 and 12.4 govern notices of appeal or petitions for discretionary review of appellate decisions.

**(h) Transmittal to Court.** If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rules 12.3 and 12.4, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of a final order under Rule 13.1(a) or 8.1(b), or other appropriate order.

#### **RULE 11.8 MODIFICATION OF REQUIREMENTS**

Upon written motion filed with the Clerk by a party for good cause shown, or on its own initiative, the ORA may modify the time periods in Title 11 and make other orders as appear appropriate to ensure fair and orderly consideration of the appeal. However, the time period for filing a notice of appeal in Rule 11.2(b) may not be extended or altered.

#### **RULE 11.9 MOTIONS**

**(a) Content of Motion.** A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

**(b) Filing and Service.** Motions for matters pending with the Appeal Panel must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by Rule 4.1.

**(c) Response.** A party may file a written response to the motion. A response must be served and filed within 10 days of service of the motion, unless the time is modified by the Chair of the Appeal Panel for good cause.

**(d) Reply.** The moving party may file a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is modified by the Chair of the Appeal Panel for good cause.

**(e) Length of Motion, Response, and Reply.** A motion, response, and reply must conform with the formatting requirements of RAP 18.17, except that (1) the motion and response must not exceed 2,500 words (word processing software) or 10 pages (typewriter or hand-written), and (2) the reply must not exceed 1,250 words (word processing software) or 5 pages (typewriter or hand-written). For good cause, the Chair of the Appeal Panel may grant a motion to file an over-length motion, response, or reply.

**(f) Consideration of Motion.** Upon expiration of the time for reply, the Chair of the Appeal Panel must promptly rule on the motion or refer the motion to the full Panel for decision. A motion will be decided without oral argument, unless the Chair of the Appeal Panel directs otherwise.

**(g) Ruling.** A motion is decided by written order filed with and served by the Clerk under Rule 4.2.

**(h) No Appeal Panel Convened.** When a motion is filed before an Appeal Panel is convened, the Chief Regulatory Adjudicator may perform all functions of the Chair under this Rule.

#### **RULE 11.10 INTERLOCUTORY REVIEW**

**(a) General.** Unless these Rules provide otherwise, a party may file a motion seeking interlocutory review by the Appeal Panel of any act or ruling of a regulatory adjudicator that is not appealable as a matter of right.

**(b) Considerations Governing Acceptance of Review.** Interlocutory review may be granted only in the following circumstances:

- (1) A regulatory adjudicator has committed an obvious error that would render further proceedings useless;
- (2) A regulatory adjudicator has committed probable error and the ruling of the hearing adjudicator substantially alters the status quo or substantially limits the freedom of a party to act;
- (3) A regulatory adjudicator has so far departed from the accepted and usual course of disciplinary proceedings as to call for review by the Appeal Panel; or
- (4) A regulatory adjudicator has certified, or all the parties have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate resolution of the proceedings.

**(c) Procedure.**

- (1) *Motion.* A party seeks interlocutory review by motion under the procedures of Rule 11.9, except that the Chief Regulatory Adjudicator decides the motion. The motion must include a copy of the ruling that the party wants reviewed, a copy of any order granting or denying motions made with respect to that ruling, and a copy of parts of the record relevant to the act or ruling.
- (2) *Timing and Service.* The motion must be filed with the Clerk and served on the opposing party within the later of (A) 15 days of the act or ruling that the party wants reviewed, or (B) 15 days of entry of an order deciding a timely motion for reconsideration under Rule 10.8(g).
- (3) *Proceedings Not Stayed.* A party's motion for interlocutory review does not stay the regulatory adjudicator's act or ruling, any proceedings, or any pre-hearing deadlines unless the regulatory adjudicator or the Chief Regulatory Adjudicator issues a stay or the Chief Regulatory Adjudicator grants review.

**(d) Effect of Denial of Interlocutory Review.** The denial of interlocutory review does not affect the right of a party to obtain later review of the act or ruling or the issues pertaining to it.

**(e) Acceptance of Review.** Upon accepting interlocutory review, the Chief Regulatory Adjudicator assigns the matter to an Appeal Panel, specifies the issue or issues as to which review is granted, and establishes the timeline and terms for any additional briefing and oral argument.

### **TITLE 12 – REVIEW BY SUPREME COURT**

#### **RULE 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. For purposes of this Title, the term “party” includes individuals seeking or responding to review under Rule 3.4.



## **RULE 12.2 METHODS OF SEEKING REVIEW**

**(a) Two Methods for Seeking Review of Appeal Panel Decision.** The methods for seeking Supreme Court review of an Appeal Panel decision entered under Rule 11.7(f) are: (1) review as a matter of right, called "appeal," and (2) 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 decision by an Appeal Panel or regulatory adjudicator and to exercise its inherent and exclusive jurisdiction over the discipline and incapacity system.

## **RULE 12.3 APPEAL**

**(a) Right to Appeal.** The respondent or disciplinary counsel has the right to appeal an Appeal Panel decision recommending disciplinary suspension or disbarment. There is no other right of appeal except as specified in Title 8.

**(b) Notice of Appeal; Timing.** The appealing party must file a notice of appeal within 30 days of service of the Appeal Panel's decision.

**(c) Where to File Notice of Appeal; Service.** A party files the notice of appeal with the ORA Clerk and must serve the other party.

**(d) Filing Fee.** A party filing a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the ORA Clerk 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.

**(e) Cross Appeal.** If a party files a timely notice and the other party wants relief from the Appeal Panel decision, the other party must file a notice of appeal with the ORA Clerk within 14 days after service of the first notice of appeal. A party filing a cross notice of appeal must serve the other party but need not pay a filing fee.

## **RULE 12.4 DISCRETIONARY REVIEW**

**(a) Decisions Subject to Discretionary Review.** Respondent or disciplinary counsel may seek discretionary review of Appeal Panel decisions or orders not subject to appeal under Rule 12.3. The Court accepts discretionary review only if:

- (1) the Appeal Panel's decision or order 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 Appeal Panel's decision or order is based; or
- (4) the petition involves an issue of substantial public interest that the Court should determine.

**(b) Petition for Discretionary Review; Timing.** A party may seek discretionary review by filing a petition for discretionary review with the ORA Clerk within 30 days of service of the Appeal Panel's decision or order.

**(c) Where to File Petition for Discretionary Review; Service.** A party files a petition for discretionary review with the ORA Clerk and must serve the other party.

**(d) Filing Fee.** A party filing a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the ORA Clerk 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.

**(e) Content of Petition; Answer; Service; Decision.** A petition for discretionary 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 RAP 13.4 to the Court of Appeals are considered references to the Appeal Panel. 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 discretionary review and related matters including service and decision by the Court.

**(f) Cross Petition.** If a party files a timely petition for discretionary review and the other party wants relief from the Appeal Panel’s decision, the other party must file a petition for discretionary review with the ORA Clerk within the later of (1) 14 days after service of the first petition, or (2) the time for filing a petition under section (b) of this Rule. A party filing a cross petition must serve the other party but need not pay a filing fee.

**(g) Acceptance of Review.** The Court accepts discretionary review of an Appeal Panel decision by granting a petition for discretionary review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

#### **RULE 12.5 RECORD TO SUPREME COURT**

**(a) Transmittal.** The ORA 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 Appeal Panel, if any. Notwithstanding these deadlines, the ORA 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 Appeal Panel’s decision or order;
- (3) the record before the Appeal Panel;
- (4) the transcript of any oral argument before the Appeal Panel; and
- (5) any other portions of the record before the ORA, including clerk’s papers or exhibits, that the Court deems necessary for full review.

**(c) Notice to Parties.** The ORA 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 13.8(e), the ORA Clerk should transmit the order 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 13.8(d).

**(e) Additions to Record.** A party may request that the ORA Clerk transmit additional portions of the record to the Court prior to or with the filing of the party’s last brief. Thereafter, a party may move the Court for an order directing the transmittal of additional portions of the record to the Court.

#### **RULE 12.6 BRIEFS**

**(a) Brief Required.** The party seeking review must file a brief stating the party’s objections to the Appeal Panel’s decision or order.

**(b) Time for Filing.** The brief of the party seeking review must 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, unless the Court directs otherwise.

**(c) Answering Brief.** Any answering brief of the other party must be filed with the Court within 30 days after service of the brief of the party seeking review.

**(d) Reply Brief.** Any reply brief of a party seeking review must 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 must be limited to a response to the issues in the answering brief.

**(e) Briefs When Both Parties Seek Review.** When both the respondent and disciplinary counsel seek review of an Appeal Panel decision or order, 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. This reply brief must be filed with the Court the sooner of 20 days after service of the respondent's brief or 14 days before oral argument.

**(f) Form of Briefs.** Unless otherwise ordered by the Court, briefs filed under this Rule must conform to the requirements of RAP 10.3 and 10.4. Documents filed with the ORA Clerk are known as Clerk's file documents and should be abbreviated CF, 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 Supreme Court Clerk.** The Supreme Court Clerk reproduces and distributes briefs as provided in RAP 10.5.

## **RULE 12.7 ARGUMENT**

**(a) Rules Applicable.** Oral argument before the Supreme Court is conducted under RAP Title 11, unless the Court directs otherwise.

**(b) Priority.** Disciplinary and incapacity proceedings have priority and are set upon compliance with the above Rules.

## **RULE 12.8 ENTRY OF ORDER OR OPINION**

Following consideration of a matter by the Court, the Court enters a final order under Rule 13.1(a) or 8.1(b), or another appropriate order.

## **RULE 12.9 MOTION FOR RECONSIDERATION**

A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment or delay the effective date of a an order or opinion under Rule 12.8 unless the Court enters a stay.

## **RULE 12.10 VIOLATION OF RULES**

The Court may sanction a party under RAP 18.9 for violation of Rules in this Title. If review is dismissed under RAP 18.9, the Appeal Panel decision or order becomes final subject to Rule 11.7(h) after the time to object under RAP 17.7 expires or upon dismissal of review by the Court if a timely objection is filed.

# **TITLE 13 – SANCTIONS AND REMEDIES**

## **RULE 13.1 FINAL ORDER; SANCTIONS AND REMEDIES**

**(a) Supreme Court Final Order.** The Supreme Court's final order in a disciplinary proceeding is an order or opinion that imposes sanctions or remedies, declines to impose sanctions or remedies, dismisses the matter, or otherwise concludes the proceeding. Except as otherwise provided in these Rules, upon entry of the Court's final order, the matter is not subject to further review under these Rules and any sanctions or remedies are imposed on the effective date as set forth in this Title. After the final order is issued, the ORA or the Court may hear and decide post-judgment issues authorized by these Rules.

**(b) Sanctions.** Upon an adjudication or stipulation under these Rules that a respondent has committed an act of misconduct, the Court may impose one or more of the following public sanctions:

- (1) Disbarment;
- (2) Disciplinary suspension;
- (3) Reprimand; or
- (4) Admonition.

The American Bar Association *Standards for Imposing Lawyer Sanctions* are used to determine the appropriate sanction.

**(c) Remedies.** Upon imposition of a sanction, the Court may impose one or more of the following public remedies:

- (1) Probation;
- (2) Restitution;
- (3) Limitation on practice;
- (4) Continuing legal education;
- (5) Assessment of costs; or
- (6) Other requirements consistent with the purposes of protecting the public and maintaining the integrity of the legal profession.

#### **RULE 13.2 DISBARMENT**

**(a) Definition.** A sanction of disbarment is the revocation of a respondent's license to practice law in this state.

**(b) Effective Date.** Disbarment is effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, disbarment is effective seven days after the date of the Court's order or opinion.

**(c) Reinstatement from Disbarment.** A person who is disbarred may seek reinstatement under APR 25.

#### **RULE 13.3 DISCIPLINARY SUSPENSION**

**(a) Definition.** A disciplinary suspension is a suspension imposed as a sanction under these Rules. A disciplinary suspension is for a fixed period of time not to exceed three years.

**(b) Effective Date.** A disciplinary suspension is effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, a disciplinary suspension is effective seven days after the date of the Court's order or opinion.

**(c) Reinstatement from Disciplinary Suspension.**

- (1) A respondent may apply to reinstate the respondent's license to practice law to either active status or inactive status.
- (2) A respondent must file an application for reinstatement with the Bar and comply with applicable court rules and the Bar's Bylaws for reinstatement from disciplinary suspension.
- (3) A respondent may not be reinstated without disciplinary counsel's certification that the respondent has complied with any pre-conditions to reinstatement or other specific conditions ordered.
- (4) If the Client Protection Fund paid an applicant due to a respondent's misconduct, the respondent must obtain a certification from Bar counsel establishing that the respondent has paid restitution to the Client Protection Fund or is current with any restitution payment plan.
- (5) A respondent may ask the ORA to review an adverse determination by disciplinary counsel or Bar counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the ORA may modify the terms of the payment plan if warranted. The ORA determines the procedure for this review. The ORA's ruling is not subject to further review.
- (6) When the respondent has complied with all conditions for reinstatement and the term of disciplinary suspension is complete, the Bar files a recommendation for reinstatement with the Supreme Court for entry of an appropriate order.

#### **RULE 13.4 REPRIMAND**

**(a) Definition.** A reprimand is a sanction that declares that the respondent violated the rules of professional conduct. A reprimand does not restrict the respondent's authorization to practice law. Unless otherwise ordered by the Court, a reprimand must include a term of probation under Rule 13.6.

**(b) Effective Date of Reprimand.** A reprimand is effective on the date of the Supreme Court's order or opinion.

### **RULE 13.5 ADMONITION**

**(a) Definition.** An admonition is a sanction that declares that the respondent violated the rules of professional conduct. An admonition does not restrict the respondent's authorization to practice law and is imposed when a sanction less than reprimand is appropriate.

**(b) Effective Date of Admonition.** An admonition is effective on the date of the Supreme Court's order or opinion.

### **RULE 13.6 PROBATION**

**(a) Definition.** An order imposing a sanction under Rule 13.1 may include a term of probation for a fixed period of two years or less that includes complying with specific conditions ordered under section (b) of this Rule.

**(b) Conditions of Probation.** Conditions of probation may include, but are not limited to:

- (1) alcohol or drug treatment;
- (2) continuing legal education;
- (3) medical treatment;
- (4) psychological or psychiatric treatment;
- (5) practice monitoring;
- (6) professional office practice or management counseling;
- (7) periodic audits or reports; or
- (8) any other program or corrective course of action to address the respondent's misconduct.

**(c) Failure to Comply.** Failure to comply with a condition of probation may be grounds for an interim suspension under Rule 7.2 and may be grounds for discipline.

**(d) Public Information.** The fact that a respondent is or was on probation, the length of probation, and the conditions of probation are public information subject to Rule 3.3(a). All other information and documents related to the supervision of probation are not public information. In any proceeding under section (c) of this Rule, information relating to the probation is admissible into evidence in any ensuing disciplinary proceeding.

### **RULE 13.7 RESTITUTION**

**(a) Restitution May Be Required.** A respondent sanctioned under Rule 13.1 may be ordered to make restitution to the Client Protection Fund or to persons or entities financially injured by the respondent's conduct.

**(b) Payment of Restitution.** A respondent ordered to make restitution, including restitution to the Client Protection Fund, must do so within 90 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan.

**(c) Periodic Payment Plan.**

- (1) Disciplinary counsel, or Bar counsel on behalf of the Client Protection Fund, may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing a present inability to pay restitution. A decision to enter into a periodic payment plan and the determination of the payment plan's terms are made after consideration of the following factors:
  - (A) whether the respondent promptly requested a reasonable periodic payment plan;
  - (B) whether, to date, the respondent has made a good faith effort to make payments;
  - (C) whether the respondent has or sought other sources for payment of the restitution; and
  - (D) whether the suggested payment plan will allow for restitution to be paid in full in a reasonable amount of time.
- (2) A respondent may file a motion with the ORA to request review of an adverse determination by

disciplinary counsel regarding specific conditions for a periodic payment plan. The Chief Regulatory Adjudicator directs the procedure for this review. The regulatory adjudicator's ruling is not subject to further review.

**(d) Interest.** The respondent must pay interest on any amount not paid within 90 days of the date on which the restitution order is final at the maximum rate permitted under RCW 19.52.020. Any payment plan entered into under this Rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

**(e) Failure to Comply.** A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan, may be grounds for discipline.

**(f) Restitution in Other Cases.** Determination of the amount of restitution and any interest thereon in discipline cases resolved by stipulation is governed by Rule 9.1. Determination of the amount of restitution and any interest thereon in discipline cases resolved by resignation in lieu of discipline is governed by Rule 9.2.

**(g) Money Judgment for Restitution.** No sooner than 90 days after a restitution order is final, a restitution beneficiary, including the Client Protection Fund, may apply to the Supreme Court Clerk or commissioner for a money judgment if the respondent has failed to pay restitution and interest thereon as provided by this Rule. The beneficiary must obtain a declaration from disciplinary counsel stating that the restitution order is final and that the respondent has failed to pay all or part of the restitution or is not current on a periodic payment plan. The beneficiary must serve the application for a money judgment and declaration of disciplinary counsel on the respondent and on disciplinary counsel under Rule 4.1. The respondent may file an objection with the Supreme Court Clerk or commissioner within 20 days of service of the application. The objection must be served on the beneficiary and disciplinary counsel under Rule 4.1. The sole issue to be determined by the Supreme Court Clerk or commissioner is whether the respondent has complied with the duty to make restitution, including compliance with the terms of a periodic payment plan, under this Rule. The Supreme Court Clerk or commissioner may enter a money judgment in compliance with RCW 4.64.030 on the order for restitution if the respondent has failed to pay the restitution as provided by this Rule. The Supreme Court Clerk or commissioner notifies the beneficiary, the respondent, and disciplinary counsel of the judgment. Upon entry of the judgment, the Supreme Court Clerk or commissioner transmits the judgment to the clerk of the superior court in any county selected by the beneficiary 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.

#### **RULE 13.8 COSTS AND EXPENSES**

**(a) General.** A respondent may be required to pay the Bar's costs and expenses as provided in this Rule.

**(b) Costs Defined.** The term "costs" for the purposes of this Rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Bar in the performance of its duties under these Rules, whether incurred before or after the filing of a statement of charges. Costs include, by way of illustration and not limitation:

- (1) court reporter charges for attending and transcribing depositions, hearings, and oral arguments;
- (2) process server charges;
- (3) necessary travel expenses of regulatory adjudicators, disciplinary counsel, adjunct disciplinary counsel, special conflicts disciplinary counsel, investigators, and witnesses;
- (4) expert witness charges;
- (5) costs of conducting an examination of books and records;
- (6) costs of supervising or monitoring probation imposed under Rule 13.6;
- (7) fees, costs, and expenses of a lawyer appointed under Title 8; and
- (8) costs of copying materials.

**(c) Expenses Defined.** "Expenses" for the purposes of this Rule means a charge for the Office of Disciplinary Counsel's attorney and staff time, in the following amounts:

- (1) in a matter without review by an Appeal Panel, \$3,000;
- (2) in a matter with review by an Appeal Panel under Title 11, without appeal to the Supreme Court, \$4,000; and
- (3) in a matter in which a notice of appeal or petition for discretionary review was filed with the Supreme Court under Title 12, \$6,000.

**(d) Statement of Costs and Expenses, Exceptions, and Reply.**

- (1) *Timing.* Disciplinary counsel must file and serve a statement of costs and expenses with the Clerk no later than 45 days from the date of entry of a hearing decision if no appeal is filed under Rule 11.2. If an appeal is filed under Rule 11.2, disciplinary counsel must file and serve a statement of costs and expenses with the Clerk no later than 45 days from the date of entry of the Appeal Panel's decision.
- (2) *Clerk's Certification of Costs.* The Clerk must file and serve a certification of adjudicative costs itemizing the costs incurred by the ORA under section (b) of this Rule no later than 35 days from the date of entry of a hearing decision if no appeal is filed under Rule 11.2. If an appeal is filed under Rule 11.2, the Clerk must file and serve a certification of adjudicative costs no later than 35 days from the date of entry of the Appeal Panel's decision.
- (3) *Content.* A statement of costs and expenses must state with particularity the nature and amount of the costs claimed by the Bar and also state the expenses requested. The statement of costs and expenses may incorporate by reference the Clerk's certification of costs.
- (4) *Exceptions.* The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.
- (5) *Reply.* Disciplinary counsel may file a reply no later than 10 days from service of any exceptions.

**(e) Assessment.** The hearing adjudicator, or other regulatory adjudicator as assigned by the Chief Regulatory Adjudicator, enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

**(f) Review of Costs Order.**

- (1) *Request for Review by Chief Regulatory Adjudicator.* Within 20 days of service on the respondent of the order assessing costs and expenses, a party may file a request for review of the order by the Chief Regulatory Adjudicator.
- (2) *Action by Chief Regulatory Adjudicator.* Upon the timely filing of a request, the Chief Regulatory Adjudicator reviews the order assessing costs and expenses based on disciplinary counsel's statement of costs and expenses and any exceptions or reply, the decision of the regulatory adjudicator, and any written statement filed by either party. The Chief Regulatory Adjudicator may approve or modify the order assessing costs and expenses. The Chief Regulatory Adjudicator's decision is not subject to further review.

**(g) Assessment in Matters Reviewed by the Court.** When a matter is reviewed by the Court under Title 12, any order assessing costs and expenses under section (e) of this Rule and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion or order by the Court imposing a sanction, costs and expenses may be assessed in favor of the Bar under the procedures of RAP Title 14, except that "costs" as used in that Title means any costs and expenses allowable under this Rule.

**(h) Assessment Discretionary.** Assessment of any or all costs and expenses may be denied if the respondent demonstrates by a preponderance of the evidence that it would be in the interests of justice to do so.

**(i) Payment of Costs and Expenses.** A respondent ordered to pay costs and expenses must do so within 90 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

**(j) Periodic Payment Plan.**

- (1) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing a present inability to pay assessed costs and expenses. A decision to enter into a periodic payment plan and the determination of the payment plan's terms are made after consideration of the following factors:
  - (A) whether the respondent promptly requested a reasonable periodic payment plan;
  - (B) whether, to date, the respondent has made good faith efforts to make payments;
  - (C) whether the respondent has or sought other sources for payment of the assessment; and
  - (D) whether the suggested payment plan will allow for costs and expenses to be paid in full in a reasonable amount of time.
- (2) A respondent may file a motion with the ORA to request review of an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chief Regulatory Adjudicator directs the procedure for this review. The regulatory adjudicator's ruling is not subject to further review.

**(k) Interest.** The respondent must pay interest on any amount not paid within 90 days of the date on which the order assessing costs and expenses is final at the maximum rate permitted under RCW 19.52.020. Any payment plan entered into under this Rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

**(l) Failure to Comply.** A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

**(m) Expenses in Other Cases.** Determination of the amount of expenses assessed and any interest thereon in other matters is governed as follows:

- (1) for discipline cases resolved by stipulation, by Rule 9.1;
- (2) for discipline cases resolved by resignation in lieu of discipline, by Rule 9.2;
- (3) for reciprocal discipline cases, by Rule 9.3;
- (4) for incapacity cases resolved by stipulation, by Rule 8.9; and
- (5) for a respondent's failure to cooperate, by Rule 5.9(c).

**(n) Money Judgment for Costs and Expenses.** No sooner than 90 days after an assessment of costs and expenses is final, including an assessment resulting from a proceeding as identified in section (m) of this Rule, disciplinary counsel may apply to the Supreme Court Clerk or commissioner for a money judgment if the respondent has failed to pay the costs and expenses as provided by this Rule. Disciplinary counsel must serve the application for a money judgment on the respondent under Rule 4.1. The respondent may file an objection with the Supreme Court Clerk or commissioner within 20 days of service of the application. The sole issue to be determined by the Supreme Court Clerk or commissioner is whether the respondent has complied with the duty to pay costs and expenses, including compliance with the terms of a periodic payment plan, under this Rule. The Supreme Court Clerk or commissioner may enter a money judgment in compliance with RCW 4.64.030 if the respondent has failed to pay the costs and expenses as provided by this Rule. The Supreme Court Clerk or commissioner notifies disciplinary counsel and the respondent of the judgment. Upon entry of the judgment, the Supreme Court Clerk or commissioner transmits the judgment to the clerk of the superior court in any county selected by disciplinary counsel 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.

**(o) Action to Enforce Judgment for Costs and Expenses.** At any time following the entry of a judgment under section (n) of this Rule, the Bar is authorized to commence a judicial action to enforce and collect the judgment. Upon recommendation of the Chief Disciplinary Counsel, the Executive Director may engage the services of lawyer to represent the Bar in efforts to collect a judgment entered under section (n) or this rule or a collection action authorized by this Rule.



## **TITLE 14 – DUTIES ON DISBARMENT, RESIGNATION IN LIEU, SUSPENSION FOR ANY REASON, OR INCAPACITY INACTIVE STATUS**

### **RULE 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY**

**(a) Providing Client Property.** A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must, upon request, provide each client or the client's substituted licensed legal professional with the client's assets, files, and other documents in the respondent's possession, regardless of any possible claim of lien under RCW 60.40.

**(b) Required Notices.** A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must within 10 days of the effective date of the disciplinary suspension, disbarment, resignation, or status change:

- (1) notify every current client in writing of the following:
  - (A) the respondent's suspension, disbarment, resignation in lieu of discipline, or status change to incapacity inactive status;
  - (B) the respondent's inability to practice law and the advisability of seeking legal services elsewhere; and
  - (C) if the client is involved in litigation or administrative proceedings, the advisability of seeking the prompt substitution of another licensed legal professional.
- (2) notify the Court or agency of the respondent's inability to practice law if a client is involved in litigation or administrative proceedings;
- (3) notify any co-counsel or licensed legal professional assisting the respondent in providing legal services to a current client of the respondent's inability to practice law; and
- (4) notify any licensed legal professional for each adverse party in pending litigation or administrative proceedings, and any unrepresented adverse party, of the respondent's suspension, disbarment, resignation in lieu of discipline, or status change and the respondent's inability to practice law.

**(c) Address of Client.** When providing the notices required by this Rule, a respondent must, to the extent consistent with the interests of the client and subject to the limitations of RPC 1.6 and 1.9 or LLLT RPC 1.6 and 1.9, take steps to ensure that adverse parties, co-counsel, courts, and agencies have information sufficient to effect service on the client.

### **RULE 14.2 RESPONDENT TO DISCONTINUE PRACTICE**

**(a) Discontinue Practice.** After the effective date of the suspension, disbarment, resignation in lieu of discipline, or a status change to incapacity inactive status, respondents must:

- (1) not practice law,
- (2) not hold themselves out as authorized to practice law in Washington State, and
- (3) take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on them as authorized to practice law.

**(b) Continuing Duties to Former Clients.** A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status is not precluded from disbursing assets to clients or other persons or providing information on the facts, theory, and status of a case to a succeeding licensed legal professional, but the respondent cannot be involved in any discussion regarding matters occurring after the effective date of the suspension, disbarment, resignation in lieu of discipline, or status change to incapacity inactive status. The respondent must provide this information on request and without charge.

### **RULE 14.3 DECLARATION OF COMPLIANCE**

Within 25 days of the effective date of a respondent's disbarment, suspension, resignation in lieu of discipline, or status change to incapacity inactive status under these Rules or the APR, the respondent must serve on disciplinary counsel or Bar counsel a declaration stating that the respondent has fully complied with the provisions of this Title. The declaration must also provide a mailing address where communications to the respondent may thereafter be directed. The respondent must attach to the declaration copies of the form letters of notification sent to the respondent's clients and opposing licensed legal professionals or parties and copies of letters to any court or tribunal, together with a list of names and addresses of all clients and opposing licensed legal professionals or parties to whom notices were sent. The declaration is confidential information except the respondent's mailing address is treated as a change of mailing address under APR 13(b).

### **RULE 14.4 RESPONDENT TO KEEP RECORDS OF COMPLIANCE**

A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must maintain written records of the steps taken by the respondent under this Title, so that proof of compliance will be available in any subsequent proceeding.

## **TITLE 15 –RANDOM EXAMINATIONS, OVERDRAFT NOTIFICATION, AND IOLTA**

### **RULE 15.1 RANDOM EXAMINATION OF BOOKS AND RECORDS**

**(a) Authorization.** The Office of Disciplinary Counsel is authorized to examine and reexamine the books and records of any lawyer, LLLT, LPO, law firm, or closing firm to determine whether the lawyer, LLLT, LPO, law firm, or closing firm is complying with RPC 1.15A and 1.15B, or LLLT RPC 1.15A and 1.15B, or LPORPC 1.12A and 1.12B and other rules of professional conduct referencing those rules. An examination or reexamination of the books and records of a closing firm must be limited as described in section (c)(2) of this Rule.

**(b) Definitions.**

- (1) As used in this Title, "law firm" has the same meaning as defined in RPC 1.0A(c) except that lawyers employed in the legal department of a closing firm are not considered a law firm under these Rules.
- (2) As used in this Title, "closing firm" means any bank, depository institution, escrow agent, title company, or other business, whether public or private, that employs, or contracts for the services of, a lawyer or LPO for the purpose of providing real or personal property closing services for a transaction. For purposes of this section, the term "other business" does not include law firms.

**(c) Selection.**

- (1) *Method.* The selection of lawyers, LLLTs, and LPOs to be examined will be limited to those whose licenses are on active status and will utilize the principle of random selection by license number.
- (2) *Law Firms and Closing Firms.* If the license number randomly selected is that of a lawyer, LLLT, or LPO who is an employee or member of a law firm, the entire law firm is subject to examination or reexamination under Rule 15.1(d). If the license number randomly selected is that of a lawyer or LPO who is an employee or member of a closing firm, only those books and records relating to transactions in which the randomly selected lawyer or LPO provided real or personal property closing services are subject to examination or reexamination.
- (3) *Exclusions.*
  - (A) A lawyer, LLLT, or LPO will not be subject to a random examination when the lawyer, LLLT, or LPO is one of the following at the time of the random selection: employed by the Bar; a justice or staff lawyer of the Supreme Court; a governor or governor-elect of the Board of

Governors; a regulatory adjudicator; a volunteer adjudicator; an adjunct disciplinary counsel; a special conflicts disciplinary counsel; an appointed counsel under these Rules; or a respondent in a disciplinary or incapacity investigation or proceeding. An exclusion under this section is not imputed to any other lawyer, LLLT, or LPO even if an employee or member of the same law firm or closing firm as a lawyer, LLLT, or LPO who would be excluded under this Rule.

(B) If the lawyer, LLLT, LPO, law firm, or closing firm has been randomly examined under this Rule within seven years preceding the current random selection, the lawyer, LLLT, LPO, law firm, or closing firm will not be subject to random examination.

(4) *Notice of Random Selection.* The Office of Disciplinary Counsel must provide written notification of the selection to the lawyer, LLLT, LPO, law firm, or closing firm.

(5) *Challenges.* Within 30 days of the date of the notice of selection, the lawyer, LLLT, LPO, law firm, or closing firm may file with the Clerk a written request that a regulatory adjudicator review the selection. A regulatory adjudicator's decision under this Rule is not reviewable.

**(d) Examination and Reexamination.** An examination denotes the initial review following the random selection of a lawyer, LLLT, or LPO. A reexamination denotes a further examination as provided for in sections (e)(2) or (f)(2) of this Rule. Examinations and reexaminations under this Rule will entail a review and testing of the internal controls and procedures used by the lawyer, LLLT, LPO, law firm, or closing firm to receive, hold, disburse, and account for money or property as required by RPC 1.15A, LLLT RPC 1.15A, or LPORPC 1.12A, and a review of the records of the lawyer, LLLT, LPO, law firm, or closing firm as required by RPC 1.15B, LLLT RPC 1.15B, or LPORPC 1.15B.

**(e) Conclusion.** At the conclusion of an examination or reexamination, the Office of Disciplinary Counsel must do one of the following:

- (1) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings and taking no further action;
- (2) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings, recommending corrective action and requiring a reexamination of the books and records to commence within one year; or
- (3) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings and recommending an investigation under Title 5. The lawyer, LLLT, LPO, law firm, or closing firm may submit a response to the recommendation within 10 days of the issuance of the report.

**(f) Regulatory Adjudicator Action on Report.** The Office of Disciplinary Counsel must transmit a report under section (e)(3) and any response to the ORA for entry of an order. A regulatory adjudicator must do one of the following:

- (1) order closure of the matter;
- (2) order corrective action and a reexamination to commence within one year; or
- (3) order an investigation under Title 5.

The action of a regulatory adjudicator under this Rule is not reviewable.

## **RULE 15.2 COOPERATION WITH EXAMINATION**

**(a) Cooperation Required.** A lawyer, LLLT, and LPO must cooperate with an examination or reexamination under this Title, subject only to the proper exercise of any privilege against self-incrimination, by:

- (1) producing promptly all evidence, books, records, and papers requested for the examination or reexamination;
- (2) furnishing promptly any explanations required for the examination or reexamination; and
- (3) producing written authorization, directed to any bank or depository, authorizing the Office of Disciplinary Counsel to examine trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer, LLLT, LPO, law firm, or closing firm in the bank or depository.

**(b) Failure to Cooperate.**

- (1) *Noncooperation Deposition.* If a lawyer, LLLT, or LPO has not complied with any request made under this Rule for more than 30 days, the Office of Disciplinary Counsel may notify the lawyer, LLLT, or LPO that failure to comply within 10 days may result in a deposition for failure to cooperate or interim suspension under Rule 7.2. Ten days after this notice, the Office of Disciplinary Counsel may serve the lawyer, LLLT, or LPO with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the lawyer's, LLLT's or LPO's continued failure to cooperate may be conducted at any place in Washington State.
- (2) *Costs and Expenses.*
  - (A) Regardless of the underlying matter's ultimate disposition, a lawyer, LLLT, or LPO who has been served with a subpoena under this Rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, the cost of transcribing the deposition if ordered by disciplinary counsel, and a reasonable attorney fee of \$750.
  - (B) The procedure for assessing costs and expenses is as follows:
    - (i) The Office of Disciplinary Counsel applies to the ORA by itemizing the costs and expenses and stating the reasons for the deposition.
    - (ii) The lawyer, LLLT, or LPO has 10 days to respond to the Office of Disciplinary Counsel's application.
    - (iii) A regulatory adjudicator by order assesses appropriate costs and expenses.
    - (iv) Rule 13.8(f) governs review of the order assessing costs and expenses.
- (3) *Grounds for Discipline.* A lawyer's, LLLT's, or LPO's failure to cooperate fully and promptly with an examination as required by this Rule is also grounds for discipline.

**RULE 15.3 CONFIDENTIALITY**

**(a) Maintaining Client Confidentiality.** In the course of conducting examinations and reexaminations under this Title, the Office of Disciplinary Counsel receives, reviews, and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. Providing information to the Office of Disciplinary Counsel or a regulatory adjudicator under these Rules is not prohibited by RPC 1.6 or 1.9 or LLLT RPC 1.6 or 1.9 and does not waive any attorney-client privilege. If the lawyer, LLLT, or LPO provides and identifies specific client information that is privileged and requests that it be treated as confidential, the Office of Disciplinary Counsel must maintain the confidentiality of the information unless the client consents to disclosure. Nothing in these Rules waives or requires waiver of any lawyer's, LLLT's, or LPO's own privilege or other protection as a client against the disclosure of information relating to the representation.

**(b) Examination Confidential.** All information related to an examination or reexamination under Rule 15.1, including any record maintained under Rule 3.9(c), is confidential and is held by the Office of Disciplinary Counsel and the ORA under the authority of the Supreme Court. Information related to examinations or reexaminations under Rule 15.1 is available only to the Office of Disciplinary Counsel; the lawyer, LLLT, LPO, law firm, or closing firm examined or reexamined; and the ORA. When a disciplinary investigation is ordered under Rule 15.1, the release provisions of Title 3 apply to all examination and reexamination information that relates to the disciplinary investigation. Disciplinary counsel may make a motion under Rule 2.13(f) for authorization to disclose other confidential information.

**RULE 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION**

**(a) Overdraft Notification Agreement Required.** To be authorized as a depository for trust accounts referred to in RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an

agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against such a trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association upon request.

**(b) Overdraft Reports.**

- (1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:
  - (A) the identity of the financial institution;
  - (B) the identity of (i) the lawyer, LLLT, or law firm, or (ii) the LPO or closing firm;
  - (C) the account number; and
  - (D) either:
    - (i) the amount of overdraft and date created; or
    - (ii) the amount of the returned instrument(s) and the date returned.
- (2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

**(c) Institution Costs.** Nothing in these Rules precludes a financial institution from charging a particular lawyer, LLLT, LPO, law firm, or closing firm for the reasonable cost of producing the reports and records required by this Rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A(i)(1), LLLT RPC 1.15A(i)(1), LPORPC 1.12A(i)(1), and Rule 15.5(e).

**(d) Duty to Notify the Office of Disciplinary Counsel.** Every lawyer, LLLT, LPO, law firm, or closing firm that receives notification that any instrument presented against a trust account of the lawyer, LLLT, LPO, law firm, or closing firm was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the information required by section (b) of this Rule. The lawyer, LLLT, LPO, law firm, or closing firm must include a full explanation of the cause of the overdraft.

## **RULE 15.5 TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON**

**(a) Legal Foundation of Washington.** The Legal Foundation of Washington (Legal Foundation) was established by Order of the Washington Supreme Court to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

- (1) *Administrative Responsibilities.* The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this Rule and Rule 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish IOLTA accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.
- (2) *Annual Report.* The Legal Foundation must prepare an annual report to the Washington Supreme Court that summarizes the Foundation's income, grants, and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

**(b) Definitions.** The following definitions apply to this Rule:

- (1) *United States Government Securities.* United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

- (2) *Daily Financial Institution Repurchase Agreement.* A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be “well capitalized” under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.
- (3) *Money Market Funds.* A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars (\$500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.
- (4) *IOLTA.* As used in these Rules, the term IOLTA means interest on lawyer’s trust accounts, interest on LLLT’s trust accounts, and interest on LPO’s trust accounts, as set forth in RPC 1.15A, LLLT RPC 1.15A, and LPORPC 1.12A, respectively, and Title 15 of these Rules.

**(c) Authorized Financial Institutions.** Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this Rule:

- (1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;
- (2) is authorized by law to do business in Washington;
- (3) complies with all requirements set forth in section (d) of this Rule and Rule 15.4; and
- (4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this Rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this Rule and Rule 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1) of this Rule. At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this Rule or Rule 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

**(d) Requirements of All Trust Accounts.** All trust accounts established pursuant to RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(i) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

**(e) IOLTA Accounts.** To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

- (1) *Interest Comparability.* For accounts established pursuant to RPC 1.15A, LLLT RPC 1.15A, or LPORPC 1.12A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:
  - (A) Establish the IOLTA account as the comparable interest-paying product; or

- (B) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or
  - (C) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.
- (2) *Remit Interest to Legal Foundation of Washington.* Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, LLLT, LPO, law firm, or closing firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The financial institution must notify each lawyer, LLLT, LPO, law firm, or closing firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.
- (3) *Reasonable Account Fees.* Reasonable account fees may only include items deposited charges, per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, deposit insurance assessment fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, LLLT, LPO, law firm, or closing firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be deducted from interest or dividends earned on any other account or from the principal.
- (4) *Comparable Accounts.* Subject to the requirements set forth in sections (d) and (e) of this Rule, an IOLTA account may be established as:
- (A) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or
  - (B) A checking account paying preferred interest rates, such as a money market or indexed rates; or
  - (B) A government interest-bearing checking account such as an account used for municipal deposits; or
  - (D) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or
  - (E) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.
- (5) Nothing in this Rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

## TITLE 16 – COURT-APPOINTED CUSTODIANS

### RULE 16.1 COURT-APPOINTED CUSTODIANS

**(a) General.** The Court may appoint one or more lawyers authorized to practice law in Washington State as custodian to protect clients' interests as set forth in this Rule.

**(b) Procedure.** Upon ex parte motion by Bar counsel, the Court may appoint a custodian whenever (1) a licensed legal professional who has resigned in lieu of discipline, or has been suspended, disbarred, or whose license has been placed in incapacity inactive status fails to carry out the obligations of Title 14 or

fails to protect the clients' interests; (2) a licensed legal professional disappears, dies, or abandons practice; or (3) it reasonably appears that the licensed legal professional is otherwise incapable of meeting the licensed legal professional's obligations to clients.

**(c) Custodianship Order.** The order authorizes the custodian to obtain and review all records relevant to the custodianship and take one or more of the actions set forth below:

- (1) *Files, Records, and Property.* The custodian takes possession of the necessary files, records, and property and takes action to protect the clients' interests as required by the Court's order or these Rules, including, but not limited to, returning files, records, and property to the client. Upon motion by the custodian, the Court may order destruction of files, records, or property as appropriate.
- (2) *Trust Accounts.* If ordered by the Court, the custodian assumes control of client trust accounts. Any bank or other person honoring the authority of the custodian as granted by the Court is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis. Any unclaimed trust funds may be dealt with under the Uniform Unclaimed Property Act, Chapter 63.29 RCW.
- (3) *Other.* The Court may enter orders to carry out the provisions and purposes of this Rule.

**(d) Confidentiality.**

- (1) *Attorney-client Privilege and Duty of Confidentiality.* A custodian receives and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. A custodian's possession of a client's file or other information does not waive the client's attorney-client privilege or other protections from disclosure of information. A custodian must maintain the confidentiality of information received under this Rule.
- (2) *Disclosure to Disciplinary Counsel Permitted.* Notwithstanding the provisions of section (d)(1) of this Rule, a custodian must comply with requests and subpoenas from disciplinary counsel under these Rules.
- (3) *Other Disclosure.* Other than the disclosure permitted in section (d)(2) of this Rule, the custodian must obtain an order from the Court before making any disclosure of the client's file or information relating to the client's representation.

**(e) Discharge.** On motion by Bar counsel or the custodian, the Court may discharge the custodian from further duties.

**(f) Costs.** The Bar pays reasonable costs incurred by the custodian. Payment of any costs incurred or reimbursed by the Bar under this Rule may be required as a condition of reinstatement from disbarment or disciplinary suspension, ordered as restitution to the Bar in a disciplinary proceeding, or claimed against the estate of a deceased or adjudicated incapacitated licensed legal professional.

**(g) Records.** The public or confidential nature of records or proceedings under this Rule is governed by Title 3. The Bar maintains a record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Court.

## TITLE 17 – EFFECT OF THESE RULES ON PENDING MATTERS

### RULE 17.1 EFFECT ON PENDING MATTERS

**(a) Initial Enactment of the Rules for Discipline and Incapacity.** These Rules in their entirety will apply to pending matters on the effective date as ordered by the Supreme Court with the following exceptions:



- (1) if a matter is pending before a review committee of the Disciplinary Board or a discipline committee of the Limited License Legal Technician (LLLT) Board or the Limited Practice (LP) Board;
- (2) if a hearing has been held or is in progress and no hearing decision has been filed by the hearing officer; and
- (3) if a matter has been briefed or argued to the Disciplinary Board, LLLT Board, the LP Board, or to the Chair of any of these boards and no decision has been filed.

