1974
REVISED CODE
of
WASHINGTON

Published under authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature up to and including the laws enacted in the 1974 extraordinary session which adjourned sine die April 24, 1974.

REVISED CODE OF WASHINGTON

1974 Edition

CERTIFICATE

The 1974 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with the provisions of RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)
Robert L. Charette, Chairman,
STATUTE LAW COMMITTEE

REVISED CODE OF WASHINGTON

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PREFACE

Numbering system: The number of each section of this code is made up of three factors, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus RCW 1.04.020 is Title 1, chapter 4, section 20. The section factor of the number (.020) is originally a three–digit factor, constitutes a true decimal, and provides a facility for numbering new sections to be inserted between old sections already consecutively numbered, merely by adding a digit at the right hand end of the number, ad infinitum. In most chapters of the code, sections have been numbered by tens (.010, .020, .030, .040, etc.) thus leaving nine vacant numbers between original sections so that for a time new sections may be inserted without extension of the section factor beyond three digits.

History of the Revised Code of Washington; Source Notes. The Revised Code of Washington was adopted by the legislature in 1950, see chapter 1.04 RCW. The original publication (1951) contained material variances from the language and organization of the session laws from which it was derived, including a variety of divisions and combinations of the session law sections. During the years 1953–1959, the Statute Law Committee in exercise of the powers contained in chapter 1.08 RCW completed a comprehensive study of these variances and by means of a series of administrative orders or reenactment bills, restored each title of the code so as to truly reflect its session law parentage, retaining however the general codification scheme originally adopted. An audit trail of this activity has been preserved in the concluding phrases of the source note of each section of the code so affected. The legislative source of each section is enclosed in brackets at the end of the section. Reference to session laws is abbreviated; thus "1891 c 23 § 1; 1854 p 99 § 135" refers to section 1, chapter 23, Laws of 1891 and section 135, page 99, Laws of 1854". "Prior" indicates a break in the statutory chain, usually a repeal and reenactment. "RRS or Rem. Supp.——" indicates the parallel citation in Remington's Revised Code, last published in 1949.

Where, prior to restoration, a section of this code constituted a consolidation of two or more sections of the session laws, or of sections separately numbered in Remington, the line of derivation is shown for each component section, each line of derivation being set off from the others by use of small Roman numerals, "(i)", "(ii)", etc.

Where, prior to restoration, only a part of a session law section was reflected in a particular RCW section the history note reference is followed by the word "part".

"Formerly" and its correlative form "FORMER PART OF SECTION" followed by an RCW citation preserves the record of original codification as it existed prior to restoration.

Index: Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are no longer carried in place. They are now tabulated in numerical order in the table entitled "Disposition of former RCW sections".

Parallel tables: To convert a session law citation to its RCW number (laws of 1951 or later) consult the parallel tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

Errors or omissions: Although great care has been used in the production of this code, within the range of available time and facilities, it is inevitable in so large a work that there will be errors, both mechanical and of judgment. As such errors are detected, or are believed to exist in particular sections, by those who use this code, it is requested that a short notation, citing the section involved and the nature of the error, be mailed to the code reviser, Legislative Building, Olympia, so that correction may be made in any subsequent publication.

CONSTITUTION OF THE UNITED STATES OF AMERICA

DIGEST

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The Constitution of the United States of America

Preamble

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

§ 1 **LEGISLATIVE POWERS.** All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ 2 **HOUSE OF REPRESENTATIVES, HOW CONSTITUTED, POWER OF IMPEACHMENT.** The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty–five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three–fifths of all other person.* The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

**Note:* Modified by Amendment XIV, Section 2.

§ 3 **THE SENATE, HOW CONSTITUTED, IMPEACHMENT TRIALS.** The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one–third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried the chief justice shall preside: and no person shall be convicted without the concurrence of two–thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

**Note:* Provisions changed by Amendment XVII.

§ 4 **ELECTION OF SENATORS AND REPRESENTATIVES.** The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*