Under the above exceptions and under the supervision of the Supreme Court, the person or entity will continue in its responsibilities under the Rules for Enforcement of Lawyer Conduct, the Rules for Enforcement of Limited License Legal Technician Conduct, or the Rules for Enforcement of Limited Practice Officer Conduct until such time as the pending decision has been filed.

**(b) Resolution of Disagreements.** Except in matters pending before the Supreme Court, in the event of a disagreement about which rules apply, the Chief Regulatory Adjudicator will determine the appropriate procedure and has authority to enter orders as necessary and appropriate to ensure a fair and orderly proceeding.

**(c) Subsequent Amendments.** Any subsequent amendments to these Rules will apply to pending matters in their entirety on the effective date as ordered by the Supreme Court.

**(d) Matters Pending Before the Court.** Unless the Supreme Court orders otherwise, if a matter is pending before the Supreme Court, these Discipline and Incapacity Rules and any subsequent amendments apply as of their effective date.

# RULES FOR DISCIPLINE AND INCAPACITY– CONFORMING AMENDMENTS

(February 2020)

## RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

Rescinded.

## RULES FOR ENFORCEMENT OF LIMITED LICENSE LEGAL TECHNICIAN CONDUCT (ELLTTC)

Rescinded.

## RULES FOR ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOC)

Rescinded.

## GENERAL RULES (GR)

### GR 1 CLASSIFICATION SYSTEM FOR COURT RULES

General Rules GR

Code of Judicial Conduct CJC

Discipline Rules for Judges DRJ

Board for Judicial Administration Rules BJAR

Admission ~~to~~ and Practice Rules APR

Rules of Professional Conduct RPC

Limited License Legal Technician Rules of Professional Conduct (LLLT RPC)

Limited Practice Officer Rules of Professional Conduct (LPORPC)

~~Rules for Enforcement of Lawyer Conduct ELC~~ Rules for Discipline and Incapacity (RDI)

Judicial Information System Committee Rules JISCR

Rules of Evidence ER

### GR 12.4 WASHINGTON STATE BAR ACCESS TO RECORDS

#### (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 LLLT Rules of Professional Conduct, the LPO Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct Rules for Discipline and Incapacity, the Admission ~~to~~ and 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:

...

- (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 ~~ELCRDI 2.3 hearing officers-regulatory adjudicators~~, 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~~ RDI 2.4 adjudicative panels in conducting investigations, hearings or proceedings; and
- (iii) the work of the Judicial Recommendation Committee and the ~~Hearing Officer selection panel~~ RDI 2.5 Volunteer Selection Board, unless such records are expressly categorized as public information by court rule.

**GR 12.5 IMMUNITY**

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission and Practice Rules, ~~or the Rules for Discipline and Incapacity Rules for Enforcement of Lawyer Conduct, or the disciplinary rules for limited practice officers and limited license legal technicians~~, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

**GR 24 DEFINITION OF THE PRACTICE OF LAW**

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

- (1) Practicing law authorized by a limited license to practice law pursuant to Admission to and Practice Rules 3(g) (emeritus pro bono admission), 8 (special limited admissions for: a particular purpose or action or proceeding; indigent representation; educational purposes; emeritus membership; house counsel), 9 (licensed legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants), or 28 (limited license legal technicians).

**THE RULES OF PROFESSIONAL CONDUCT (RPC)**

**RPC 1.0B ADDITIONAL WASHINGTON TERMINOLOGY**

**(c)** “Limited License Legal Technician” or “LLLT” ~~denotes~~ means a person qualified by education, training, and work experience who is ~~authorized~~ licensed 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~~ means a person who is licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board to engage in the limited practice of law as specified by APR 12.

**RPC 1.6 CONFIDENTIALITY OF INFORMATION**

...

**Additional Washington Comments (21-28)**

...

[28] This Rule does not relieve a lawyer of his or her obligations under ~~Rules 5.4(b) 2.13(b) or 15.3(a)~~ of the ~~Rules for Enforcement of Lawyer Conduct~~ Rules for Discipline and Incapacity.

### RPC 1.15A SAFEGUARDING PROPERTY

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~ELC 15.7(d)~~ RDI 15.5(d) and ~~ELC 15.7(e)~~15.5(e). In the exercise of ordinary prudence, a lawyer may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~ELC 15.7(c)~~RDI 15.5(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:

- (1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ~~ELC~~ RDI 15.4 and ~~ELC 15.7(e)~~ 15.5(e).

...

- (4) The provisions of paragraph (i) do not relieve a lawyer or law firm from any obligation imposed by these Rules or the ~~Rules for Enforcement of Lawyer Conduct~~ Rules for Discipline and Incapacity.

...

#### Washington Comments

...

[7] A lawyer may not use as a trust account an account in which funds are periodically transferred by the financial institution between a trust account and an uninsured account or other account that would not qualify as a trust account under this Rule or ~~ELC 15.7~~RDI 15.5.

...

[16] The term "closing firm" as used in this rule has the same definition as in RDI 15.1~~ELPOC 1.3~~(g).

...

[18] When selecting a financial institution for purposes of depositing and holding funds in a trust account, a lawyer is obligated to exercise ordinary prudence under paragraph (i). All trust accounts must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. See ~~ELC 15.7(d)~~ RDI 15.5(d).

[19] Only those financial institutions authorized by the Legal Foundation of Washington (Legal Foundation) are eligible to offer trust accounts to Washington lawyers. To become authorized, the financial institution must satisfy the Legal Foundation that it qualifies as an authorized financial institution under ~~ELC 15.7(c)~~RDI 15.5(c) and must have on file with the Legal Foundation a current Overdraft Notification Agreement under ~~ELC~~RDI 15.4. A list of all authorized financial institutions is maintained and published by the Legal Foundation and is available to any person on request.

[20] Upon receipt of a notification of a trust account overdraft, a lawyer must comply with the duties set forth in ~~ELC~~RDI 15.4(d) (lawyer must promptly notify the Office of Disciplinary Counsel of the Washington State Bar Association and include a full explanation of the cause of the overdraft).

### RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate

- or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, ~~disabled~~ incapacitated, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

#### **RPC 5.6 RESTRICTIONS ON RIGHT TO PRACTICE**

...

##### **Comments**

[3] [**Washington revision**] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17, a lawyer's plea agreement in a criminal matter, or a stipulation under the ~~Rules for Enforcement of Lawyer Conduct~~ Rules for Discipline and Incapacity.

#### **RPC 5.8 MISCONDUCT INVOLVING LAWYERS, ~~AND LLLTs~~, AND LPOs NOT ACTIVELY LICENSED TO PRACTICE LAW**

**(b)** A lawyer shall not engage in any of the following with a lawyer, ~~or LLLT~~, or LPO who is disbarred or suspended for discipline, ~~or~~ who has resigned in lieu of disbarment or discipline, or whose license has been revoked for discipline or voluntarily cancelled in lieu of ~~discipline~~ revocation:

...

##### **Washington Comments**

[2] ~~The prohibitions in paragraph (b) of this Rule apply to suspensions, revocations, and voluntary cancellations in lieu of discipline under the disciplinary procedural rules applicable to LLLTs. See Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC) [Reserved].~~

#### **RPC 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS**

...

##### **Additional Washington Comments (4-5)**

[4] A lawyer's obligations under this Rule are in addition to the lawyer's obligations under the ~~Rules for Enforcement of Lawyer Conduct~~ Rules for Discipline and Incapacity.

#### **RPC 8.4 MISCONDUCT**

It is professional misconduct for a lawyer to:

...

**(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 RDI 1.65~~;

#### **RPC 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW**

**(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~~ Rules for Discipline and Incapacity for acts performed in his or her judicial capacity or as a candidate for judicial office unless judicial discipline is imposed for that conduct by the Commission on Judicial Conduct or the Supreme Court. Disciplinary authority should not be exercised for the identical conduct if the violation of the Code of Judicial Conduct pertains to the role of the judiciary and does not relate to the judge's or justice's fitness to practice law.

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

### LLLT RPC 1.0B ADDITIONAL TERMINOLOGY

(f) "Limited License Legal Technician" or "LLLT" ~~denotes~~ means a person qualified by education, training, and work experience who is ~~authorized~~ licensed to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(g) "Limited Practice Officer" or "LPO" means a person who is licensed to engage in the limited practice of law as specified by APR 12.

(g)(h) "ELLLTCRDI" denotes the Washington Supreme Court's Rules for Enforcement of Limited License Legal Technician Conduct Rules for Discipline and Incapacity.

### LLLT RPC 1.15A SAFEGUARDING PROPERTY

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~LLLT REC 15.7(d)~~ RDI 15.5(d) and ~~LLLT REC 15.7(e)~~ 15.5(e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~LLLT REC 15.7(e)~~ RDI 15.5(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

- (1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Limited License Legal Technician's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ~~LLLT REC RDI 15.4~~ and ~~LLLT REC 15.7(e)~~ 15.5(e).

...

- (4) The provisions of paragraph (i) do not relieve an LLLT or law firm from any obligation imposed by these Rules or the ~~LLLT REC~~ RDI.

### LLLT RPC 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT

(a) An LLLT or LLLT firm shall not share legal fees with anyone who is not a LLLT, except that:

- (1) an agreement by an LLLT with the LLLT's firm, partner, or LLLT associate may provide for the payment of money, over a reasonable period of time after the LLLT's death, to the LLLT's estate or to one or more specified persons;
- (2) an LLLT who purchases the practice of a deceased, ~~disabled~~ incapacitated, or disappeared LLLT or lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that LLLT or lawyer the agreed-upon purchase price;

...

### LLLT RPC 5.8 MISCONDUCT INVOLVING LLLTS, AND LAWYERS, AND LPOS NOT ACTIVELY LICENSED TO PRACTICE LAW

(b) An LLLT shall not engage in any of the following with ~~an LLLT or a lawyer, LLLT, or LPO~~ who is disbarred or suspended for discipline, ~~or who has resigned in lieu of disbarment or discipline,~~ or whose license has been revoked for discipline or voluntarily canceled in lieu of discipline revocation:

...

## LLLT RPC 8.4 MISCONDUCT

It is professional misconduct for an LLLT to:

...

(f) violate a duty or sanction imposed by or under the ~~LLLT REC RDI~~ in connection with a disciplinary matter; including, but not limited to, the duties cataloged at ~~LLLT REC RDI 1.65~~;

...

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

### LPORPC 1.0 TERMINOLGY

(f) “Limited Practice Officer” or “LPO” means a person ~~who is licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board to engage in the limited practice of law as specified by APR 12.~~

### LPORPC 1.8 UNAUTHORIZED PRACTICE OF LAW

An LPO shall not:

...

(c) select, prepare, or complete documents authorized by APR 12 for or together with ~~any person whose an LPO certification who has been is~~ disbarred, revoked, or suspended for discipline, or who has resigned in lieu of discipline, or whose license has been revoked for discipline or voluntarily cancelled in lieu of revocation, if the LPO knows, or reasonably should know, of such disbarment, revocation, or suspension, resignation, or cancellation; or

...

### LPORPC 1.10 MISCONDUCT

It is professional misconduct for an LPO to:

...

(f) violate a duty or sanction imposed by or under ~~the Rules for Enforcement of Limited Practice Officer Conduct~~ Rules for Discipline and Incapacity in connection with a disciplinary matter, including, but not limited to, the duties cataloged at ~~ELPOCRDI 1.65, 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 ELPOCRDI~~;

### LPORPC 1.12A SAFEGUARDING PROPERTY

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation. In the exercise of ordinary prudence, the LPO or Closing Firm may select any bank, savings bank, credit union or savings and loan association that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, is authorized by law to do business in Washington and has filed the agreement required by ~~rule RDI 15.4 of the Rules for Enforcement of Lawyer Conduct.~~ Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

- (1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer’s Trust Account or IOLTA. The interest ~~accruing~~ earned on the IOLTA accounts, ~~net of reasonable check and deposit processing charges which may only include items deposited charge,~~

~~monthly maintenance fee, per item check charge, and per deposit charge, must shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with RDI 15.4 and 15.5(e). Any other fees and transaction costs must be paid by the LPO or Closing Firm. An LPO or Closing Firm may, but shall not be required to, notify the parties to the transaction of the intended use of such funds.~~

## **ADMISSION AND PRACTICE RULES**

### **APR 1 IN GENERAL; SUPREME COURT; PREREQUISITES TO THE PRACTICE OF LAW; COMMUNICATIONS TO THE BAR; CONFIDENTIALITY; DEFINITIONS**

#### **(d) Confidentiality. ...**

- ~~(5) Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, the nature of the incapacity and all application records under this rule, including all supporting documentation and related investigation files and documents are confidential and shall be privileged against disclosure. The fact and date of placement in incapacity inactive status shall be subject to disclosure.~~

### **APR 5 PREADMISSION REQUIREMENTS: OATH: RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE LAW**

#### **(h) Oath for LPOs—Content of Oath.**

...

3. I will abide by the Limited Practice Officer Rules of Professional Conduct ~~and Rules for Enforcement of Limited Practice Officer Conduct~~ approved by the Supreme Court of the State of Washington.

### **APR 8 NONMEMBER LAWYER LICENSES TO PRACTICE LAW**

#### **(c) Exception for Indigent Representation. ...**

- (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~~ Rules for Discipline and Incapacity and to the Rules of Professional Conduct.

...

#### **(f) Exception for House Counsel. ...**

(v) ...

- (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~~ Rules for Discipline and Incapacity, 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.

### **APR 9 LICENSED LEGAL INTERNS**

#### **(d) Application. ...**

- (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~~ Rules for Discipline and Incapacity 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~~ result in 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.



...

**(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~~ Rules for Discipline and Incapacity. In addition to the duties stated or implied above, the supervising lawyer:

#### **APR 12 LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS**

##### **(b) Limited Practice Board.**

...

###### *(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)~~ Rules for Discipline and Incapacity.
- (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.

#### **APR 14 LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS**

##### **(c) Procedure. ...**

- (3) Filing with the Bar in writing his or her address in the State of Washington, or the name and address of his or her registered agent as provided in APR 13, together with a statement that the applicant has read the Rules of Professional Conduct and ~~Rules for Enforcement of Lawyer Conduct~~ Rules for Discipline and Incapacity, is familiar with their contents and agrees to abide by them.

...

**(e) Regulatory Provisions.** A Foreign Law Consultant shall be subject to the ~~Rules for Enforcement of Lawyer Conduct~~ Rules for Discipline and Incapacity 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.

#### **APR 15 CLIENT PROTECTION FUND**

**(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 incapacity ~~disability~~ inactive

must pay restitution to the Fund in full prior to returning to Active status, unless the ~~attorney~~ licensed legal professional 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-incapacity~~ 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 ~~3090~~ 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 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.

#### **APR 15 CLIENT PROTECTION FUND (APR 15) PROCEDURAL REGULATIONS**

##### **REGULATION 6: PROCEDURES**

###### **(i) Deferred Disciplinary Proceedings; Lawyer, LLLT or LPO on ~~Disability-Incapacity~~ Inactive Status.**

- (1) If an application relates to a lawyer, LLLT or LPO on ~~disability-incapacity~~ inactive status, and/or a disciplinary proceeding or investigation is deferred due to a lawyer's, LLLT's or LPO's transfer to ~~disability-incapacity~~ 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-incapacity~~ inactive status.
- (2) A lawyer, LLLT or LPO on ~~disability-incapacity~~ inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the ~~Rules for Enforcement of Conduct Rules for Discipline and Incapacity~~ 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-incapacity~~ inactive status be reviewed.

##### **APR 22.1. REVIEW OF APPLICATIONS**

**(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 section (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 section (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.

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.

#### **APR 23. CHARACTER AND FITNESS BOARD**

**(f) Disqualification.** A Character and Fitness Board member must adhere to Rule 2.11 of the Code of Judicial Conduct regarding disqualification, including ~~In the event a grievance~~ when a complaint 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.

#### **APR 24.1. HEARING PROCEDURE**

**(f) Independent Medical Examination.** An independent medical examination may be requested by the Character and Fitness Board only when a basis for an inquiry by the Character and Fitness Board exists under Rule 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 findings which report shall be provided to the Applicant and his or her counsel, Bar Counsel and the Character and Fitness Board.
- (5) Confidentiality of IME: 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 thirty (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.

## APR 24.2. DECISION AND RECOMMENDATION

**(b) Action on Character and Fitness Board Recommendation.** The recommendation of the Character and Fitness Board shall be served upon the Applicant pursuant to Rule 23.5.

- (1) If the Character and Fitness Board recommends admission, the record, recommendation and all exhibits shall be transmitted to the Supreme Court for disposition.
- (2) If the Character and Fitness Board recommends against admission, the record and recommendation shall be retained in the office of the Bar unless the Applicant requests that it be submitted to the Supreme Court by filing a ~~Notice of Appeal~~ notice of appeal with the Character and Fitness Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Applicant ~~so requests~~ files a notice of appeal, the Character and Fitness Board will transmit the record, including the transcript, exhibits, and recommendation shall be transmitted to the Supreme Court for review and disposition. The Applicant must pay to the Supreme Court any fee required by the Court in connection with the appeal and review.
- (3) If the Character and Fitness Board recommends against admission and the Applicant does not file a notice of appeal, then the Bar shall transmit the recommendation to the Supreme Court for disposition. The Supreme Court may request that the Bar transmit all or part of the record for the Court's consideration, or take such other action, including scheduling the matter for appeal, as it deems appropriate based on the record and recommendation. If the Supreme Court approves the Board's recommendation against admission, it may enter an order to that effect and notify the Bar and the parties of the decision, without requiring further action.

**(c) Reapplication.** No application for admission or a license to practice law may be filed within a period of one year after a decision of the Character and Fitness Board recommending against admission or licensure that is not appealed to the Supreme Court, and the Bar shall maintain a record of the application, hearing and Character and Fitness Board recommendation in the Bar records.

## APR 25.1. RESTRICTIONS ON REINSTATEMENT

**(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~~ Discipline and Incapacity, 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~~ Discipline and Incapacity, 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~~ in the related disciplinary matter or a prior reinstatement proceeding 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~~ Client Protection Fund, or until periodic payment plans for costs and expenses, restitution and repayment to the ~~client protection fund~~ Client Protection Fund have been entered into by agreement between the Petitioner and disciplinary counsel or bar 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 by following the procedures set forth in RDI 13.8(i). 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 Disciplinary Board will be final.~~

#### **APR 25.5. ACTION BY CHARACTER AND FITNESS BOARD**

**(d) Action on Character and Fitness Board Recommendation.** The recommendation of the Character and Fitness Board shall be served upon the Petitioner pursuant to Rule 23.5.

- ~~(1) If the Character and Fitness Board recommends reinstatement, the record, and recommendation and all exhibits shall be transmitted to the Supreme Court for disposition.~~
- ~~(2) If the Character and Fitness Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar unless the Petitioner requests that it be submitted to the Disciplinary Board by filing with the Clerk of the Disciplinary Board a request for Disciplinary Board review files a notice of appeal with the Character and Fitness Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Petitioner so requests files a notice of appeal, the record, including the transcript, exhibits, and recommendation shall be transmitted to the Disciplinary Board Supreme Court for review and disposition and the review will be conducted under the procedure of rules 11.9 and 11.12 of the Rules for Enforcement of Lawyer Conduct. The Petitioner must pay to the Supreme Court any fee required by the Court in connection with the appeal and review.~~
- ~~(3) If the Character and Fitness Board recommends against reinstatement and the Petitioner does not so request file a notice of appeal, then the Bar shall transmit the recommendation to the Supreme Court for disposition. The Supreme Court may request that the Bar transmit all or part of the record for the Court's consideration and take such other action as it deems appropriate based on the record and recommendation, including scheduling the matter for appeal. the record and The recommendation and all related records shall be retained in the records of the Bar and the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Character and Fitness Board. If the Supreme Court approves the Board's recommendation against admission, it may enter an order to that effect and notify the Bar and the parties of the decision, without requiring further action.~~

~~**(e) Action on Disciplinary Board Recommendation.** The recommendation of the Disciplinary Board shall be served upon the Petitioner. If the Disciplinary Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Disciplinary Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar unless the Petitioner requests that it be submitted to the Supreme Court by filing with the Clerk of the Disciplinary Board a request for Supreme Court review within 30 days of service of the recommendation. If the Petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Petitioner does not so request, the record and the recommendation shall be retained in the records of the Bar and the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Disciplinary Board under the procedure of rule 13.9 of the Rules for Enforcement of Lawyer Conduct.~~

#### **APR 28 LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS**

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##### **B. Definitions**

(4) "Limited License Legal Technician" (LLL) means a person qualified by education, training, and work experience who is ~~authorized~~ licensed to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations.

### **APR 29 LAWYER TRUST ACCOUNT DECLARATION [NEW]**

Every active lawyer must annually certify compliance with Rules 1.15A and 1.15B of the Rules of Professional Conduct. The certification must be filed in a form and manner as prescribed by the Bar and must include the bank where each account is held and the account number. Failure to certify may result in suspension from practice under APR 17.

### **APR 30 VOLUNTARY INCAPACITY INACTIVE STATUS [NEW]**

**(a) Basis.** Except for matters governed by Title 8 of the Rules for Discipline and Incapacity, when a licensed legal professional has a mental or physical condition or disability that adversely affects the licensed legal professional's capacity to practice law, the licensed legal professional may submit an application to the Bar to have the license to practice law placed in incapacity inactive status if all requirements of this Rule are met.

**(b) Requirements.** In order to qualify for incapacity inactive status under this Rule, the licensed legal professional must:

- (1) have a mental or physical condition or disability that adversely affects the licensed legal professional's capacity to practice law;
- (2) not have any pending discipline or incapacity matters under the Rules for Discipline and Incapacity or have knowledge that a discipline matter is imminent;
- (3) acknowledge that while on incapacity inactive status, the licensed legal professional will be prohibited from practicing law; and
- (4) acknowledge that in order to return from incapacity inactive status, the licensed legal professional will be required to demonstrate that the basis for the incapacity has been resolved as set forth in RDI 8.11.

**(c) Application.** The application must be in a form and manner as prescribed by the Bar and must state the nature of the licensed legal professional's incapacity supported by current medical, psychological, or psychiatric evidence.

**(d) Placement in Incapacity Inactive Status.** Upon the licensed legal professional's compliance with sections (b) and (c) of this Rule, the Bar will place the licensed legal professional's license in incapacity inactive status. The licensed legal professional must comply with all duties under Title 14 of the Rules for Discipline and Incapacity. The Bar must comply with the notice requirements of RDI 3.8.

**(e) Confidentiality.** Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, the nature of the incapacity and all application records under this rule, including all supporting documentation and related investigation files and documents are confidential and shall be privileged against disclosure. The fact and date of placement in incapacity inactive status shall be subject to disclosure.

**(f) Return from Incapacity Inactive Status.** In order to return to a prior or other license status from incapacity inactive status, the licensed legal professional must demonstrate that the basis for the incapacity has been resolved as set forth in RDI 8.11.



# Rules for Discipline and Incapacity: Summary of Rule Changes

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## **PURPOSE OF SUMMARY OF RULE CHANGES**

The purpose of this *Summary of Rule Changes* is to provide volunteer reviewers with a more detailed explanation of various provisions of the new Rules for Discipline and Incapacity (RDI), as well as the substantive conforming amendments to other court rules. For the RDI, this document includes a general summary for each individual title, followed by itemized, rule-by-rule explanations with, where appropriate, comparisons to relevant or similar provisions in the Rules for Enforcement of Lawyer Conduct (ELC). Volunteer reviewers are encouraged to reference this document when reading through the rules to ascertain where individual provisions are derived from in the ELC, if applicable, and to understand the reasoning behind specific provisions in the rules.

In order to best effect the new RDI, conforming amendments are also necessary to other sets of rules that either cross-reference or give effect to the ELC, Rules for Enforcement of Limited Practice Officer Conduct (ELPOC) or Rules for Enforcement of Limited License Legal Technician Conduct (ELLTLC). Most of the conforming amendments are technical amendments that change citations and references of the discipline rules to the new Rules for Discipline and Incapacity. In addition, the names of entities and other terminology is amended to reflect the new terminology used in the RDI. There are also corrections to other rules where errors or omissions were found. There are also a small number of substantive changes in the conforming amendments and they are identified following the explanation of the new RDI.

## **SUMMARY OF THE RDI AND COMPARISON TO THE ELC**

### **TITLE 1 SCOPE, JURISDICTION, DEFINITIONS, AND DUTIES**

#### **1. Summary**

Title 1 of the RDI identifies the purpose of the RDI, who is subject to the jurisdiction of the RDI, and disciplinary authority in general. In addition, it provides a list of definitions, acronyms, and words of authority, with each list moved into its own rule. Terms were added and deleted as necessary. Very little substantive change from Title 1 of the ELC was otherwise made, except to make clear that the rules govern all licensed legal professionals.

#### **2. Itemized Rule Changes**

**RDI 1.1 (Scope of Rules)**: The rule is derived from ELC 1.1 and 1.2 and reorganized for clarity. Because the scope is not limited to disciplinary sanctions as stated in ELC 1.1, the provision was drafted with a broader purpose statement. Section (b)(3) clarifies that persons who were previously admitted to practice law are subject to these Rules if the conduct occurred while licensed to practice law. Otherwise, no substantive changes were made.

**RDI 1.2 (No Statute of Limitation)**: The rule is derived from ELC 1.4 with no substantive change.

RDI 1.3 (Definitions): The rule is derived from ELC 1.3. Terms no longer used under the Rules, e.g. “Board” and “Chair,” were deleted. New terms were added such as “hearing transcript,” “licensed legal professional,” and “suspension.” Of note, certain terminology was replaced with new terminology, e.g. “grievant” is now “complainant” and “Association” is now “Bar.” Because the term “conviction” is used in more than one title, the definition is now in Title 1 and was derived from ELC 7.1. The definition of “respondent” in ELC 1.3(m) was moved to RDI 2.12.

RDI 1.4 (Acronyms): The rule is derived from ELC 1.3 with additional acronyms added as necessary.

RDI 1.5 (Words of Authority): The rule is derived from ELC 1.3 with no substantive change.

RDI 1.6 (Duties Imposed by These Rules): The rule is derived from ELC 1.5. The duties were reorganized to more closely mirror the organization of the Rules. New provisions were added to make the list of duties more comprehensive, although still not exhaustive.

## **TITLE 2 ORGANIZATION AND STRUCTURE**

### **1. Summary**

Title 2 creates the framework for the discipline and incapacity system; it identifies all entities and individuals who play a role in the system (except for the complainant). The Title replaces the Board of Governors (BOG) with the Washington State Bar Association (Bar) and deletes or modifies rules stating or suggesting the BOG plays a role in the system. Title 2 creates a new office within the Bar called the Office of the Regulatory Adjudicator (ORA), which will be staffed primarily by professional adjudicators. The ORA will consist of professional regulatory adjudicators (replacing hearing officers) and largely volunteer adjudicative Appeal Panels (replacing the Disciplinary Board) and Authorization Panels (replacing Review Committees). The Title also identifies the Office of Disciplinary Counsel.

Under RDI Title 2, significant revisions from the ELC include that the conflicts review officer was replaced with special conflicts disciplinary counsel, who would have the same powers and duties as disciplinary counsel to review, investigate and prosecute matters involving conflicts. In addition, almost all volunteers under these Rules will be appointed by the Supreme Court based on recommendations by a Supreme Court board staffed by the ORA called the Volunteer Selection Board. The exception is adjunct disciplinary counsel, who would still be appointed by the BOG. Finally, most privilege and confidential information provisions were consolidated under one rule in this Title.

### **2. Itemized Rule Changes**

RDI 2.1 (Supreme Court): The rule is derived from ELC 2.1 with no substantive change.

RDI 2.2 (Washington State Bar Association): The rule is derived from ELC 2.2. The entity in this rule was changed from the BOG to the Bar because the Bar is the entity that administers these Rules and the BOG, for the most part, does not play a role in the discipline system. Other than

that, no other substantive changes were made to ELC 2.2(a)–(c). Section (d) regarding restrictions on representing respondents was moved to RDI 2.14. Section (e), regarding the Disciplinary Selection Panel, was deleted because these functions were transferred to the Volunteer Selection Board under RDI 2.5. Section (f) regarding diversity was moved to its own rule, RDI 2.7.

RDI 2.3 (Office of the Regulatory Adjudicator): This is a new rule that establishes the ORA with paid, professional regulatory adjudicators, and necessary support staff. The rule defines regulatory adjudicator, chief regulatory adjudicator, and hearing adjudicator. ELC 2.5 (Hearing Officers) is consequently deleted.

RDI 2.4 (Adjudicative Panels): This is a new rule that establishes the two adjudicative panel types—Authorization Panel and Appeal Panel—and sets forth the membership requirements for each panel including, when possible, a member of the Bar who has the same license type as the respondent. All members of a panel are volunteers except for the chair who will be a regulatory adjudicator from the ORA. The Authorization Panel considers requests for orders authorizing the filing of a statement of charges or to initiate incapacity proceedings. The Appeal Panel considers appeals and review proceedings.

Given the advent of the Appeal Panel (which replaces the Disciplinary Board) and the Authorization Panel (which replaces the review committee), both ELC 2.3 (Disciplinary Board) and ELC 2.4 (Review Committees) are deleted.

RDI 2.5 (Volunteer Selection Board): This is a new rule derived from ELC 2.2(e) (Disciplinary Selection Panel) with substantive changes. The Volunteer Selection Board will recommend all volunteers under these Rules (except for adjunct disciplinary counsel) to the Supreme Court, instead of to the BOG. The rule sets forth the composition of the Board, provides for confidential deliberations, allows for expense reimbursement, and restricts service after leaving office.

RDI 2.6 (Volunteer Adjudicator Pool): This is a new rule. Under the RDI, volunteers for the adjudicative panels under RDI 2.4 and settlement officers under RDI 10.11(h) are collectively referred to as volunteer adjudicators. Volunteer adjudicators are vetted by the Volunteer Selection Board, appointed by the Supreme Court, and assigned to a panel or as a settlement officer by the Chief Regulatory Adjudicator. The rule sets forth the composition of the pool, qualifications for volunteers who are members of the Bar, and allows for expense reimbursement.

RDI 2.7 (Diversity): This is a new rule derived from ELC 2.2(f) with no substantive change.

RDI 2.8 (Regulatory Adjudicator Conduct): This is a new rule derived from ELC 2.6 but with considerable substantive changes. Instead of identifying all the provisions of the Code of Judicial Conduct (CJC) that apply to regulatory adjudicators, this rule states that the CJC applies to regulatory adjudicators in the same manner as the CJC applies to judges pro tempore. The rule identifies several exceptions. In addition, the rule explicitly prohibits a regulatory adjudicator from reviewing that adjudicator's own decision or order.

RDI 2.9 (Office of Disciplinary Counsel): This is a new rule derived in part from ELC 2.8. The ELC establish disciplinary counsel as the primary counsel in matters under the ELC, whereas this rule establishes the Office of Disciplinary Counsel (ODC). The rule makes clear that the Chief Disciplinary Counsel and all other ODC staff are employed by the Bar. It removes the Board of Governors (BOG) from the employment provisions because the BOG is not involved in the employment of the Chief Disciplinary Counsel.

RDI 2.10 (Special Conflicts Disciplinary Counsel): This is a new rule derived in part from ELC 2.7 and 2.8. Under the ELC, there is a conflicts review officer who initially reviews and investigates matters involving conflicts. If the matter proceeds beyond an initial investigation, it is then assigned to a special disciplinary counsel. Under the RDE, the matter is assigned to special conflicts disciplinary counsel (SCDC) who takes on both roles and has the same powers and duties as disciplinary counsel. This process is more efficient and prevents delay. In addition to the conflicts contemplated under current ELC 2.7, the Chief Disciplinary Counsel would refer a matter to an SCDC when, in the Chief's discretion, it appears appropriate to promote the appearance of impartiality or to serve the ends of justice. The Chief Disciplinary Counsel refers a matter to be handled by an SCDC to a pool of SCDCs appointed by the Court. This rule also provides for appointment and qualifications, SCDC independence, access to disciplinary information, reimbursement of expenses, and restrictions on representing respondents.

RDI 2.11 (Adjunct Disciplinary Counsel): This is a new rule derived from ELC 2.9. The purpose and function of adjunct disciplinary counsel (ADC) is unchanged. This rule has several new provisions including a standard for assigning matters to an ADC and provisions regarding appointment and qualifications, access to disciplinary information, reimbursement of expenses, and restrictions on representing respondents.

RDI 2.12 (Respondent): This rule is derived from ELC 1.3(m) (definition) and ELC 2.13 with slight modifications to extend the definition of respondent to all licensed legal professionals and to conform the language of (d) to other similar provisions in the RDI. New section (c) is derived from ELC 10.11(h).

RDI 2.13 (Privileges): Derived from ELC 2.12, 5.4, and 5.6, this new rule consolidates privileges and confidentiality provisions. Section (a) (Communications Privileged) is derived from ELC 2.12 with no substantive changes. Sections (b)-(e) regarding attorney-client privilege and confidentiality are derived from ELC 5.4 with no substantive changes, but the rules are reorganized for clarity. Section (f) (Disclosure of Confidential Information) is derived from ELC 5.6 provisions regarding authorization to release confidential information with no substantive changes other than removing two factors to be considered by the adjudicator (ELC 5.6(b)(6)(B) and (E)).

RDI 2.14 (Restrictions on Representing or Advising Individuals Under These Rules): This rule is derived from ELC 2.14 with no substantive change.

RDI 2.15 (Removal of Appointees): This rule is derived from ELC 2.10 with no substantive change.

## **TITLE 3 DISCIPLINARY AND INCAPACITY INFORMATION**

### **1. Summary**

Title 3 identifies public and confidential events and information under the RDI. Also included in Title 3 are the conditions and procedures for releasing confidential information and for protecting otherwise nonpublic information from disclosure. In addition, Title 3 includes procedures for providing notice of discipline and procedures for maintenance and destruction of records created under the RDI.

Title 3 reorganizes and consolidates many sections of rules into one rule and also made some sections into their own rules. Of note, ELC Title 3 contains multiple provisions scattered throughout the title regarding release of information either with or without notice to the respondent. A major innovation to Title 3 is taking those provisions and consolidating them into two rules: one regarding release without notice, RDI 3.5, and another regarding release with notice, RDI 3.7. Title 3 of the RDI makes it easier to identify public versus confidential information and to find information and applicable procedures.

### **2. Itemized Rule Changes**

**RDI 3.1 (Confidentiality)**: This rule is derived from ELC 3.2(a), 3.2(b), 3.2(f), 3.4(a), and 3.4(n) with no substantive changes. RDI 3.1 contains the general and overarching principles of the title. Section (a), derived from ELC 3.2(a) and 3.4(a), details generally the obligations of the Bar with respect to matters and information made confidential under the rules. Section (b) is derived from ELC 3.2(b) and relates to information identified as client privileged information. Section (c) is derived from ELC 3.4(n) with no substantive changes. Section (d), derived from ELC 3.2(f), describes the consequences of wrongful release.

**RDI 3.2 (Public and Confidential Events)**: This is a new rule derived in part from ELC 3.1(a) but redrafted for clarification. This rule was created to detail the confidentiality of certain events. RDI 3.2 identifies events and proceedings that are open to the public and those that are not. The majority of the rule is derived from ELC 3.1(a) with no substantive changes. RDI 3.2(b), regarding events that are closed to the public, now includes a list of the most common events that are confidential. New section (c) clarifies that Supreme Court proceedings are public unless otherwise ordered or made confidential under the rules.

**RDI 3.3 (Public and Confidential Information)**: This rule is derived in part from ELC 3.1(b) and 3.2(a). Similar to RDI 3.2, a new rule was created to identify that information which is public and that which is confidential. Information that was scattered throughout Title 3 was consolidated into this rule to identify public versus confidential information. Thus, RDI 3.3(a) regarding public information is derived from ELC 3.1(b), 3.3(b), 3.3(c), 3.3(d), and 5.1(e). Likewise, RDI 3.3(b) regarding confidential information is derived from ELC 3.2 and 5.1(e). Unlike ELC 3.2(a), RDI 3.3(b) includes a non-exhaustive list of information that is confidential rather than a general statement that anything not public under RDI 3.3(a) is confidential.

RDI 3.4 (Protective Orders): This rule is derived in concept from ELC 3.2(e). For clarity, the information about and procedures for obtaining protective orders is now in one rule. While the purpose for a protective order remains unchanged, the procedure for obtaining a protective order is simplified. A motion is made following the procedures of RDI 10.8. Instead of providing for temporary protective orders, the information is protected while the motion is pending. An Appeal Panel reviews a decision granting or denying a protective order.

RDI 3.5 (Release of Confidential Information Without Notice): This rule is derived from ELC 3.4(b), 3.4(c), and 3.4(g)-(m). RDI 3.5 consolidates all provisions of ELC Title 3 regarding permissible release of confidential information without notice into one rule.

RDI 3.6 (Release of Confidential Information With Notice): This rule is derived from ELC 3.4(d) and 3.4(e). RDI 3.6 consolidates all provisions of ELC Title 3 that provide for release of confidential information only after notice. The only substantive change is that a special conflicts disciplinary counsel assigned to a matter may make decisions under section (d) of this rule when requested by the Chief Disciplinary Counsel or when the Chief Disciplinary Counsel is unable to act.

RDI 3.7 (Public Statement of Concern): This is a new rule derived from ELC 3.4(f) with no substantive changes. The new rule clarifies the specific action taken by the Bar when a statement of concern is withdrawn.

RDI 3.8 (Notice of Disciplinary Action, Resignation in Lieu of Discipline, Interim Suspension, or Placement in Incapacity Inactive Status): RDI 3.8 is derived from ELC 3.5. RDI 3.8(a) consolidates all notices to the courts and the American Bar Association (ABA) into one section. RDI 3.8(b) regarding the content of the notice is simplified by removing the procedures for review and modification of the notice published by the Bar. Because the Bar notice contains only the most basic identifying and summary information with links to the documents containing the details (including the rule violations), there is no longer a need for such procedures. In addition, the requirement that the Bar provide notice to the news media was removed from the rule given that the information is published to the Bar's website.

RDI 3.9 (Maintenance of Records): This rule is derived from ELC 3.6. Section (a) contains a more complete list of those records made permanent under the Rules. Section (b), derived from ELC 3.6(b), is reorganized for clarity. The rule eliminates ELC 3.6(c) regarding retention of anonymized dockets on destroyed investigation files because it is unclear what purpose this rule serves and, for practical purposes, the rule remains unused. ELC 3.6(e), which provides for review of decisions regarding requests for destruction, was likewise deleted because such processes are better left to internal decision-making rather than adjudicative decision-making. Finally, ELC 3.6(f) regarding destruction of deceased lawyer files was deleted because it is in the public interest to maintain permanent public records regardless of whether the respondent is deceased.

RDI 3.10 (No Retroactive Effect): This is a new rule that preserves the public or confidential nature of information under prior discipline rules.

## **TITLE 4 GENERAL PROCEDURAL RULES**

### **1. Summary**

Title 4 contains general procedural rules governing filing and service of documents, as well as miscellaneous provisions pertaining to issuance of subpoenas for use in another jurisdiction's proceeding, enforcement of subpoenas, service and filing by inmates, and redaction of personal identifiers. The structure of Title 4 is identical to ELC Title 4, except for the elimination of ELC 4.8 (Declarations in Lieu of Affidavits) and consequent renumbering of Rules 4.9 and 4.10. ELC 4.8 is eliminated since any rule that mentions affidavits also allows for declarations.

### **2. Itemized Rule Changes**

RDI 4.1 (Service of Papers): This rule is derived from ELC 4.1. Section (a) has been simplified to provide that whenever service is required under the Rules, it must be accomplished in accordance with the procedures specified in RDI 4.1. The primary difference from the ELC is the authorization of electronic service on consent of the parties and specification of the procedural requirements for electronic service in section (b). Provisions on service by mail, by delivery, personal service, service on a guardian, and proof of service remain with only clarifying revisions.

RDI 4.2 (Filing; Orders): This rule is derived from ELC 4.2. Section (a) on filing has been reorganized for clarity; it now specifies the Clerk's deadline for timely filing and expressly authorizes the Clerk to reject noncompliant filings. Section (a) also encourages the parties to file documents electronically through use of systems approved by the Clerk. Other differences from the ELC are clarifying and cosmetic only, with the addition of provisions regarding service of orders electronically, including service on respondents not licensed in Washington.

RDI 4.3 (Papers and Documents in Proceedings): This rule is derived from ELC 4.3 with clarifying changes, as well as the addition of a font-size requirement for pleadings, documents, and other papers filed in proceedings.

RDI 4.4 (Computation of Time): This rule is derived from ELC 4.4 with no substantive change.

RDI 4.5 (Extension or Reduction of Time in Proceedings): This rule is derived from ELC 4.5. This rule represents a change from ELC 4.5, which authorized parties to stipulate to extensions and reductions of time. This rule provides that extensions in proceedings must be authorized by the ORA on its own initiative or on motion of the parties.

RDI 4.6 (Subpoena Under the Law of Another Jurisdiction): This rule is derived from ELC 4.6. This rule includes clarifying revisions as well as the addition of a procedural requirement that a person seeking a subpoena for use in a proceeding in another jurisdiction must certify that the subpoena has been approved or authorized under the law of the other jurisdiction.

RDI 4.7 (Enforcement of Subpoenas): This rule is derived from ELC 4.7. This rule changes and simplifies the process for seeking enforcement of a subpoena issued in disciplinary matters. Prior procedure required commencement of a proceeding via petition in superior court. This process



proved cumbersome, and it granted authority to superior courts in disciplinary matters, which for policy and practical reasons generally is nearly always reserved for the Supreme Court. This rule provides that noncompliance with a subpoena without adequate excuse is deemed contempt of the Supreme Court, and establishes a process for enforcement of subpoenas through a petition for an order to show cause filed with the Supreme Court.

RDI 4.8 (Service and Filing by an Inmate Confined in an Institution): This rule is derived from ELC 4.9 with no substantive change.

RDI 4.9 (Redaction or Omission of Personal Identifiers). This rule is derived from ELC 4.10. Changes clarify which documents are subject to redaction (in lieu of non-specific references to the General Rules) and specify who is responsible for making the redactions. Identification of the specific documents subject to redaction was formulated in consultation with the Supreme Court Clerk's office.

## **TITLE 5 REVIEW, INVESTIGATION, AND COMPLAINT PROCEDURES**

### **1. Summary**

Title 5 governs review, investigation, and dispositions of complaints and is modeled generally after current ELC Title 5. The rules were reordered to clarify the steps in review, investigation, and closure of complaints. Title 5 further clarifies the process for obtaining an order for the filing of a statement of charges, formerly called an order to hearing. Among several conceptual changes reflected in Title 5, key terms under the ELC of "grievance," "grievant," and "file dismissal" are replaced with "complaint," complainant," and "file closure." The Title further makes clear that ODC reviews and investigates complaints against all license types and reframes the role of complainants, who have extensive rights in investigations under the current ELC, to a more limited role that better reflects their position under the Rules as witnesses.

In an effort to simplify our processes, the Title further eliminates much of the work of review committees. Specifically, the Title simplifies current dismissal review procedures, instead allowing for closure of files without external or adjudicative review while maintaining the internal authority to reopen a complaint in appropriate circumstances, such as when a complainant provides additional, significant information. Title 5 further eliminates other review committee functions, including the issuance of admonitions, the issuance of advisory letters, orders of deferral, orders to withhold, etc. The only remaining function of review committees would be performed by a new review body, an Authorization Panel, which would consider recommendations from disciplinary counsel for the filing of a statement of charges or the initiation of incapacity proceedings. RDI 2.4(b) describes Authorization Panel composition and authority.

Of note, existing ELC 5.4(a)-(b) relating to the privilege against self-incrimination and attorney-client privilege was moved to Rule RDI 2.13. Existing ELC 5.4(b) prohibiting disclosure of client information identified as confidential without client consent is moved to new RDI 3.1(b).

## 2. Itemized Rule Changes

**RDI 5.1 (Investigative Authority)**: This is a new rule derived in part from ELC 5.1(a) and 5.3(a). The term “grievance” under the ELC is renamed “complaint.” The rule sets forth disciplinary counsel’s authority to review and investigate complaints and states who may file a complaint.

**RDI 5.2 (Complainant Consent to Disclosure and Exceptions)**: This is a new rule derived in part from ELC 5.1 and 5.2 with significant revisions. RDI 5.2(a) combines ELC 5.1(b)(1) and 5.1(b)(3) regarding a complainant’s consent to disclosure of the complaint and information relating to the complaint. Section (b), derived from ELC 5.1(b)(4), clarifies that consent to disclosure does not waive any privilege in any other forum. Section (c), derived from ELC 5.1(b)(2) and ELC 5.1(c)(3), provides a standard for when disciplinary counsel may withhold information. However, ELC 5.1(c)(3), which provides for challenges to withholding decisions, is deleted given the elimination of review committees. Section (d) is derived from ELC 5.2 regarding confidential sources. Notably, the provisions of ELC 5.1(c) regarding grievant rights are deleted given that the rules reframe the complainant’s role to one of a witness. Complainants will no longer be entitled to a respondent’s preliminary response given their more limited role. For more information on when certain notices must be provided to the complainant, see new RDI 5.12.

**RDI 5.3 (Request for Preliminary Response)**: This rule is derived from ELC 5.3(b) with changes to simplify the rule but no substantive changes.

**RDI 5.4 (Deferral by Disciplinary Counsel)**: This rule is derived from ELC 5.3(d). The rule eliminates review committee review of deferral decisions.

**RDI 5.5 (Vexatious Complainants)**: This rule is derived from ELC 5.1(e). The rule is reorganized for clarity and includes new substantive provisions. New section (f) allows for the issuance of a temporary order to allow disciplinary counsel to refuse to review or investigate complaints from an alleged vexatious complainant during the pendency of the motion. New section (g) clarifies what the ORA’s ruling on the motion must include.

**RDI 5.6 (Investigative Inquiries and Objections)**: This rule is derived from ELC 5.3(g) on investigative inquiries and 5.3(i) on objections with minor changes.

**RDI 5.7 (Investigative Subpoenas and Depositions)**: This rule is derived from ELC 5.5 with minor changes. The new rule consolidates the procedure for objections to subpoenas or inquiries into section (c). The obligation to cooperate under ELC 5.5(d) is governed by RDI 5.9.

**RDI 5.8 (Review of Objections)**: This rule is derived from ELC 5.6 with several substantive changes. First, the rule incorporates objections under RDI 5.7 by those who are not licensed legal professionals into its processes, rather than making RDI 5.8 applicable to licensed legal professionals only. Also, the ORA is the body considering all objections under the rule instead of the chief hearing officer. The rule retains the factors to be considered for objections and interim review of decisions. Review of disciplinary counsel requests for authorization to disclose confidential information is governed by new RDI 2.13(f).

RDI 5.9 (Cooperation): The rule is derived from ELC 5.3(f) and 5.5(d) and clarifies exceptions. The authority of disciplinary counsel to conduct noncooperation depositions under ELC 5.3(h) is retained. Costs for noncooperation depositions is increased from \$500, the amount adopted in 2002, to \$750 to account for the increased cost of funding the discipline system. Failure to cooperate continues to be a ground for discipline.

RDI 5.10 (Reporting Investigations to an Authorization Panel): This is a new rule derived conceptually from ELC 5.7 regarding a request to order a hearing, but the rule retitles the request to a request for an order authorizing the filing of a statement of charges or the initiation of incapacity proceedings. It further establishes procedures for a response and reply and standards for issuing the order. Action by an Authorization Panel is limited to approval or denial of the request. An order denying the request must include an explanation of the reasons for the denial. The orders are not subject to review, except that orders denying the request with prejudice are transmitted to the Court.

RDI 5.11 (Closure by Disciplinary Counsel): This rule is derived from ELC 5.7(a). However, “dismissal” under ELC 5.7(a) is renamed “closure.” ELC 5.7(b), which provides for review of a dismissal decision, is eliminated, but any additional information received on a closed matter may be considered for appropriate action. The rule retains the ability of disciplinary counsel under current ELC 5.3(e) to investigate if the complainant withdraws a grievance.

RDI 5.12 (Notification): This is a new rule derived in part from ELC 5.1(c) with significant revisions. The rule eliminates many of the grievant rights now found in ELC 5.1(c) (e.g. right to receipt of grievance, to communicate with person assigned, to receipt of response), but requires notification of closure, any report to an Authorization Panel, diversion, or a resolution under Title 9.

## **TITLE 6 DIVERSION**

### **1. Summary**

Title 6 describes the kinds of cases for which diversion is appropriate and the applicable procedures. Material has been reorganized and procedures clarified and streamlined. ELC 6.7 was eliminated as unnecessary. Confidentiality rules were collected into new RDI 6.8, which also includes a provision for discretionary release.

### **2. Itemized Rule Changes**

RDI 6.1 (General): This a new rule that defines what diversion is, which was only implied in the current rule, and provides a short description of process. Timing information in ELC 6.1 is now in RDI 6.1(b); optional diversion terms found in ELC 6.1 were moved to RDI 6.4(c). Disciplinary counsel now “offers” rather than “refers to” diversion, because the term more accurately describes the process.

RDI 6.2 (Less Serious Misconduct): This rule is derived from ELC 6.2 with three substantive changes. First, the provision that “less serious misconduct” would not apply if the respondent had been sanctioned in the last three years was removed to allow for diversion if a respondent previously successfully completed diversion for unrelated conduct. Second, the reference to “adequate provisions for restitution”, which appeared in ELC 6.2(B), as removed because the definition of less serious misconduct does not turn on the availability of restitution. The intent is not to eliminate the possibility of restitution as part of diversion. Third, a new provision, RDI 6.2(g), states that knowing and repeated practice outside of the respondent’s license type is not “less serious misconduct.”

RDI 6.3 (Factors for Diversion): This rule is derived from ELC 6.3 with little substantive change, except that factors in existing ELC 6.3(A) and (C) were combined to clarify that disciplinary counsel considers not just the presumptive sanction but the sanction that likely would be imposed after analyzing the aggravating and mitigating factors.

RDI 6.4 (Diversion Contract): This rule is derived from ELC 6.5 with minor changes but no substantive changes. This rule includes the non-exclusive list of optional diversion terms that had been in ELC 6.1. The list now includes ethics consultation and a plan for the respondent to transition out of practice.

RDI 6.5 (Declaration Supporting Diversion): This rule is derived from ELC 6.6. The option of an affidavit is eliminated. Provisions about the confidentiality of the declaration were moved to RDI 6.8.

RDI 6.6 (Status of Investigation or Proceedings During Diversion): This rule is derived from ELC 6.8. The title of the rule was expanded to include both investigations and proceedings. The rule clarifies that the complaint or proceeding is stayed rather than deferred, since deferral is a separate procedure under Title 5.

RDI 6.7 (Completion or Termination of Diversion): This rule is derived from ELC 6.9. The rule eliminates the ELC 6.9(a) requirement that a respondent provide a declaration demonstrating completion of the contract terms prior to termination. Section (a) clarifies that a respondent who successfully completes diversion cannot be subject to further disciplinary proceedings based solely on the same facts and violations as the diversion. Section (c) clarifies that, upon breach, the investigation or proceeding cannot be resumed pending review if the respondent files a timely request for review by the ORA.

RDI 6.8 (Confidentiality): This is a new rule that collects and expands on prior rules regarding confidentiality. It covers notification to complainants (ELC 6.4), notification to persons providing diversion services (previously governed in part by ELC 6.5(b)(2) and by the contract), admissibility following material breach (part of ELC 6.6), and discretionary release (previously governed by ELC 6.5(b)(7) and ELC 6.6).

## **TITLE 7 INTERIM SUSPENSION**

### **1. Summary**

Title 7 governs interim suspensions and is derived from ELC Title 7. The rules were revised primarily to improve the organization of the interim suspension rules. The various grounds for interim suspension have been combined into a single rule and there are now uniform procedures for seeking, considering, and terminating an interim suspension. The rules include a definition of an interim suspension, which does not exist in the current ELC. One significant substantive change is that interim procedures in incapacity proceedings have largely been moved to Title 8, which provides rules for interim placement on incapacity inactive status. See RDI 8.2(c), 8.3(e)(1), and 8.4(d). However, a failure to cooperate in an incapacity proceeding may still result in an interim suspension under RDI 7.2(c).

Other ELC Title 7 provisions have moved to new locations within the RDI. Namely, ELC 7.1(a)(1) (definition of conviction) was moved to RDI 1.3(f) and ELC 7.7 (Appointment of Custodian to Protect Clients' Interests) was moved to new RDI Title 16.

### **2. Itemized Rule Changes**

**RDI 7.1 (Interim Suspension)**: This is a new rule that defines “interim suspension.”

**RDI 7.2 (Grounds for Interim Suspension)**: This rule is derived from ELC 7.1(a)-(c) and 7.2(a). The rule combines the various grounds for interim suspension in a single rule. Section (e) adds a new ground for failure to comply with an obligation imposed by a probation order.

**RDI 7.3 (Interim Suspension Procedure)**: This rule is derived from ELC 7.1(d)-(e), 7.2(b), 7.5, and 7.6. RDI 7.3 provides a uniform procedure for filing and answering a petition for interim suspension and for the Supreme Court’s consideration of the petition. New section (c) ensures the maintenance by the Court of the confidentiality of information or documents upon request by a party. In an effort to simplify the process, the requirement in ELC 7.2(b)(2) that a show cause order be issued was not incorporated into the rule; instead, the matter is considered without oral argument unless the court orders otherwise, and either party may request argument. Section (g) specifies what an interim suspension order must state, including the conditions under which an interim suspension order terminates.

**RDI 7.4 (Stipulation to Interim Suspension)**: This rule is derived from ELC 7.4. The rule provides that a respondent and disciplinary counsel may stipulate to an interim suspension for any of the reasons set forth in Rule 7.2. The rule alters ELC 7.4, which provides that a stipulation to interim suspension may only be based on a felony conviction, a substantial threat of serious harm to the public, or incapacity to practice law.

**RDI 7.5 (Termination of Interim Suspension)**: This rule is derived from ELC 7.1(f)-(g). The rule provides a uniform procedure for the termination of an interim suspension. New sections (b) and (d) provide an additional two ways for the Court to terminate beyond a respondent’s petition: (1)

upon notification from disciplinary counsel that the basis for the suspension no longer exists and (2) by agreement of the parties. New section (d) clarifies that reinstatement is still conditioned upon complying with the Bar’s bylaws or applicable court rules on reinstatement.

## **TITLE 8 INCAPACITY PROCEEDINGS**

### **1. Summary**

Title 8 governs incapacity proceedings and is derived from ELC Title 8. This Title has been rewritten and restructured substantially for clarity and to streamline procedures. The Title replaces the term “disability” with “incapacity,” as the latter more accurately describes the inability to perform the functions of a licensed legal professional. It aligns procedures in incapacity proceedings with those in disciplinary proceedings to the extent possible. The Title introduces a new status, “interim incapacity inactive status,” to replace “interim suspension” in all situations under the rule except for refusal to cooperate. The difference between “interim incapacity inactive status” and “interim suspension” is significant for the respondent’s ability to work in a law office. See RPC 5.8(b). The bulk of the new Title describes three distinct procedural “paths” for incapacity proceedings: those initiated by ODC without a disciplinary investigation or proceeding pending, those initiated by a respondent’s assertion during a disciplinary investigation or proceeding, and those initiated by an adjudicator who finds reasonable cause to believe the respondent lacks capacity to defend. The Title simplifies the decision matrix for the hearing adjudicator following a hearing. As in disciplinary matters, incapacity cases become final after the Court issues an order. The rule highlights that incapacity is not discipline.

Of note, ELC 8.3 grouped together the procedures for two different situations: (1) where a respondent made an assertion of incapacity during a proceeding, and (2) where a hearing officer found reasonable cause to believe the respondent lacked the capacity to defend. These Rules separate the two situations into RDI 8.3 and RDI 8.4, respectively. Also, ELC 7.3 is eliminated as redundant with RDI 8.3(e), which specifically provides for interim incapacity inactive status.

Given the extensive improvements and revisions made to the incapacity proceeding rules, the descriptions of the itemized rule changes under this Title are far more detailed than other titles summarized in this document, providing in many instances section-by-section summaries.

### **2. Itemized Rule Changes**

**RDI 8.1 (Incapacity Inactive Status):** This is a new rule: Section (a) defines incapacity inactive status, clarifying that it is not discipline; section (b) defines a final order in an incapacity proceeding and its effect.

**RDI 8.2 (Incapacity Proceedings When No Disciplinary Investigations or Proceedings Pending):** Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 8.2(a) (Incapacity Proceedings Ordered by Authorization Panel). This rule is derived from ELC 8.2(a) with no substantive changes.
- RDI 8.2(b) (Initial Pleadings). This is a new rule that describes the initial pleadings to be filed by disciplinary counsel and the respondent, codifying existing practice.
- RDI 8.2(c) (Placement in Interim Incapacity Inactive Status). This rule is derived from ELC 8.2(d) but refers to placing the respondent's license in interim incapacity status instead of interim suspension. The rule codifies existing practice that the respondent must be represented by counsel for this proceeding. It sets forth a standard for the Court to employ in considering a petition, which is the same as the standard under Title 7 for interim suspension after a disbarment recommendation given that the Authorization Panel has ordered a hearing. Section (c)(3) is derived from ELC 8.2(e), except that the interim status terminates by rule when the proceeding is final without the need for a party's petition.
- RDI 8.2(d) (Health Care Records, Releases, and Examination). This rule is derived from and combines ELC 8.2(c)(3) and 8.2(c)(4). Section (d) adds a timeline under which the respondent must furnish medical records and releases. It eliminates the requirement in ELC 8.2(d)(4) that the independent medical examination (IME) provider send the report directly to the hearing adjudicator.
- RDI 8.2(e) (Failure to Appear or Cooperate). This rule is derived from ELC 8.2(d)(2). Section (e) provides for a petition for interim suspension for failure to cooperate. No other substantive changes were added.
- RDI 8.2(f) (Procedures for Incapacity Hearing). This rule is derived from ELC 8.2(c)(1). Section (f) includes a provision for the same burden of proof for hearings as provided for in existing ELC 8.7 (ODC's burden by clear preponderance).
- RDI 8.2(g) (Hearing Decision). This rule is derived from ELC 8.2(c)(5). Section (g) adds a provision that the hearing adjudicator recommends dismissal on finding insufficient evidence of incapacity, codifying existing practice. The rule refers to RDI 10.15 for other procedural aspects.
- RDI 8.2(h) (Transmittal to Court). This is a new rule that provides that if neither party files a timely appeal of the hearing adjudicator's decision, the hearing decision is transmitted to the Court for entry of a final order.

RDI 8.3 (Incapacity Proceedings During Course of Disciplinary Investigations or Proceedings Based on Respondent's Assertion): Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 8.3(a) (Incapacity Proceedings Ordered after Respondent's Assertion). This rule is derived from the portion of ELC 8.3(a) pertaining to assertions by the respondent. The Rule differs from ELC 8.3, which grouped together the procedures where a respondent asserted lack of capacity to defend and those where a hearing officer found reasonable cause to believe the respondent lacked capacity to defend. The scope of the rule was

expanded to include assertions made during the course of a disciplinary investigation, not just a proceeding.

- RDI 8.3(b) (Method of Assertion). This is a new rule that specifies that an assertion must be in writing or on the record to avoid misunderstanding about the assertion.
- RDI 8.3(c) (Contents of Order; Advisement; Effective Date; Notice). This is a new rule derived in part from ELC 8.3(b). The content of the order in RDI 8.3(c)(1) is derived from ELC 8.3(b), but limits issues at hearing to whether the respondent can respond to or defend a disciplinary investigation or proceeding, or can assist counsel in doing so. RDI 8.3(c)(2) requires a written advisement, which spells out the consequences of the incapacity assertion. The order is effective seven days after its date (or sooner if ordered) to give the respondent the opportunity to act on the advisement. The rule codifies existing practice that disciplinary counsel does not file a statement of alleged incapacity when the respondent asserts incapacity.
- RDI 8.3(d) (Effect of Incapacity Proceeding on Pending Disciplinary Matters). This rule is derived from ELC 8.3(d)(2) with no substantive change.
- RDI 8.3(e) (Interim Incapacity Inactive Status). This rule is derived from ELC 8.3(e) and ELC 7.3, but refers to placing the respondent's license in interim incapacity status instead of interim suspension. RDI 8.3(e)(1) provides for immediate transfer upon the Supreme Court's receipt of the regulatory adjudicator's order, consistent with ELC 7.3, which is eliminated. RDI 8.3(e)(1)(B) is a new rule for when the incapacity proceeding is ordered initially by the Court following the respondent's assertion in a matter before it, codifying existing practice. RDI 8.3(e)(2) is a new rule that interim status terminates by rule when the proceeding is final.
- RDI 8.3(f) (Health Records, Releases, and Examination). RDI 8.3(f)(1) is a new rule requiring the respondent to supply medical records to support the assertion within 30 days of the effective date of the order for the incapacity proceeding. The rule is otherwise derived from and combines ELC 8.3(d)(4) and ELC 8.3(d)(5). It adds a timeline for the respondent to furnish additional medical records and releases. The rule eliminates the requirement in ELC 8.3(d)(5) that the IME provider send the report directly to the hearing adjudicator.
- RDI 8.3(g) (Failure to Appear or Cooperate). This rule is derived from ELC 8.3(d)(6). The rule gives disciplinary counsel discretion to move to dismiss the incapacity proceeding for failure to appear or cooperate. The rule sets the standard for the hearing adjudicator's consideration of the motion. The rule contains a new provision that an order granting a motion to dismiss is without prejudice to either ODC or the hearing adjudicator initiating an incapacity proceeding under RDI 8.2(a) or RDI 8.4(a), which could occur if the respondent has failed to cooperate but other evidence of incapacity exists.
- RDI 8.3(h) (Procedures of Incapacity Hearing). This rule is derived from ELC 8.3(d)(1). The rule includes a provision for the same burden of proof for hearings as provided for in existing ELC 8.7 (respondent's burden by preponderance).



- RDI 8.3(i) (Hearing Decision). This rule is derived from ELC 8.3(d)(7). The rule was redrafted and simplified to focus the hearing adjudicator's decision on whether the respondent has the capacity to respond to or defend a disciplinary investigation or proceeding, with or without the assistance of counsel, since these are the issues in an RDI 8.3 proceeding. The rule eliminates adjudication of whether the respondent has the capacity to practice law.
- RDI 8.3(j) (Transmittal to the Court). This is a new rule that if neither party files a timely appeal of the hearing adjudicator's decision, the hearing decision is transmitted to the Court for entry of a final order.

RDI 8.4 (Incapacity Proceedings During Course of Disciplinary Investigations or Proceedings without Respondent's Assertion): Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 8.4(a) (Order by Regulatory Adjudicator or Supreme Court). This is derived from the portion of ELC 8.3(a), which permits an adjudicator to find reasonable cause to believe the respondent lacks the capacity to defend. The scope of the rule was expanded to include situations where either a regulatory adjudicator or the Supreme Court finds reasonable cause. The rule provides that the finding can be made following a motion or sua sponte, codifying existing practice.
- RDI 8.4(b) (Contents of Order; Statement of Alleged Incapacity; Response). This is a new rule derived in part from ELC 8.3(b). The content of the order is derived from ELC 8.3(b), but limits issues at hearing to whether the respondent can respond to or defend a disciplinary investigation or proceeding, or can assist counsel in doing so. The rule provides a new requirement that the order must state the factual basis for the determination that an incapacity proceeding is warranted. The remaining provisions describe the initial pleadings to be filed by disciplinary counsel and the respondent, codifying existing practice.
- RDI 8.4(c) (Effect of Incapacity Proceeding on Pending Disciplinary Matters). This rule is derived from ELC 8.3(d)(2) with no substantive change.
- RDI 8.4(d) (Interim Incapacity Inactive Status). This rule is derived from ELC 8.3(e). The rule provides for placement of respondent's license on interim incapacity inactive status rather than interim suspension. The rule codifies existing practice that the respondent must be represented by counsel. RDI 8.4(d)(1)(B) is a new rule for the unusual situation where the Supreme Court initiates an incapacity proceeding. Section (d)(2) sets forth a standard for the Court to employ in addressing a petition, which is the same as the standard under Title 7 for interim suspension after a disbarment recommendation given that a regulatory adjudicator or the Court has ordered a hearing. RDI 8.4(d)(3) is a new rule that the interim status terminates by rule when the proceeding is final.
- RDI 8.4(e) (Health Records, Releases, and Examination). This rule is derived from and combines ELC 8.3(d)(4) and 8.3(d)(5). The rule adds a timeline for the respondent to

furnish additional medical records and releases. It eliminates the requirement in ELC 8.3(d)(5) that the IME provider send the report directly to the hearing adjudicator.

- RDI 8.4(f) (Failure to Appear or Cooperate). This rule is derived from ELC 8.3(d)(6). The rule modifies the ELC, which required ODC to hold a hearing if the respondent did not appear or cooperate. Under this Rule, disciplinary counsel may petition the Court for an interim suspension if the respondent refuses to appear or cooperate, similar to RDI 8.2(e).
- RDI 8.4(g) (Procedure for Incapacity Hearing). This rule is derived from ELC 8.3(d)(1). The rule includes a provision for the same burden of proof for hearings as provided for in existing ELC 8.7 (ODC's burden by clear preponderance).
- RDI 8.4(h) (Hearing Decision). This rule is derived from ELC 8.3(d)(7). The rule is the same as RDI 8.3(i). The rule was redrafted and simplified to focus the hearing adjudicator's decision on whether the respondent has the capacity to respond to or defend a disciplinary investigation or proceeding, with or without the assistance of counsel, since these are the issues in an RDI 8.4 proceeding. It eliminates an adjudication of whether the respondent has the capacity to practice law.
- RDI 8.4(i) (Transmittal to the Court). This is a new rule that if neither party files a timely appeal of the hearing adjudicator's decision, the hearing decision is transmitted to the Court for entry of a final order.

RDI 8.5 (Placement in Incapacity Inactive Status based on Adjudicated Grounds): This rule is derived from ELC 8.1, but changes the procedure so that the Court orders the placement in incapacity inactive status rather than having the Bar "automatically transfer" the license, and to have notice of placement come from the Court.

RDI 8.6 (Representation by Counsel): This rule is derived from ELC 8.10. RDI 8.6(a) specifies that counsel is required in proceedings under RDI 8.2-8.4 and 8.11; counsel is not required for matters covered by RDI 8.5 because the reason for placement in incapacity inactive status in those situations has already been adjudicated. RDI 8.6(b) contains new provisions that counsel must be appointed promptly after the order is entered, rather than after 20 days as in ELC 8.10, and that an order appointing counsel constitutes authority for counsel to act on behalf of the respondent in the proceeding whether or not the respondent expressly consents to the representation. RDI 8.6(b) further provides that authorization for withdrawal of counsel is not required if substitute counsel appears. RDI 8.6(c) is a new rule regarding compensation by counsel, derived from ELC 2.11(c). RDI 8.6(d) permits withdrawal of appointed counsel upon authorization from the Chief Regulatory Adjudicator after a showing of good cause. RDI 8.6(e) is derived from ELC 8.10(d) and provides for placement of the respondent's license in interim incapacity inactive status and a stay of the proceedings when appointment of counsel would be futile because there is no reasonable chance that other counsel will be able to effectively represent the respondent. New RDI 8.6(f) replaces ELC 8.9 regarding limited guardianships, which was rarely used, cumbersome, and expensive.

RDI 8.7 (Appeal to an Appeal Panel): This rule is derived from ELC 8.2(b)(6) and 8.3(d)(7)(D). RDI 8.7(a) governs appeals to the Appeal Panel under Title 8, except as stated in RDI 8.11 regarding termination of incapacity inactive status. The rule clarifies existing rules that final decisions of the hearing adjudicator regarding capacity to practice law or defend a disciplinary proceeding are appealable; other decisions are subject to interlocutory review. RDI 8.7(b) is a new provision regarding transmittal to the Court for entry of a final order.

RDI 8.8 (Appeal to the Supreme Court): This rule is derived from ELC 8.4. RDI 8.8(a) clarifies existing rules about which orders are appealable to the Court. RDI 8.8(b) is a new rule for a petition for an order placing the respondent's license in interim incapacity inactive status if a respondent appeals, mirroring the procedures and standards in RDI 7.2(b) relating to petitions for interim suspension when a respondent appeals a disbarment recommendation, except that the respondent must be represented by counsel. It replaces the portion of existing ELC 8.4 in which a Disciplinary Board decision recommending transfer to disability inactive status went into effect even if the respondent appealed to the Supreme Court.

RDI 8.9 (Stipulations): This rule is derived from ELC 8.5. The rule includes provisions for stipulating to interim incapacity inactive status. The requirements track with the existing rule. Procedures are similar to RDI 9.1, including that stipulations must be submitted to the Court for a final order. This a change from the ELC, in which stipulations to disability inactive status were final upon approval by the Disciplinary Board.

RDI 8.10 (Costs in Incapacity Proceedings): This rule is derived from ELC 8.6 and simplifies the procedure. The rule rewrites the ELC so that costs assessment procedure is the same for incapacity and disciplinary matters.

RDI 8.11 (Return from Incapacity Inactive Status): This rule is derived from ELC 8.8. The rule was rewritten substantially to streamline existing procedures and create procedures where none existed. The term "reinstatement" was eliminated from this rule because "reinstatement" generally is associated with reinstatement from discipline. Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 8.11(a) (Petition). This rule is derived from ELC 8.8(a)-8.8(c), but combined and restructured. The rule creates a new requirement in RDI 8.11(a)((1)(A) that a petition be supported by a signed statement from a medical provider within the prior three months that the incapacity has been resolved and respondent has the current capacity to practice law. Requiring this showing at the outset weeds out meritless petitions and will increase the probability that a petition will be successful.
- RDI 8.11(b) (Appointment of Counsel). This is a new rule that counsel is appointed in accordance with RDI 8.6.
- RDI 8.11(c) (Review and Action by Chief Regulatory Adjudicator). This rule is derived from ELC 8.8(d) and 8.8(e), but combines and streamlines process.

- RDI 8.11(d) (Stipulation). This is a new rule providing explicitly for stipulations. The rule codifies existing practice to allow stipulations, but modifies the approval process. Stipulations must be supported with medical evidence that the respondent has the current capacity to practice. The procedures are similar to RDI 8.9 with respect to approval of stipulations, except that there is no procedure for reconsideration because rejection does not preclude another petition with additional medical information.
- RDI 8.11(e) (Hearing on Petition). This is a new rule setting forth hearing and pre-hearing procedures, which were not specified in the ELC. All procedures except for those in RDI 8.11(e)(8) (Hearing Decision) and RDI 8.11(e)(9) (Transmittal to the Court) are the same as those in RDI 8.3. RDI 8.11(e)(8) is a new rule providing that the hearing adjudicator recommends granting or denying the petition based on whether the respondent has the current capacity to practice law. RDI 8.11(e)(9) is a new rule that provides for transmittal of the decision to the Supreme Court for entry of an order.
- RDI 8.11(f) (Appeal to an Appeal Panel). This is a new rule specifying the procedures for appeal of the hearing adjudicator's decision to the Appeal Panel. Only decisions following a hearing on the petition are appealable.
- RDI 8.11(g) (Appeal to Supreme Court). This rule is derived from ELC 8.8(g) with no substantive change. The rule clarifies that the only appealable decisions of the Appeal Panel are those following a hearing adjudicator's decision on a petition following a hearing.
- RDI 8.11(h) (Transmittal to Court). This is a new rule that if neither party files a timely appeal of the appellate decision or if the Supreme Court denies discretionary review, the appellate and hearing decisions are transmitted to the Court for entry of an order.
- RDI 8.11(i) (Petition Granted). This rule is derived from ELC 8.8(f). The rule clarifies that, if a petition is granted or a stipulation is approved, the placement on incapacity inactive status is terminated only after the Supreme Court enters a final order. The respondent's license is restored to its most recent status other than incapacity inactive status, except that if the most recent status was active the respondent may request that the status be changed to inactive.
- RDI 8.11(j) (Client Protection Fund Certification). This is a new rule providing that if the Client Protection Fund paid an applicant based on the respondent's conduct, the respondent must obtain a certification from Bar counsel that restitution has been paid or that the respondent is current with a periodic payment plan. The procedures are the same as RDI 13.3(c)(4), which are applicable to reinstatement from disciplinary suspensions.

## **TITLE 9 RESOLUTIONS WITHOUT HEARING**

### **1. Summary**

Title 9 governs resolutions without hearings. Requirements of stipulations and resignations in lieu of discipline are clarified in list format. A significant revision to the rules provides for first review of stipulations by a regulatory adjudicator, followed by Supreme Court review of all

approved stipulations to discipline, not just stipulations to disbarment or suspension as required by ELC 9.1(d). The Title limits reciprocal discipline to suspension and disbarment but provides that the Court may order publication of other discipline imposed in another jurisdiction. The Title simplifies reciprocal processes by moving reciprocal resignation in lieu of discipline to a single rule on reciprocal treatment of discipline, resignations in lieu, and placement of a respondent's license in incapacity inactive status. A new provision provides for respondent's payment of expenses in contested reciprocal discipline, which was found in ELC 13.9(c)(3).

## **2. Itemized Rule Changes**

**RDI 9.1 (Stipulations):** This rule is derived from ELC 9.1 with significant revisions. RDI 9.1(b) clarifies the requirements for the stipulation form. The rule preserves stipulation to alleged facts under existing ELC 9.1(c) but renames it to "stipulation to allegations in lieu of admissions" and requires the respondent to agree that there is a substantial likelihood that the allegations would be proved by a clear preponderance of the evidence. RDI 9.1(d) sets forth the process, standards for approval of a stipulation, and possible dispositions. All stipulations are subject to review by a regulatory adjudicator under section (d), followed by Supreme Court review of all approved stipulations under section (f). The rule eliminates the conditional review process under ELC 9.1(e). Under section (j), failure to abide by the terms of an approved stipulation may be grounds for discipline.

**RDI 9.2 (Resignation in Lieu of Discipline):** This rule is derived from ELC 9.3. RDI 9.2(a) clarifies that resignation in lieu of discipline is the only way to resign when an investigation or proceeding is pending, as set forth in the Bar's Bylaws. RDI 9.2(b) includes a more comprehensive list of consequences that the respondent must agree to when resigning in lieu. RDI 9.2(f) limits the ability to obtain an order for costs and restitution to one year from the filing of the resignation and eliminates the Client Protection Fund's ability to request review.

**RDI 9.3 (Reciprocal Discipline, Reciprocal Resignation in Lieu of Discipline, and Reciprocal Placement in Incapacity Inactive Status):** This rule is derived from and combines ELC 9.2 and 9.4, retaining the self-report requirement. RDI 9.3(a) defines "public discipline" and "jurisdiction" for purposes of clarifying the self-reporting requirement. RDI 9.3(b) modifies existing dispositions of reciprocal matters as follows: (1) limits reciprocal discipline to disbarment or suspension (resignation in lieu treated as disbarment) and (2) permits the Court to order publication of information about discipline imposed in another jurisdiction for all other types of discipline (including fully stayed suspensions). RDI 9.3(d) allows respondents to consent to reciprocal discipline or publication without the Court issuing an order to show cause. RDI 9.3(e) sets forth what the respondent must demonstrate under a show cause order for the different types of discipline and for placement in incapacity inactive status. Of note, section (e)(4) permits the Court to direct disciplinary counsel to show cause why the sanction should be greater than that imposed in the other jurisdiction. RDI 9.3(h) establishes that the burden rests with the party seeking a different result to establish that an equivalent result is not appropriate. RDI 9.3(j) permits a respondent who self-reports to request a different effective date for the reciprocal

order than that set out in the rule if certain requirements are met. Derived from ELC 13.9(c)(3), RDI 9.2(m) provides for payment of expenses in contested reciprocal discipline matters.

## **TITLE 10 HEARING PROCEDURES**

### **1. Summary**

Title 10 governs the procedures for disciplinary hearings. The changes made were generally geared toward improving the fairness and efficiency of the hearing process. Notably, the rules impose deadlines intended to encourage timelier completion of disciplinary hearings; revised discovery rules encourage more informal exchange of information; the confidentiality of settlement conferences is strengthened; and the rule governing the finality of proceedings is simplified. A number of other changes, as detailed below, were made to adapt hearing procedures to the advent of the Office of the Regulatory Adjudicator and to changes in the overall adjudicative structure of the discipline system. Also, ELC 10.9 (Interim Review) was removed from Title 10 and replaced with RDI 11.11, which is a new rule regarding interlocutory review by an Appeals Panel.

### **2. Itemized Rule Changes**

**RDI 10.1 (General Procedure)**: This is a new rule derived in part from ELC 10.1. Section (a) was moved from ELC 10.3(b) to this rule to clarify earlier on in Title 10 when a proceeding commences. The term “formal complaint” under the ELC is changed to “statement of charges.” Reference to Civil Rules (CR) was moved to section (b) on Hearing Adjudicator Authority. New section (c) is derived from CR 1 and from a proposed revision to CR 1 by the Civil Litigation Rules Drafting Task Force (see <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/civil-litigation-rules-drafting-task-force>). The provision on summary judgment and collateral estoppel was moved from ELC 10.1 to RDI 10.9.

**RDI 10.2 (Hearing Adjudicator Assignment)**: This rule is derived from ELC 10.2. Section (b) removes the provision allowing for removal of a hearing officer without cause (current ELC 10.2(b)(1)) because of concerns over the reduced number of adjudicators as compared to the current hearing officer list. Parties may still seek removal for cause.

**RDI 10.3 (Filing of Charges)**: This rule is derived from ELC 10.3. For clarity, the rule separates consolidation and joinder into two separate provisions. Additional revisions to the rule were added to clarify the standard for making a decision and the effect of an order under the rule.

**RDI 10.4 (Notice to Answer)**: This rule is derived from ELC 10.4. The rule removes from the body of the notice to answer sample pleading the section identifying the assigned hearing officer. The rule adds “[amended]” where the sample pleading references a statement of charges, as the notice to answer must also be served with amendments (see new RDI 10.7(b)).

**RDI 10.5 (Answer; Respondent’s Motion to Dismiss)**: This rule is derived from ELC 10.5 and 10.10. Sections (a)-(c) derived from ELC 10.5. The rule includes a new section (b)(3) requiring

respondents to state whether they consent to email service. RDI 10.5(d) (respondent's motion to dismiss) is derived from ELC 10.10(a), is reorganized for clarity, and is included in this rule because such a motion must be filed within the time for filing the answer.

RDI 10.6 (Default): This rule is derived from ELC 10.6. Under section (a), the deadline for filing an answer after service of a motion for default is extended from five to seven days. Section (b) removes the provision allowing for a default hearing. Instead, all default proceedings will be done through written submission, with a decision entered 60 days after order of default. Section (c)(3) clarifies that the burden of proof on a motion to vacate an order of default is a clear preponderance of the evidence. Section (c) revises the provision on review of a decision on a motion to vacate an order of default (current ELC 10.6(c)(7)-(8)) to use the interlocutory review procedures of new RDI 11.10.

RDI 10.7 (Amendment of Statement of Charges): This rule is derived from ELC 10.7. The rule on amendments is simplified by replacing the provisions of ELC 10.7(a)-(c) with RDI 10.7(a). Instead of allowing for objections (as in current ELC 10.7(a)-(b)), a respondent may now move to strike amendments under RDI 10.7(c). Section (d) includes added language clarifying that failure to answer an amended statement of charges could result in default.

RDI 10.8 (General Rules for Motions): This rule is derived from ELC 10.8. New section (a) includes a definition of a motion. New section (g) allows for a motion for reconsideration.

RDI 10.9 (Specific Motions): The bulk of this rule is derived from ELC 10.10. However, respondent's motion to dismiss (current ELC 10.10(a) and parts of ELC 10.10(c) and (d)) are moved to RDI 10.5. RDI 10.9(a) regarding a motion for finding misconduct on the pleadings is derived from current ELC 10.10(b)-(c). Provisions on summary judgment and collateral estoppel are moved from current ELC 10.1(a) to RDI 10.9(b) and (c), respectively. New section (d) allows disciplinary counsel to voluntarily dismiss a proceeding at any time and mandating that the hearing adjudicator order dismissal.

RDI 10.10 (Discovery and Prehearing Procedures): This rule is derived from ELC 10.11. The rule revises current ELC 10.11(b)-(d) to require hearing adjudicator authorization for all forms of discovery under the CR (RDI 10.10(b)). This is intended to simplify discovery and encourage the informal exchange of information. RDI 10.10(c) is derived from CR 26(b)(4) and is added to protect attorney work product. Section (d) clarifies that subpoenas may be issued only when necessary to obtain permitted discovery. The provision on CR 16 orders was eliminated (current ELC 10.11(g)).

RDI 10.11 (Scheduling of Hearing): This rule is derived from ELC 10.12. Section (a) adds a presumption that hearings will be held at Bar offices. Scheduling conferences now must be held within 30 days after the filing of an answer (RDI 10.11(b)). Hearings must be held within 180 days of the scheduling conference, absent good cause (RDI 10.11(b)(1)). Section (e) adds procedures to the rule allowing a motion for a hearing within 120 days. The deadline for a settlement conference is changed from 30 days prior to hearing to 45 days prior (RDI 10.11(h)(3)). Section

(h)(4) includes enhanced provisions on confidentiality of settlement conferences, with some portions derived from the current standard settlement conference order.

RDI 10.12 (Hearing): This rule is derived from ELC 10.13. A new provision is added to section (b) providing that a respondent who fails to appear at a hearing forfeits the right to appeal. Section (h) adds a provision requiring that the entire hearing be recorded (not just witness testimony as in current ELC 10.13(d)) and that a transcript be filed and served by the clerk (RDI 10.12(g)).

RDI 10.13 (Evidence and Burden of Proof): This rule is derived from ELC 10.14. RDI 10.13(c) clarifies what is established by a criminal conviction for purposes of a disciplinary hearing based on the conviction and codifies existing case law. *In re Disciplinary Proceedings Against Vanderveen*, 166 Wn.2d 594, 607, 211 P.3d 1008 (2009). The Rule revises the rule on judicial notice to adopt the provisions of ER 201 (RDI 10.13(d)(3)). The rule removes the provision that the Washington Administrative Procedures Act should serve as guidance (current ELC 10.14(e)).

RDI 10.14 (Bifurcated Hearings): This rule is derived from ELC 10.15. The deadline for holding a sanction hearing was extended from 45 days after the anticipated end of the violation hearing to 60 days after the commencement of the violation hearing. (RDI 10.14(b)(3)).

RDI 10.15 (Hearing Decision): This rule is derived from ELC 10.16. Current ELC 10.16(a) and (b) are merged into RDI 10.15(a). Section (a) further simplifies the provision on parties submitting proposed findings. Section (d) replaces the finality provision (ELC 10.15(d)) with a new provision requiring transmittal of the decision to the Court for entry of a final order under RDI 13.1(a) (which governs finality) where a decision is not appealed (RDI 10.15(d)). The transmittal rule is consistent with other changes in this rule set requiring a final Supreme Court order in most proceedings.

## **TITLE 11 APPEAL TO THE APPEAL PANEL**

### **1. Summary**

Title 11 governs appeals from a hearing adjudicator decision and interlocutory review. The rules modify existing ELC Title 11 to reflect the creation of the Appeal Panel, which would perform the appellate functions assigned to the Disciplinary Board under the ELC. The procedural rules were changed to conform more closely to the Rules of Appellate Procedure (RAP). A section was added on interlocutory review, which was addressed with little specificity in existing ELC Title 10. The Rules eliminate the concept of sua sponte review (ELC 11.3, i.e., allowing for review by the Disciplinary Board when neither party appealed), which was never ordered by the Disciplinary Board and added unnecessary delay to the resolution of disciplinary matters. Note that ELC 11.4 (transcript) was moved to Rule RDI 10.12(f).

### **2. Itemized Rule Changes**

RDI 11.1 (Scope of Title): This rule is derived from ELC 11.1. The description of scope was revised. The rule refers to the new rule regarding interlocutory review. It states that the RAP



provide guidance, which was not specified in the ELC. It further expands the definition of party for purposes of Title 11 to include those seeking review under RDI 3.4

RDI 11.2 (Decisions Subject to Appeal): This rule is derived from ELC 11.2. The rule includes reference to matters appealable under Title 8 (incapacity). The rule has the same timelines for notice of appeal and cross appeal as ELC 11.2(b)-(c).

RDI 11.3 (Record on Appeal, Designation, and Preparation): This rule is derived from ELC 11.5, ELC 11.6, and ELC 11.7, but the rules are combined and streamlined. The rule retains the important provision that “[e]vidence not presented to the hearing adjudicator must not be designated by the parties or presented to the Appeal Panel.”

RDI 11.4 (Briefs): This rule is derived from ELC 11.9. The rule was substantially reworked to conform generally to RAP 10.3, RAP 10.4, and existing Disciplinary Board policies. The provision regarding the content of briefs is similar to the RAP, except that parties need to designate issues for review but not formally designate assignments of error. Timelines for filing briefs remain the same as in the ELC. RDI 11.4(f) regarding formatting and length of briefs comes from proposed RAP 18.17. The rule anticipates that proposed RAP 18.17 pending before the Supreme Court will be adopted: if the rule is not adopted, this provision will need revision.