**Note:* Provision changed by Amendment XX, Section 2.

§ 5 **QUORUM, JOURNALS, MEETINGS, ADJOURNMENTS.** Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two–thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one–fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 6 COMPENSATION, PRIVILEGES, DISABILITIES. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

§ 7 PROCEDURE IN PASSING BILLS AND RESOLUTIONS. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8 POWERS OF CONGRESS. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

§ 9 LIMITATIONS UPON POWERS OF CONGRESS. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

§ 10 RESTRICTIONS UPON POWERS OF STATES. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

§ 1 EXECUTIVE POWER, ELECTION, QUALIFICATIONS OF THE PRESIDENT. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two–thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.*

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty–five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

**Note:* Provisions superseded by Amendment XII.

§ 2 POWERS OF THE PRESIDENT. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

§ 3 POWERS AND DUTIES OF THE PRESIDENT. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them tc such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ 4 IMPEACHMENT. The president, vice president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

§ 1 JUDICIAL POWER, TENURE OF OFFICE. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

§ 2 JURISDICTION. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.*

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

**Note:* Clause changed by Amendment XI.

§ 3 TREASON, PROOF AND PUNISHMENT. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV

§ 1 FAITH AND CREDIT AMONG STATES. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

§ 2 PRIVILEGES AND IMMUNITIES, FUGITIVES. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

§ 3 **ADMISSION OF NEW STATES.** New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ 4 **GUARANTEE OF REPUBLICAN GOVERNMENT.** The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

Amendment of the Constitution. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI

Debts, supremacy, oath. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

Ratification and establishment. The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the independence of the United States of America the twelfth.* In witness whereof we have hereunto subscribed our names,

GEO. WASHINGTON, President
and Deputy from Virginia.

New Hampshire	**Delaware**
John Langdon	Geo. Read
Nicholas Gilman	Gunning Bedford, Jr.
Massachusetts	John Dickinson
Nathaniel Gorham	Richard Bassett
Rufus King	Jaco. Broom
Connecticut	**Maryland**
Wm. Saml. Johnson	James McHenry
Roger Sherman	Dan of St. Thos. Jenifer
New York	Danl. Carroll
Alexander Hamilton	**Virginia**
New Jersey	John Blair
Wil. Livingston	James Madison, Jr.
David Brearley	**North Carolina**
Wm. Paterson	Wm. Blount
Jona. Dayton	Richd. Dobbs Spaight
Pennsylvania	Hu. Williamson
B. Franklin	**South Carolina**
Thomas Mifflin	J. Rutledge
Robt. Morris	Charles Cotesworth Pinckney
Geo. Clymer	Charles Pinckney
Thos. FitzSimons	Pierce Butler
Jared Ingersoll	**Georgia**
James Wilson	William Few
Gouv. Morris	Abr. Baldwin

**Note:* The Constitution was submitted on September 17, 1787, by the Constitutional Convention, was ratified by the conventions of several states at various dates up to May 29, 1790, and became effective on March 4, 1789.

Amendments to the Constitution of the United States 1791–1971

AMENDMENT I

FREEDOM OF RELIGION, OF SPEECH, AND OF THE PRESS. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT II

RIGHT TO KEEP AND BEAR ARMS. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT III

QUARTERING OF SOLDIERS. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

SECURITY FROM UNWARRANTABLE SEARCH AND SEIZURE. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

RIGHTS OF ACCUSED IN CRIMINAL PROCEEDINGS. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

RIGHT TO SPEEDY TRIAL, WITNESSES, ETC. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VII

TRIAL BY JURY IN CIVIL CASES. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

AMENDMENT VIII

BAILS, FINES, PUNISHMENTS. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

RESERVATION OF RIGHTS OF THE PEOPLE. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

POWERS RESERVED TO STATES OR PEOPLE. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

**Note:* The first ten amendments were all proposed by congress on September 25, 1789, and were ratified and adoption certified on December 15, 1791.