RDI 11.5 (Supplementing the Record): This rule is derived from ELC 11.10 with the reference to RAP 9.6 removed because much of it does not apply.

RDI 11.6 (Request for the Taking of Additional Evidence): This rule is derived from ELC 11.11. The rule was modified to conform generally to RAP 9.11 and to clarify its effect on a pending appeal.

RDI 11.7 (Appellate Decision): This rule is derived from ELC 11.12. New portions of RDI 11.7(a) and all of RDI 11.7(b) were taken from RAP 12.1. The standards of review in RDI 11.7(c) remain unchanged from ELC 11.12(b). Provisions regarding oral argument in RDI 11.7(d) come from existing ELC 11.12 and Disciplinary Board policies; the provision regarding the record is new. Provisions regarding the actions and decision of the Appeal Panel in RDI 11.7 (e) and (f) are streamlined but not changed substantively. The provision regarding transmittal to the Court in RDI 11.7(h) clarifies that, absent a timely notice of appeal or petition for review, the Clerk transmits the record to the Court for entry of a final order.

RDI 11.8 (Modification of Requirements): This rule is derived from ELC 11.13 with no substantive change.

RDI 11.9 (Motions): This rule is derived from ELC 11.14 with no substantive change, except that the provision in ELC 11.14(h) that motions on minor matters can be presented by letter is deleted.

RDI 11.10 (Interlocutory Review): This is a new rule derived from ELC 10.9 (Interim Review), but the rule was greatly expanded to provide standards and procedure. The standards are taken from RAP 2.3(b); procedures are drawn generally from RAP 2.3.

## **TITLE 12 REVIEW BY SUPREME COURT**

### **1. Summary**

Title 12 governs review by the Supreme Court. The rules modify existing ELC Title 12 to reflect the creation of the Appeal Panel, which would perform the appellate functions assigned to the Disciplinary Board under the ELC, and to change references from “disability” to “incapacity.” RDI Title 12 further simplifies procedures where possible and revises language to enhance readability.

### **2. Itemized Rule Changes**

**RDI 12.1 (Applicability of Rules of Appellate Procedure)**: This rule is derived from ELC 12.1 with no substantive change except to expand the definition of party for purposes of Title 12 to include those seeking review under RDI 3.4.

**RDI 12.2 (Methods of Seeking Review)**: This rule is derived from ELC 12.2 with no change to ELC 12.2(a) and minor edits to the language of ELC 12.2(b).

**RDI 12.3 (Appeal)**: This rule is derived from ELC 12.3 with changes to the structure of the rule and edits to clarify procedures. The provision stating that the filing fee can be paid in cash was deleted. The filing deadlines are unchanged and conform to the RAP. The rule refers specifically to Title 8 for appealable decisions under that rule.

**RDI 12.4 (Discretionary Review)**: This rule is derived from ELC 12.4 with changes to the structure of the rule and edits to clarify procedures. The provision stating that the filing fee can be paid in cash was deleted. The filing deadlines are unchanged and conform to the RAP.

**RDI 12.5 (Record to Supreme Court)**: This rule is derived from ELC 12.5 with minor edits to language. RDI 12.5(d) governs transmittal of costs orders in matters reviewed by the Court. Since Title 13 did not make substantive changes regarding assessments of costs, this rule remained the same.

**RDI 12.6 (Briefs)**: This rule is derived from ELC 12.6 with minor edits to language. In RDI 12.6(f), documents filed with the ORA Clerk will be called “Clerk’s file” documents (abbreviated as CF), rather than “Bar file” documents (abbreviated as BF) as in ELC 12.6(f).

**RDI 12.7 (Argument)**: This rule is derived from ELC 12.7 with minor edits to section (a). Rule 12.7(b) includes reference to incapacity proceedings.

**RDI 12.8 (Entry of Order or Opinion)**: For purposes of finality, this new rule makes clear that the Court enters a final order as provided for in RDI 13.1(a) or RDI 8.1(b).

**RDI 12.9 (Motion for Reconsideration)**: This rule is derived from ELC 12.8 but rather than limiting the rule’s application to disbarments or suspensions as in ELC 12.8, the rule applies to all final orders entered by the Court under RDI 12.8.

RDI 12.10 (Violation of Rules): This rule is derived from ELC 12.9. The rule is revised to clarify when the Appeal Panel decision is final if review is dismissed under RAP 18.9.

## **TITLE 13 SANCTIONS AND REMEDIES**

### **1. Summary**

Title 13 contains the rules describing the available sanctions (disbarment, suspension, reprimand admonition) that may be imposed as a result of a discipline proceeding or stipulation, as well as other “remedies” that may be ordered in conjunction with a disciplinary sanction, such as restitution, probation, and the assessment of costs. The Title also establishes the procedures for assessment of costs and review of such decisions, as well as the provisions authorizing entry of a money judgment if there is a failure to pay costs or restitution. One purpose of the Title 13 revision is to conform the sanctions terminology among the three license types; at present, different terminology is used for certain sanctions such as disbarment (which is revocation for LPOs and LLLTs) and resignation in lieu (which is voluntary cancellation for LPOs and LLLTs).

The structure of Title 13 is similar to ELC Title 13, except for the substitution of a definition of disbarment in place of ELC 13.2 (currently Effective Date of Suspensions and Disbarments), the elimination of ELC 13.6 (currently Discipline for Cumulative Admonitions, which becomes the probation rule), and the consequent renumbering of ELC 13.9 (currently Costs and Expenses), which becomes RDI 13.8. Notably, because the cumulative admonition rule has seldom if ever been used, it was deemed unnecessary and was eliminated under these rules.

### **2. Itemized Rule Changes**

RDI 13.1 (Final Order; Sanctions and Remedies): This rule is derived from ELC 13.1. Section (a) is a new provision defining the term “final order” so that the timing and effect of finality throughout the rules is clarified and consistent. Section (b) is similar to ELC 13.1(a), except that admonitions are now classified as a sanction, and use of the *ABA Standards for Imposing Lawyer Sanctions* is expressly referenced in the rule. Other changes are largely cosmetic and/or clarifying.

RDI 13.2 (Disbarment): RDI 13.2 is a new rule that includes in section (a) a definition of disbarment, which previously had been undefined in the rules. ELC 13.2, which establishes the effective date of suspensions and disbarments, would become a component of the rules defining each sanction (section (b) in RDI 13.2). Section (c) of the rule is essentially a cross reference, directing attention to the rules that govern reinstatement from disbarment.

RDI 13.3 (Disciplinary Suspension): This rule is derived from ELC 13.3, with the addition of a definition of suspension in section (a). The title of the rule is Disciplinary Suspension (rather than just suspension) to distinguish disciplinary suspensions from administrative suspensions under the Admission and Practice Rules (APR) and non-disciplinary suspensions elsewhere in the rules. The effective date provision in section (b) is taken from ELC 13.2. The provisions on reinstatement in section (c) are based on ELC 13.3(b), but reorganized for clarity, with the rule now specifying that the reinstatement process is initiated by respondent filing an application. Review of an

adverse determination on a reinstatement application is now addressed to the ORA rather than the Disciplinary Board Chair. Finally, consistent with the approach taken throughout the rules, reinstatement is expressly made subject to the entry of a Supreme Court order.

RDI 13.4 (Reprimand): RDI 13.4 is derived in part from ELC 13.4, but with several material changes. First, section (a) defines reprimand, which had previously been undefined. Second, the “Notice of Reprimand” procedure in ELC 13.4 is done away with. Under these rules, a reprimand would consist simply of the order imposing a reprimand. Third, section (b) of the rule establishes the effective date of a reprimand. Fourth, the definition of reprimand now specifies that a reprimand must include a term of probation, unless otherwise ordered by the Court. This will serve to distinguish reprimands from admonitions.

RDI 13.5 (Admonition): This rule is derived from ELC 13.5 with significant changes. RDI 13.5 deletes ELC 13.5(a), which authorized review committees to issue admonitions after an investigation but without an adversarial disciplinary proceeding. Under the RDI, admonitions could only be ordered after a disciplinary hearing or pursuant to a stipulation. ELC 13.5 contains many procedural components that will no longer be necessary because of that change. Section (a) of the rule defines admonition, which had previously been undefined, and section (b) establishes the effective date of an admonition.

RDI 13.6 (Probation): This rule is derived from ELC 13.8. Section (a) of the rule defines probation, which had previously been undefined. Section (b) adds additional examples of potential probation conditions based on conditions that are typically imposed, such as continuing legal education and practice monitoring. Section (c) adds interim suspension under RDI 7.2 as a possible consequence for noncompliance, in addition to discipline. Section (d) is new, addressing the extent to which probation is public information, an issue that is not clear under the ELC.

RDI 13.7 (Restitution): This rule is derived from ELC 13.7 and includes a number of changes designed to make the process of paying restitution and entering into payment plans clearer and more accessible, as well as the addition of provisions on interest and money judgments that correspond to existing provisions applicable to discipline costs. Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 13.7(a) (Restitution May be Required). The rule is essentially identical to ELC 13.7(a), with only clarifying and conforming changes.
- RDI 13.7(b) (Payment of Restitution). Section (b) is based on ELC 13.7(b)(1) and (2), essentially combining those provisions for the sake of clarity. There is a material change in that the deadline for making restitution is extended from 30 days to 90 days from the date of a restitution order.
- RDI 13.7(c) (Periodic Payment Plan). The provisions regarding entry into payment plans and review of adverse determinations have been shifted to section (c), which now also includes a list of factors to be considered in making decisions about entry into payment

plans and their terms, and the rule specifies that adverse determinations are reviewable by the Chief Regulatory Adjudicator (in lieu of the Disciplinary Board Chair).

- RDI 13.7(d) (Interest). Section (d) is new, providing for payment of interest on unpaid restitution amounts.
- RDI 13.7(e) (Failure to Comply). Section (e) on failure to comply is identical to ELC 13.7(e).
- RDI 13.7(f) (Restitution in Other Cases). Section (f) is essentially a cross-reference to clarify that restitution in matters resolved by stipulation or resignation in lieu of discipline is governed by other rules.
- RDI 13.7(g) Money Judgment for Restitution. Section (g) is a new provision providing for money judgments to be entered on behalf of the restitution beneficiary if there has been a failure to pay. It is modeled on ELC 13.9(f).

RDI 13.8 (Costs and Expenses): This rule is derived from the current Costs and Expenses Rule, ELC 13.9. Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 13.8(a) (General): Section (a) of RDI 13.8 is a simplified version of ELC 13.9(a).
- RDI 13.8(b) (Costs Defined). Section (b) is based on ELC 13.9(b) except for the elimination of a number of illustrative cost items that would be no longer relevant owing to other changes in the rules, as well as telephone charges which are not routinely assessed anymore.
- RDI 13.8(c) Expenses Defined. Section (c) is substantively the same as ELC 13.9(c) except that the presumptive charges for ODC time have been increased to account for the increased cost of funding the discipline system since the amounts were adopted in 2002, as well as to reflect the elimination of review committee admonitions and structural changes in shifting Disciplinary Board responsibility to ORA. Also, expenses for certain matters have been moved to other rules (RDI 13.9(m)).
- RDI 13.8(d) (Statement of Costs and Expenses, Exceptions, Reply). Section (d) is based on ELC 13.9(d), with simplifications to the current complicated system for determining the time for filing of a costs statement. Procedurally, the time for filing an ODC statement of costs is increased from 20 days from the relevant triggering event to 45 days from the entry of the decision of a hearing adjudicator or an Appeal Panel. There is a new provision on "Clerk's Certification of Costs," to permit adjudicative costs incurred by ORA to be assessed as part of an order assessing costs.
- RDI 13.8(e) (Assessment). Section (e) is essentially the same as ELC 13.9(e) except for conforming changes to the identity of the relevant adjudicator.

- RDI 13.8(f) (Review of Costs Order). Section (f) is essentially the same as ELC 13.9(f) except for conforming changes to the identity of the relevant adjudicator.
- RDI 13.8(g) (Assessment in Matters Reviewed by the Court). Section (g) is essentially identical to ELC 13.9(g) except for minor conforming changes.
- RDI 13.8(h) (Assessment Discretionary). Section (h), establishing that a costs assessment is discretionary, is based on ELC 13.9(h), except that the standard for the exercise of discretion is clarified to require that the respondent bear the burden of establishing that denial of an assessment would be in the interests of justice.
- RDI 13.8(i) (Payment of Costs and Expenses). In section (i) there is a material change from ELC 13.9(i)(1) in that the deadline for paying costs is extended from 30 days to 90 days from the date the assessment order becomes final.
- RDI 13.8(j) (Periodic Payment Plan). Section (j) is based on ELC 13.9(i)(3), except that the rule now includes a list of factors to be considered in making decisions about entry into payment plans and their terms, and the rule specifies that adverse determinations are reviewable by the Chief Regulatory Adjudicator (in lieu of the Disciplinary Board Chair).
- RDI 13.8(k) (Interest). Section (k) is based on ELC 13.9(i)(2) and (3)(A), combining those provisions into the same section.
- RDI 13.8(l) (Failure to Comply). Section (l) is identical to ELC 13.9(j).
- RDI 13.8(m) (Expenses in Other Cases). Section (m) is based on ELC 13.9(k), which is essentially a cross reference to provisions elsewhere in the rules that govern expenses.
- RDI 13.9(n) (Money Judgment for Costs and Expenses). Section (n) is essentially identical to ELC 13.9(l), except that it limits the time for an application for a judgment to no sooner than 90 days after an assessment of costs and expenses becomes final.
- RDI 13.9(o) (Action to Enforce Judgment and Expenses). Section (o) is a new rule authorizing the commencement of judicial action to enforce judgments and the hiring of a lawyer to represent the Bar in collection action.

## **TITLE 14 DUTIES ON DISBARMENT, RESIGNATION IN LIEU, SUSPENSION FOR ANY REASON, OR INCAPACITY INACTIVE STATUS**

### **1. Summary**

Title 14 identifies the duties of a licensed legal professional when the legal professional has been suspended or disbarred, has been placed in incapacity inactive status, or has resigned in lieu of discipline. The procedures were simplified by making the duties the same for all actions and regardless of the term of suspension. Very little substantive changes otherwise were incorporated into Title 14.

## 2. Itemized Rule Changes

RDI 14.1 (Notice to Clients and Others; Providing Client Property): This rule is derived from ELC 14.1. Section (a) makes clear that the rule applies to licensed legal professionals. Section (b) consolidates and streamlines procedures from ELC 14.1(b)-(d), so that notice requirements are the same for all terms of suspension, disbarments, resignations in lieu of discipline, and status changes to incapacity inactive status. Section (c) was simplified to clarify that notices under the rule need information sufficient for others to effect service on the client.

RDI 14.2 (Respondent to Discontinue Practice): This rule is derived from ELC 14.2 with minor changes. Section (a) clarifies the obligation that licensed legal professionals must not hold themselves out as authorized to practice law if suspended, disbarred, resigned in lieu of discipline, or if their status changes to incapacity inactive status. Other changes are merely cosmetic.

RDI 14.3 (Declaration of Compliance): This rule is derived from ELC 14.3 with no substantive change.

RDI 14.4 (Respondent to Keep Records of Compliance): This rule is derived from ELC 14.4 with no substantive change.

## TITLE 15 RANDOM EXAMINATIONS, OVERDRAFT NOTIFICATION, AND IOLTA

### 1. Summary

Title 15 contains various rules concerning trust accounts. Rules 15.1, 15.2, and 15.3 (current ELC 15.1, 15.2, and 15.3) govern random trust account examinations by the ODC. The only significant changes are in RDI 15.1, where definitions were added, codified the current process of challenging a random selection, and shifted authority held by review committees under ELC Title 15 to regulatory adjudicators or disciplinary counsel. No substantive changes were made in RDI 15.2 or RDI 15.3. RDI 15.4 and RDI 15.5 (current ELC 15.4 and 15.7) include requirements for trust accounts and obligations of financial institutions that wish to offer them. These rules include no substantive changes. ELC 15.5 (Declaration), which requires a lawyer to provide a declaration to the Bar affirming that the lawyer is complying with RPC 1.15A, has been moved to the APR, as it is part of the annual licensing process. See proposed new APR 29 of the conforming amendments.

### 2. Itemized Rule Changes

RDI 15.1 (Random Examination of Books and Records): This rule is derived from ELC 15.1. Section (b) added definitions of “law firm” and “closing firm.” The definition of law firm excludes the legal department of a closing firm in order to ensure that the limitation on examinations under RDI 15.1(c)(2) applies even if a closing firm employs lawyers. The definition of closing firm excludes a law firm as “other business” to clarify that law firms that perform closing services are still considered “law firms” for purposes of this rule. Section (c)(2) adds a provision limiting the random examination of a closing firm to those transactions where the selected lawyer or LPO

provided closing services. This limitation is consistent with the fact that the Court's regulatory authority is only over licensed legal professionals. The list of individuals excluded from random examinations is revised (RDI 15.1(c)(3)) to include those listed in RDI 2.10. Section (e)(2) shifts authority for requiring a re-examination from the review committee to disciplinary counsel. Section (f) shifts authority to order an investigation from the review committee to a regulatory adjudicator (RDI 15.1(f)).

RDI 15.2 (Cooperation with Examination): This rule is derived from ELC 15.2 with no substantive changes.

RDI 15.3 (Confidentiality): This rule is derived from ELC 15.3 with no substantive changes. The final sentence of ELC 15.3 (regarding waiver of a legal professional's own privilege) was moved from section (b) to section (a).

RDI 15.4 (Trust Account Overdraft Notification): This rule is derived from ELC 15.4 with no substantive changes.

RDI 15.5 (Trust Accounts and the Legal Foundation of Washington): This rule is derived from ELC 15.7 with no substantive changes. The rule was renumbered following the shift of ELC 15.5 (Declaration) to the APR and removal of reserved ELC 15.6.

## **TITLE 16 COURT-APPOINTED CUSTODIANS**

### **1. Summary**

Title 16 provides the procedure for custodians to be appointed by the Court to protect client interests in the event a licensed legal professional is disbarred, is suspended, resigns in lieu, is placed in incapacity inactive status, disappears, dies, or abandons practice. The Title, which consists of a single rule, RDI 16.1, is derived from ELC 7.7, originally found in Title 7 regarding interim suspensions. However, RDI 16.1 bears no relation to interim suspensions or any other provisions under the Rules. Consequently, the Rule was moved into its own title. The main substantive changes confer the power of appointment to the Court rather than the Chair of the Disciplinary Board and codify the obligations of custodians to protect privileged and otherwise confidential client information.

### **2. Itemized Rule Changes**

RDI 16.1 (Court-Appointed Custodians). This rule is derived from ELC 7.7. Because of the number of sections within this rule, the explanation of the different sections is in list form.

- RDI 16.1(a) (General). The language of section (a) is derived from the first sentence of ELC 7.7(a), except that the Court, rather than the Chair of the Disciplinary Board, makes the appointment.



- RDI 16.1(b) (Procedure). Section (b) is also derived from ELC 7.7(a) and describes the procedures for appointment and lists the circumstances under which a custodian may be appointed.
- RDI 16.1(c) Custodianship Order. Section (c) is derived from ELC 7.7(b) and clarifies what the order should direct the custodian to do. Unlike current ELC 7.7, section (c) better articulates and differentiates between the possible responsibilities a custodian might be ordered to undertake, including taking possession of client files and records and/or assuming control of a licensed legal professional's trust account.
- RDI 16.1(d) (Confidentiality). Section (d) is a new provision intended to reflect the obligations of a custodian to protect the client's attorney-client-privileged and other confidential information. Disclosure of information is not permitted without a Supreme Court order; however, a custodian must comply with requests and subpoenas from disciplinary counsel.
- RDI 16.1(e) (Discharge). Section (e) is derived from ELC 7.7(c) with no substantive change; however, the last sentence of ELC 7.7(c) is moved to new section (c)(1).
- RDI 16.1(f) (Costs). Section (f) is derived from ELC 7.7(d); however, the reference to fees is removed to clarify that the custodian does not represent the clients of the lawyer.
- RDI 16.1(g) (Records). Section (g) is derived from ELC 7.7(e), clarifying that Title 3 governs the confidentiality of the custodianship and providing that the custodian maintains the records until otherwise ordered by the Court.

## **TITLE 17 EFFECT OF THESE RULES ON PENDING MATTERS**

### **1. Summary**

Title 17 clarifies which rules, the new Rules for Discipline and Incapacity or the current disciplinary procedural rules applicable to a particular license type, will apply to pending matters upon adoption of these rules. The drafting of the rule was complicated by the fact that three different entities operating under three different sets of rules all perform a role in the three current adjudicative systems. The goal was to allow adjudicative bodies before which a case-determinative decision was pending to complete their adjudicative functions before the rules would take effect.

### **2. Itemized Rule Changes**

RDI 17.1 (Effect on Pending Matters). The Title consists of a single rule, RDI 17.1, derived in concept from ELC 16.1. RDI 17.1 provides that the new rules will apply to pending matters with limited exceptions. The exceptions are for matters pending before a person or entity that no longer exists under these Rules. In those matters, that person or entity will conclude the matter under the ELC, ELPOC, or ELLTC, whichever is applicable to the license type at issue. Any

disagreements in application of the rules will be resolved by the Chief Regulatory Adjudicator. For matters before the Court, these Rules will apply unless the Court orders otherwise.

### **SUBSTANTIVE CONFORMING AMENDMENTS TO OTHER SETS OF RULES**

#### **RPC 1.0B(D), LPORPC 1.0(F), LLLT RPC 1.0B(G)**

The definition of LPO was amended due to prior amendments to the APR. Under those amendments, the term “certification” was changed to “license” and the APR 12 regulations were rescinded. The LPO definition was also added to the LLLT RPC as LPOs are now referenced in that set of rules also.

#### **RPC 5.8, LLLT RPC 5.8, LPORPC 1.8**

These rules prohibit licensed legal professionals from working with other licensed legal professionals who are disbarred, suspended or whose license has been revoked. A significant change is limiting the prohibition for suspension to a discipline suspension, i.e., it would be permissible to work with a licensed legal professional who is under an administrative suspension (e.g., suspended for failing to pay the license fee). The prohibition for LPOs remains limited to other LPOs.

#### **LPORPC 1.12A**

This rule has additional amendments so that the text of the rule mirrors the text of the lawyer RPC and LLLT RPC.

#### **APR 1(D)(5)**

This new section is a confidentiality provision that relates to incapacity inactive status under new APR 30.

#### **APR 23(F)**

Under the RDI, there are no procedures for disqualification. Instead, regulatory adjudicators look to the Code of Judicial Conduct (CJC). Thus, Character and Fitness Board members likewise should look to the CJC regarding disqualification when a complaint is filed against a member.

#### **APR 24.1 – APR 25.5**

Currently under the APR, when the Character and Fitness Board recommends against admission in a reinstatement of disbarment proceeding, the petitioner has a right to an intermediate appeal to the Disciplinary Board. This is unique to reinstatement after disbarment proceedings. For all other character and fitness matters, the only appeal is to the Washington Supreme Court. With the elimination of the Disciplinary Board under the RDI and with no particular reason to have an intermediate appeal for this specific type of proceeding, the intermediate appeal is removed in

these proposed amendments to the APR. In addition, there are necessary procedural amendments resulting from the removal of the appeal to the Disciplinary Board as well as some procedural amendments that reflect current practice in these proceedings.

#### **APR 29 LAWYER TRUST ACCOUNT DECLARATION**

This is a new rule. Currently, the trust account declaration requirement for lawyers is in the ELC. See ELC 15.5 (Declaration). For LLLTs and LPOs, it is in the APR. As an annual licensing requirement to practice law, this provision is best situated in the Admission and Practice Rules.

#### **APR 30 VOLUNTARY INCAPACITY INACTIVE STATUS**

This is a new provision for voluntarily requesting incapacity inactive status. There are a few requests every year for incapacity inactive status (currently called disability inactive status). Under the current rules, the only way to accomplish this is under ELC 8.5 Stipulated Transfer to Disability Inactive Status and through the discipline system. This is an unnecessarily long, complicated process for those situations when a licensed legal professional wants to freely and simply demonstrate incapacity to practice law. Under this proposed rule, there would be a simple application process handled by the Regulatory Services Department. To prevent abuse of this provision, the licensed legal professional must not have any pending discipline or incapacity matters. In addition, the licensed legal professional must seek reinstatement the same manner as any other licensed legal professional on incapacity inactive status.

**TO:** WSBA Board of Governors  
**FROM:** Kim Hunter, District 8 Governor & Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** March 4, 2020  
**RE:** March BOG meeting Co-Chair Update on Member Engagement Committee

**ACTION/DISCUSSION :** The following is meant to provide an update on the work of the WSBA Member Engagement Committee

The following is an update on various pertinent actions of the Member Engagement Committee:

- **Outstanding Service by WSBA Exec Team Member Kevin Plachy:**

As Co-Chairs, both Kim Hunter and Dan Clark would like to express major appreciation for consistently going above and beyond in serving as the WSBA employee Committee Liaison to the newly created Member Engagement Committee. Please thank Kevin for his amazing talent and hard work in helping the Committee get up and running and to achieve the goals of all of the committee members.

- **Various Outreach:**

Co-Chair Governor Kim Hunter, and Governor Paul Swegle, along with Kevin Plachy, attended a recent Snohomish County Bar General Membership Meeting. Governor Hunter also recently attended a SSP Retreat that went very well.

- **Charter Revision:**

The Committee approved a recommendation for a Charter Revision that if approved by the Board of Governors will enhance the ability for membership to serve on the committee.

- **Net Promoter Survey**

Paul will give update on options for this idea.

- **Various Outreach Efforts:**

There are several County Bar functions, Section functions, and specialty and Minority Bar Association functions and events that will be taking place during the spring and summer of 2020.

Spokane County Bar Professionalism Event on March 25, 2020 – Rajeev, Dan and Terra will attend

Spokane County Bar Diversity Event April 25, 2020 – PJ attend?

Yakima County Bar Board Meeting last Friday of each month – Dan Clark will plan to attend one of their meetings this year.

The Committee encourages all Governors to get involved in helping to attend these events to increase outreach, engagement, and communication with membership.

There are four section midyears that the Member Engagement Workgroup Members would like to attend and would also appreciate attendance of other Governors where possible. The midyear events are as follows:

- ELUL – May 7-9, 2020 – Kim planning to attend on Thursday (Kevin will be there as well)
- Family Law Midyear – June 19-21, 2020 - Kim planning to attend
- RPPT – Skamania – June 5-7, 2020 - Kyle?
- SSF Conference – Kitsap Convention Center - September 25-27, 2020 - Dan Bridges?

In any event, if you have any questions regarding this update, and/or anything related to WSBA finances, please let me know and I will do my best to get you a prompt answer to your question(s) and/or concerns.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)

(509) 574-1207 (office)

(509) 969-4731 (cell)

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** March 4, 2020  
**RE:** March BOG meeting Treasurer Update

**ACTION/DISCUSSION:** The following is meant to provide an update on the activity of the WSBA Treasurer, Budget and Audit Committee and WSBA Financial Department from November and December 2019.

The following is an update on various pertinent financial matters of the WSBA.

**FY 2020 Key Financial Benchmarks October 1 through January 31, 2020 (1/3 of Fiscal Year Complete).**

1/3 of the Fiscal Year completed and the WSBA is in very healthy financial shape. Overall through January 31, 2020, the WSBA has actual net income of **\$359,523** for the year 1/3 of the Fiscal Year completed. This is outstanding news by way of comparison for the FY 2020 Budget that was adopted by the WSBA which would have called for a net loss of **(\$591,915)**. Overall, our income is much higher than anticipated and our expenses both in direct and indirect costs are much lower than Budgeted. Overall, 1/3 through the year and we are **\$951,438** positive fiscal position v. FY 2020 budgeted numbers. This is because of prudent financial management, and WSBA’s historical conservative budgeting practices which tend to prudently under-estimate revenue and over-estimate expenses when building WSBA operating budgets.

The following are Key Financial Benchmark information that WSBA Controller Maggie Yu, has prepared:

Category	% of Year	Current Year % YTD	Current Year \$ Difference	Prior Year YTD	Comments
Salaries	33%	33%	\$ 32,971 under budget	35%	Salaries are slightly under due to open positions. Are 2 percent lower than same time last year.
Benefits	33%	32%	\$ 59,933 under budget	33%	Benefit Expenditures under Budget

					due to open positions.
<b>Other Indirect Expenses</b>	<b>33%</b>	<b>32%</b>	<b>\$38,563 under budget</b>	<b>34%</b>	<b>Slightly under budget due to timing of payments. Still a 2 percent increase from same time last year.</b>
<b>Total Indirect Expenses</b>	<b>33%</b>	<b>33%</b>	<b>\$131,467 under budget</b>	<b>34%</b>	<b>Under budget due to open positions</b>

<b>General Fund Revenues</b>	<b>33%</b>	<b>35%</b>	<b>\$255,997 Over Budget</b>	<b>35%</b>	<b>Over Budget due to timing of payments.</b>
<b>General Fund Direct Expenses</b>	<b>33%</b>	<b>26%</b>	<b>\$194,773 Under Budget</b>	<b>27%</b>	<b>Under budget due to timing of payments</b>

<b>CLE Revenue</b>	<b>33%</b>	<b>38%</b>	<b>\$96,920 Over Budget</b>	<b>42%</b>	<b>Over Budget Due to Higher than Anticipated Sales of CLE products</b>
<b>CLE Direct Expenses</b>	<b>33%</b>	<b>15%</b>	<b>\$194,949 Under Budget</b>	<b>20%</b>	<b>Under the budget due to timing of the payments.</b>
<b>CLE Indirect Expenses</b>	<b>33%</b>	<b>32%</b>	<b>\$25,198 Under Budget</b>	<b>34%</b>	<b>Under Budget due to open positions.</b>

These results are very encouraging 1/3 of the Fiscal Year. As WSBA Treasurer, I will continue to work collaboratively and closely with Jorge Perez, his very talented financial team, and the rest of the talented WSBA staff to monitor closely WSBA financials for the Board of Governors.

### **Continued WSBA Financial Communication and Transparency:**

As previously stated in the November and January BOG books, one of my individual goals as Treasurer is to improve communications and transparency of WSBA financial matters. As such, I have started Washington Bar News articles attempting to provide membership increased communication and transparency of WSBA's financials and budgeting results. I have also attempted to increase transparency and communication with BOG Book written material updates.

I look forward to continue to bring forward new ways to improve transparency and increase WSBA financial information to the membership and the public in the future.

### **FY 2020 Budget Reforecast Process:**

As previously discussed in November, and January's Treasurer updates, Jorge Perez, Terra Nevitt and I will be conducting a reforecasting of FY 2020's cost center expenses. The goal will be to look for potential increased efficiencies and cost savings for the WSBA and its membership. So far Terra has done a fantastic job of taking a hard look when vacancies have arisen and she's chosen, I believe wisely not to fill some management level positions, but rather to look at new and innovative ways to have those job duties absorbed by existing WSBA employees. While this can only be done so much, I think it points to her attempting to hear what the BOG's top 2019-20 group goal was as previously discussed at the 2019 BOG retreat in Richland, Washington in July.

Terra, the WSBA Financial Staff and I have worked very hard on implementing this project. We will have final results ready to present at the March 30, 2020 Budget and Audit meeting, and then a final report to the Board of Governors to be presented at the April 2020 BOG meeting for approval by the BOG.

### **Adaptive Insights WSBA Financial Software Implementation:**

The Board of Governors approved purchase of new financial forecasting software for the WSBA Financial Department at the January 2020 BOG Meeting. The kick off meeting for implementation of this software was held on February 6, 2020. The Finance team is currently conducting trainings and hopes to have the full software online for use and in April 2020.

This software really is thought to be a game changer for the WSBA in greatly improving efficiency not only for the WSBA Financial Department, but also for various other WSBA Departments. It will allow the Board of Governors and Budget and Audit Committee members to be able to have much faster and



accurate financial information, and it will allow us to avoid increasing the organizations FTE count by one (1) FTE. Jorge Perez and I are very excited about getting this software up and running to continue to improve efficiencies and cost savings for the organization.

### **2020 Deep Dive Audit:**

Jorge Perez, Julie Shankland and I, along with Joseph Purvis, and other representatives from the accounting firm of Clark Nuber have met several times during the latter part of 2019 and the first quarter of 2020, to review the status of various comprehensive and extensive financial data set testing that is being conducted by Clark Nuber. The following tests of WSBA financial data have been conducted by Clark Nuber:

- A. Analysis of Credit Card Spending
- B. Analysis of Credit Card Controls (Receipts/Documentation)
- C. Credit Card Limit Variance Analysis
- D. Monthly Purchases of WSBA
- E. Duplicative Transactions (Data/Person/Vendor)
- F. Recurring Transactions
- G. Incremental Transactions
- H. Transaction Data Frequency
- I. Accounts Payable Database Review
- J. Check Sequencing

The analysis of the above areas yielded no patterns or activities that warrant any type of further investigation for fraudulent or non-compliant procedures.

Jorge Perez, and I are set to schedule an exit interview with Clark Nuber for the week of March 23rd. The audit report will be completed and presented at the March 30, 2020 Budget and Audit meeting to the Budget and Audit members and then will be a discussion review item on the April 2020 Board of Governors Meeting.

I would like to thank Jorge, Julie and all of the WSBA financial team for providing timely requested financial materials to Clark Nuber so they could complete the Audit. Clark Nuber has been very complimentary of WSBA staff during this deep dive process.

### **FY 2019 Financial Statement Audit:**

Clark Nuber has completed its audit of the WSBA financial statements for Fiscal Year 2019. WSBA received an unmodified, “clean” audit opinion for the 2019 fiscal year. This marks several decades of similar outstanding audit reports for the state bar.

I would like to congratulate the bar’s financial team and all staff for their diligent budget controls and processes.” This audit report should give us all a high degree of confidence in the bars financial integrity as far as reporting financial statements being true and accurate.

**WSBA Hardship Exemption:**

The Budget and Audit Committee voted at the January 15, 2020 special Budget and Audit Meeting to recommend increasing the WSBA license hardship exemption exception for members that have personal hardships and are unable to timely pay WSBA license fees from a one time in a life-time use, to a two time use. This will be on the March 2020 agenda for a first read by the Board of Governors and then potentially on for a second read and potential adoption at the April 2020 BOG meeting.

**WSBA Apex Awards:**

The Budget and Audit Committee voted in January at its regular meeting to recommend to the full Board of Governors to cease holding the Apex Awards Ceremony. This is the following net losses that the Apex Awards Dinner has cost the WSBA since FY 2015.

FY 15	FY 16	FY 17	FY 18	FY 19	FY 20 (anticipated)
(\$52,488)	(\$61,369)	(\$49,495)	(\$42,236)	(\$63,783)	(\$73,150)

Overall since FY 2015, even with very generous donations from former District 7(s) Governor James Doane and his wife Yumi, and from Ken Masters and the Masters Law Group, and several other donations, the above chart clearly illustrates that the WSBA has lost significant money putting on this Awards Dinner. Overall, the total sum of losses from FY 2015 through 2019 has been **\$269,371.00**. This amounts to an annual average loss of the Apex awards dinner of **\$53,874.20**. With FY 2020 being an anticipated much larger loss to the WSBA, WSBA staff, myself as Treasurer and the vast majority of the Governors on the Budget and Audit Committee believe it is in the best interest of the WSBA and its members if we changed the current format of the Apex Awards Dinner. This will be further discussed later in the BOG book.

**FY 2022 & 2023 License fee recommendations:**

The Budget and Audit Committee will be discussing recommendations to the BOG for the FY 2022 and FY 2023 license years. Those will be ultimately presented to the BOG sometime this summer/fall and the ultimate decision will be that of the BOG.

**FY 2021 Budget Process:**

The Budget and Audit Committee will start the FY 2021 Budget Process in April 2020 and that will continue through 2020 with an anticipated first Read of the WSBA Budget set for the July 2020 BOG meeting, and final adoption of the FY 2021 Budget at the September 2020 BOG Meeting. During this process, the Budget and Audit committee members and I will continue to explore various ways to potentially improve efficiencies and expand services of the WSBA on behalf of membership and the public.

If you have any questions regarding this update, and/or anything related to WSBA finances, please let me know and I will do my best to get you a prompt answer to your question(s) and/or concerns.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

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

**TO:** WSBA Board of Governors  
**FROM:** Terra Nevitt, Interim Executive Director  
**DATE:** March 6, 2020  
**RE:** ABA Midyear Meeting Report

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Attached, is the Daily Journal from the 2020 Midyear Meeting of the American Bar Association House of Delegates on February 17, 2020 in Austin, TX.

If you would like more information about any of listed resolutions, it can be found on the ABA Website, <https://www.abajournal.com/topic/midyear+meeting>.

**AMERICAN BAR ASSOCIATION  
HOUSE OF DELEGATES**

**2020 MIDYEAR MEETING  
AUSTIN, TEXAS  
FEBRUARY 17, 2020**

**DAILY JOURNAL**

<b><u>RPT NO.</u></b>	<b><u>PROPOSED BY</u></b>	<b><u>SHORT TITLE</u></b>	<b><u>ACTION</u></b>
<a href="#"><u>10A</u></a>	MASSACHUSETTS BAR ASSOCIATION SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE NATIONAL NATIVE AMERICAN BAR ASSOCIATION KING COUNTY BAR ASSOCIATION COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE CRIMINAL JUSTICE SECTION SECTION OF LITIGATION COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY COMMISSION ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES COALITION ON RACIAL AND ETHNIC JUSTICE SECTION OF STATE AND LOCAL GOVERNMENT LAW WASHINGTON STATE BAR ASSOCIATION COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION	Urges federal, state, local, territorial, and tribal governments to acknowledge and prioritize responding to the Missing and Murdered Indigenous Women (MMIW) crisis, and urges Congress to pass legislation that (1) prioritizes national data collection and tribal access to that data, (2) develops inter-jurisdictional protocols, and (3) provides a holistic response.	Approved
<a href="#"><u>10B</u></a>	MASSACHUSETTS BAR ASSOCIATION CRIMINAL JUSTICE SECTION	Urges federal, state, local, territorial, and tribal governments to examine existing policies on the use of lethal force against individuals during law enforcement encounters -- including investigative stops, arrests, and searches -- in order to determine whether those policies should be modified to ensure that the lethal force is only employed against individuals when necessary to protect officers or public safety.	Approved

<a href="#"><u>10C</u></a>	VIRGIN ISLANDS BAR ASSOCIATION	Supports an interpretation of the Citizenship Clause of the Fourteenth Amendment to the United States Constitution that recognizes all persons born in the territories, possessions, and commonwealths of the United States, and who are subject to the jurisdiction of the United States, as natural-born citizens of the United States; and further urges the Judiciary to declare 8 U.S.C. § 1408(1) as unconstitutional in violation of the Citizenship Clause.	Approved as Amended*
<a href="#"><u>10D</u></a>	BAR ASSOCIATION OF SAN FRANCISCO SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE CRIMINAL JUSTICE SECTION	Urges federal courts to interpret the relationship of federal habeas corpus and federal civil rights law to permit an individual who is ineligible for federal habeas corpus relief to bring a civil rights claim pursuant to 42 U.S.C. § 1983 for civil rights violations associated with the criminal process leading to a criminal conviction.	Approved as Amended*
<a href="#"><u>100A</u></a>	SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR	Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2020 to Rules 13, 29, 30-36, 37, and 39 of the <i>ABA Standards and Rules of Procedure for Approval of Law Schools</i> .	Approved
<a href="#"><u>100B</u></a>	SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR	Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2020 to Standards 202, 307, 310, 502, and 509 of the <i>ABA Standards and Rules of Procedure for Approval of Law Schools</i> .	Approved
<a href="#"><u>101A</u></a>	SECTION OF INTELLECTUAL PROPERTY LAW	Supports a rebuttable presumption of irreparable harm for purposes of preliminary or permanent injunctive relief in trademark infringement cases and supports amending section 34 of the Lanham act, 15 U.S.C. § 1116, to provide for such a presumption.	Approved

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\* See Attached

<a href="#">101B</a>	SECTION OF INTELLECTUAL PROPERTY LAW	Supports a right that would legally compel the disclosure of internet domain name registrant contact information by any U.S. entity that administers and maintains such contact information, upon receipt of a notice alleging a legitimate interest based on the registrant's violations of applicable laws relating to intellectual property protections.	Approved
<a href="#">102A</a>	STANDING COMMITTEE ON PARALEGALS	Grants approval to 3 programs, grants reapproval to 19 paralegal education programs, withdraws the approval of 6 programs at the request of the institutions, and extends the terms of approval to 38 paralegal education programs.	Approved
<a href="#">102B</a>	STANDING COMMITTEE ON PARALEGALS	Adopts amendments, dated February 2020, to the ABA Guidelines for the Approval of Paralegal Education Programs.	Approved
<a href="#">103A</a>	TORT TRIAL AND INSURANCE PRACTICE SECTION CRIMINAL JUSTICE SECTION	Urges all federal, state, local, territorial, and tribal legislative bodies to enact laws, and governmental agencies to adopt policies, that provide law enforcement officers with comprehensive animal encounter training on the reasonable use of force necessary to better secure the safety of such officers, protect public health, reduce legal liability, and ensure the humane treatment of the animals encountered.	Approved
<a href="#">103B</a>	TORT TRIAL AND INSURANCE PRACTICE SECTION	Urges Congress to enact legislation to clarify and ensure that it does not constitute a federal crime for qualified lawyers to provide legal advice and services to clients regarding marijuana-related activities that are in compliance with state, territorial, and tribal law.	Approved as Revised*
<a href="#">103C</a>	TORT TRIAL AND INSURANCE PRACTICE SECTION	Urges state, territorial and federal courts to apply the modern incorporation doctrine standards to the Seventh Amendment to the Constitution of the United States and make its formulation of the fundamental right to trial by jury in civil cases applicable to all states and territories of the Union.	Approved as Amended*

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\* See Attached.

<a href="#"><u>103D</u></a>	TORT TRIAL AND INSURANCE PRACTICE SECTION	Urges Congress to enact legislation to clarify and ensure that it shall not constitute a federal crime for banking and financial institutions to provide services to businesses and individuals, including attorneys, who receive compensation from the sale of state-legalized cannabis or who provide services to cannabis-related legitimate business acting in accordance with state, territorial, and tribal laws.	Approved
<a href="#"><u>104A</u></a>	SECTION OF INTERNATIONAL LAW SECTION OF DISPUTE RESOLUTION	Urges all nations, including the United States, to become party to and implement the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Mediation Convention.	Approved as Revised*
<a href="#"><u>104B</u></a>	SECTION OF INTERNATIONAL LAW GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION TORT TRIAL AND INSURANCE PRACTICE SECTION	Urges the U.S. federal government and other national governments, as well as multinational and international organizations to amend existing laws or enact new enforceable laws, policies and procedures that protect and provide for the health and well-being of Military Working Dogs, whether deployed in service, retained and trained by armed forces or deployed to armed forces through contracts with governments.	Approved as Amended*
<a href="#"><u>105</u></a>	STANDING COMMITTEE ON SPECIALIZATION	Grants reaccreditation to the Civil Trial Law program of the National Board of Trial Advocacy and the Estate Planning Law program of the National Association of Estate Planners & Councils, Estate Law Specialist Board, Inc. of Cleveland, Ohio.	Approved
<a href="#"><u>106</u></a>	COMMISSION ON DISABILITY RIGHTS	Urges Congress to amend the Air Carrier Access Act, 49 U.S.C. § 41705 (1986), to establish a private right of action and to provide equitable and legal relief, including compensatory and punitive damages, as well as reasonable attorneys' fees, reasonable expert fees, and the costs of the action to plaintiffs who prevail in civil discrimination actions.	Approved

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\* See Attached



<a href="#"><u>107A</u></a>	STANDING COMMITTEE ON GUN VIOLENCE CRIMINAL JUSTICE SECTION SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE	Urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would make it unlawful for any person to transfer, sell, trade, give, transport, or deliver any unfinished firearm frame or receiver to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) unless the unfinished frame or receiver is serialized in accordance with federal requirements for the serialization of firearms, the recipient passes a background check consistent with the federal requirements for a licensed dealer's transfer of a firearm, and records consistent with the federal record-keeping requirements for licensed firearm dealers are created and retained.	Approved
<a href="#"><u>107B</u></a>	STANDING COMMITTEE ON GUN VIOLENCE CRIMINAL JUSTICE SECTION SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE	Urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would require any person seeking to purchase a firearm to apply for a permit from a designated law enforcement or public safety agency; that, at a minimum, the applicant apply in person, be fingerprinted, and be subject to a background and criminal records check; and prohibit the sale, delivery or transfer of a firearm to anyone who does not possess a valid permit.	Approved
<a href="#"><u>107C</u></a>	STANDING COMMITTEE ON GUN VIOLENCE CRIMINAL JUSTICE SECTION SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE	Urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would define the requirements of safe storage of a firearm, require firearm owners to meet those requirements, promote safe storage education for firearm owners and urges the federal government to incentivize safe storage programs within the states.	Approved

<a href="#">108</a>	STANDING COMMITTEE ON ELECTION LAW SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE STANDING COMMITTEE ON PUBLIC EDUCATION SECTION OF STATE AND LOCAL GOVERNMENT LAW LAW STUDENT DIVISION	Urges federal, state, local, territorial, and tribal governments to enact legislation that provides for voter preregistration for eligible 16-18-year-olds and that they be added to the voter roll upon reaching the legal age for voting; for high schools and colleges to provide students a meaningful opportunity to register and vote and to provide robust civics education to promote well-informed voting; and for governmental entities to appropriate sufficient funds to implement voter preregistration and civics education as called for by this resolution.	Approved
<del>109A</del>	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Requests approval of the Uniform Automated Operation of Vehicles Act as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Withdrawn
<a href="#">109B</a>	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Requests approval of the Uniform Electronic Wills Act an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
<a href="#">109C</a>	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Requests approval of the Uniform Registration of Canadian Money Judgments Act as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
<a href="#">110</a>	CRIMINAL JUSTICE SECTION	Urges federal, state, local, territorial and tribal governments to provide courts with discretion to allow defendants to remain released pending sentencing following a guilty plea or conviction as long as the court finds that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released, such as by amending 18 U.S.C. § 3143 or similar statutes in other jurisdictions.	Approved as Revised*
<a href="#">111</a>	SECTION OF REAL PROPERTY TRUST AND ESTATE LAW	Urges federal, state, local, territorial and tribal governments, and their respective agencies and departments, to protect real property interests, including common law trespass and privacy rights, with respect to any statute, ordinance, regulation, administrative rule, order, or guidance pertaining to the development and usage of unmanned aircraft systems over private property.	Approved

<a href="#"><u>112</u></a>	<p>SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE          COALITION ON RACIAL AND ETHNIC JUSTICE          COMMISSION ON DISABILITY RIGHTS          COMMISSION ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES          COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY          NATIONAL CONFERENCE OF SPECIALIZED COURT JUDGES          NATIONAL NATIVE AMERICAN BAR ASSOCIATION          SECTION OF STATE AND LOCAL GOVERNMENT LAW</p>	<p>Urges federal, state, local, territorial and tribal governments to enact legislation to remove voting barriers to Native American and Alaska Native voter registration and participation, and to establish measures to ensure protections for Native American and Alaska Native voting rights.</p>	<p>Approved</p>
<a href="#"><u>113</u></a>	<p>CENTER FOR HUMAN RIGHTS</p>	<p>Encourages lawyers in all practice areas to use and promote technology-based platforms that facilitate the efficient, timely, and targeted matching of survivors of human trafficking who have legal needs with lawyers who have the requisite specialization and availability to meet those needs <i>pro bono</i>.</p>	<p>Approved</p>
<a href="#"><u>114</u></a>	<p>COALITION ON RACIAL AND ETHNIC JUSTICE          SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE          SECTION OF STATE AND LOCAL GOVERNMENT LAW          COMMISSION ON HOMELESSNESS AND POVERTY          NATIONAL NATIVE AMERICAN BAR ASSOCIATION</p>	<p>Urges federal, state, local, territorial, and tribal governments to enact legislation that allows for an individual to use an address other than a physical residential address for purposes of voter registration and urges the enactment of legislation or regulations that assign the voter to the precinct in which the person can be found, whether that location is expressed by a traditional address or description.</p>	<p>Approved</p>

<a href="#"><u>115</u></a>	<p>CENTER FOR INNOVATION STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY STANDING COMMITTEE ON PROFESSIONAL REGULATION STANDING COMMITTEE ON PUBLIC PROTECTION IN THE PROVISION OF LEGAL SERVICES</p>	<p>Encourages U.S. jurisdictions to consider adoption of regulatory innovation approaches to address the access to justice crisis in the United States.</p>	<p>Approved as Revised and Amended*</p>
<a href="#"><u>116</u></a>	<p>COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE NATIONAL NATIVE AMERICAN BAR ASSOCIATION NATIONAL CONFERENCE SPECIALIZED COURT JUDGES</p>	<p>Urges Congress to amend and reauthorize the Violence Against Women Act as reflected in H.R. 1585 (as passed) and S. 2843 (as introduced), or similar legislation, that specifically provides funding to tribal governments and recognizes the inherent authority of American Indian and Alaska Native governments to prosecute non-Indian perpetrators of crimes arising from gender-based violence, while ensuring that due process rights are protected as set forth in section 234(c) of the Tribal Law and Order Act, Public Law 111-211.</p>	<p>Approved</p>
<a href="#"><u>117</u></a>	<p>COMMISSION ON IMMIGRATION</p>	<p>Urges the federal government to maintain an asylum system that affords all persons seeking protection from persecution or torture access to counsel, due process, and a full and fair adjudication that comports with U.S. and international law.</p>	<p>Approved as Revised*</p>
<a href="#"><u>118</u></a>	<p>SECTION OF STATE AND LOCAL GOVERNMENT LAW SECTION OF SCIENCE &amp; TECHNOLOGY LAW SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE CRIMINAL JUSTICE SENIOR LAWYERS DIVISION STANDING COMMITTEE ON ELECTION LAW CYBERSECURITY LEGAL TASK FORCE</p>	<p>Urges the United States Congress to protect the security and integrity of U.S. federal elections by enacting legislation that authorizes and appropriates necessary funding for the National Institute of Standards and Technology.</p>	<p>Approved</p>

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\* See Attached

<a href="#"><u>119</u></a>	YOUNG LAWYERS DIVISION	Urges federal, state, local, territorial, and tribal governments to appropriate and allocate funds to identify and address mental health problems experienced by youth as a result of racism, poverty, and living in high crime communities.	Approved
<a href="#"><u>200</u></a>	HOUSE COMMITTEE ON CREDENTIALS AND ADMISSIONS	Requests from the California Lawyers Association and the North Carolina Bar Association to receive primary state bar association status and acquire additional delegate seats in the House of Delegates.	Approved as Amended*

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\* See Attached

# 10C Amendment

## RESOLUTION

1 RESOLVED, That the American Bar Association supports an  
2 interpretation of the Citizenship Clause of the Fourteenth  
3 Amendment to the United States Constitution that recognizes all  
4 persons born in the territories, possessions, and commonwealths  
5 of the United States, and who are subject to the jurisdiction of the  
6 United States, as natural-born citizens of the United States; and

7 FURTHER RESOLVED, That ~~the American Bar Association urges~~  
8 ~~the Judiciary to declare 8 U.S.C. § 1408(1) and any other statute~~  
9 ~~or regulation that withholds recognition as natural-born citizens~~  
10 ~~from any persons born in any of the territories, possessions, and~~  
11 ~~commonwealths of the United States, and who are subject to the~~  
12 ~~jurisdiction of the United States, as unconstitutional in violation of~~  
13 ~~the Citizenship Clause~~ nothing in this Resolution should be  
14 construed to infringe on the cultural sovereignty of any United  
15 States territory, including the matai system in American Samoa.

*Deletions struck through; additions underlined.*

# 10D Amendment

## RESOLUTION

1 RESOLVED, That the American Bar Association ~~urges~~  
2 ~~federal courts to interpret~~ supports an interpretation that the  
3 relationship of federal habeas corpus and federal civil rights  
4 law ~~to~~ permit an individual who is ineligible for federal habeas  
5 corpus relief to bring a civil rights claim pursuant to 42 U.S.C.  
6 § 1983 for civil rights violations associated with the criminal  
7 process leading to a criminal conviction; and

8  
9 FURTHER RESOLVED, That the American Bar Association  
10 urges the United States Congress to amend 42 U.S.C. § 1983  
11 to make explicit that an individual who is not eligible for federal  
12 habeas corpus relief may bring a civil rights claim pursuant to  
13 42 U.S.C. § 1983 for civil rights violations associated with the  
14 criminal process leading to a criminal conviction.

*Deletions struck through; additions underlined.*

# REVISED 103B

## RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress  
2 to enact legislation to clarify and explicitly ensure that it ~~shall~~does  
3 not constitute a violation of federal law ~~crime~~ for lawyers, acting in  
4 accord consistent with state, territorial, and tribal ethical rules on  
5 lawyers' professional conduct, to provide legal advice and services  
6 to clients regarding matters involving marijuana-related activities  
7 that are in compliance with state, territorial, and tribal law.

Deletions struck through; additions underlined



# 103C Amendment

## RESOLUTION

1 RESOLVED, That the American Bar Association ~~urges~~ supports  
2 the application by state, territorial, and federal courts ~~to apply~~ of the  
3 modern incorporation doctrine standards to the Seventh  
4 Amendment to the Constitution of the United States and make its  
5 formulation of the fundamental right to trial by jury in civil cases  
6 applicable to all states and territories of the Union.

Deletions struck through; additions underlined

**Amendment to Line 1 and 2.**

## RESOLUTION

1 RESOLVED, That the American Bar Association urges all nations,  
2 including the United States, to become party to and implement the  
3 United Nations Convention on International Settlement  
4 Agreements Resulting from Mediation (also known as the  
5 Singapore Mediation Convention); and  
6  
7 FURTHER RESOLVED, That the American Bar Association urges  
8 the United States executive branch and Senate to regard the  
9 Singapore Mediation Convention as self-executing under U.S. law  
10 ~~and urges that any U.S. implementing legislation considered~~  
11 ~~necessary be federal legislation.~~

*Deletions struck through; additions underlined*

# 104B Amendment

## RESOLUTION

- 1 RESOLVED, That the American Bar Association urges the U.S.  
2 federal government and other national governments, as well as  
3 multinational and international organizations around the world, to  
4 amend existing laws or enact new enforceable laws, policies and  
5 procedures that protect and provide for the health and well-being  
6 of all Military Working Dogs, whether deployed in service, armed  
7 forms or deployed to armed forces through contracts with  
8 governments, to:  
9
- 10 ○ provide for military transportation back to their home  
11 country at decommission or retirement;
  - 12 ○ grant priority of first adoption at retirement to their  
13 veteran soldier handlers;
  - 14 ○ ensure the provision of skilled veterinary care while in  
15 military service; ~~and fund the coverage of veterinary~~  
16 ~~care costs in retirement for their lifetimes;~~ and
- 17 designate specific government oversight for compliance and  
18 enforcement of provisions for veterinary care, transportation  
19 and adoption processes at decommission or retirement.

*Deletions struck through; additions underlined.*

## RESOLUTION

1 RESOLVED, That the American Bar Association urges federal,  
2 state, local, territorial and tribal governments, and courts and court  
3 rule-making entities, to provide courts with discretion to allow  
4 defendants to remain ~~on bond~~ released pending sentencing  
5 following a guilty plea or conviction as long as the court finds that  
6 the defendant is not likely to flee or pose a danger to the safety of  
7 any other person or the community if released, such as by  
8 amending 18 U.S.C. § 3143 or similar statutes in other jurisdictions.

Deletions struck through; additions underlined

# 115 Revised and Amended

## RESOLUTION

1 RESOLVED, That the American Bar Association encourages U.S. jurisdictions to  
2 consider innovative approaches to the access to justice crisis in order to help the more  
3 than 80% of people below the poverty line and the ~~majority~~ many of middle-income  
4 Americans who lack meaningful access to ~~legal services when facing critical civil legal~~  
5 ~~issues, such as child custody, debt collection, eviction, and foreclosure~~ effective civil legal  
6 services;

7  
8 FURTHER RESOLVED, That the American Bar Association encourages U.S.  
9 jurisdictions to consider regulatory innovations that have the potential to improve the  
10 accessibility, affordability, and quality of civil legal services, while also ensuring necessary  
11 and appropriate protections that best serve clients and the public including the provision  
12 of legal counsel as a matter of right and at government expense for children facing  
13 essential civil legal matters and for low-income individuals in adversarial proceedings  
14 where basic human needs or a loss of physical liberty are at stake;

15  
16 FURTHER RESOLVED, That the American Bar Association encourages U.S.  
17 jurisdictions to collect and assess data regarding regulatory innovations both before and  
18 after ~~the~~ their adoption ~~of any innovations~~ to ensure that changes are effective in  
19 increasing access to legal services and are in the ~~public~~ interest of clients and the public;  
20 and

21  
22 FURTHER RESOLVED, That nothing in this Resolution should be construed as altering  
23 recommending any changes to any of the ABA Model Rules of Professional Conduct,  
24 including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized  
25 practice of law, or any other subject.

*Deletions struck through; additions underlined.*

***Proposed amendment on lines 22 and 23.***

RESOLUTION

1 RESOLVED, That the American Bar Association urges the federal  
2 government to maintain an asylum system that affords all persons  
3 seeking protection from persecution or torture access to counsel,  
4 due process, and a full and fair adjudication that comports with U.S.  
5 and international law;

6  
7 FURTHER RESOLVED, That the American Bar Association  
8 opposes the imposition of limitations that restrict eligibility for  
9 asylum based on the place or manner of arrival at the U.S. border  
10 or submission of applications for protection in countries of transit;

11  
12 FURTHER RESOLVED, That the American Bar Association  
13 opposes the implementation of procedures that allow U.S.  
14 immigration authorities to refuse to process asylum seekers  
15 arriving at the border or to transfer asylum seekers to other  
16 countries for processing of their asylum claims, without regard to  
17 the safety situation or the adequacy of the asylum process in those  
18 third countries; and

19  
20 FURTHER RESOLVED, That the American Bar Association  
21 opposes procedural restrictions including but not limited to the  
22 ~~Migration~~Migrant Protection Protocols (“MPP”), that prevent  
23 migrants from remaining in the United States during the  
24 adjudication of their asylum claims.

*Deletions struck through; additions underlined*

AMERICAN BAR ASSOCIATION

HOUSE OF DELEGATES COMMITTEE ON CREDENTIALS AND ADMISSIONS

**Recommendation regarding requests from the California Lawyers Association and the North Carolina Bar Association for Primary State Bar Association Designation and Acquisition of Additional Delegate Seats in the House of Delegates**

**I-CALIFORNIA DELEGATION**

The Credentials and Admissions Committee recommends approval of the California Lawyers Association as the primary state bar in the HOD California delegation (*State Bar of California to remain in the House as the secondary state bar in the California delegation, with 1 delegate seat*), and that CLA receive 2 of the SBC's delegate seats, inclusive of the seats' current terms which will conclude at the end of the 2020 Annual Meeting.

**II-NORTH CAROLINA DELEGATION**

The Credentials and Admissions Committee recommends approval of the North Carolina Bar Association as the primary state bar in the HOD North Carolina delegation, and that, NCBA receive the 5 seats that were relinquished by the North Carolina State Bar Association, inclusive of the seats' current terms as follows:

- (3) with term to end at the conclusion of the 2020 Annual;
- (1) with term to end at the conclusion of the 2021 Annual, and
- (1)-YLD with term to end at the conclusion of the 2021 Annual

In addition, the Committee recommends that it be allowed to report/make a motion for approval of both of the above recommendations, at the start of the House 2020 Midyear proceedings, so that the additional delegates for each organization may be officially certified and seated in the well of the House as voting delegate representatives of the organizations for the 2020 ABA House of Delegates Midyear Meeting.

*Deletions struck through; additions underlined.*

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** March 4, 2020  
**RE:** March BOG meeting B & A Recommendation re: 2020 Apex Awards Dinner

**ACTION/DISCUSSION :** Recommendation of Budget and Audit Committee to Board of Governors to not hold 2020 Apex Awards Dinner, and to adopt recommendations of WSBA Staff for alternative process to honor Apex Award Winners.

**WSBA Apex Awards:**

The Budget and Audit Committee voted in January 27, 2020 at its regular meeting to recommend to the full Board of Governors to cease holding the Apex Awards Ceremony. This is the following net losses that the Apex Awards Dinner has cost the WSBA since FY 2015.

FY 15	FY 16	FY 17	FY 18	FY 19	FY 20 (anticipated)
(\$52,488)	(\$61,369)	(\$49,495)	(\$42,236)	(\$63,783)	(\$73,150)

Overall since FY 2015, even with very generous donations from former District 7(s) Governor James Doane and his wife Yumi, and from Ken Masters and the Masters Law Group, and several other donations, the above chart clearly illustrates that the WSBA has lost significant money putting on this Awards Dinner. Overall, the total sum of losses from FY 2015 through 2019 has been **\$269,371.00**. This amounts to an annual average loss of the Apex awards dinner of **\$53,874.20**. With FY 2020 being an anticipated much larger loss to the WSBA, WSBA staff, myself as Treasurer and the vast majority of the Governors on the Budget and Audit Committee believe it is in the best interest of the WSBA and its members if we changed the current format of the Apex Awards Dinner.

In any event, if you have any questions regarding this update, and/or anything related to WSBA finances, please let me know and I will do my best to get you a prompt answer to your question(s) and/or concerns.



Attachment A is true and correct additional information that was prepared by WSBA Communications Director Sara Negowski and staff regarding this agenda item request.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)

(509) 574-1207 (office)

(509) 969-4731 (cell)

**To:** Treasurer Dan Clark and the Budget and Audit Committee  
**From:** Interim Executive Director Terra Nevitt and Chief Communication and Outreach Officer Sara Niegowski  
**Date:** Jan. 8, 2020  
**Re:** Proposal for APEX Awards and Dinner

**PROPOSAL:** Beginning in FY20, we propose that WSBA honor its APEX Award winners through an alternative means than an awards dinner in Seattle. The goal will be to save direct and indirect expenses while showcasing the winners’ stories statewide and to the public.

**BACKGROUND:** The APEX (**A**cknowledging **P**rofessional **E**xcellence) Awards (previously known as the WSBA Annual Awards)) date back to 2005. The awards are meant to recognize Washington legal luminaries whose work embodies the WSBA mission; to inspire members to proudly uphold the rule of law and integrity of the profession; and to grow public confidence in a just and equitable legal profession. In its current iteration, this annual tradition encompasses a dozen categories, bestowed at an evening gala during the Board of Governor’s September meeting. The event is a combination of three main elements: Ceremonial recognition and swearing-in of WSBA Board of Governors and Officers; presentation of awards, which includes a 2- to 3-minute video of each winner; and a fundraiser for the Washington State Bar Foundation (WSBF).

We set a financial goal for the event two years ago: to bring in more revenue (including WSBF sponsorships and donations) than the direct costs of the program. The 2018 event was a high point, all but breaking even. We had hoped to continuing the upward trend in 2019 by attracting even more attendees and sponsors to start to make a dent in the approximately \$40,000 in indirect (staff-related) costs. In reality, we were able to reduce direct expenses by about 6%; while lower attendance and sponsorship numbers made the 2019 awards dinner the most expensive yet.

	2012	2013	2014	2015	2016	2017	2018	2019
<b>Paid Attendees</b>	178	280	214	263	240	199	288	216
<b>Staff Comps</b>	13	17	20	23	20	20	22	24
<b>Comps</b>	63	74	86	106	94	87	55	73
<b>Total Attendees</b>	255	371	320	392	354	306	365	313

	FY15	FY16	FY17	FY18	FY19	FY20*
<b>Revenue (Minus WSBF Donations)</b>	\$55,829 (\$33,426)	\$31,274 (\$25,219)	\$51,914 (\$18,534)	\$68,053 (\$32,553)	\$44,810 (\$24,348)	\$40,000
<b>Direct Expense</b>	\$72,722	\$56,707	\$66,986	\$70,776	\$66,301	\$70,000
<b>Indirect Expense</b>	\$35,595	\$35,936	\$34,423	\$39,513	\$41,292	\$43,150
<b>Net</b>	(\$52,488)	(\$61,369)	(\$49,495)	(\$42,236)	(\$63,783)	(\$73,150)

\*Budgeted

**CONSIDERATIONS:** At the request of the Budget & Audit Committee, and in light of the no-increase license fee recommendation for 2021, the WSBA is undertaking a careful review of its budget to ensure we are being both fiscally responsible with license-fee revenues and maximizing return on our investments to meet mission-critical goals. After some thoughtful reorganization, we believe that we can eliminate a position that is currently open in our Communications Department with some shifting of our priorities. By discontinuing the award dinner, our smaller team will be well positioned to make a strategic pivot to begin a public-confidence/education campaign in the coming year (which could include moving forward with Washington Legal Link, a directory tool that could be a major boon for both the public and members).

In evaluating how and where to recuperate both direct and indirect costs (with staff time perhaps being the most important resource) to execute new priorities, we propose discontinuing the APEX Awards dinner while finding new and more far-reaching ways to honor APEX recipients going forward. Reasons to discontinue the dinner include:

- The event’s reach is limited. Attendees include the recipients and their guests as well as WSBA Board of Governors and Officers. Participation in this and other events leads us to believe that many members do not associate with the state bar as a communal organization and attend events as a matter of fraternity (as opposed to, say, minority bar associations).
- The cost and Seattle-centric location is prohibitive for those with no direct connection to the winners (and often even for those with direct connections). For some members, the event is symbolic of what they perceive as a geographic bias and extravagant tendencies of the organization.
- It does not work well as a combination awards/induction/fund-raising event, often causing some friction in planning and scheduling, as well as ungainliness for attendees who may not be expecting certain elements.

While many staff are steadily involved with the awards throughout the year (from putting out calls for nominees to staffing the Awards Committee), the enormity of hosting the dinner event requires an almost full-time commitment from about three staff members throughout the summer as well as about a dozen staff members in the week leading up to the event.

By discontinuing the dinner, we would hope to continue and expand the most important goals—and return on investment—of the awards: Honoring the winners and spreading their stories, especially to the public. We would like to work with the Awards Committee to consider new ways to present the awards, which might include:

- Continuing to produce high-quality videos for each recipient
- Working closely with media partners across the state to air the videos and to share the stories with the public (TVW? “Lawyer of the Year” promos?)
- Showcasing one or two winners in each issue of *NWLawyer* as an ongoing feature to reach the legal community
- Presenting the awards in a meaningful way in the recipients’ home communities, such as at a county bar meeting or event

**BOTTOM LINE:** By eliminating the dinner, we anticipate lowering the direct costs (which would essentially be limited to videos and crystals) and indirect costs (involving substantially less staff time) to about \$25,000 total for FY20, which is almost a \$50,000 difference than what is budgeted. We need a quick and definitive decision, however, because we are quickly facing deadlines for the event venue and nomination advertising.

**TO:** WSBA Board of Governors

**FROM:** Dan Clark, Treasurer  
Jean McElroy, Chief Regulatory Counsel

**DATE:** March 9, 2020

**RE:** Hardship Fee Exemption Bylaw, Art III.I.5 - Proposed Amendment To Permit Exemption to Be Granted Up To Two Times For Qualifying Active Members – **First Reading**

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**FIRST READING:** Discussion and consideration of proposed amendments to WSBA Bylaws (Art.III.I.5) designed to increase to two the number of times Active members can receive a hardship exemption from paying annual license fees.

## **BACKGROUND**

This item is on the agenda for First Reading, as required by the WSBA Bylaws for all proposed Bylaw amendments. This proposed amendment has been reviewed and approved by the Budget and Audit Committee at its January 15, 2020, special meeting, for presentation to the full Board of Governors for consideration.

The WSBA Bylaws, at Art.III.I.5, contain a provision that permits the Executive Director to grant Active members an exemption from paying the annual license fee if the members file a request certifying that they meet the qualifying requirements (“current annual household income equal to or less than 200% of the federal poverty level as determined based on the member’s household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees”). The Bylaws currently provide that this exemption may be granted only one time while the member is a licensed member of the WSBA. At this time, the exemption is granted based solely on the members’ certification of qualifying household income, without requiring verification of the stated income.

The proposed amendment would increase the number of times such an exemption may be granted to two times while the member is a licensed member of the WSBA.

This proposed amendment is being suggested as a way to 1) assist lower income Active WSBA members to remain on Active status despite facing current financial hardship, and 2) allow WSBA to conduct a preliminary assessment of the effect on WSBA’s budget, regulatory requirements, and other members’ license fees, among other considerations, if the number of Active members receiving exemptions goes up significantly.

It is possible that WSBA could eventually decide to offer the hardship exemption to be granted more times, or even an indefinite number of times, to qualifying members. It is difficult to assess the effects of that possibility without gathering more data. An initial increase to two grants of hardship exemption (from the current one) would allow us to gather some data about the number of Active members who would make such a request and how that affects WSBA license fee revenue and other programs. Additional consideration may also be warranted regarding the question of whether any additional regulatory safeguards should be in place for determining member eligibility for the exemption.

## **FEEDBACK**

Since this idea was discussed at a WSBA Budget and Audit Committee meeting, and no preliminary outreach has been done regarding this proposed amendment, at the time of submitting this memo, there has been no feedback received. WSBA will attempt to receive feedback regarding these proposed Bylaw amendments by asking for feedback from members.

## **ATTACHMENTS:**

1. WSBA Bylaws Art.III.I.5 redlined version to show proposed amendments.
2. WSBA Bylaws Art.III.I.5, clean version containing proposed amendments.
3. 2020 Hardship Exemption request form.

### III. MEMBERSHIP

...

#### I. ANNUAL LICENSE FEES AND ASSESSMENTS

...

##### 5. License Fee and Assessment Exemptions Due to Hardship

In case of proven extreme financial hardship, which must entail a current annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees, the Executive Director may grant an ~~one-time~~ exemption from payment of annual license fees and assessments by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable. A member may be granted a hardship exemption a maximum of two times, on the basis of separate exemption requests, and the exemptions may be granted for consecutive or non-consecutive calendar years.

### **III. MEMBERSHIP**

...

#### **I. ANNUAL LICENSE FEES AND ASSESSMENTS**

...

##### **5. License Fee and Assessment Exemptions Due to Hardship**

In case of proven extreme financial hardship, which must entail a current annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees, the Executive Director may grant an exemption from payment of annual license fees and assessments by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable. A member may be granted a hardship exemption a maximum of two times, on the basis of separate exemption requests, and the exemptions may be granted for consecutive or non-consecutive calendar years.

# WASHINGTON STATE BAR ASSOCIATION

Regulatory Services Department

## 2020 License Fee Exemption Request Form

*This form must be postmarked or received on or before Feb. 3, 2020. If your request is denied and payment is not made online or postmarked or received by Feb. 3, 2020, a 30% late fee will be assessed. You will be denied only if you do not meet the eligibility criteria outlined below.*

### ELIGIBILITY CRITERIA

Article III, section I of the bylaws provides:

#### 5. License Fee and Assessment Exemptions Due to Hardship.

In case of proven extreme financial hardship, which must entail a current annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees, the Executive Director may grant a one-time exemption from payment of annual license fees and assessments by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable.

Supporting documentation may be requested.

#### The 2019 Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia\*

Persons in family	Annual <u>Gross Household</u> Income – Poverty Guideline	200%
1	\$12,490	\$24,980
2	16,910	33,820
3	21,330	42,660
4	25,750	51,500
5	30,170	60,340
6	34,590	69,180
7	39,010	78,020
8	43,430	86,860

For families with more than 8 persons, add \$4,420 for each additional person.

\*For Alaska and Hawaii see [aspe.hhs.gov/poverty-guidelines](https://aspe.hhs.gov/poverty-guidelines)

### CERTIFICATION

I, \_\_\_\_\_, License # \_\_\_\_\_, hereby submit a request for a **one-time** exemption from payment of the annual license fee and assessment for the 2020 license year, based on the following:

- 2019 Annual gross household income: \_\_\_\_\_
- Number of persons in family: \_\_\_\_\_

I certify that my 2019 annual gross household income is equal to or less than 200% of the federal poverty level.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place signed (city, state)





**TO:** WSBA Board of Governors

**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor

**DATE:** March 4, 2020

**RE:** March BOG meeting B & A Recommendation re: Approval of Budget Considerations for Legal Research Member Benefits (Casemaker & Fastcase).

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**ACTION/DISCUSSION :** Recommendation of Budget and Audit Committee to Board of Governors to approve option "C" renewal of contracts for vendors for Casemaker and Fastcase for FY 2021 Budget.

The Budget and Audit Committee unanimously voted at its February 24, 2020 meeting to recommend to the full Board of Governors approval of option C to continue contracting with vendors for Fastcase and Casemaker, which are the two providers of legal research and writing software that are currently offered to WSBA members as a member benefit as part of their license fees. Further information regarding this Agenda item is included in the following.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)

(509) 574-1207 (office)

(509) 969-4731 (cell)

Memo

**To:** Budget & Audit Committee, Board of Governors

**From:** Destinee Evers, Practice Management Assistance Advisor  
Paris Eriksen, Member Services and Engagement Manager  
Kevin Plachy, Interim Director, Advancement Department

**Date:** February 24, 2020

**RE:** Budget Considerations for Legal Research Member Benefits (Casemaker and Fastcase)

Summary

The contracts for WSBA’s legal research benefits, Casemaker and Fastcase, are set to expire later this year (October and December 2020, respectively).<sup>1</sup> The Budget and Audit Committee and Board of Governors are asked to determine whether to renew these member benefits.

Recommendation and Budget Options

Below are the following options for continuing this member benefit:

	<b>OPTION A</b> Casemaker Only	<b>OPTION B</b> Fastcase Only	<b>OPTION C</b> Casemaker & Fastcase	<b>OPTION D</b> Casemaker & Fastcase (with Docket Alarm add-on)
Existing Budget	-	-	\$136,436	-
FY21 Budget (If Selected)	\$64,992 <sup>2</sup> commencing 10/1/2020	\$71,199 <sup>3</sup> commencing 12/1/2020	\$136,191 <sup>4</sup>	\$176,876
Annual Cost Equivalent for the Member <sup>5</sup>	\$1.60	\$1.75 <sup>6</sup>	\$3.35	\$4.35 (an additional \$1.00 per member for the add-on)

We recommend that the Board renew the contracts for both vendors (Options C or D) for three more years. Both platforms are new to the membership—Casemaker just upgraded to Casemaker 4 in January and Fastcase went live to members in February 2019. In this short time, we have been happy with member usage rates and believe that an additional three years would provide more time for member outreach and evaluation of the two tools.

<sup>1</sup> For more discussion, see the Update re: Legal Research Tools attached to the January Executive Director’s Report: Meeting Materials, Board of Governors (Jan. 16–17) pp. 30–33.

<sup>2</sup> Casemaker has offered to keep the contract price-as is if we renew again.

<sup>3</sup> The Fastcase license fee is calculated based on the number of members licensed as of August 1 of each year. All membership numbers shown here are calculated based on August 1, 2019, which was 40,685.

<sup>4</sup> The existing Fastcase term goes through October and November of our FY21. The new contract would start in December of FY21, and will fluctuate a small amount depending on the August 2020 licensing count.

<sup>5</sup> Calculated as the budget cost divided by 40,685 members (membership count as of 8/1/2019). This would be for the entire year.

<sup>6</sup> Our existing contract allows for a 4% increase after the expiration of our contract, but Fastcase has offered to waive that provision for the next three years. The budget amount fluctuates slightly based on the number of members licensed in that term.

Both vendors have agreed to maintain the existing price, therefore the budget would be relatively the same between this year and next (Option C). There is an additional add-on option (Option D) that would increase the budget by approximately \$40,685, or \$1.00 per member. Option D includes the existing research services with Casemaker and Fastcase, and would expand the Fastcase library to include some court documents, such as legal briefs or complaints. This Fastcase “add-on” would be a valuable benefit for members.

## About Docket Alarm and the Fastcase Add-On

Docket Alarm is a standalone product that delivers court filings, docket updates, and other litigation tools.<sup>7</sup> Fastcase acquired Docket Alarm in 2018<sup>8</sup> and has been developing an integration between Docket Alarm and the Fastcase legal research platform.

When we initially considered Fastcase as a member benefit in 2018, one of the options was a proposal to include a Docket Alarm feature as part of the Fastcase member benefit, for an additional add-on fee. The B&A Committee recommended this option to the Board of Governors.<sup>9</sup> However, the add-on was in the early stages of development and was not expected to be available that fiscal year. For that reason, we recommended that the Board wait to consider the add-on when it was closer to launch.<sup>10</sup>

Now, Fastcase is finalizing development and believes that the add-on will be available before the start of FY21 (October 1, 2010).

### What the Fastcase Add-On Would Be

As discussed above, this Fastcase Add-On would expand the Fastcase database available within the Fastcase legal research platform. Right now, when members log into Fastcase,<sup>11</sup> our contract provides members access to court opinions, statutes, and regulations for Washington State, Federal, and any other states (“primary law”).

With the add-on, the database would be expanded to include searchable copies of reference materials such as legal briefs, motions, and pleadings that have been filed in court. These materials would be accessed within the Fastcase platform itself along with the existing primary law materials there now. Members who desire access to other state court filings, or wish to utilize the full features of Docket Alarm (such as docket alerts, etc.), would be able to purchase a separate subscription with Fastcase to expand the scope of their member benefit.

### Limitations of the Fastcase Add-On

The add-on would likely include access to court filings for Washington state courts and Federal courts. However, as discussed below, not every document would be available due to court restrictions on public access.

#### **1. Federal PACER Access Restrictions.**

At this time, federal court filings are only available electronically if those documents are first purchased through PACER. Once a document is purchased, it can be stored and shared.

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<sup>7</sup> See the Docket Alarm website at <https://www.docketalarm.com/features>.

<sup>8</sup> <https://www.fastcase.com/press/fastcase-expands-legal-analytics-capabilities-with-docket-alarm-acquisition/>.

<sup>9</sup> Public Session Minutes, Board of Governors Meeting (Nov. 16, 2018) p. 5.

<sup>10</sup> Public Session Minutes, Board of Governors Meeting (Nov. 16, 2018) pp. 5–6.

<sup>11</sup> Log in at <http://www.mywsba.org/PersonifyEbusiness/wsbaauthentication.aspx?destination=fastcase>.

The Fastcase Add-On would include access to all Washington federal courts in theory, but only documents that had been purchased (by any Fastcase or Docket Alarm user) would be in the database. This does not necessarily mean that the database would be scarce—just that not every document would be available for free.

2. **Limited Washington Superior Courts.** Docket Alarm—and the Fastcase Add-On—works by pulling documents online using an automated system. For state courts, Fastcase obtains docket filings from the court websites so long as the filings are available online without paywall.<sup>12</sup>

In Washington State, our appellate court dockets are available online so those should be available. However, each county clerk administers the courts in its region and at this time, most superior courts restrict access to online records.

We believe that even with these limitations, the overall benefit of the Fastcase Add-On would help members in their legal research and the relative cost of \$1.00 per member would offer a good value.

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<sup>12</sup> This is unlike the Fastcase process for federal courts because state courts vary too much in terms of the process or interface for records access; Fastcase will not be establishing payment integrations with each state court system.

**TO:** WSBA Board of Governors  
**FROM:** Alec Stephens, Chair  
Personnel Committee  
**DATE:** March 4, 2020  
**RE:** Proposed Instruments for Performance Assessment of Interim Executive Director— Performance Assessment Questionnaire and Self-Assessment Questions

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**Action:** Approve the use of the Proposed Instruments for Performance Assessment of Interim Executive Director— Performance Assessment Questionnaire and Self-Assessment Questions

Having extended the tenure of Terra Nevitt as Interim Executive Director to November 2020, the Personnel Committee recommends that we conduct an assessment of her performance as an organizational best practice. We understand that Interim Executive Director Nevitt would welcome this assessment. The Personnel Committee has worked over its last 2 meetings to develop a performance assessment questionnaire and a self-assessment tool that would be used to make that assessment. The assessment period would be as close to the mid-way point in which Ms. Nevitt has served in the position, which would be from April 2019 through February 2020. The assessment will be made to provide feedback on how she has performed and may be one of the elements that will be used to determine what process will be used to hire a Permanent Executive Director. The Performance Assessment would also be useful to Ms. Nevitt in identifying how well she is performing her job and identifying areas in which she may need to improve.

These tools are being provided to the full Board of Governors for its agreement to use them in making an assessment on Terra Nevitt’s performance as Interim Executive Director. The Personnel Committee will finalize the process, determining what parties it will seek to provide input for individual questions, and will use those inputs and the self-assessment to prepare a draft overall assessment for the approval of the Board of Governors at its May meeting.

To keep its schedule with the intent of beginning the assessment process immediately following the March BOG meetings and report back to the BOG at its May meetings, action is needed from the BOG at this meeting approving the instruments that will be used. The Personnel Committee is also open to suggested ideas of what stakeholders should be approached for their input in the assessment.

# WASHINGTON STATE BAR ASSOCIATION

## Washington State Bar Association Interim Executive Director Performance Assessment Questionnaire

**Evaluation Period: April 2019 – February 2020**

This self-assessment questionnaire is designed to help you assess the performance of the Interim Executive Director during the evaluation period and to facilitate discussion with the Board of Governors. Consider the Interim Executive Director’s competencies for each of the goals identified. Select the most accurate rating for each using the scale below based upon your observation, considering the elements identified for that competency area. If you have not observed performance for a particular competency, please mark “Not Observed.”

A “Comments” field appears below each section if there is a desire to include additional information.

1 = Did not achieve minimum expectations	2 = Demonstrated progress towards expectations	3 = Achieved Expectations	4 = Exceeded Expectations	5= Demonstrated Exceptional Performance
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### INTERIM EXECUTIVE DIRECTOR ASSESSMENT

*How satisfied are you that the Interim Executive Director:*

1. **Successfully orchestrated and managed the execution of the Budget reforecast process within the prescribed timeline.**

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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2. **Successfully orchestrated and managed the execution of the Supplemental audit process within the prescribed timeline.**

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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**3. Worked effectively with the Board, including implementing board policies, maintaining good communications and creating a professional environment.**

*(Providing vision and leadership to the Board through discernment of issues and presenting creative solutions for the Board's consideration; Demonstrates knowledge and respect for the roles, responsibilities, authority, and relationships of the BOG; assists, and interacts with BOG to achieve goals and objectives and to help define and solve problems; promotes harmony in BOG relations and is open and willing to take on new duties and responsibilities).*

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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**4. Demonstrated Leadership in engagement with the Communities served by the WSBA.**

*(Serves as an effective spokesperson. Represents the organization well to its key Stakeholder Groups (public, members, Sections, Councils, Committees & Commissions; public officials, other nonprofits, government agencies and other relevant organizations); effectively establishes, maintains and cultivates effective working relationships with organizations and individuals in the legal community; has a robust outreach strategy to ensure conduits for member feedback; ensures that communication vehicles are developed and utilized well)*

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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**5. Demonstrated Effective Leadership of the Executive Management team and staff.**

*(Led staff in maintaining a climate of excellence, accountability and respect; seeks, evaluates and acts upon opportunities for innovation to change, grow and improve; creates an environment that accepts and respects individual and cultural differences; values, develops, and encourages the unique contributions and addresses the concerns of diverse groups and individuals).*

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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**6. Created and maintained a positive working relationship with the Supreme Court.**

*(Developed and implemented a comprehensive approach to enhancing relations between the WSBA and the Supreme Court, individually and as a group. Continued to work in partnership with the BOG).*

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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**7. Successfully managed the transition from the previous WSBA leadership and Executive Team with the following key stakeholder groups:**

a. WSBA Employees;

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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b. BOG;

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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c. Executive team;

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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d. Supreme Court;

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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e. Other stakeholder groups

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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8. Provided relevant updates to the BOG associated with open litigation and the Open Public meetings Act:

Assessment of Results	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> N/O
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Comments:

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# WASHINGTON STATE BAR ASSOCIATION

## Washington State Bar Association Interim Executive Director Performance Self-Assessment (Open-Ended Questions)

Evaluation Period: April 2019 – February 2020

Reflecting over the last year on the goals which the BOG expected you to achieve –please reflect in writing on the areas where you achieved the goals as identified; where you leveraged your strengths, areas in which you can improve and how this has informed the personal goals you have for the coming year.

*What have been your major accomplishments during this evaluation period? Do you feel you met the goals over the last year?*

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*What strengths have you utilized that you would like to highlight?*

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*What difficulties did you have achieving your job expectations and objectives during this evaluation period? What prevented you from achieving these goals?*

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*What would you like to accomplish in the next year? What are your long-term goals for the WSBA?*

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*In what ways could the Board better support you in your work?*

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*What are your short-term personal development goals for the next year and longer-term personal development goals? How do you plan on achieving them?*

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*During this evaluation period, what difficult issues have faced the WSBA and how did you bring them to resolution?*

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*Additional comments:*

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**Signature of Interim Executive Director**

**Date**

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**Signature of Personnel Committee Chair**

**Date**

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**TO:** WSBA Board of Governors  
**FROM:** Kim Hunter, Governor  
Jean McElroy, Chief Regulatory Counsel  
**DATE:** February 26, 2020  
**RE:** Judicial Status Change Bylaw Amendments – Action

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**ACTION:** Consideration of and action on proposed changes to WSBA Bylaws designed to eliminate barriers for Judicial members who are entering or leaving judicial office and must change to a new member status classification with WSBA.

## **BACKGROUND**

This item was previously on the agenda for First Reading at the January 2020 Board of Governors meeting, and is now on for Action, as required by the WSBA Bylaws for all proposed Bylaw amendments.

The WSBA Bylaws contain provisions that identify the types of WSBA membership status classifications. One of the membership status classifications is “Judicial”. The Bylaws describe how a member qualifies to become a Judicial member upon taking or while in judicial office, and also describe the steps Judicial members are required to take to change to a different membership status classification when they leave judicial office (such as through retirement from their judicial office) and no longer qualify to be a Judicial member.

Some of these provisions have been identified as barriers for members in achieving the necessary status changes to or from Judicial. These proposed amendments eliminate those barriers.

## **PROPOSED BYLAW AMENDMENTS**

### Change To Judicial:

For members seeking to change to Judicial membership, the *current* Bylaws state that an “Active” member may qualify to become a Judicial member. Not all members seeking to change to Judicial membership are Active members in Washington state; because of this Bylaw provision, in order to change to Judicial, these members first have to change to Active and then change to Judicial.

The first proposed amendment would eliminate this requirement.

### Change From Judicial To A Different Membership Status Classification:

For members seeking to change from Judicial membership to another membership status classification, the *current* Bylaws provide that these Judicial members must:

- 1) pay a \$100 investigation fee and submit a completed application form;
- 2) pass a character and fitness review similar to that of an applicant for first admission (but in reality, usually involving nothing more than a WSBA staff review of the information in the completed full application), and
- 3) if they've been Judicial for six or more consecutive years, complete a required reinstatement/readmission course.

The requirements for changing from Judicial to another membership status classification were established by a workgroup that included members of the WSBA Board of Governors, judges, and others. The members of that workgroup agreed to the requirements, which were then approved by the BOG to be effective in January, 2012. Over the years, however, many Judicial members have complained that they think these requirements are unnecessary in light of their public service as judicial officers and that they present barriers to changing to another membership status classification. These barriers lead some Judicial members to resign rather than complete these requirements and change status with the WSBA.

The proposed Bylaw amendments would eliminate all of these requirements. Judicial members would still have to submit an application (to be developed), for WSBA's records and to begin the process to change membership status classification, but it would not be the full admission-length application nor would it undergo a character and fitness review. Also, there would not be a required reinstatement/readmission course for Judicial members who are changing to a different status with the WSBA.

## **OTHER MATTERS**

### Online Legal Directory:

Another matter in which Judicial members and some Courts have expressed interest is to have some method in the online Legal Directory to identify and locate former judges, which could be used to help courts identify experienced judges to serve on a pro tem basis. Although these Bylaw changes do not directly address this interest, because no Bylaw change is necessary to accomplish this, we believe that WSBA staff would be able to develop a method using the online Legal Directory to indicate this judicial service history.

## **FEEDBACK**

WSBA has attempted to receive feedback regarding these proposed Bylaw amendments by asking for feedback from various judicial associations. Any feedback received will be included in the materials provided to the Board for consideration in connection with this agenda item.

## **ATTACHMENTS:**

1. Relevant WSBA Bylaws redlined to show proposed amendments.
2. Clean version of relevant WSBA Bylaws, with proposed amendments

### III. MEMBERSHIP

#### A. MEMBER LICENSE TYPES

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#### B. STATUS CLASSIFICATIONS

Membership status classifications have the qualifications, privileges, and restrictions specified.

##### 1. Active

...

##### 2. Inactive

...

##### 3. Judicial [~~Effective January 1, 2012~~]

a. ~~An Active~~ member may qualify to become a Judicial member if the member is one of the following:

1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;

2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;

3) A current senior status or recall judge in the courts of the United States;

4) An administrative law judge, which is defined as either:  
(a) Current federal judges created under Articles I and II of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or

(b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or

- 5) A current Tribal Court judge in the State of Washington.

...

C. REGISTER OF MEMBERS

...

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

1. Members may change membership status as provided below.

- a. Transfer from Inactive to Active.

...

- b. Transfer from Judicial to Active. ~~[Effective January 1, 2012]~~

A Judicial member may request to transfer to any other status, including Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his or her affiliation with the Bar must change to another membership status within the Bar.

1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership status may transfer to Active by submitting an application for change to Active membership status and:

~~\_\_\_\_\_ (a) paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information;~~

~~\_\_\_\_\_ (b) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as a Judicial member for the same licensing year; and~~

~~\_\_\_\_\_ (c) passing a character and fitness review essentially equivalent to that required of applicants for admission to the Bar, pursuant to APR 20-24.3. Judicial members seeking to transfer to Active must disclose at the time of the requested transfer any pending public charges and/or substantiated public discipline of which the member is aware; and~~

~~\_\_\_\_\_ (d) (b) complying with the MCLE requirements for members returning from Inactive to Active, except that the member must complete a one-day reinstatement/readmission course tailored to judges, to include lawyer ethics and IOLTA requirements among other topics, if a Judicial member for six or more consecutive years.~~

~~Administrative law judge Judicial members shall complete the 15 credit reinstatement/readmission course required of Inactive lawyers if a Judicial member for six or more consecutive years.~~ Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or pay the annual license fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Active, be required to pay the Active license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.



### III. MEMBERSHIP

#### A. MEMBER LICENSE TYPES

...

#### B. STATUS CLASSIFICATIONS

Membership status classifications have the qualifications, privileges, and restrictions specified.

##### 1. Active

...

##### 2. Inactive

...

##### 3. Judicial

a. A member may qualify to become a Judicial member if the member is one of the following:

1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;

2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;

3) A current senior status or recall judge in the courts of the United States;

4) An administrative law judge, which is defined as either:

(a) Current federal judges created under Articles I and II of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or

(b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or

- 5) A current Tribal Court judge in the State of Washington.

...

C. REGISTER OF MEMBERS

...

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

1. Members may change membership status as provided below.

- a. Transfer from Inactive to Active.

...

- b. Transfer from Judicial to Active.

A Judicial member may request to transfer to any other status, including Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his or her affiliation with the Bar must change to another membership status within the Bar.

1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership status may transfer to Active by submitting an application for change to Active membership status and:

(a) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as a Judicial member for the same licensing year; and

(b) complying with the MCLE requirements for members returning from Inactive to Active. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or pay the annual license fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Active, be required to pay the Active license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.

**MEMO**

**To:** Board of Governors

**From:** Daryl Rodrigues, Chair, Council on Public Defense  
Travis Stearns, Vice-Chair, Council on Public Defense

**Date:** March 1, 2020

**Re:** Comment on removing the qualification for Death Penalty in Indigent Defense Standards in CrR 3.1, JuCrR 3.1 JurCr 9.2

**ACTION:** Approve the Council on Public Defense submitting a comment on behalf of WSBA regarding the proposed amendments in CrR 3.1, JuCrR 3.1, and JurCr 9.2 which remove references to capital punishment in the Indigent Defense Standards.

Capital punishment in the state of Washington was abolished on October 11, 2018 when the state Supreme Court ruled it was unconstitutional as applied. In November 2019, former Chief Justice Fairhurst proposed amending the Indigent Defense Standards to remove the qualifications for capital defense. Comments on the rule change must be provided to the court by April 30, 2020.

On February 7, 2020, a super majority of the Council on Public Defense voted that commenting on the proposed rule changes fell within the parameters of GR 12. A super majority of the Council then voted to approve submitting comments on proposed amendments. The Council supports submitting comments in favor of removing the qualifications for capital defense if the legislature abolishes the death penalty. If the legislature does not act to remove the punishment, the Council believes the Standards should not be abolished and CrR 3.1, JuCrR 3.1, and JurCr 9.2 should remain unchanged. The Council takes no position on the remainder of the proposed amendments, which also remove references to the death penalty from the court rules. Attached are the proposed comments the Council proposes to submit to the Court.

Travis Stearns, Vice Chair of the Council and attorney with the Washington Appellate Project will attend the Board of Governors March 19 meeting telephonically and present information about the Council's proposed comment.

## **Comment on an amendment to the Indigent Defense Standards to remove references to capital defense by the Council on Public Defense**

The state legislature is considering rescinding RCW 10.95 in its 2020 session. If the legislature rescinds this statute, the Council on Public Defense supports eliminating the standards and guidelines for capital defense.

Until the death penalty is no longer statutorily permitted, the Council on Public Defense believes the Indigent Defense Standards for capital defense should not be removed. Should the death penalty ever be reinstated, preservation of the training, experience, and caseload requirements for lawyers who handle capital cases is essential. Until the legislature rescinds the statute, the standards for those representing persons charged with capital offenses should remain.

*State v. Gregory* was not the first time the Supreme Court found the death penalty unconstitutional.<sup>1</sup> The past three times the Supreme Court struck the death penalty, the legislature revived it. While it seems unlikely that this will happen again, it cannot be dismissed as impossible until the statute is no longer part of Washington's laws.

Until then, the standards and guidelines for capital defenders must remain part of the indigent defense standards. These standards enabled all persons charged with capital offenses to be sure they would receive adequate legal representation. Removing those protections from the standards before the death penalty is abolished is premature.

The Council on Public Defense supports removing the standards for capital defense representation, but on the condition that the ability to impose the death penalty is eliminated by the legislature. Until that time, the standards for capital representation should remain intact. Should the legislature rescind the death penalty before this comment period has ended, the Council would support removing the standards from the Indigent Defense Standards.

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<sup>1</sup> *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018); *State v. Frampton*, 95 Wn.2d 469, 627 P.2d 922 (1981); *State v. Green*, 91 Wn.2d 431, 588 P.2d 1370 (1979); *State v. Baker*, 81 Wn.2d 281, 501 P.2d 284 (1972).



To: WSBA Board of Governors  
From: Kristina Larry, President  
Re: 2019-20 Board of Trustees Appointments  
Date: January 23, 2020

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**ACTION REQUESTED:** Approve the appointment of the Trustees listed below to fill existing vacancies, as recommended by unanimous consent of the Foundation Board of Trustees.

The Washington State Bar Foundation Board of Trustees is pleased to present the following candidates for consideration to be added to the 2019-20 Board of Trustees.

The Washington State Bar Foundation is the fundraising arm of the WSBA. The current members of the WSBA Board of Governors constitute the membership of the Foundation. Per the Foundation's bylaws, the WSBA Executive Director serves as the Foundation's Secretary ex officio, the WSBA Past President serves as a trustee ex officio, and the WSBA President each year appoints a first year Governor to serve a 3-year term on the Foundation Board. The remaining seats are recommended by the Foundation Board and appointed by the Board of Governors, convened as the members of the Foundation.

The Foundation Board has unanimously approved appointing the following as Trustees of the Foundation:

- Allie Sisson, WSBA Member (for remainder of term ending September, 2021)
- Deb Wechselblatt, Minority or Specialty Bar Representative (for remainder of term ending September, 2021)

Attachment:

- Candidate application materials



## 2019-2020 Board of Trustees, Recommendation

	POSITION	RECOMMENDATION	TERM, ending
1	WSBA 1 <sup>st</sup> Year Governor	<i>Appointed by 2019-2020 BOG President Thomas McBride</i>	September 2022
2	WSBA 2 <sup>nd</sup> Year Governor	<i>Appointed by 2018-2019 BOG President Sunitha Anjilvel</i>	September 2021
3	WSBA 3 <sup>rd</sup> Year Governor	<i>Appointed by 2017-2018 BOG President Kyle Sciuchetti</i>	September 2019
4	WSBA Past President or Governor	Tracy S. Flood	Remainder, September 2020
5	WSBA Member	Allie Sisson	Remainder, September 2021
6	WSBA Member		Remainder, September 2020
7	WSBA Member	Kinnon Williams	1 <sup>st</sup> Term, September 2020
8	WSBA Member	Brent Williams-Ruth	1 <sup>st</sup> Term, September 2022
9	Minority/ Specialty Bar Rep.	Deb Wechselblatt	Remainder, September 2021
10	Law Student	Maya Manus	Graduation
11	Public Member	Joan Duffy Watt	2 <sup>nd</sup> Term, September 2020
12	Public Member	Richard C. Bird, Jr.	2 <sup>nd</sup> Term, September 2022
13	At Large	Gloria Ochoa-Bruck	1 <sup>st</sup> Term, September 2022
14	At Large	Kristina Larry	2 <sup>nd</sup> Term, September 2021
15	At Large	Blake Kremer	1 <sup>st</sup> Regular Term, September 2020
16	WSBA Immediate Past President	Bill Pickett	September 2020
17	Secretary	Terra K. Nevitt	Executive Director serves Ex Officio

# Allie Sisson

sisson@ryanlaw.com

## EDUCATION

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### Seattle University School of Law

Seattle, WA

*Juris Doctor, cum laude*

May 2019

- Scholarship: Trustee Scholarship
- Honors: Pro Bono Pledge Outstanding Service Awardee
- Journal: Seattle Journal for Social Justice, *Managing Editor*
- Publication: Allie Sisson, *Access to Justice for Undocumented Female Victims of Sex Trafficking* (Seattle Journal for Social Justice, 2019)
- Activities: International Refugee Assistance Project, *Case Manager*  
Women's Law Caucus, *Mentor*; Phi Alpha Delta Law Fraternity, International, *Member*
- Advocacy: Immigration Family Advocacy Program, *Student case assistant for U visa immigration case*  
Northwest Immigrant Rights Project, *Rule 9 bilingual pro bono volunteer for detained women*
- Competition: James E. Bond ABA Moot Court Competition, *Semifinalist*
- Study Abroad: Human Rights in the Americas at the Inter-American Court of Human Rights, Santa Clara University School of Law; San José, CR (May – June 2017)

### University of Denver

Denver, CO

*Bachelor of Science, Business Administration, Marketing; Minors, Spanish, Leadership*

June 2016

- Honors: Provost Scholar; Dean's List
- Leadership: Pioneer Leadership Program, *Co-Founder of Highline Academy Community Change Initiative*
- Study Abroad: Universidad Argentina de la Empresa; Buenos Aires, AR (February – July 2015)  
Universidad de Buenos Aires/Torcuato Di Tella; Buenos Aires, AR (July – December 2014)

## EXPERIENCE

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### Ryan, Swanson & Cleveland, PLLC

Seattle, WA

*Associate*

October 2019 – Present

- Assists litigation, business, and real estate departments

#### *Legal Intern*

October 2018 – May 2019

- Assisted real estate and business groups with the drafting of deeds of trust, article of incorporation and bylaws, closing documents, lease guaranties, management agreements, property agreements, federal government easement applications, and other drafting and research work as needed

#### *Rule 9 Summer Associate*

June – August 2018

- Met with clients; shadowed partners during depositions and client intakes; participated in real estate closings
- Drafted interrogatories and requests for production, estate planning documents, declarations for immigration matters, real estate purchase and sale related documents
- Researched and wrote memoranda on a variety of diverse issues such as employee retaliation, security law, adverse possession, corporate acquisition and mergers, property rights, and medical malpractice

### Inspire Corp.

Rabat, Morocco

*Independent Study*

January – May 2019

- Coordinated remotely with attorneys in Morocco and the United Kingdom to create an advocacy strategy for Moroccan mental health organization
- Drafted and presented international law fact sheet to Inspire Corp. in Rabat, Morocco

### Ronald A. Peterson Law Clinic, Seattle University School of Law

Seattle, WA

*Rule 9 Youth Advocacy Clinic Intern*

January – May 2019

- Represented youth during first appearance hearings, arraignments, and all other aspects of a case leading up to trial
- Represented adult clients during clemency petitions, prepared witnesses, drafted memos, and met with client
- Represented adult clients during sex offender registration removal applications, prepared briefs, and counseled and interviewed clients

# Allie Sisson

sisson@ryanlaw.com

## *Community Development & Entrepreneurship Clinic Intern*

January – May 2018

- Developed a working relationship with a local business owner by delivering business and legal assistance
- Provided client with four deliverables, including two contracts, a marketing plan, and financial forecasting

## **Beckner Immigration Law PLLC**

Seattle, WA

### *Bilingual Law Clerk*

March – September 2017

- Ran client interviews and meetings in both Spanish and English; conducted extensive legal research on issues such as asylum and u visa eligibility; drafted memoranda and briefs for supervising attorney
- Prepared client declarations in Spanish for asylum seekers and u visa applicants; translated all related documents into English in preparation for court hearings and application submissions
- Handled intakes of new clients in Spanish; scheduled appointments; drafted and compiled necessary paperwork for upcoming court dates

## **ADDITIONAL INFORMATION**

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Languages: Spanish: fluent in speaking, reading, writing, and comprehension (including legal Spanish)  
Interests: PADI certified, certification in adventure diving, extensive experience living and traveling abroad



Dear Board Development & Leadership Committee:

As a recent graduate of Seattle University School of Law (SU), I look forward to utilizing my experience empowering diverse populations. I'm interested in being on the Board of Trustees because I am passionate about expanding the legal profession to include more minority representation. I recognize that this goal is key to creating a legal system that is representative and accessible for all.

My particular interest in the Board of Trustees is in working to raise funds for the very organizations and communities I was directly involved in during law school. I recognize the importance of these programs in helping create a more diverse bar association and in providing legal access to underprivileged communities. I am excited to engage with my fellow attorneys in fundraising efforts that further these goals.

While I am not currently a member of any Washington Minority Associations, I plan to join the Washington Women Lawyers in the New Year. As I begin my career as a new lawyer in Washington, I am motivated to find new ways to engage in pro bono activities and am excited about the possibilities.

As a young professional, my passion for social justice, reinforced and expanded upon at SU, is something I'm committed to as I begin my career. My firm, Ryan, Swanson & Cleveland, PLLC, encourages its attorneys to give back to the Seattle community and beyond, and I plan to take full advantage of its support.

I welcome the opportunity to serve on the Board of Trustees for the Washington State Bar Foundation. I look forward to hearing from you and discussing this position further.

Best regards,

Allie Sisson

# Deborah R. Wechselblatt

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## Experience

**Clark County Prosecutor's Office** | Deputy Prosecuting Attorney May 2014 to present | Vancouver, WA  
*District Court Unit (May 2014-May 2015) | Domestic Violence Unit (June 2015-February 2018) | General Felonies Unit (March 2018-October 2019) | Juvenile Unit Coordinator/Team Leader (October 2019-present)*

- Prosecute cases in both District and Superior Court, including preparation of the case for initial court appearances, review of police reports, filing of appropriate criminal charges, negotiation, witness preparation, motions, and trials
- Litigated over 40 jury trials in both District Court and Superior Court
- Served as DUI grant position prosecutor from 2014-2015, including updating internal DUI resources and materials, training new attorneys on DUI prosecution
- Served as Mental Health Court representative and implemented felony-level pre-plea program, created guidelines for new program, worked with stakeholders to implement and improve policies, created program training materials
- Supervise Juvenile Court prosecutor's, set policy goals and implementation

**Clark County Prosecutor's Office** | Rule 9 Intern | June 2012 to June 2013 | Vancouver, WA

- Responsible for approximately 400 misdemeanor cases including DUIs, assaults, and thefts as a court-certified law student
- Negotiated plea agreements, recommended sentences, and responded to motions in writing and at oral argument
- Met with pro se clients to discuss charges and potential sentences
- Represented the State in Superior Court for appeals of District Court decisions
- Prepared cases for trial and represented the State at trial

**Domestic Violence Prosecution Center** | *Legal Extern* | January 2013 to June 2013 | Vancouver, WA

- Represented Clark County and the City of Vancouver in arraignments, mandatory pre-trial conferences, and review hearings
- Argued on conditions of release including, bail, no contact orders, supervision, and alcohol and substance abuse monitoring
- Conducted research and write 404(b) and joinder motions for felony and misdemeanor cases, and respond to defense motions

**Pierce County Superior Court** | *Judicial Intern to the Honorable Stephanie A. Arend* | June 2011 to August 2011 | Tacoma, WA

- Researched laws, court decisions, and other legal authorities and drafted legal memoranda on issues property disputes, asbestos litigation, and conspiracy
- Researched Washington State probate law to develop a protocol for leading a clean-up of estate cases and implementing case management strategies; trained and supervised five paralegal students in reviewing 5,000 case files

**Bark – Protectors of Mt. Hood National Forest** | August 2007 to August 2010 | Portland, OR

*Restore Mt. Hood Campaign Manager, 2008-2010*

*Mt. Hood Travel Plan Campaign Coordinator, 2007-2008*

- Created and managed the Restore Mt. Hood Coalition, a group of over twenty conservation organizations, committed to improving ecosystem health and recreation access in Mt. Hood National Forest
- Crafted policy and assisted in developing legal framework for Pacific Northwest organizations regarding Forest Service recreation and travel planning initiatives
- Researched legislative initiatives to lead Oregon recreation and conservation groups in submitting the federal Legacy Roads and Trails Program appropriations request
- Wrote and submitted National Environmental Policy Act (NEPA) comments on the Mt. Hood National Forest Travel Plan

**City of Lake Oswego** | *Community Forestry Coordinator* | September 2006 to September 2007 | Lake Oswego, OR

- Developed a communications program that included website content, brochures, press releases, and outreach to Lake Oswego neighborhood associations to improve neighborhood relations and encourage public input on new forestry program
- Organized and led monthly Lake Oswego Forestry Technical Advisory Committee; devised work plans and benchmarks to track Urban and Community Forestry Plan progress
- Researched urban and community forestry best management practices by conducting literature reviews and consulting with experts in other cities for Urban and Community Forestry Plan

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## Education & Bar Admissions

**Lewis and Clark Law School** | Juris Doctor, May 2013 | Portland, OR

*Completed Moot Court – Mock Trial course | Best Oral Advocate Award, LAW II | Pro Bono Honors Award, 2012-2013*

**Oberlin College** | Bachelor of Arts, Environmental History, May 2006 | Oberlin, OH

**Bar Admissions** | New York State, January 2014 to present | Washington State, May 2014 to present

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## Community Service

City of Portland Urban Forestry Commissioner (appointed 2010-2012)

- Reviewed land use actions and appeals
- Worked with community members and city departments to update Portland's Urban Forestry Management Plan for approval by City Council
- Advised the City Forester, Director of Parks, and Park's Budget Advisory Committee on the annual urban forestry budget.

Trailkeepers of Oregon Board Member (2010-2012)

*Chair of the Advocacy Committee*

- Wrote comments on public land agency recreation and environmental projects throughout Oregon
- Organized and presented a National Environmental Policy Act training for trail maintenance volunteers

Winter Wildlands Alliance Board Member (2011-2013)

- Strategic planning to set legislative and policy priorities for improving access and recreational opportunities and management on public lands
- Reviewed organizational budget and grant programs

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## Interests & Hobbies

Backpacking, mountaineering, gardening, bird-watching, going to see live music, environmental and local history

I am applying for the Board of the Washington State Bar Foundation in order to better serve my community in Southwest Washington, which is where I live and work. I am a 2019 graduate of the Washington Leadership Institute (WLI). Participating in WLI gave me a greater appreciation of the opportunities within the WSBA and beyond to give back. As a member of QLAW, and through my experience as a WLI fellow, I would like to support the Foundation's mission of diversity and access to justice. The programs the Foundation helps to fund are a direct way to give back to communities throughout the State. Thank you for your consideration.

Please let me know if you have any questions or need additional information.

Thanks,

Deb Wechselblatt  
Deputy Prosecuting Attorney  
Clark County Prosecuting Attorney's Office

**TO:** WSBA Board of Governors

**FROM:** Kim Hunter, Co-Chair, Member Engagement Workgroup  
Dan Clark, Co-Chair, Member Engagement Workgroup  
Kevin Plachy, Staff Liaison, Member Engagement Workgroup

**DATE:** March 9, 2020

**RE:** Charter Revision

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**Action:** Approve charter revision for the Member Services and Engagement Workgroup.

#### **BACKGROUND**

The Member Engagement Workgroup voted to revise its charter on February 28, 2020.

The workgroup will consist of seven voting members, at least three of which will be current Governors or Officers of the Board of Governors. The Co-Chairs are also granted authority to appoint Ex-Officio members to the workgroup in a number they deem necessary to further the goals of the workgroup.

The workgroup will be led by two Co-Chairs, one from the Eastern side of the state and the other from the Western side of the state.

The timeline verbiage was also removed.

#### **ATTACHMENTS:**

1. Redline version of the charter revision
2. Clean version of the charter revision.

**Member Engagement Work Group CHARTER**

*(Adopted by the WSBA Board of Governors on July 27, 2018)*

*(Extended indefinitely by the WSBA Board of Governors on September 28, 2018)*

**Background**

The WSBA must rely on member involvement, feedback, and expertise to operate and meet its mission; as such, the Board of Governors must continually interface with members to create mutual understanding, drive priorities, form relationships, and share involvement opportunities. Governors would like a reliable way to gauge member engagement and sentiment and to continually improve WSBA’s reputation and the reputation of the board.

**Work Group Purpose**

The work group shall create a written plan and best practices for governors to:

- Educate members in a proactive manner about WSBA’s and the Board of Governors’ actions and work.
- Involve members in the decision-making process by informing them and asking for input on a regular basis.
- Involve members in a positive manner with WSBA governance.
- Involve governors on a one-on-one, relationship-building basis with individuals who contact WSBA with concerns or feedback.
- Ensure ongoing updates to the Board of Governors about WSBA member-engagement processes and measurement.

As part of the plan, work-group members shall:

- Define “member engagement” and its role in the board’s governance process; this may include outreach to other mandatory/unified bar associations to determine how they engage members and for what purposes.
- Create an agreement—with norms, values, and responsibilities—for how governors will represent themselves, WSBA, and their fellow governors while conducting official outreach to members and the public.
- Identify which board processes and decisions most need member input for the coming year and propose coordinated outreach efforts.
- Determine how board member-engagement efforts and goals should dovetail with WSBA member-engagement efforts and goals already underway.

**Work Group Membership**

The work group shall consist of seven voting members. At least three of the members will be current Governors or Officers of the Board of Governors. The Workgroup will be led by two Co-

**Deleted: Timeline¶**  
¶  
The work group shall begin meeting no more than six weeks after appointments are completed, and shall submit its report not later than the October Board of Governors meeting, unless the board agrees to extend this timeline.¶

**Deleted: of the following voting members: ¶**  
A governor who shall serve as chair¶  
A first-, second-, and third-year governor (based on 2018-19)¶  
An at-large governor¶  
A WSBA officer¶  
5 non-Governor members (added September 28, 2018)

Chairs, one from the Eastern side of the state and the other from the Western side of the state. The Co-Chairs will have the authority to appoint Ex-Officio members to the Workgroup in a number they deem necessary to further the goals of the Workgroup.

The Executive Director will designate a WSBA staff liaison. In accordance with WSBA Bylaws Art. IX(B)(2)(e) and (f), the members and the chair of the work group will be appointed by the WSBA President subject to being accepted or rejected by the board.

# WASHINGTON STATE BAR ASSOCIATION

## Member Engagement Work Group CHARTER

*(Adopted by the WSBA Board of Governors on July 27, 2018)*

*(Extended indefinitely by the WSBA Board of Governors on September 28, 2018)*

### Background

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- Involve members in a positive manner with WSBA governance.
- Involve governors on a one-on-one, relationship-building basis with individuals who contact WSBA with concerns or feedback.
- Ensure ongoing updates to the Board of Governors about WSBA member-engagement processes and measurement.

As part of the plan, work-group members shall:

- Define "member engagement" and its role in the board's governance process; this may include outreach to other mandatory/unified bar associations to determine how they engage members and for what purposes.
- Create an agreement—with norms, values, and responsibilities—for how governors will represent themselves, WSBA, and their fellow governors while conducting official outreach to members and the public.
- Identify which board processes and decisions most need member input for the coming year and propose coordinated outreach efforts.
- Determine how board member-engagement efforts and goals should dovetail with WSBA member-engagement efforts and goals already underway.

### Work Group Membership

The work group shall consist of seven voting members. At least three of the members will be current Governors or Officers of the Board of Governors. The Workgroup will be led by two Co-



Chairs, one from the Eastern side of the state and the other from the Western side of the state. The Co-Chairs will have the authority to appoint Ex-Officio members to the Workgroup in a number they deem necessary to further the goals of the Workgroup.

The Executive Director will designate a WSBA staff liaison. In accordance with WSBA Bylaws Art. IX(B)(2)(e) and (f), the members and the chair of the work group will be appointed by the WSBA President subject to being accepted or rejected by the board.

**WASHINGTON STATE**  
**B A R A S S O C I A T I O N**

# Financial Reports

(Unaudited)

## Year to Date January 31, 2020

Prepared by Maggie Yu, Controller  
Submitted by  
Jorge Perez, Chief Financial Officer  
February 18, 2020

**Washington State Bar Association Financial Summary**  
**Compared to Fiscal Year 2020 Budget**  
**For the Period from January 1, 2020 to January 31, 2020**

Category	Actual Revenues	Budgeted Revenues	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
Access to Justice	-	2,100	82,064	261,101	3,868	47,320	85,932	308,421	(85,932)	(306,321)
Administration	50,951	100,000	389,606	1,200,318	1,458	5,429	391,064	1,205,747	(340,113)	(1,105,747)
Admissions/Bar Exam	426,545	1,407,000	320,593	948,929	15,187	429,301	335,780	1,378,230	90,765	28,770
Board of Governors	-	0	42,472	125,162	129,396	439,900	171,868	565,062	(171,868)	(565,062)
Communications Strategies	2,643	40,000	174,095	556,115	19,660	111,040	193,755	667,155	(191,112)	(627,155)
Conference & Broadcast Services	-	0	266,062	819,763	3,042	5,500	269,104	825,263	(269,104)	(825,263)
Discipline	58,424	110,500	1,906,045	5,950,238	54,651	177,449	1,960,696	6,127,687	(1,902,272)	(6,017,187)
Diversity	130,000	135,374	134,468	567,558	6,675	28,930	141,143	596,488	(11,143)	(461,114)
Foundation	-	0	46,038	151,832	209	13,400	46,248	165,232	(46,248)	(165,232)
Human Resources	-	0	130,587	229,115	-	0	130,587	229,115	(130,587)	(229,115)
Law Clerk Program	135,215	174,700	54,661	162,479	5,514	13,950	60,175	176,429	75,040	(1,729)
Legislative	-	0	48,335	145,204	6,835	15,200	55,170	160,404	(55,170)	(160,404)
Licensing and Membership Records	120,284	325,000	213,235	637,839	13,202	35,788	226,437	673,627	(106,153)	(348,627)
Licensing Fees	5,133,156	16,200,000	-	0	-	0	-	-	5,133,156	16,200,000
Limited License Legal Technician	6,042	27,605	59,659	179,579	4,229	42,051	63,889	221,630	(57,846)	(194,025)
Limited Practice Officers	68,132	212,390	49,768	149,262	417	30,025	50,185	156,182	17,947	33,104
Mandatory CLE	402,500	1,042,800	269,833	681,850	84,284	254,617	354,117	936,467	48,384	106,334
Member Assistance Program	4,110	6,750	46,239	148,656	776	1,275	47,014	149,931	(42,904)	(143,181)
Member Benefits	16,905	138,300	41,719	568,011	129,324	42,345	171,042	610,356	(154,137)	(472,056)
Member Services & Engagement	66,114	21,000	201,426	92,512	3,417	186,496	204,843	279,008	(138,729)	(258,008)
NW Lawyer	201,716	461,350	119,574	359,579	148,251	357,915	267,825	717,494	(66,109)	(256,144)
Office of the Executive Director	-	0	149,186	360,062	1,023	13,379	0	0	(150,209)	(373,441)
Office of General Counsel	4	0	269,695.27	966,739.00	1,981.84	24,334.00	271,677.11	991,073	(271,673)	(991,073)
OGC-Disciplinary Board	-	0	62,974	189,508	25,039	104,316	88,013	293,824	(88,013)	(293,824)
Outreach and Engagement	-	0	122,479	391,929	4,606	31,625	127,085	423,554	(127,085)	(423,554)
Practice of Law Board	-	0	21,140	63,261	1,046	16,000	22,185	79,261	(22,185)	(79,261)
Professional Responsibility Program	-	0	87,125	261,517	2,617	9,654	89,743	271,171	(89,743)	(271,171)
Public Service Programs	130,099	128,100	65,949	203,853	28,404	250,777	94,352	454,630	35,747	(326,530)
Publication and Design Services	-	0	43,162	135,169	4,280	5,572	47,442	140,741	(47,442)	(140,741)
Sections Administration	247,481	300,000	138,519	540,012	6,798	9,297	145,318	549,309	102,164	(249,309)
Technology	-	0	577,900	1,674,849	-	0	577,900	1,674,849	(577,900)	(1,674,849)
<b>Subtotal General Fund</b>	<b>7,200,320</b>	<b>20,832,969</b>	<b>6,134,609</b>	<b>18,722,001</b>	<b>706,188</b>	<b>2,702,883</b>	<b>6,840,797</b>	<b>21,424,884</b>	<b>359,523</b>	<b>(591,915)</b>
Expenses using reserve funds							6,840,797		-	-
<b>Total General Fund - Net Result from Operations</b>									<b>359,523</b>	<b>(591,915)</b>
<b>Percentage of Budget</b>	<b>34.56%</b>		<b>32.77%</b>		<b>26.13%</b>		<b>31.93%</b>			
CLE-Seminars and Products	731,117	1,824,000	376,884	1,156,926	77,581	502,190	454,465	1,659,116	276,652	164,884
CLE - Deskbooks	28,969	165,500	73,907	271,040	10,909	82,658	84,816	353,698	(55,847)	(188,198)
<b>Total CLE</b>	<b>760,087</b>	<b>1,989,500</b>	<b>450,791</b>	<b>1,427,966</b>	<b>88,490</b>	<b>584,848</b>	<b>539,281</b>	<b>2,012,814</b>	<b>220,805</b>	<b>(23,314)</b>
<b>Percentage of Budget</b>	<b>38.20%</b>		<b>31.57%</b>		<b>15.13%</b>		<b>26.79%</b>			
<b>Total All Sections</b>	<b>457,494</b>	<b>606,544</b>	<b>-</b>	<b>-</b>	<b>325,049</b>	<b>860,784</b>	<b>325,049</b>	<b>860,784</b>	<b>132,445</b>	<b>(254,240)</b>
Client Protection Fund-Restricted	898,566	1,023,000	48,019	144,686	4,168	504,000	52,187	648,686	846,378	374,314
<b>Totals</b>	<b>9,316,467</b>	<b>24,452,013</b>	<b>6,633,419.65</b>	<b>20,294,653</b>	<b>1,123,895.63</b>	<b>4,652,514.00</b>	<b>7,757,315</b>	<b>24,947,167</b>	<b>1,559,152</b>	<b>(495,154)</b>
<b>Percentage of Budget</b>	<b>38.10%</b>		<b>32.69%</b>		<b>24.16%</b>		<b>31.09%</b>			

Summary of Fund Balances:	Fund Balances Sept. 30, 2019	2020 Budgeted Fund Balances	Fund Balances Year to date
<b>Restricted Funds:</b>			
Client Protection Fund	3,816,143	4,190,457	4,662,521
<b>Board-Designated Funds (Non-General Fund):</b>			
CLE Fund Balance	526,285	502,972	747,090
Section Funds	1,121,224	866,984	1,253,669
<b>Board-Designated Funds (General Fund):</b>			
Operating Reserve Fund	1,500,000	1,500,000	1,500,000
Facilities Reserve Fund	550,000	550,000	550,000
<b>Unrestricted Funds (General Fund):</b>			
Unrestricted General Fund	2,686,537	2,094,622	3,046,060
<b>Total General Fund Balance</b>	<b>4,736,537</b>	<b>4,144,622</b>	<b>5,096,059.68</b>
<b>Net Change in general Fund Balance</b>		<b>(591,915)</b>	<b>359,523</b>
<b>Total Fund Balance</b>	<b>10,200,189</b>	<b>9,705,035</b>	<b>11,759,341</b>
<b>Net Change In Fund Balance</b>		<b>(495,154)</b>	<b>1,559,152</b>

**Washington State Bar Association**

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	<b>FISCAL 2020 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>
<b>LICENSE FEES</b>					
<b>REVENUE:</b>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
LICENSE FEES	16,200,000.00	1,181,570.84	5,133,156.29	11,066,843.71	31.69%
<b>TOTAL REVENUE:</b>	<u><b>16,200,000.00</b></u>	<u><b>1,181,570.84</b></u>	<u><b>5,133,156.29</b></u>	<u><b>11,066,843.71</b></u>	<u><b>31.69%</b></u>

# Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>ACCESS TO JUSTICE</b>					
<b>REVENUE:</b>					
WORK STUDY GRANTS	2,100.00	-	-	2,100.00	0%
<b>TOTAL REVENUE:</b>	<b>2,100.00</b>	<b>-</b>	<b>-</b>	<b>2,100.00</b>	<b>0.00%</b>
<b>DIRECT EXPENSES:</b>					
ATJ BOARD RETREAT	2,000.00	-	-	2,000.00	0.00%
LEADERSHIP TRAINING	2,000.00	-	-	2,000.00	0.00%
ATJ BOARD EXPENSE	24,000.00	401.38	2,639.86	21,360.14	11.00%
STAFF TRAVEL/PARKING	2,700.00	-	87.48	2,612.52	3.24%
STAFF MEMBERSHIP DUES	120.00	-	-	120.00	0.00%
PUBLIC DEFENSE	7,000.00	-	1,140.66	5,859.34	16.30%
RECEPTION/FORUM EXPENSE	9,500.00	-	-	9,500.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>47,320.00</b>	<b>401.38</b>	<b>3,868.00</b>	<b>43,452.00</b>	<b>8.17%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.92 FTE)	151,471.00	15,511.30	47,746.28	103,724.72	31.52%
BENEFITS EXPENSE	54,395.00	3,919.18	16,467.90	37,927.10	30.27%
OTHER INDIRECT EXPENSE	55,235.00	3,868.31	17,850.31	37,384.69	32.32%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>261,101.00</b>	<b>23,298.79</b>	<b>82,064.49</b>	<b>179,036.51</b>	<b>31.43%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>308,421.00</b>	<b>23,700.17</b>	<b>85,932.49</b>	<b>222,488.51</b>	<b>27.86%</b>
<b>NET INCOME (LOSS):</b>	<b>(306,321.00)</b>	<b>(23,700.17)</b>	<b>(85,932.49)</b>		

# Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>ADMINISTRATION</b>					
<b>REVENUE:</b>					
INTEREST INCOME	100,000.00	14,309.36	50,951.18	49,048.82	50.95%
<b>TOTAL REVENUE:</b>	<b>100,000.00</b>	<b>14,309.36</b>	<b>50,951.18</b>	<b>49,048.82</b>	<b>50.95%</b>
<b>DIRECT EXPENSES:</b>					
CREDIT CARD MERCHANT FEES	-	5,813.50	-	-	
STAFF TRAVEL/PARKING	4,200.00	350.00	1,448.00	2,752.00	34.48%
STAFF MEMBERSHIP DUES	950.00	-	-	950.00	0.00%
LAW LIBRARY	279.00	10.48	10.48	268.52	3.76%
<b>TOTAL DIRECT EXPENSES:</b>	<b>5,429.00</b>	<b>6,173.98</b>	<b>1,458.48</b>	<b>3,970.52</b>	<b>26.86%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE ( 7.98 FTE)	723,667.00	60,716.80	241,659.96	482,007.04	33.39%
BENEFITS EXPENSE	247,080.00	17,868.89	73,526.00	173,554.00	29.76%
OTHER INDIRECT EXPENSE	229,571.00	16,127.49	74,420.03	155,150.97	32.42%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>1,200,318.00</b>	<b>94,713.18</b>	<b>389,605.99</b>	<b>810,712.01</b>	<b>32.46%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,205,747.00</b>	<b>100,887.16</b>	<b>391,064.47</b>	<b>814,682.53</b>	<b>32.43%</b>
<b>NET INCOME (LOSS):</b>	<b>(1,105,747.00)</b>	<b>(86,577.80)</b>	<b>(340,113.29)</b>		

## Washington State Bar Association

### Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>ADMISSIONS</b>					
<b>REVENUE:</b>					
EXAM SOFT REVENUE	35,000.00	-	-	35,000.00	0.00%
BAR EXAM FEES	1,300,000.00	47,400.00	407,830.00	892,170.00	31.37%
RULE 9/LEGAL INTERN FEES	12,000.00	450.00	1,850.00	10,150.00	15.42%
SPECIAL ADMISSIONS	60,000.00	5,475.00	16,865.00	43,135.00	28.11%
<b>TOTAL REVENUE:</b>	<b>1,407,000.00</b>	<b>53,325.00</b>	<b>426,545.00</b>	<b>980,455.00</b>	<b>30.32%</b>
<b>DIRECT EXPENSES:</b>					
DEPRECIATION	26,900.00	-	-	26,900.00	0.00%
POSTAGE	4,000.00	235.57	1,010.99	2,989.01	25.27%
STAFF TRAVEL/PARKING	14,900.00	350.00	2,436.14	12,463.86	16.35%
STAFF MEMBERSHIP DUES	650.00	-	200.00	450.00	30.77%
SUPPLIES	2,500.00	119.23	521.04	1,978.96	20.84%
FACILITY, PARKING, FOOD	84,060.00	-	5,927.48	78,132.52	7.05%
EXAMINER FEES	35,000.00	-	-	35,000.00	0.00%
UBE EXMINATIONS	135,000.00	-	-	135,000.00	0.00%
BOARD OF BAR EXAMINERS	30,000.00	-	-	30,000.00	0.00%
BAR EXAM PROCTORS	31,000.00	-	-	31,000.00	0.00%
CHARACTER & FITNESS BOARD	20,000.00	-	2,967.58	17,032.42	14.84%
DISABILITY ACCOMMODATIONS	20,000.00	-	-	20,000.00	0.00%
CHARACTER & FITNESS INVESTIGATIONS	900.00	-	-	900.00	0.00%
LAW SCHOOL VISITS	1,600.00	18.00	534.14	1,065.86	33.38%
COURT REPORTERS	18,000.00	-	1,245.70	16,754.30	6.92%
CONFERENCE CALLS	-	-	3.79	(3.79)	
ONLINE LEGAL RESEARCH	3,675.00	297.95	297.95	3,377.05	8.11%
LAW LIBRARY	1,116.00	42.39	42.39	1,073.61	3.80%
<b>TOTAL DIRECT EXPENSES:</b>	<b>429,301.00</b>	<b>1,063.14</b>	<b>15,187.20</b>	<b>414,113.80</b>	<b>3.54%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (6.80 FTE)	547,525.00	49,873.88	190,275.09	357,249.91	34.75%
BENEFITS EXPENSE	205,780.00	16,299.94	66,923.24	138,856.76	32.52%
OTHER INDIRECT EXPENSE	195,624.00	13,738.23	63,394.83	132,229.17	32.41%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>948,929.00</b>	<b>79,912.05</b>	<b>320,593.16</b>	<b>628,335.84</b>	<b>33.78%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,378,230.00</b>	<b>80,975.19</b>	<b>335,780.36</b>	<b>1,042,449.64</b>	<b>24.36%</b>
<b>NET INCOME (LOSS):</b>	<b>28,770.00</b>	<b>(27,650.19)</b>	<b>90,764.64</b>		

# Washington State Bar Association

## Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>BOARD OF GOVERNOR</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
STAFF MEMBERSHIP DUES	400.00	-	-	400.00	0.00%
WASHINGTON LEADERSHIP INSTITUTE	100,000.00	80,000.00	80,000.00	20,000.00	80.00%
BOG MEETINGS	210,500.00	8,242.92	42,329.15	168,170.85	20.11%
BOG COMMITTEES' EXPENSES	30,000.00	310.66	3,414.19	26,585.81	11.38%
BOG RETREAT	15,000.00	-	-	15,000.00	0.00%
BOG CONFERENCE ATTENDANCE	44,000.00	983.00	983.00	43,017.00	2.23%
BOG TRAVEL & OUTREACH	35,000.00	-	2,669.63	32,330.37	7.63%
CONSULTING SERVICES	5,000.00	-	-	5,000.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>439,900.00</b>	<b>89,536.58</b>	<b>129,395.97</b>	<b>310,504.03</b>	<b>29.41%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.00 FTE)	69,756.00	5,509.40	24,204.13	45,551.87	34.70%
BENEFITS EXPENSE	26,638.00	2,118.31	8,949.06	17,688.94	33.60%
OTHER INDIRECT EXPENSE	28,768.00	2,019.50	9,318.99	19,449.01	32.39%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>125,162.00</b>	<b>9,647.21</b>	<b>42,472.18</b>	<b>82,689.82</b>	<b>33.93%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>565,062.00</b>	<b>99,183.79</b>	<b>171,868.15</b>	<b>393,193.85</b>	<b>30.42%</b>
<b>NET INCOME (LOSS):</b>	<b>(565,062.00)</b>	<b>(99,183.79)</b>	<b>(171,868.15)</b>		



## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>COMMUNICATION STRATEGIES</b>					
<b>REVENUE:</b>					
APEX LUNCH/DINNER	40,000.00	-	2,250.00	37,750.00	5.63%
50 YEAR MEMBER TRIBUTE LUNCH	-	-	50.00	(50.00)	
WSBA LOGO MERCHANDISE SALES	-	-	342.59	(342.59)	
<b>TOTAL REVENUE:</b>	<b>40,000.00</b>	<b>-</b>	<b>2,642.59</b>	<b>37,357.41</b>	<b>6.61%</b>
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	4,700.00	350.00	1,473.53	3,226.47	31.35%
STAFF MEMBERSHIP DUES	1,515.00	630.00	630.00	885.00	41.58%
SUBSCRIPTIONS	10,050.00	361.79	794.59	9,255.41	7.91%
DIGITAL/ONLINE DEVELOPMENT	1,450.00	-	-	1,450.00	0.00%
APEX DINNER	70,000.00	3,350.00	3,515.63	66,484.37	5.02%
50 YEAR MEMBER TRIBUTE LUNCH	8,000.00	-	10,707.57	(2,707.57)	133.84%
COMMUNICATIONS OUTREACH	15,000.00	875.86	2,408.27	12,591.73	16.06%
TELEPHONE	325.00	27.61	110.44	214.56	33.98%
CONFERENCE CALLS	-	-	19.69	(19.69)	
<b>TOTAL DIRECT EXPENSES:</b>	<b>111,040.00</b>	<b>5,595.26</b>	<b>19,659.72</b>	<b>91,380.28</b>	<b>17.71%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (4.44 FTE)	310,102.00	23,711.16	96,022.00	214,080.00	30.96%
BENEFITS EXPENSE	118,282.00	8,938.45	36,728.55	81,553.45	31.05%
OTHER INDIRECT EXPENSE	127,731.00	8,959.68	41,344.38	86,386.62	32.37%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>556,115.00</b>	<b>41,609.29</b>	<b>174,094.93</b>	<b>382,020.07</b>	<b>31.31%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>667,155.00</b>	<b>47,204.55</b>	<b>193,754.65</b>	<b>473,400.35</b>	<b>29.04%</b>
<b>NET INCOME (LOSS):</b>	<b>(627,155.00)</b>	<b>(47,204.55)</b>	<b>(191,112.06)</b>		

# Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>CONFERENCE &amp; BROADCAST SERVICES</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
TRANSLATION SERVICES	5,500.00	825.55	3,041.50	2,458.50	55.30%
<b>TOTAL DIRECT EXPENSES:</b>	<b>5,500.00</b>	<b>825.55</b>	<b>3,041.50</b>	<b>2,458.50</b>	<b>55.30%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (7.11 FTE)	439,469.00	36,036.04	143,577.26	295,891.74	32.67%
BENEFITS EXPENSE	175,752.00	13,455.47	56,202.50	119,549.50	31.98%
OTHER INDIRECT EXPENSE	204,542.00	14,363.97	66,282.31	138,259.69	32.41%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>819,763.00</b>	<b>63,855.48</b>	<b>266,062.07</b>	<b>553,700.93</b>	<b>32.46%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>825,263.00</b>	<b>64,681.03</b>	<b>269,103.57</b>	<b>556,159.43</b>	<b>32.61%</b>
<b>NET INCOME (LOSS):</b>	<b>(825,263.00)</b>	<b>(64,681.03)</b>	<b>(269,103.57)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>DISCIPLINE</b>					
<b>REVENUE:</b>					
AUDIT REVENUE	2,500.00	318.50	1,291.00	1,209.00	51.64%
RECOVERY OF DISCIPLINE COSTS	90,000.00	15,248.79	50,587.71	39,412.29	56.21%
DISCIPLINE HISTORY SUMMARY	14,000.00	1,492.50	6,544.83	7,455.17	46.75%
PRACTICE MONITOR FEES	4,000.00	-	-	4,000.00	0.00%
<b>TOTAL REVENUE:</b>	<b>110,500.00</b>	<b>17,059.79</b>	<b>58,423.54</b>	<b>52,076.46</b>	<b>52.87%</b>
<b>DIRECT EXPENSES:</b>					
DEPRECIATION-SOFTWARE	2,300.00	328.00	1,310.00	990.00	56.96%
PUBLICATIONS PRODUCTION	250.00	-	48.53	201.47	19.41%
STAFF TRAVEL/PARKING	35,000.00	2,935.41	11,098.81	23,901.19	31.71%
STAFF MEMBERSHIP DUES	4,111.00	580.00	2,980.00	1,131.00	72.49%
TELEPHONE	2,300.00	237.45	949.80	1,350.20	41.30%
COURT REPORTERS	35,000.00	3,984.60	9,261.00	25,739.00	26.46%
OUTSIDE COUNSEL/AIC	1,000.00	-	-	1,000.00	0.00%
LITIGATION EXPENSES	25,000.00	(1,875.78)	15,448.67	9,551.33	61.79%
DISABILITY EXPENSES	7,500.00	-	-	7,500.00	0.00%
ONLINE LEGAL RESEARCH	53,287.50	2,587.59	8,546.52	44,740.98	16.04%
LAW LIBRARY	6,700.00	255.24	4,767.24	1,932.76	71.15%
TRANSLATION SERVICES	1,000.00	-	240.00	760.00	24.00%
PRACTICE MONITOR EXPENSE	4,000.00	-	-	4,000.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>177,448.50</b>	<b>9,032.51</b>	<b>54,650.57</b>	<b>122,797.93</b>	<b>30.80%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (36.93 FTE)	3,676,010.00	306,478.65	1,172,907.83	2,503,102.17	31.91%
BENEFITS EXPENSE	1,211,817.00	94,330.95	388,731.29	823,085.71	32.08%
OTHER INDIRECT EXPENSE	1,062,411.00	74,635.86	344,406.00	718,005.00	32.42%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>5,950,238.00</b>	<b>475,445.46</b>	<b>1,906,045.12</b>	<b>4,044,192.88</b>	<b>32.03%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>6,127,686.50</b>	<b>484,477.97</b>	<b>1,960,695.69</b>	<b>4,166,990.81</b>	<b>32.00%</b>
<b>NET INCOME (LOSS):</b>	<b>(6,017,186.50)</b>	<b>(467,418.18)</b>	<b>(1,902,272.15)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>DIVERSITY</b>					
<b>REVENUE:</b>					
DONATIONS	125,000.00	130,000.00	130,000.00	(5,000.00)	104.00%
WORK STUDY GRANTS	10,374.00	-	-	10,374.00	0.00%
<b>TOTAL REVENUE:</b>	<b>135,374.00</b>	<b>130,000.00</b>	<b>130,000.00</b>	<b>5,374.00</b>	<b>96.03%</b>
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	6,000.00	150.83	624.43	5,375.57	10.41%
STAFF MEMBERSHIP DUES	980.00	-	-	980.00	0.00%
COMMITTEE FOR DIVERSITY	6,000.00	301.66	1,611.64	4,388.36	26.86%
DIVERSITY EVENTS & PROJECTS	15,750.00	-	4,438.95	11,311.05	28.18%
INTERNAL DIVERSITY OUTREACH	200.00	-	-	200.00	0.00%
<b>TOTAL DIRECT EXPENSE:</b>	<b>28,930.00</b>	<b>452.49</b>	<b>6,675.02</b>	<b>22,254.98</b>	<b>23.07%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (3.87 FTE)	341,233.00	13,588.08	65,523.35	275,709.65	19.20%
BENEFITS EXPENSE	114,992.00	7,456.65	32,850.68	82,141.32	28.57%
OTHER INDIRECT EXPENSE	111,333.00	7,821.96	36,094.34	75,238.66	32.42%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>567,558.00</b>	<b>28,866.69</b>	<b>134,468.37</b>	<b>433,089.63</b>	<b>23.69%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>596,488.00</b>	<b>29,319.18</b>	<b>141,143.39</b>	<b>455,344.61</b>	<b>23.66%</b>
<b>NET INCOME (LOSS):</b>	<b>(461,114.00)</b>	<b>100,680.82</b>	<b>(11,143.39)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>FOUNDATION</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
CONSULTING SERVICES	3,000.00	-	-	3,000.00	0.00%
PRINTING & COPYING	900.00	-	-	900.00	0.00%
STAFF TRAVEL/PARKING	750.00	-	-	750.00	0.00%
SUPPLIES	250.00	-	-	250.00	0.00%
SPECIAL EVENTS	5,000.00	-	-	5,000.00	0.00%
BOARD OF TRUSTEES	3,000.00	-	147.06	2,852.94	4.90%
POSTAGE	500.00	-	62.28	437.72	12.46%
<b>TOTAL DIRECT EXPENSES:</b>	<b>13,400.00</b>	<b>-</b>	<b>209.34</b>	<b>13,190.66</b>	<b>1.56%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.05 FTE)	90,008.00	6,420.56	26,138.15	63,869.85	29.04%
BENEFITS EXPENSE	31,689.00	2,449.26	10,056.32	21,632.68	31.73%
OTHER INDIRECT EXPENSE	30,135.00	2,133.27	9,843.90	20,291.10	32.67%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>151,832.00</b>	<b>11,003.09</b>	<b>46,038.37</b>	<b>105,793.63</b>	<b>30.32%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>165,232.00</b>	<b>11,003.09</b>	<b>46,247.71</b>	<b>118,984.29</b>	<b>27.99%</b>
<b>NET INCOME (LOSS):</b>	<b>(165,232.00)</b>	<b>(11,003.09)</b>	<b>(46,247.71)</b>		

# Washington State Bar Association

## Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>HUMAN RESOURCES</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	250.00	-	44.00	206.00	17.60%
STAFF MEMBERSHIP DUES	870.00	-	-	870.00	0.00%
SUBSCRIPTIONS	2,100.00	207.00	279.00	1,821.00	13.29%
STAFF TRAINING- GENERAL	30,000.00	1,312.33	1,847.63	28,152.37	6.16%
RECRUITING AND ADVERTISING	7,000.00	162.62	634.28	6,365.72	9.06%
PAYROLL PROCESSING	49,000.00	6,567.38	13,172.56	35,827.44	26.88%
SALARY SURVEYS	2,900.00	-	765.20	2,134.80	26.39%
CONSULTING SERVICES	75,000.00	-	-	75,000.00	0.00%
TRANSFER TO INDIRECT EXPENSE	(167,120.00)	(8,249.33)	(16,742.67)	(150,377.33)	10.02%
<b>TOTAL DIRECT EXPENSES:</b>	-	-	-	-	
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (2.45 FTE)	271,913.00	21,374.53	79,501.26	192,411.74	29.24%
ALLOWANCE FOR OPEN POSITIONS	(200,000.00)	-	-	(200,000.00)	0.00%
BENEFITS EXPENSE	86,720.00	6,870.72	28,247.40	58,472.60	32.57%
OTHER INDIRECT EXPENSE	70,482.00	4,949.16	22,837.88	47,644.12	32.40%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>229,115.00</b>	<b>33,194.41</b>	<b>130,586.54</b>	<b>98,528.46</b>	<b>57.00%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>229,115.00</b>	<b>33,194.41</b>	<b>130,586.54</b>	<b>98,528.46</b>	<b>57.00%</b>
<b>NET INCOME (LOSS):</b>	<b>(229,115.00)</b>	<b>(33,194.41)</b>	<b>(130,586.54)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>LAW CLERK PROGRAM</b>					
<b>REVENUE:</b>					
LAW CLERK FEES	172,000.00	84,960.67	134,114.67	37,885.33	77.97%
LAW CLERK APPLICATION FEES	2,700.00	-	1,100.00	1,600.00	40.74%
<b>TOTAL REVENUE:</b>	<b>174,700.00</b>	<b>84,960.67</b>	<b>135,214.67</b>	<b>39,485.33</b>	<b>77.40%</b>
<b>DIRECT EXPENSES:</b>					
SUBSCRIPTIONS	250.00	-	-	250.00	0.00%
CHARACTER & FITNESS INVESTIGATIONS	100.00	-	-	100.00	0.00%
LAW CLERK BOARD EXPENSE	10,000.00	453.33	1,768.15	8,231.85	17.68%
STAFF TRAVEL/PARKING	600.00	-	-	600.00	0.00%
LAW CLERK OUTREACH	3,000.00	458.93	3,745.77	(745.77)	124.86%
<b>TOTAL DIRECT EXPENSES:</b>	<b>13,950.00</b>	<b>912.26</b>	<b>5,513.92</b>	<b>8,436.08</b>	<b>39.53%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.25 FTE)	92,121.00	8,115.58	31,825.60	60,295.40	34.55%
BENEFITS EXPENSE	34,398.00	2,714.06	11,153.53	23,244.47	32.42%
OTHER INDIRECT EXPENSE	35,960.00	2,531.50	11,681.46	24,278.54	32.48%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>162,479.00</b>	<b>13,361.14</b>	<b>54,660.59</b>	<b>107,818.41</b>	<b>33.64%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>176,429.00</b>	<b>14,273.40</b>	<b>60,174.51</b>	<b>116,254.49</b>	<b>34.11%</b>
<b>NET INCOME (LOSS):</b>	<b>(1,729.00)</b>	<b>70,687.27</b>	<b>75,040.16</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>LEGISLATIVE</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	2,500.00	742.29	916.33	1,583.67	36.65%
STAFF MEMBERSHIP DUES	450.00	-	-	450.00	0.00%
SUBSCRIPTIONS	2,000.00	-	1,981.80	18.20	99.09%
OLYMPIA RENT	2,500.00	51.58	51.58	2,448.42	2.06%
CONTRACT LOBBYIST	5,000.00	3,333.32	3,333.32	1,666.68	66.67%
LEGISLATIVE COMMITTEE	2,500.00	102.88	552.03	1,947.97	22.08%
BOG LEGISLATIVE COMMITTEE	250.00	-	-	250.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>15,200.00</b>	<b>4,230.07</b>	<b>6,835.06</b>	<b>8,364.94</b>	<b>44.97%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.10 FTE)	82,883.00	6,933.90	28,102.15	54,780.85	33.91%
BENEFITS EXPENSE	30,676.00	2,435.63	9,995.41	20,680.59	32.58%
OTHER INDIRECT EXPENSE	31,645.00	2,218.62	10,237.75	21,407.25	32.35%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>145,204.00</b>	<b>11,588.15</b>	<b>48,335.31</b>	<b>96,868.69</b>	<b>33.29%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>160,404.00</b>	<b>15,818.22</b>	<b>55,170.37</b>	<b>105,233.63</b>	<b>34.39%</b>
<b>NET INCOME (LOSS):</b>	<b>(160,404.00)</b>	<b>(15,818.22)</b>	<b>(55,170.37)</b>		



# Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>LICENSING &amp; MEMBERSHIP RECORDS</b>					
<b>REVENUE:</b>					
STATUS CERTIFICATE FEES	22,000.00	3,632.50	11,366.63	10,633.37	51.67%
INVESTIGATION FEES	22,700.00	2,700.00	8,300.00	14,400.00	36.56%
PRO HAC VICE	270,000.00	31,970.00	93,586.00	176,414.00	34.66%
MEMBER CONTACT INFORMATION	10,000.00	625.58	6,899.43	3,100.57	68.99%
PHOTO BAR CARD SALES	300.00	24.00	132.00	168.00	44.00%
<b>TOTAL REVENUE:</b>	<b>325,000.00</b>	<b>38,952.08</b>	<b>120,284.06</b>	<b>204,715.94</b>	<b>37.01%</b>
<b>DIRECT EXPENSES:</b>					
DEPRECIATION	13,850.00	1,150.00	4,602.00	9,248.00	33.23%
POSTAGE	19,500.00	11.00	6,346.95	13,153.05	32.55%
LICENSING FORMS	2,437.50	-	2,253.10	184.40	92.43%
<b>TOTAL DIRECT EXPENSES:</b>	<b>35,787.50</b>	<b>1,161.00</b>	<b>13,202.05</b>	<b>22,585.45</b>	<b>36.89%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (4.20 FTE)	386,870.00	33,723.58	131,711.67	255,158.33	34.05%
BENEFITS EXPENSE	130,142.00	10,316.88	42,410.51	87,731.49	32.59%
OTHER INDIRECT EXPENSE	120,827.00	8,476.17	39,113.15	81,713.85	32.37%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>637,839.00</b>	<b>52,516.63</b>	<b>213,235.33</b>	<b>424,603.67</b>	<b>33.43%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>673,626.50</b>	<b>53,677.63</b>	<b>226,437.38</b>	<b>447,189.12</b>	<b>33.61%</b>
<b>NET INCOME (LOSS):</b>	<b>(348,626.50)</b>	<b>(14,725.55)</b>	<b>(106,153.32)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>LIMITED LICENSE LEGAL TECHNICIAN PROGRAM</b>					
<b>REVENUE:</b>					
SEMINAR REGISTRATIONS	14,655.00	-	398.00	14,257.00	2.72%
LLLT LICENSE FEES	7,250.00	456.66	1,894.16	5,355.84	26.13%
LLLT LATE LICENSE FEES	300.00	-	300.00	-	100.00%
INVESTIGATION FEES	300.00	-	100.00	200.00	33.33%
LLLT EXAM FEES	4,500.00	-	3,350.00	1,150.00	74.44%
LLLT WAIVER FEES	300.00	-	-	300.00	0.00%
MEMBER LATE FEES	300.00	-	-	-	-
<b>TOTAL REVENUE:</b>	<b>27,605.00</b>	<b>456.66</b>	<b>6,042.16</b>	<b>21,262.84</b>	<b>21.89%</b>
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	600.00	-	101.80	498.20	16.97%
FACILITY, PARKING, FOOD	600.00	-	-	600.00	0.00%
LLLT BOARD	18,000.00	457.30	2,793.84	15,206.16	15.52%
LLLT OUTREACH	3,000.00	642.92	1,333.56	1,666.44	44.45%
LLLT EDUCATION	5,650.00	-	-	5,650.00	0.00%
POSTAGE	20.00	-	-	20.00	0.00%
LLLT EXAM WRITING	14,178.00	-	-	14,178.00	0.00%
LICENSING FORMS	2.50	-	-	2.50	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>42,050.50</b>	<b>1,100.22</b>	<b>4,229.20</b>	<b>37,821.30</b>	<b>10.06%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.34 FTE)	103,330.00	8,791.84	34,869.34	68,460.66	33.75%
BENEFITS EXPENSE	37,843.00	2,965.19	12,189.79	25,653.21	32.21%
OTHER INDIRECT EXPENSE	38,406.00	2,730.57	12,600.17	25,805.83	32.81%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>179,579.00</b>	<b>14,487.60</b>	<b>59,659.30</b>	<b>119,919.70</b>	<b>33.22%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>221,629.50</b>	<b>15,587.82</b>	<b>63,888.50</b>	<b>157,741.00</b>	<b>28.83%</b>
<b>NET INCOME (LOSS):</b>	<b>(194,024.50)</b>	<b>(15,131.16)</b>	<b>(57,846.34)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>LIMITED PRACTICE OFFICERS</b>					
<b>REVENUE:</b>					
INVESTIGATION FEES	1,000.00	100.00	100.00	900.00	10.00%
ACCREDITED PROGRAM FEES	6,000.00	-	-	6,000.00	0.00%
MEMBER LATE FEES	900.00	600.00	600.00	300.00	66.67%
LPO EXAMINATION FEES	26,000.00	-	11,200.00	14,800.00	43.08%
LPO LICENSE FEES	173,900.00	12,466.21	55,831.52	118,068.48	32.11%
LPO LATE LICENSE FEES	4,590.00	-	400.00	4,190.00	8.71%
<b>TOTAL REVENUE:</b>	<b>212,390.00</b>	<b>13,166.21</b>	<b>68,131.52</b>	<b>144,258.48</b>	<b>32.08%</b>
<b>DIRECT EXPENSES:</b>					
FACILITY, PARKING, FOOD	6,890.00	-	-	6,890.00	0.00%
EXAM WRITING	14,178.00	-	-	14,178.00	0.00%
ONLINE LEGAL RESEARCH	1,837.50	148.97	148.97	1,688.53	8.11%
LAW LIBRARY	279.00	10.48	10.48	268.52	3.76%
LICENSING FORMS	60.00	-	-	60.00	0.00%
LPO BOARD	3,000.00	-	257.64	2,742.36	8.59%
LPO OUTREACH	3,000.00	-	-	3,000.00	0.00%
POSTAGE	480.00	-	-	480.00	0.00%
PRINTING & COPYING	200.00	-	-	200.00	0.00%
STAFF TRAVEL/PARKING	100.00	-	-	100.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>30,024.50</b>	<b>159.45</b>	<b>417.09</b>	<b>29,607.41</b>	<b>1.39%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.09 FTE)	86,688.00	7,435.76	29,375.98	57,312.02	33.89%
BENEFITS EXPENSE	31,360.00	2,464.83	10,153.99	21,206.01	32.38%
OTHER INDIRECT EXPENSE	31,214.00	2,218.61	10,237.72	20,976.28	32.80%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>149,262.00</b>	<b>12,119.20</b>	<b>49,767.69</b>	<b>99,494.31</b>	<b>33.34%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>179,286.50</b>	<b>12,278.65</b>	<b>50,184.78</b>	<b>129,101.72</b>	<b>27.99%</b>
<b>NET INCOME (LOSS):</b>	<b>33,103.50</b>	<b>887.56</b>	<b>17,946.74</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>MANDATORY CONTINUING LEGAL EDUCATION</b>					
<b>REVENUE:</b>					
ACCREDITED PROGRAM FEES	534,000.00	39,700.00	170,300.00	363,700.00	31.89%
FORM 1 LATE FEES	150,000.00	12,800.00	70,200.00	79,800.00	46.80%
MEMBER LATE FEES	201,800.00	53,800.00	56,350.00	145,450.00	27.92%
ANNUAL ACCREDITED SPONSOR FEES	43,000.00	250.00	41,750.00	1,250.00	97.09%
ATTENDANCE LATE FEES	85,000.00	8,200.00	36,850.00	48,150.00	43.35%
COMITY CERTIFICATES	29,000.00	9,725.00	27,050.23	1,949.77	93.28%
<b>TOTAL REVENUE:</b>	<b>1,042,800.00</b>	<b>124,475.00</b>	<b>402,500.23</b>	<b>640,299.77</b>	<b>38.60%</b>
<b>DIRECT EXPENSES:</b>					
DEPRECIATION	250,000.00	20,843.00	83,368.00	166,632.00	33.35%
STAFF MEMBERSHIP DUES	500.00	-	-	500.00	0.00%
ONLINE LEGAL RESEARCH	1,837.50	148.97	148.97	1,688.53	8.11%
LAW LIBRARY	279.00	10.48	10.48	268.52	3.76%
MCLE BOARD	2,000.00	615.60	746.98	1,253.02	37.35%
STAFF TRAVEL/PARKING	-	-	9.26	(9.26)	
<b>TOTAL DIRECT EXPENSES:</b>	<b>254,616.50</b>	<b>21,618.05</b>	<b>84,283.69</b>	<b>170,332.81</b>	<b>33.10%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (4.65 FTE)	424,678.00	43,550.42	188,184.60	236,493.40	44.31%
BENEFITS EXPENSE	123,400.00	8,895.61	38,335.09	85,064.91	31.07%
OTHER INDIRECT EXPENSE	133,772.00	9,386.36	43,313.25	90,458.75	32.38%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>681,850.00</b>	<b>61,832.39</b>	<b>269,832.94</b>	<b>412,017.06</b>	<b>39.57%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>936,466.50</b>	<b>83,450.44</b>	<b>354,116.63</b>	<b>582,349.87</b>	<b>37.81%</b>
<b>NET INCOME (LOSS):</b>	<b>106,333.50</b>	<b>41,024.56</b>	<b>48,383.60</b>		

**Washington State Bar Association**  
Statement of Activities  
For the Period from January 1, 2020 to January 31, 2020  
**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>MEMBER ASSISTANCE PROGRAM</b>					
<b>REVENUE:</b>					
DIVERSIONS	6,750.00	375.00	3,750.00	3,000.00	55.56%
LAP GROUPS REVENUE	-	360.00	360.00	(360.00)	
<b>TOTAL REVENUE:</b>	<b>6,750.00</b>	<b>735.00</b>	<b>4,110.00</b>	<b>2,640.00</b>	<b>60.89%</b>
<b>DIRECT EXPENSES:</b>					
PUBLICATIONS PRODUCTION	200.00	-	-	200.00	0.00%
STAFF MEMBERSHIP DUES	225.00	-	-	225.00	0.00%
PROF LIAB INSURANCE	850.00	775.50	775.50	74.50	91.24%
<b>TOTAL DIRECT EXPENSES:</b>	<b>1,275.00</b>	<b>775.50</b>	<b>775.50</b>	<b>499.50</b>	<b>60.82%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (0.90 FTE)	87,698.00	6,810.15	26,777.69	60,920.31	30.53%
BENEFITS EXPENSE	35,067.00	2,696.55	11,061.10	24,005.90	31.54%
OTHER INDIRECT EXPENSE	25,891.00	1,820.38	8,400.08	17,490.92	32.44%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>148,656.00</b>	<b>11,327.08</b>	<b>46,238.87</b>	<b>102,417.13</b>	<b>31.10%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>149,931.00</b>	<b>12,102.58</b>	<b>47,014.37</b>	<b>102,916.63</b>	<b>31.36%</b>
<b>NET INCOME (LOSS):</b>	<b>(143,181.00)</b>	<b>(11,367.58)</b>	<b>(42,904.37)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>MEMBER SERVICES &amp; ENGAGEMENT</b>					
<b>REVENUE:</b>					
ROYALTIES	42,500.00	158.04	13,463.08	29,036.92	31.68%
NMP PRODUCT SALES	70,000.00	6,793.00	52,651.00	17,349.00	75.22%
SPONSORSHIPS	800.00	-	-	800.00	0.00%
SEMINAR REGISTRATIONS	15,000.00	-	-	15,000.00	0.00%
TRIAL ADVOCACY PROGRAM	10,000.00	-	-	10,000.00	0.00%
<b>TOTAL REVENUE:</b>	<b>138,300.00</b>	<b>6,951.04</b>	<b>66,114.08</b>	<b>72,185.92</b>	<b>47.80%</b>
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	2,500.00	-	-	2,500.00	0.00%
SUBSCRIPTIONS	500.00	25.00	70.00	430.00	14.00%
CONFERENCE CALLS	300.00	-	13.61	286.39	4.54%
YLL SECTION PROGRAM	1,100.00	615.00	615.00	485.00	55.91%
WYLC CLE COMPS	1,000.00	-	-	1,000.00	0.00%
WYLC OUTREACH EVENTS	2,500.00	-	96.51	2,403.49	3.86%
WYL COMMITTEE	15,000.00	193.85	960.93	14,039.07	6.41%
OPEN SECTIONS NIGHT	3,000.00	-	-	3,000.00	0.00%
TRIAL ADVOCACY EXPENSES	2,500.00	-	0.05	2,499.95	0.00%
RECEPTION/FORUM EXPENSE	4,000.00	797.12	947.12	3,052.88	23.68%
WYLC SCHOLARSHIPS/DONATIONS/GRANT	2,500.00	-	-	2,500.00	0.00%
STAFF MEMBERSHIP DUES	445.00	-	75.00	370.00	16.85%
LENDING LIBRARY	5,500.00	38.23	402.91	5,097.09	7.33%
NMP SPEAKERS & PROGRAM DEVELOPMENT	1,500.00	-	235.40	1,264.60	15.69%
<b>TOTAL DIRECT EXPENSES:</b>	<b>42,345.00</b>	<b>1,669.20</b>	<b>3,416.53</b>	<b>38,928.47</b>	<b>8.07%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (4.24 FTE)	326,272.00	28,908.74	121,870.09	204,401.91	37.35%
BENEFITS EXPENSE	119,762.00	9,752.33	40,049.18	79,712.82	33.44%
OTHER INDIRECT EXPENSE	121,977.00	8,561.52	39,506.95	82,470.05	32.39%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>568,011.00</b>	<b>47,222.59</b>	<b>201,426.22</b>	<b>366,584.78</b>	<b>35.46%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>610,356.00</b>	<b>48,891.79</b>	<b>204,842.75</b>	<b>405,513.25</b>	<b>33.56%</b>
<b>NET INCOME (LOSS):</b>	<b>(472,056.00)</b>	<b>(41,940.75)</b>	<b>(138,728.67)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>MEMBERSHIP BENEFITS</b>					
<b>REVENUE:</b>					
SPONSORSHIPS	9,000.00	-	-	9,000.00	0.00%
INTERNET SALES	12,000.00	1,666.00	16,905.00	(4,905.00)	140.88%
<b>TOTAL REVENUE:</b>	<b>21,000.00</b>	<b>1,666.00</b>	<b>16,905.00</b>	<b>4,095.00</b>	<b>80.50%</b>
<b>DIRECT EXPENSES:</b>					
TRANSCRIPTION SERVICES	1,500.00	-	-	1,500.00	0.00%
LEGAL LUNCHBOX SPEAKERS & PROGRAM	2,000.00	-	-	2,000.00	0.00%
WSBA CONNECTS	46,560.00	-	31,040.00	15,520.00	66.67%
CASEMAKER & FASTCASE	136,436.00	5,416.00	98,283.69	38,152.31	72.04%
<b>TOTAL DIRECT EXPENSES:</b>	<b>186,496.00</b>	<b>5,416.00</b>	<b>129,323.69</b>	<b>57,172.31</b>	<b>69.34%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (0.69 FTE)	53,322.00	6,973.92	27,213.12	26,108.88	51.04%
BENEFITS EXPENSE	19,484.00	1,970.36	8,073.99	11,410.01	41.44%
OTHER INDIRECT EXPENSE	19,706.00	1,393.73	6,431.43	13,274.57	32.64%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>92,512.00</b>	<b>10,338.01</b>	<b>41,718.54</b>	<b>50,793.46</b>	<b>45.10%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>279,008.00</b>	<b>15,754.01</b>	<b>171,042.23</b>	<b>107,965.77</b>	<b>61.30%</b>
<b>NET INCOME (LOSS):</b>	<b>(258,008.00)</b>	<b>(14,088.01)</b>	<b>(154,137.23)</b>		

# Washington State Bar Association

Statement of Activities

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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>NORTHWEST LAWYER</b>					
<b>REVENUE:</b>					
ROYALTIES	-	225.00	1,440.86	(1,440.86)	
DISPLAY ADVERTISING	297,500.00	-	125,077.00	172,423.00	42.04%
SUBSCRIPT/SINGLE ISSUES	350.00	-	72.00	278.00	20.57%
CLASSIFIED ADVERTISING	12,500.00	-	2,693.80	9,806.20	21.55%
GEN ANNOUNCEMENTS	17,500.00	-	4,056.00	13,444.00	23.18%
PROF ANNOUNCEMENTS	21,000.00	-	7,650.00	13,350.00	36.43%
JOB TARGET ADVERTISING	112,500.00	12,105.30	60,726.15	51,773.85	53.98%
<b>TOTAL REVENUE:</b>	<b>461,350.00</b>	<b>12,330.30</b>	<b>201,715.81</b>	<b>259,634.19</b>	<b>43.72%</b>
<b>DIRECT EXPENSES:</b>					
BAD DEBT EXPENSE	2,000.00	-	-	2,000.00	0.00%
POSTAGE	89,000.00	-	30,666.94	58,333.06	34.46%
PRINTING, COPYING & MAILING	250,000.00	-	71,983.90	178,016.10	28.79%
DIGITAL/ONLINE DEVELOPMENT	12,000.00	1,200.00	4,050.00	7,950.00	33.75%
GRAPHICS/ARTWORK	3,500.00	-	-	3,500.00	0.00%
OUTSIDE SALES EXPENSE	-	-	41,034.90	(41,034.90)	
EDITORIAL ADVISORY COMMITTEE	800.00	-	515.32	284.68	64.42%
STAFF MEMBERSHIP DUES	615.00	-	-	615.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>357,915.00</b>	<b>1,200.00</b>	<b>148,251.06</b>	<b>209,663.94</b>	<b>41.42%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (2.55 FTE)	206,395.00	17,238.64	69,862.97	136,532.03	33.85%
BENEFITS EXPENSE	79,825.00	6,325.68	25,954.46	53,870.54	32.51%
OTHER INDIRECT EXPENSE	73,359.00	5,148.27	23,756.62	49,602.38	32.38%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>359,579.00</b>	<b>28,712.59</b>	<b>119,574.05</b>	<b>240,004.95</b>	<b>33.25%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>717,494.00</b>	<b>29,912.59</b>	<b>267,825.11</b>	<b>449,668.89</b>	<b>37.33%</b>
<b>NET INCOME (LOSS):</b>	<b>(256,144.00)</b>	<b>(17,582.29)</b>	<b>(66,109.30)</b>		



# Washington State Bar Association

## Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>OFFICE OF THE EXECUTIVE DIRECTOR</b>					
<b>REVENUE:</b>					
<hr/>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<hr/>					
<b>DIRECT EXPENSES:</b>					
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ED TRAVEL & OUTREACH	5,000.00	171.80	934.94	4,065.06	18.70%
LAW LIBRARY	279.00	60.45	60.45	218.55	21.67%
STAFF TRAVEL/PARKING	5,400.00	28.00	28.00	5,372.00	0.52%
STAFF MEMBERSHIP DUES	1,700.00	-	-	1,700.00	0.00%
TELEPHONE	1,000.00	-	-	1,000.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>13,379.00</b>	<b>260.25</b>	<b>1,023.39</b>	<b>12,355.61</b>	<b>7.65%</b>
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<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.45 FTE)	247,104.00	31,881.08	108,938.16	138,165.84	44.09%
BENEFITS EXPENSE	71,244.00	7,007.07	26,728.64	44,515.36	37.52%
OTHER INDIRECT EXPENSE	41,714.00	2,929.69	13,518.98	28,195.02	32.41%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>360,062.00</b>	<b>41,817.84</b>	<b>149,185.78</b>	<b>210,876.22</b>	<b>41.43%</b>
<hr/>					
<b>TOTAL ALL EXPENSES:</b>	<b>373,441.00</b>	<b>42,078.09</b>	<b>150,209.17</b>	<b>223,231.83</b>	<b>40.22%</b>
<hr/>					
<b>NET INCOME (LOSS):</b>	<b>(373,441.00)</b>	<b>(42,078.09)</b>	<b>(150,209.17)</b>		
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## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>OFFICE OF GENERAL COUNSEL</b>					
<b>REVENUE:</b>					
COPY FEES	-	-	3.96	(3.96)	
<b>TOTAL REVENUE:</b>	<b>-</b>	<b>-</b>	<b>3.96</b>	<b>(3.96)</b>	
<b>DIRECT EXPENSES:</b>					
DEPRECIATION	3,336.00	-	-	3,336.00	0.00%
STAFF TRAVEL/PARKING	300.00	-	-	300.00	0.00%
STAFF MEMBERSHIP DUES	1,500.00	-	-	1,500.00	0.00%
ONLINE LEGAL RESEARCH	11,025.00	893.84	893.84	10,131.16	8.11%
LAW LIBRARY	1,673.00	63.36	63.36	1,609.64	3.79%
COURT RULES COMMITTEE	3,000.00	-	925.00	2,075.00	30.83%
DISCIPLINE ADVISORY ROUNDTABLE	500.00	-	-	500.00	0.00%
CUSTODIANSHIPS	2,500.00	-	59.76	2,440.24	2.39%
LITIGATION EXPENSES	500.00	39.73	39.88	460.12	7.98%
<b>TOTAL DIRECT EXPENSES:</b>	<b>24,334.00</b>	<b>996.93</b>	<b>1,981.84</b>	<b>22,352.16</b>	<b>8.14%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (5.82 FTE)	600,907.00	38,305.72	154,309.60	446,597.40	25.68%
BENEFITS EXPENSE	198,401.00	14,868.65	61,178.53	137,222.47	30.84%
OTHER INDIRECT EXPENSE	167,431.00	11,747.18	54,207.14	113,223.86	32.38%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>966,739.00</b>	<b>64,921.55</b>	<b>269,695.27</b>	<b>697,043.73</b>	<b>27.90%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>991,073.00</b>	<b>65,918.48</b>	<b>271,677.11</b>	<b>719,395.89</b>	<b>27.41%</b>
<b>NET INCOME (LOSS):</b>	<b>(991,073.00)</b>	<b>(65,918.48)</b>	<b>(271,673.15)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>OFFICE OF GENERAL COUNSEL - DISCIPLINARY BOARD</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSE:</b>					
STAFF MEMBERSHIP DUES	200.00	-	-	200.00	0.00%
LAW LIBRARY	1,116.00	42.39	42.39	1,073.61	3.80%
DISCIPLINARY BOARD EXPENSES	10,000.00	25.00	488.57	9,511.43	4.89%
CHIEF HEARING OFFICER	33,000.00	2,487.00	10,000.00	23,000.00	30.30%
HEARING OFFICER EXPENSES	3,000.00	-	(2,018.63)	5,018.63	-67.29%
HEARING OFFICER TRAINING	2,000.00	290.16	526.93	1,473.07	26.35%
OUTSIDE COUNSEL	55,000.00	4,000.00	16,000.00	39,000.00	29.09%
<b>TOTAL DIRECT EXPENSES:</b>	<b>104,316.00</b>	<b>6,844.55</b>	<b>25,039.26</b>	<b>79,276.74</b>	<b>24.00%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.55 FTE)	104,449.00	8,717.62	35,332.66	69,116.34	33.83%
BENEFITS EXPENSE	40,468.00	3,218.34	13,203.52	27,264.48	32.63%
OTHER INDIRECT EXPENSE	44,591.00	3,128.79	14,437.78	30,153.22	32.38%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>189,508.00</b>	<b>15,064.75</b>	<b>62,973.96</b>	<b>126,534.04</b>	<b>33.23%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>293,824.00</b>	<b>21,909.30</b>	<b>88,013.22</b>	<b>205,810.78</b>	<b>29.95%</b>
<b>NET INCOME (LOSS):</b>	<b>(293,824.00)</b>	<b>(21,909.30)</b>	<b>(88,013.22)</b>		

**Washington State Bar Association**  
Statement of Activities  
For the Period from January 1, 2020 to January 31, 2020  
**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>OUTREACH &amp; ENGAGEMENT</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSE:</b>					
STAFF MEMBERSHIP DUES	825.00	-	-	825.00	0.00%
ABA DELEGATES	5,600.00	-	-	5,600.00	0.00%
ANNUAL CHAIR MEETINGS	600.00	-	510.31	89.69	85.05%
JUDICIAL RECOMMENDATIONS COMMITTEE	4,500.00	-	175.36	4,324.64	3.90%
BOG ELECTIONS	6,500.00	3,920.00	3,920.00	2,580.00	60.31%
BAR OUTREACH	11,600.00	-	-	11,600.00	0.00%
PROFESSIONALISM	2,000.00	-	-	2,000.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>31,625.00</b>	<b>3,920.00</b>	<b>4,605.67</b>	<b>27,019.33</b>	<b>14.56%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (2.73 FTE)	231,494.00	15,800.24	71,098.76	160,395.24	30.71%
BENEFITS EXPENSE	81,898.00	6,121.15	25,917.36	55,980.64	31.65%
OTHER INDIRECT EXPENSE	78,537.00	5,518.07	25,463.01	53,073.99	32.42%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>391,929.00</b>	<b>27,439.46</b>	<b>122,479.13</b>	<b>269,449.87</b>	<b>31.25%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>423,554.00</b>	<b>31,359.46</b>	<b>127,084.80</b>	<b>296,469.20</b>	<b>30.00%</b>
<b>NET INCOME (LOSS):</b>	<b>(423,554.00)</b>	<b>(31,359.46)</b>	<b>(127,084.80)</b>		

# Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>PRACTICE OF LAW BOARD</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
PRACTICE OF LAW BOARD	16,000.00	215.14	1,045.62	14,954.38	6.54%
<b>TOTAL DIRECT EXPENSES:</b>	<b>16,000.00</b>	<b>215.14</b>	<b>1,045.62</b>	<b>14,954.38</b>	<b>6.54%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (0.40 FTE)	38,689.00	3,259.68	13,208.71	25,480.29	34.14%
BENEFITS EXPENSE	13,065.00	1,035.77	4,256.06	8,808.94	32.58%
OTHER INDIRECT EXPENSE	11,507.00	796.43	3,675.03	7,831.97	31.94%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>63,261.00</b>	<b>5,091.88</b>	<b>21,139.80</b>	<b>42,121.20</b>	<b>33.42%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>79,261.00</b>	<b>5,307.02</b>	<b>22,185.42</b>	<b>57,075.58</b>	<b>27.99%</b>
<b>NET INCOME (LOSS):</b>	<b>(79,261.00)</b>	<b>(5,307.02)</b>	<b>(22,185.42)</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>PROFESSIONAL RESPONSIBILITY PROGRAM</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	4,000.00	-	1,351.78	2,648.22	33.79%
STAFF MEMBERSHIP DUES	375.00	-	-	375.00	0.00%
LAW LIBRARY	279.00	10.48	10.48	268.52	3.76%
CPE COMMITTEE	5,000.00	175.09	1,255.02	3,744.98	25.10%
<b>TOTAL DIRECT EXPENSES:</b>	<b>9,654.00</b>	<b>185.57</b>	<b>2,617.28</b>	<b>7,036.72</b>	<b>27.11%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.55 FTE)	159,873.00	13,342.90	54,078.14	105,794.86	33.83%
BENEFITS EXPENSE	57,053.00	4,530.54	18,609.58	38,443.42	32.62%
OTHER INDIRECT EXPENSE	44,591.00	3,128.79	14,437.72	30,153.28	32.38%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>261,517.00</b>	<b>21,002.23</b>	<b>87,125.44</b>	<b>174,391.56</b>	<b>33.32%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>271,171.00</b>	<b>21,187.80</b>	<b>89,742.72</b>	<b>181,428.28</b>	<b>33.09%</b>
<b>NET INCOME (LOSS):</b>	<b>(271,171.00)</b>	<b>(21,187.80)</b>	<b>(89,742.72)</b>		

**Washington State Bar Association**  
Statement of Activities  
For the Period from January 1, 2020 to January 31, 2020  
**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>PUBLIC SERVICE PROGRAMS</b>					
<b>REVENUE:</b>					
DONATIONS & GRANTS	125,000.00	130,000.00	130,000.00	(5,000.00)	104.00%
PSP PRODUCT SALES	1,000.00	-	99.00	901.00	9.90%
WORK STUDY GRANTS	2,100.00	-	-	2,100.00	0.00%
<b>TOTAL REVENUE:</b>	<b>128,100.00</b>	<b>130,000.00</b>	<b>130,099.00</b>	<b>(1,999.00)</b>	<b>101.56%</b>
<b>DIRECT EXPENSES:</b>					
DONATIONS/SPONSORSHIPS/GRANTS	221,777.00	23,918.00	27,434.03	194,342.97	12.37%
STAFF TRAVEL/PARKING	2,000.00	-	59.00	1,941.00	2.95%
PRO BONO & PUBLIC SERVICE COMMITTEE	2,000.00	-	910.49	1,089.51	45.52%
PUBLIC SERVICE EVENTS AND PROJECTS	25,000.00	-	-	25,000.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>250,777.00</b>	<b>23,918.00</b>	<b>28,403.52</b>	<b>222,373.48</b>	<b>11.33%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.54 FTE)	117,048.00	9,191.70	37,789.76	79,258.24	32.29%
BENEFITS EXPENSE	42,502.00	3,331.24	13,852.18	28,649.82	32.59%
OTHER INDIRECT EXPENSE	44,303.00	3,100.34	14,306.56	29,996.44	32.29%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>203,853.00</b>	<b>15,623.28</b>	<b>65,948.50</b>	<b>137,904.50</b>	<b>32.35%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>454,630.00</b>	<b>39,541.28</b>	<b>94,352.02</b>	<b>360,277.98</b>	<b>20.75%</b>
<b>NET INCOME (LOSS):</b>	<b>(326,530.00)</b>	<b>90,458.72</b>	<b>35,746.98</b>		

**Washington State Bar Association**  
Statement of Activities  
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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>PUBLICATION &amp; DESIGN SERVICES</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
EQUIPMENT, HARDWARE & SOFTWARE	330.00	-	-	330.00	0.00%
SUBSCRIPTIONS	262.00	179.98	179.98	82.02	68.69%
SUPPLIES	300.00	-	-	300.00	0.00%
IMAGE LIBRARY	4,680.00	-	4,100.00	580.00	87.61%
<b>TOTAL DIRECT EXPENSES:</b>	<b>5,572.00</b>	<b>179.98</b>	<b>4,279.98</b>	<b>1,292.02</b>	<b>76.81%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.09 FTE)	75,007.00	5,935.18	24,061.39	50,945.61	32.08%
BENEFITS EXPENSE	28,805.00	2,192.29	8,994.41	19,810.59	31.23%
OTHER INDIRECT EXPENSE	31,357.00	2,190.14	10,106.38	21,250.62	32.23%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>135,169.00</b>	<b>10,317.61</b>	<b>43,162.18</b>	<b>92,006.82</b>	<b>31.93%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>140,741.00</b>	<b>10,497.59</b>	<b>47,442.16</b>	<b>93,298.84</b>	<b>33.71%</b>
<b>NET INCOME (LOSS):</b>	<b>(140,741.00)</b>	<b>(10,497.59)</b>	<b>(47,442.16)</b>		



**Washington State Bar Association**  
Statement of Activities  
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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>SECTIONS ADMINISTRATION</b>					
<b>REVENUE:</b>					
REIMBURSEMENTS FROM SECTIONS	300,000.00	244,612.50	247,481.25	52,518.75	82.49%
<b>TOTAL REVENUE:</b>	<b>300,000.00</b>	<b>244,612.50</b>	<b>247,481.25</b>	<b>52,518.75</b>	<b>82.49%</b>
<b>DIRECT EXPENSES:</b>					
STAFF TRAVEL/PARKING	1,200.00	-	236.97	963.03	19.75%
SUBSCRIPTIONS	372.00	-	409.57	(37.57)	110.10%
CONFERENCE CALLS	300.00	-	19.12	280.88	6.37%
MISCELLANEOUS	300.00	-	-	300.00	0.00%
SECTION/COMMITTEE CHAIR MTGS	1,000.00	-	344.39	655.61	34.44%
DUES STATEMENTS	6,000.00	-	5,788.00	212.00	96.47%
STAFF MEMBERSHIP DUES	125.00	-	-	125.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>9,297.00</b>	<b>-</b>	<b>6,798.05</b>	<b>2,498.95</b>	<b>73.12%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (4.24 FTE)	303,468.00	12,478.75	65,395.88	238,072.12	21.55%
BENEFITS EXPENSE	114,639.00	7,955.19	33,616.63	81,022.37	29.32%
OTHER INDIRECT EXPENSE	121,905.00	8,561.50	39,506.98	82,398.02	32.41%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>540,012.00</b>	<b>28,995.44</b>	<b>138,519.49</b>	<b>401,492.51</b>	<b>25.65%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>549,309.00</b>	<b>28,995.44</b>	<b>145,317.54</b>	<b>403,991.46</b>	<b>26.45%</b>
<b>NET INCOME (LOSS):</b>	<b>(249,309.00)</b>	<b>215,617.06</b>	<b>102,163.71</b>		

## Washington State Bar Association

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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>TECHNOLOGY</b>					
<b>REVENUE:</b>					
<b>TOTAL REVENUE:</b>	-	-	-	-	
<b>DIRECT EXPENSES:</b>					
CONSULTING SERVICES	85,000.00	2,825.93	17,677.06	67,322.94	20.80%
STAFF TRAVEL/PARKING	2,500.00	-	726.39	1,773.61	29.06%
STAFF MEMBERSHIP DUES	110.00	-	-	110.00	0.00%
TELEPHONE	24,000.00	1,516.36	6,393.85	17,606.15	26.64%
COMPUTER HARDWARE	29,000.00	671.52	2,688.78	26,311.22	9.27%
COMPUTER SOFTWARE	29,000.00	-	6,438.69	22,561.31	22.20%
HARDWARE SERVICE & WARRANTIES	60,000.00	-	32,669.19	27,330.81	54.45%
SOFTWARE MAINTENANCE & LICENSING	270,000.00	539.54	137,819.96	132,180.04	51.04%
TELEPHONE HARDWARE & MAINTENANCE	10,000.00	219.10	219.10	9,780.90	2.19%
COMPUTER SUPPLIES	15,000.00	529.56	1,910.89	13,089.11	12.74%
THIRD PARTY SERVICES	143,000.00	26,459.02	97,619.17	45,380.83	68.27%
TRANSFER TO INDIRECT EXPENSES	(667,610.00)	(32,761.03)	(304,163.08)	(363,446.92)	45.56%
<b>TOTAL DIRECT EXPENSES:</b>	-	-	-	-	
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (12.10 FTE)	1,090,382.00	89,669.90	373,973.21	716,408.79	34.30%
BENEFITS EXPENSE	377,371.00	29,887.53	122,829.49	254,541.51	32.55%
CAPITAL LABOR & OVERHEAD	(141,000.00)	(2,724.00)	(31,780.00)	(109,220.00)	22.54%
OTHER INDIRECT EXPENSE	348,096.00	24,461.45	112,876.89	235,219.11	32.43%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>1,674,849.00</b>	<b>141,294.88</b>	<b>577,899.59</b>	<b>1,096,949.41</b>	<b>34.50%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,674,849.00</b>	<b>141,294.88</b>	<b>577,899.59</b>	<b>1,096,949.41</b>	<b>34.50%</b>
<b>NET INCOME (LOSS):</b>	<b>(1,674,849.00)</b>	<b>(141,294.88)</b>	<b>(577,899.59)</b>		

## Washington State Bar Association

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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>CONTINUING LEGAL EDUCATION (CLE)</b>					
<b>REVENUE:</b>					
SEMINAR REGISTRATIONS	860,000.00	2,713.00	250,716.50	609,283.50	29.15%
SEMINAR-EXHIB/SPNSR/ETC	29,000.00	-	2,000.00	27,000.00	6.90%
SHIPPING & HANDLING	1,000.00	36.00	168.75	831.25	16.88%
COURSEBOOK SALES	9,000.00	305.00	2,953.00	6,047.00	32.81%
MP3 AND VIDEO SALES	925,000.00	47,650.25	475,279.05	449,720.95	51.38%
<b>TOTAL REVENUE:</b>	<b>1,824,000.00</b>	<b>50,704.25</b>	<b>731,117.30</b>	<b>1,092,882.70</b>	<b>40.08%</b>
<b>DIRECT EXPENSES:</b>					
COURSEBOOK PRODUCTION	3,000.00	3.82	125.43	2,874.57	4.18%
POSTAGE - FLIERS/CATALOGS	15,500.00	365.74	2,940.97	12,559.03	18.97%
POSTAGE - MISC./DELIVERY	1,000.00	35.00	245.00	755.00	24.50%
DEPRECIATION	5,820.00	485.00	1,940.00	3,880.00	33.33%
ONLINE EXPENSES	42,000.00	5,261.90	16,386.83	25,613.17	39.02%
ACCREDITATION FEES	3,000.00	(48.00)	2,835.00	165.00	94.50%
SEMINAR BROCHURES	21,000.00	-	4,366.12	16,633.88	20.79%
FACILITIES	234,000.00	-	41,257.35	192,742.65	17.63%
SPEAKERS & PROGRAM DEVELOP	62,000.00	330.08	5,946.18	56,053.82	9.59%
SPLITS TO SECTIONS	100,100.00	(806.60)	(806.60)	100,906.60	-0.81%
CLE SEMINAR COMMITTEE	500.00	-	21.72	478.28	4.34%
BAD DEBT EXPENSE	600.00	-	-	600.00	0.00%
STAFF TRAVEL/PARKING	6,000.00	58.10	266.48	5,733.52	4.44%
STAFF MEMBERSHIP DUES	1,470.00	-	1,175.00	295.00	79.93%
SUPPLIES	2,000.00	-	378.39	1,621.61	18.92%
TELEPHONE	-	-	8.99	(8.99)	
COST OF SALES - COURSEBOOKS	200.00	26.58	267.34	(67.34)	133.67%
A/V DEVELOP COSTS (RECORDING)	1,500.00	-	-	1,500.00	0.00%
POSTAGE & DELIVERY-COURSEBOOKS	500.00	59.24	172.14	327.86	34.43%
STAFF TRAVEL/PARKING	2,000.00	-	54.56	1,945.44	2.73%
<b>TOTAL DIRECT EXPENSES:</b>	<b>502,190.00</b>	<b>5,770.86</b>	<b>77,580.90</b>	<b>424,609.10</b>	<b>15.45%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (9.31 FTE)	643,255.00	56,006.87	209,171.33	434,083.67	32.52%
BENEFITS EXPENSE	245,839.00	20,332.20	80,823.84	165,015.16	32.88%
OTHER INDIRECT EXPENSE	267,832.00	18,829.62	86,888.94	180,943.06	32.44%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>1,156,926.00</b>	<b>95,168.69</b>	<b>376,884.11</b>	<b>780,041.89</b>	<b>32.58%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,659,116.00</b>	<b>100,939.55</b>	<b>454,465.01</b>	<b>1,204,650.99</b>	<b>27.39%</b>
<b>NET INCOME (LOSS):</b>	<b>164,884.00</b>	<b>(50,235.30)</b>	<b>276,652.29</b>		

## Washington State Bar Association

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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>DESKBOOKS</b>					
<b>REVENUE:</b>					
SHIPPING & HANDLING	2,500.00	369.00	1,343.25	1,156.75	53.73%
DESKBOOK SALES	100,000.00	5,688.00	18,678.60	81,321.40	18.68%
SECTION PUBLICATION SALES	3,000.00	450.00	900.00	2,100.00	30.00%
CASEMAKER ROYALTIES	60,000.00	3,296.31	8,047.48	51,952.52	13.41%
<b>TOTAL REVENUE:</b>	<b>165,500.00</b>	<b>9,803.31</b>	<b>28,969.33</b>	<b>136,530.67</b>	<b>17.50%</b>
<b>DIRECT EXPENSES:</b>					
COST OF SALES - DESKBOOKS	60,000.00	2,436.79	4,889.37	55,110.63	8.15%
COST OF SALES - SECTION PUBLICATION	750.00	127.98	213.30	536.70	28.44%
SPLITS TO SECTIONS	1,000.00	145.91	145.91	854.09	14.59%
DESKBOOK ROYALTIES	1,000.00	-	-	1,000.00	0.00%
POSTAGE & DELIVER-DESKBOOKS	2,500.00	334.27	1,855.65	644.35	74.23%
FLIERS/CATALOGS	3,000.00	-	-	3,000.00	0.00%
ONLINE LEGAL RESEARCH	1,837.50	148.97	148.97	1,688.53	8.11%
POSTAGE - FLIERS/CATALOGS	1,500.00	-	-	1,500.00	0.00%
COMPLIMENTARY BOOK PROGRAM	2,500.00	-	-	2,500.00	0.00%
OBSOLETE INVENTORY	-	70.30	281.20	(281.20)	
BAD DEBT EXPENSE	100.00	-	-	100.00	0.00%
RECORDS STORAGE - OFF SITE	8,100.00	675.00	3,375.00	4,725.00	41.67%
STAFF MEMBERSHIP DUES	220.00	-	-	220.00	0.00%
SUBSCRIPTIONS	150.00	-	-	150.00	0.00%
<b>TOTAL DIRECT EXPENSES:</b>	<b>82,657.50</b>	<b>3,939.22</b>	<b>10,909.40</b>	<b>71,748.10</b>	<b>13.20%</b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (2.25 FTE)	148,307.00	8,916.96	37,208.23	111,098.77	25.09%
BENEFITS EXPENSE	58,004.00	3,814.04	15,698.47	42,305.53	27.06%
OTHER INDIRECT EXPENSE	64,729.00	4,550.94	21,000.28	43,728.72	32.44%
<b>TOTAL INDIRECT EXPENSES:</b>	<b>271,040.00</b>	<b>17,281.94</b>	<b>73,906.98</b>	<b>197,133.02</b>	<b>27.27%</b>
<b>TOTAL ALL EXPENSES:</b>	<b>353,697.50</b>	<b>21,221.16</b>	<b>84,816.38</b>	<b>268,881.12</b>	<b>23.98%</b>
<b>NET INCOME (LOSS):</b>	<b>(188,197.50)</b>	<b>(11,417.85)</b>	<b>(55,847.05)</b>		

## Washington State Bar Association

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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>CLIENT PROTECTION FUND</b>					
<b>REVENUE:</b>					
CPF RESTITUTION	3,000.00	373.81	1,957.25	1,042.75	65.24%
CPF MEMBER ASSESSMENTS	1,000,000.00	531,180.00	870,690.00	129,310.00	87.07%
INTEREST INCOME	20,000.00	6,015.71	25,918.28	(5,918.28)	129.59%
<b>TOTAL REVENUE:</b>	<b><u>1,023,000.00</u></b>	<b><u>537,569.52</u></b>	<b><u>898,565.53</u></b>	<b><u>124,434.47</u></b>	<b><u>87.84%</u></b>
<b>DIRECT EXPENSES:</b>					
BANK FEES - WELLS FARGO	1,000.00	168.20	631.18	368.82	63.12%
GIFTS TO INJURED CLIENTS	500,000.00	(1,999.50)	3,082.51	496,917.49	0.62%
CPF BOARD EXPENSES	3,000.00	186.76	454.40	2,545.60	15.15%
<b>TOTAL DIRECT EXPENSES:</b>	<b><u>504,000.00</u></b>	<b><u>(1,644.54)</u></b>	<b><u>4,168.09</u></b>	<b><u>499,831.91</u></b>	<b><u>0.83%</u></b>
<b>INDIRECT EXPENSES:</b>					
SALARY EXPENSE (1.18 FTE)	79,855.00	6,656.66	26,977.25	52,877.75	33.78%
BENEFITS EXPENSE	30,884.00	2,441.49	10,016.91	20,867.09	32.43%
OTHER INDIRECT EXPENSE	33,947.00	2,389.26	11,025.20	22,921.80	32.48%
<b>TOTAL INDIRECT EXPENSES:</b>	<b><u>144,686.00</u></b>	<b><u>11,487.41</u></b>	<b><u>48,019.36</u></b>	<b><u>96,666.64</u></b>	<b><u>33.19%</u></b>
<b>TOTAL ALL EXPENSES:</b>	<b><u>648,686.00</u></b>	<b><u>9,842.87</u></b>	<b><u>52,187.45</u></b>	<b><u>596,498.55</u></b>	<b><u>8.05%</u></b>
<b>NET INCOME (LOSS):</b>	<b><u>374,314.00</u></b>	<b><u>527,726.65</u></b>	<b><u>846,378.08</u></b>		

## Washington State Bar Association

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**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>SECTIONS OPERATIONS</b>					
<b>REVENUE:</b>					
SECTION DUES	454,005.00	370,661.25	374,935.00	79,070.00	82.58%
SEMINAR PROFIT SHARE	94,118.73	71,693.40	71,693.40	22,425.33	76.17%
INTEREST INCOME	2,320.00	-	-	2,320.00	0.00%
PUBLICATIONS REVENUE	10,000.00	145.91	145.91	9,854.09	1.46%
OTHER	46,100.00	1,500.00	10,720.00	35,380.00	23.25%
<b>TOTAL REVENUE:</b>	<b><u>606,543.73</u></b>	<b><u>444,000.56</u></b>	<b><u>457,494.31</u></b>	<b><u>149,049.42</u></b>	<b><u>75.43%</u></b>
<b>DIRECT EXPENSES:</b>					
DIRECT EXPENSES OF SECTION ACTIVITIES	562,340.00	19,879.28	77,567.79	484,772.21	13.79%
REIMBURSEMENT TO WSBA FOR INDIRECT EXPENSES	298,443.75	244,612.50	247,481.25	50,962.50	82.92%
<b>TOTAL DIRECT EXPENSES:</b>	<b><u>860,783.75</u></b>	<b><u>264,491.78</u></b>	<b><u>325,049.04</u></b>	<b><u>535,734.71</u></b>	<b><u>37.76%</u></b>
<b>NET INCOME (LOSS):</b>	<b><u>(254,240.02)</u></b>	<b><u>179,508.78</u></b>	<b><u>132,445.27</u></b>		

**Washington State Bar Association**  
Statement of Activities  
For the Period from January 1, 2020 to January 31, 2020  
**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
<b>INDIRECT EXPENSES:</b>					
SALARIES	12,060,469.00	962,827.16	3,857,962.01	8,202,506.99	31.99%
ALLOWANCE FOR OPEN POSITIONS	(200,000.00)	-	-	(200,000.00)	0.00%
TEMPORARY SALARIES	250,780.00	45,039.03	130,929.59	119,850.41	52.21%
CAPITAL LABOR & OVERHEAD	(141,000.00)	(2,724.00)	(31,780.00)	(109,220.00)	22.54%
EMPLOYEE ASSISTANCE PLAN	4,800.00	-	1,200.00	3,600.00	25.00%
EMPLOYEE SERVICE AWARDS	3,080.00	-	935.00	2,145.00	30.36%
FICA (EMPLOYER PORTION)	887,000.00	73,030.43	271,294.95	615,705.05	30.59%
L&I INSURANCE	49,500.00	9,597.26	9,597.26	39,902.74	19.39%
WA STATE FAMILY MEDICAL LEAVE (EMPLOYER PORTION)	17,500.00	1,426.90	5,216.50	12,283.50	29.81%
MEDICAL (EMPLOYER PORTION)	1,580,000.00	116,827.96	476,392.88	1,103,607.12	30.15%
RETIREMENT (EMPLOYER PORTION)	1,527,000.00	120,279.86	478,923.20	1,048,076.80	31.36%
TRANSPORTATION ALLOWANCE	115,000.00	480.00	105,102.50	9,897.50	91.39%
UNEMPLOYMENT INSURANCE	84,500.00	9,338.03	15,123.32	69,376.68	17.90%
STAFF DEVELOPMENT-GENERAL	6,900.00	98.02	1,375.19	5,524.81	19.93%
<b>TOTAL SALARY &amp; BENEFITS EXPENSE:</b>	<b>16,245,529.00</b>	<b>1,336,220.65</b>	<b>5,322,272.40</b>	<b>10,923,256.60</b>	<b>32.76%</b>
WORKPLACE BENEFITS	44,500.00	1,838.44	10,608.66	33,891.34	23.84%
HUMAN RESOURCES POOLED EXP	167,120.00	8,249.33	16,742.67	150,377.33	10.02%
MEETING SUPPORT EXPENSES	15,000.00	1,393.91	5,345.46	9,654.54	35.64%
RENT	1,951,000.00	154,645.50	598,561.50	1,352,438.50	30.68%
PERSONAL PROP TAXES-WSBA	12,000.00	900.84	3,603.36	8,396.64	30.03%
FURNITURE, MAINT, LH IMP	35,000.00	3,310.87	9,029.84	25,970.16	25.80%
OFFICE SUPPLIES & EQUIPMENT	46,000.00	2,103.68	16,496.85	29,503.15	35.86%
FURN & OFFICE EQUIP DEPRECIATION	53,000.00	4,284.00	17,132.00	35,868.00	32.32%
COMPUTER HARDWARE DEPRECIATION	50,000.00	3,938.54	14,910.54	35,089.46	29.82%
COMPUTER SOFTWARE DEPRECIATION	165,000.00	10,649.00	42,307.00	122,693.00	25.64%
INSURANCE	243,000.00	17,639.19	70,556.76	172,443.24	29.04%
PROFESSIONAL FEES-AUDIT	85,000.00	11,763.00	47,688.10	37,311.90	56.10%
PROFESSIONAL FEES-LEGAL	250,000.00	12,425.22	83,994.77	166,005.23	33.60%
TELEPHONE & INTERNET	47,000.00	3,632.40	14,452.56	32,547.44	30.75%
POSTAGE - GENERAL	30,000.00	2,972.26	8,713.79	21,286.21	29.05%
RECORDS STORAGE	42,000.00	2,677.43	15,182.79	26,817.21	36.15%
STAFF TRAINING	99,900.00	1,334.41	12,877.45	87,022.55	12.89%
BANK FEES	34,000.00	5,278.54	14,119.74	19,880.26	41.53%
PRODUCTION MAINTENANCE & SUPPLIES	12,000.00	2,539.75	4,660.33	7,339.67	38.84%
COMPUTER POOLED EXPENSES	667,610.00	32,761.03	304,163.08	363,446.92	45.56%
<b>TOTAL OTHER INDIRECT EXPENSES:</b>	<b>4,049,130.00</b>	<b>284,337.34</b>	<b>1,311,147.25</b>	<b>2,737,982.75</b>	<b>32.38%</b>
<b>TOTAL INDIRECT EXPENSES:</b>	<b>20,294,659.00</b>	<b>1,620,557.99</b>	<b>6,633,419.65</b>		

## Washington State Bar Association

Statement of Activities

For the Period from January 1, 2020 to January 31, 2020

**33.33% OF YEAR COMPLETE**

	FISCAL 2020 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE
<b>SUMMARY PAGE</b>				
LICENSE FEES	16,200,000.00	1,181,570.84	5,133,156.29	11,066,843.71
ACCESS TO JUSTICE	(306,321.00)	(23,700.17)	(85,932.49)	(220,388.51)
ADMINISTRATION	(1,105,747.00)	(86,577.80)	(340,113.29)	(765,633.71)
ADMISSIONS/BAR EXAM	28,770.00	(27,650.19)	90,764.64	(61,994.64)
BOARD OF GOVERNORS	(565,062.00)	(99,183.79)	(171,868.15)	(393,193.85)
COMMUNICATIONS	(627,155.00)	(47,204.55)	(191,112.06)	(436,042.94)
CONFERENCE & BROADCAST SERVICES	(825,263.00)	(64,681.03)	(269,103.57)	(556,159.43)
DISCIPLINE	(6,017,186.50)	(467,418.18)	(1,902,272.15)	(4,114,914.35)
DIVERSITY	(461,114.00)	100,680.82	(11,143.39)	(449,970.61)
FOUNDATION	(165,232.00)	(11,003.09)	(46,247.71)	(118,984.29)
HUMAN RESOURCES	(229,115.00)	(33,194.41)	(130,586.54)	(98,528.46)
LAP	(143,181.00)	(11,367.58)	(42,904.37)	(100,276.63)
LEGISLATIVE	(160,404.00)	(15,818.22)	(55,170.37)	(105,233.63)
LICENSING AND MEMBERSHIP	(348,626.50)	(14,725.55)	(106,153.32)	(242,473.18)
LIMITED LICENSE LEGAL TECHNICIAN	(194,024.50)	(15,131.16)	(57,846.34)	(136,178.16)
LIMITED PRACTICE OFFICERS	33,103.50	887.56	17,946.74	15,156.76
MANDATORY CLE ADMINISTRATION	106,333.50	41,024.56	48,383.60	57,949.90
MEMBER BENEFITS	(258,008.00)	(14,088.01)	(154,137.23)	(103,870.77)
MEMBER SERVICES & ENGAGEMENT	(472,056.00)	(41,940.75)	(138,728.67)	(333,327.33)
NW LAWYER	(256,144.00)	(17,582.29)	(66,109.30)	(190,034.70)
OFFICE OF THE EXECUTIVE DIRECTOR	(373,441.00)	(42,078.09)	(150,209.17)	(223,231.83)
OFFICE OF GENERAL COUNSEL	(991,073.00)	(65,918.48)	(271,673.15)	(719,399.85)
OGC-DISCIPLINARY BOARD	(293,824.00)	(21,909.30)	(88,013.22)	(205,810.78)
OUTREACH & ENGAGEMENT	(423,554.00)	(31,359.46)	(127,084.80)	(296,469.20)
PRACTICE OF LAW BOARD	(79,261.00)	(5,307.02)	(22,185.42)	(57,075.58)
PROFESSIONAL RESPONSIBILITY PROGRAM	(271,171.00)	(21,187.80)	(89,742.72)	(181,428.28)
PUBLICATION & DESIGN SERVICES	(140,741.00)	(10,497.59)	(47,442.16)	(93,298.84)
PUBLIC SERVICE PROGRAMS	(326,530.00)	90,458.72	35,746.98	(362,276.98)
LAW CLERK PROGRAM	(1,729.00)	70,687.27	75,040.16	(76,769.16)
SECTIONS ADMINISTRATION	(249,309.00)	215,617.06	102,163.71	(351,472.71)
TECHNOLOGY	(1,674,849.00)	(141,294.88)	(577,899.59)	(1,096,949.41)
CLE - PRODUCTS	688,083.00	27,144.80	396,412.51	291,670.49
CLE - SEMINARS	(523,199.00)	(77,380.10)	(119,760.22)	(403,438.78)
SECTIONS OPERATIONS	(254,240.02)	179,508.78	132,445.27	(386,685.29)
DESKBOOKS	(188,197.50)	(11,417.85)	(55,847.05)	(132,350.45)
CLIENT PROTECTION FUND	374,314.00	527,726.65	846,378.08	(472,064.08)
INDIRECT EXPENSES	(20,294,659.00)	(1,620,557.99)	(6,633,419.65)	(13,661,239.35)
<b>TOTAL OF ALL</b>	<b><u>20,789,813.02</u></b>	<b><u>604,868.27</u></b>	<b><u>5,074,268.12</u></b>	<b><u>15,715,544.90</u></b>
<b>NET INCOME (LOSS)</b>	<b><u>(495,154.02)</u></b>	<b><u>1,015,689.72</u></b>	<b><u>1,559,151.53</u></b>	



**Washington State Bar Association  
Analysis of Cash Investments  
As of January 31,2020**

**Checking & Savings Accounts**

**General Fund**

**Checking**

<b><u>Bank</u></b>	<b><u>Account</u></b>	<b><u>Amount</u></b>
Wells Fargo	General	\$ 2,182,037

Total

<b><u>Investments</u></b>	<b><u>Rate</u></b>	<b><u>Amount</u></b>
Wells Fargo Money Market	1.65%	\$ 12,214,259
UBS Financial Money Market	1.66%	\$ 1,079,036
Morgan Stanley Money Market	1.56%	\$ 3,344,844
Merrill Lynch Money Market	1.70%	\$ 1,972,201

**General Fund Total \$ 20,792,377**

**Client Protection Fund**

**Checking**

<b><u>Bank</u></b>	<b><u>Amount</u></b>
Wells Fargo	\$ 513,532

<b><u>Investments</u></b>	<b><u>Rate</u></b>	<b><u>Amount</u></b>
Wells Fargo Money Market	1.65%	\$ 3,586,527
Morgan Stanley Money Market	1.56%	\$ 106,734

**Client Protection Fund Total \$ 4,206,793**

**Grand Total Cash & Investments \$ 24,999,170**

**GR 12**  
**REGULATION OF THE PRACTICE OF LAW**

The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. The legal profession serves clients, courts, and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons and entities acting under the Supreme Court's authority.

*[Adopted effective September 1, 2017.]*

**GR 12.1**  
**REGULATORY OBJECTIVES**

Legal services providers must be regulated in the public interest. In regulating the practice of law in Washington, the Washington Supreme Court's objectives include: protection of the public; advancement of the administration of justice and the rule of law; meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;

- (a) transparency regarding the nature and scope of legal services To be provided, the credentials of those who provide them, and the availability of regulatory protections;
- (b) delivery of affordable and accessible legal services;
- (c) efficient, competent, and ethical delivery of legal services;
- (d) protection of privileged and confidential information;
- (e) independence of professional judgment;
- (f) Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs;
- (g) Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

*[Adopted effective September 1, 2017.]*

**GR 12.2**  
**WASHINGTON STATE BAR ASSOCIATION: PURPOSES, AUTHORIZED  
ACTIVITIES, AND PROHIBITED ACTIVITIES**

In the exercise of its inherent and plenary authority to regulate the practice of law in Washington, the Supreme Court authorizes and supervises the Washington State Bar Association's activities. The Washington State Bar Association carries out the administrative responsibilities and functions expressly delegated to it by this rule and other Supreme Court rules and orders enacted or adopted to regulate the practice of law, including the purposes and authorized activities set forth below.

- (a) Purposes: In General. In general, the Washington State Bar Association strives to:

- (1) Promote independence of the judiciary and the legal profession.
- (2) Promote an effective legal system, accessible to all.
- (3) Provide services to its members and the public.
- (4) Foster and maintain high standards of competence, professionalism, and ethics among its members.
- (5) Foster collegiality among its members and goodwill between the legal profession and the public.
- (6) Promote diversity and equality in the courts and the legal profession.
- (7) Administer admission, regulation, and discipline of its members in a manner that protects the public and respects the rights of the applicant or member.
- (8) Administer programs of legal education.
- (9) Promote understanding of and respect for our legal system and the law.
- (10) Operate a well-managed and financially sound association, with a positive work environment for its employees.
- (11) Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the association and the legal profession.

(b) Specific Activities Authorized. In pursuit of these purposes, the Washington State Bar Association may:

- (1) Sponsor and maintain committees and sections, whose activities further these purposes;
- (2) Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;
- (3) Provide periodic reviews and recommendations concerning court rules and procedures;
- (4) Administer examinations and review applicants' character and fitness to practice law;
- (5) Inform and advise its members regarding their ethical obligations;
- (6) Administer an effective system of discipline of its members, including receiving and investigating complaints of misconduct by legal professionals, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;
- (7) Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;
- (8) Maintain a program for mediation of disputes between members and others;
- (9) Maintain a program for legal professional practice assistance;
- (10) Sponsor, conduct, and assist in producing programs and products of continuing legal education;

- (11) Maintain a system for accrediting programs of continuing legal education;
- (12) Conduct examinations of legal professionals' trust accounts;
- (13) Maintain a fund for client protection in accordance with the Admission and Practice Rules;
- (14) Maintain a program for the aid and rehabilitation of impaired members;
- (15) Disseminate information about the organization's activities, interests, and positions;
- (16) Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession;
- (17) Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns;
- (18) Encourage public service by members and support programs providing legal services to those in need;
- (19) Maintain and foster programs of public information and education about the law and the legal system;
- (20) Provide, sponsor, and participate in services to its members;
- (21) Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the organization's discretion, authorizing collective bargaining;
- (22) Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Washington State Bar Association, and collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged. The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable;

(23) Administer Supreme-Court-created boards in accordance with General Rule 12.3.

(c) Activities Not Authorized. The Washington State Bar Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or
- (3) Support or oppose, in an election, candidates for public office.

*[Adopted effective July 17, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2007; September 1, 2013; September 1, 2017.]*

**GR 12.3**  
**WASHINGTON STATE BAR ASSOCIATION ADMINISTRATION**  
**OF SUPREME COURT-CREATED BOARDS AND COMMITTEES**

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

*[Adopted effective September 1, 2007; amended effective September 1, 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 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 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.

(1) This rule goes into effect on July 1, 2014, and applies to records that are created on or after that date.



(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test; the Public Records Act, chapter 42.56 RCW, does not apply to such Bar records, but it may be used for nonbinding guidance.

*[Adopted effective July 1, 2014; amended effective September 1, 2017.]*

**GR 12.5  
IMMUNITY**

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission and Practice Rules, the Rules for Enforcement of Lawyer Conduct, or the disciplinary rules for limited practice officers and limited license legal technicians, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

*[Adopted effective January 2, 2008; amended effective September 1, 2017.]*

# WASHINGTON STATE BAR ASSOCIATION

## WSBA MISSION

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

## WSBA GUIDING PRINCIPLES

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

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

## MISSION FOCUS AREAS

### Ensuring Competent and Qualified Legal Professionals

- Cradle to Grave
- Regulation and Assistance

### Promoting the Role of Legal Professionals in Society

- Service
- Professionalism

## PROGRAM CRITERIA

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

## 2016 – 2018 STRATEGIC GOALS

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





# WSBA Board of Governors CONGRESSIONAL DISTRICT MAP

2019-2020



**Rajeev Majumdar**  
President



**Kyle Sciuchetti**  
President-Elect



**Bill Pickett**  
Immediate Past  
President



**Terra Nevitt**  
Interim Exec. Dir.  
& Secretary



**Sunitha Anjilvel**  
Governor District 1



**Carla Higginson**  
Governor District 2



**Brian Tollefson**  
Governor District 6



**Paul Swegle**  
Governor District 7-North



**Jean Kang**  
Governor District 7-South



**Kim Hunter**  
Governor District 8



**Bryn Peterson**  
Governor District 9



**Thomas A. McBride**  
Governor District 10



**Kyle Sciuchetti**  
Governor District 3



**P.J. Grabicki**  
Governor District 5



**Dan Clark**  
Governor District 4



**Hunter Abell**  
Governor At-Large



**Alec Stephens**  
Governor At-Large



**Russell Knight**  
Governor At-Large



## **BASIC CHARACTERISTICS OF MOTIONS**

*From: The Complete Idiot's Guide to Robert's Rules  
The Guerilla Guide to Robert's Rules*

MOTION	PURPOSE	INTERRUPT SPEAKER?	SECOND NEEDED?	DEBATABLE?	AMENDABLE?	VOTE NEEDED
1. Fix the time to which to adjourn	Sets the time for a continued meeting	No	Yes	No <sup>1</sup>	Yes	Majority
2. Adjourn	Closes the meeting	No	Yes	No	No	Majority
3. Recess	Establishes a brief break	No	Yes	No <sup>2</sup>	Yes	Majority
4. Raise a Question of Privilege	Asks urgent question regarding to rights	Yes	No	No	No	Rules by Chair
5. Call for orders of the day	Requires that the meeting follow the agenda	Yes	No	No	No	One member
6. Lay on the table	Puts the motion aside for later consideration	No	Yes	No	No	Majority
7. Previous question	Ends debate and moves directly to the vote	No	Yes	No	No	Two-thirds
8. Limit or extend limits of debate	Changes the debate limits	No	Yes	No	Yes	Two-thirds
9. Postpone to a certain time	Puts off the motion to a specific time	No	Yes	Yes	Yes	Majority <sup>3</sup>
10. Commit or refer	Refers the motion to a committee	No	Yes	Yes	Yes	Majority
11. Amend an amendment (secondary amendment)	Proposes a change to an amendments	No	Yes	Yes <sup>4</sup>	No	Majority
12. Amend a motion or resolution (primary amendment)	Proposes a change to a main motion	No	Yes	Yes <sup>4</sup>	Yes	Majority
13. Postpone indefinitely	Kills the motion	No	Yes	Yes	No	Majority
14. Main motion	Brings business before the assembly	No	Yes	Yes	Yes	Majority

*1 Is debatable when another meeting is scheduled for the same or next day, or if the motion is made while no question is pending*

*2 Unless no question is pending*

*3 Majority, unless it makes question a special order*

*4 If the motion it is being applied to is debatable*



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## Discussion Protocols Board of Governors Meetings

### Philosophical Statement:

“We take serious our representational responsibilities and will try to inform ourselves on the subject matter before us by contact with constituents, stakeholders, WSBA staff and committees when possible and appropriate. In all deliberations and actions we will be courageous and keep in mind the need to represent and lead our membership and safeguard the public. In our actions, we will be mindful of both the call to action and the constraints placed upon the WSBA by GR 12 and other standards.”

### Governor’s Commitments:

1. Tackle the problems presented; don’t make up new ones.
2. Keep perspective on long-term goals.
3. Actively listen to understand the issues and perspective of others before making the final decision or lobbying for an absolute.
4. Respect the speaker, the input and the Board’s decision.
5. Collect your thoughts and speak to the point – sparingly!
6. Foster interpersonal relationships between Board members outside Board events.
7. Listen and be courteous to speakers.
8. Speak only if you can shed light on the subject, don’t be repetitive.
9. Consider, respect and trust committee work but exercise the Board’s obligation to establish policy and insure that the committee work is consistent with that policy and the Board’s responsibility to the WSBA’s mission.
10. Seek the best decision through quality discussion and ample time (listen, don’t make assumptions, avoid sidebars, speak frankly, allow time before and during meetings to discuss important matters).
11. Don’t repeat points already made.
12. Everyone should have a chance to weigh in on discussion topics before persons are given a second opportunity.
13. No governor should commit the board to actions, opinions, or projects without consultation with the whole Board.
14. Use caution with e-mail: it can be a useful tool for debating, but e-mail is not confidential and does not easily involve all interests.
15. Maintain the strict confidentiality of executive session discussions and matters.



## **BOARD OF GOVERNORS**

### **WSBA VALUES**

Through a collaborative process, the WSBA Board of Governors and Staff have identified these core values that shall be considered by the Board, Staff, and WSBA volunteers (collectively, the “WSBA Community”) in all that we do.

To serve the public and our members and to promote justice, the WSBA Community values the following:

- Trust and respect between and among Board, Staff, Volunteers, Members, and the public
- Open and effective communication
- Individual responsibility, initiative, and creativity
- Teamwork and cooperation
- Ethical and moral principles
- Quality customer-service, with member and public focus
- Confidentiality, where required
- Diversity and inclusion
- Organizational history, knowledge, and context
- Open exchanges of information



## BOARD OF GOVERNORS

Anthony David Gipe  
President

phone: 206.386.4721  
e-mail: [adgipeWSBA@gmail.com](mailto:adgipeWSBA@gmail.com)

November 2014

## BEST PRACTICES AND EXPECTATIONS

### ❖ Attributes of the Board

- Competence
- Respect
- Trust
- Commitment
- Humor

### ❖ Accountability by Individual Governors

- Assume Good Intent
- Participation/Preparation
- Communication
- Relevancy and Reporting

### ❖ Team of Professionals

- Foster an atmosphere of teamwork
  - Between Board Members
  - The Board with the Officers
  - The Board and Officers with the Staff
  - The Board, Officers, and Staff with the Volunteers
  
- We all have common loyalty to the success of WSBA

### ❖ Work Hard and Have Fun Doing It

*Working Together to Champion Justice*



## BOARD OF GOVERNORS

### GUIDING COMMUNICATION PRINCIPLES

In each communication, I will assume the good intent of my fellow colleagues; earnestly and actively listen; encourage the expression of and seek to affirm the value of their differing perspectives, even where I may disagree; share my ideas and thoughts with compassion, clarity, and where appropriate confidentiality; and commit myself to the unwavering recognition, appreciation, and celebration of the humanity, skills, and talents that each of my fellow colleagues bring in the spirit and effort to work for the mission of the WSBA. Therefore, I commit myself to operating with the following norms:

- ◆ I will treat each person with courtesy and respect, valuing each individual.
- ◆ I will strive to be nonjudgmental, open-minded, and receptive to the ideas of others.
- ◆ I will assume the good intent of others.
- ◆ I will speak in ways that encourage others to speak.
- ◆ I will respect others' time, workload, and priorities.
- ◆ I will aspire to be honest and open in all communications.
- ◆ I will aim for clarity; be complete, yet concise.
- ◆ I will practice "active" listening and ask questions if I don't understand.
- ◆ I will use the appropriate communication method (face-to-face, email, phone, voicemail) for the message and situation.
- ◆ When dealing with material of a sensitive or confidential nature, I will seek and confirm that there is mutual agreement to the ground rules of confidentiality at the outset of the communication.
- ◆ I will avoid triangulation and go directly to the person with whom I need to communicate. (If there is a problem, I will go to the source for resolution rather than discussing it with or complaining to others.)
- ◆ I will focus on reaching understanding and finding solutions to problems.
- ◆ I will be mindful of information that affects, or might be of interest or value to, others, and pass it along; err on the side of over-communication.
- ◆ I will maintain a sense of perspective and respectful humor.