AMENDMENT XI

RESTRICTION OF JUDICIAL POWERS. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.*

**Note:* Proposed by congress on March 4, 1794, and declared ratified on January 8, 1798.

AMENDMENT XII

ELECTION OF PRESIDENT AND VICE PRESIDENT. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the

fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.*

**Note:* Proposed by congress on December 9, 1803; declared ratified on September 25, 1804; supplemented by Amendment XX.

AMENDMENT XIII

§ 1 ABOLITION OF SLAVERY. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2 POWER TO ENFORCE THIS ARTICLE. Congress shall have power to enforce this article by appropriate legislation.*

**Note:* Proposed by congress on January 31, 1865; declared ratified on December 18, 1865.

AMENDMENT XIV

§ 1 CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2 APPORTIONMENT OF REPRESENTATIVES IN CONGRESS. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridges, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3 PERSONS DISQUALIFIED FROM HOLDING OFFICE. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

§ 4 WHAT PUBLIC DEBTS ARE VALID. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5 POWER TO ENFORCE THIS ARTICLE. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

**Note:* Proposed by congress on June 13, 1866; declared ratified on July 28, 1868.

AMENDMENT XV

§ 1 NEGRO SUFFRAGE. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2 POWER TO ENFORCE THIS ARTICLE. The congress shall have power to enforce this article by appropriate legislation.*

**Note:* Proposed by congress on February 26, 1869; declared ratified on March 30, 1870.

AMENDMENT XVI

AUTHORIZING INCOME TAXES. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.*

**Note:* Proposed by congress on July 12, 1909; declared ratified on February 25, 1913.

AMENDMENT XVII

POPULAR ELECTION OF SENATORS. The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any state may empower the executive thereof to make temporary appointments

until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.*

*Note: Proposed by congress on May 13, 1912; declared ratified on May 31, 1913.

AMENDMENT XVIII

§ 1 NATIONAL LIQUOR PROHIBITION. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ 2 POWER TO ENFORCE THIS ARTICLE. The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ 3 RATIFICATION WITHIN SEVEN YEARS. This article shall be inoperative until it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the congress.*

*Note: Proposed by congress on December 18, 1917; declared ratified on January 29, 1919. Repealed by Amendment XXI.

AMENDMENT XIX

WOMAN SUFFRAGE. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.*

*Note: Proposed by congress on June 4, 1919; declared ratified on August 26, 1920.

AMENDMENT XX

§ 1 TERMS OF OFFICE. The terms of the president and vice president shall end at noon on the 20th day of January, and the terms of senators and representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ 2 TIME OF CONVENING CONGRESS. The congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

§ 3 DEATH OF PRESIDENT ELECT. If, at the time fixed for the beginning of the term of the president, the president elect shall have died, the vice president elect shall become president. If a president shall not have been chosen before the time fixed for the beginning of his term, or if the president elect shall have failed to qualify, then the vice president elect shall act as president until a president shall have qualified; and the congress may by law provide for the case wherein neither a president elect nor a vice president elect shall have qualified, declaring who shall then act as president, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a president or vice president shall have qualified.

§ 4 ELECTION OF THE PRESIDENT. The congress may by law provide for the case of the death of any of the persons from whom the house of representatives may choose a president whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the senate may choose a vice president whenever the right of choice shall have devolved upon them.

§ 5 Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

§ 6 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three–fourths of the several states within seven years from the date of its submission.*

*Note: Proposed by congress on March 2, 1932; declared ratified on February 6, 1933.

AMENDMENT XXI

§ 1 NATIONAL LIQUOR PROHIBITION REPEALED. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2 TRANSPORTATION OF LIQUOR INTO "DRY" STATES. The transportation or importation into any states, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the congress.*

*Note: Proposed by congress on February 20, 1933; declared ratified on December 5, 1933.

AMENDMENT XXII

§ 1 TERMS OF OFFICE OF PRESIDENT. No person shall be elected to the office of the president more than twice, and no person who held the office of president, or acted as president, for more than two years of a term to which some other person was elected president, shall be elected to the office of president more than once. But this article shall not apply to any person holding the office of president when this article was proposed by the congress, and shall not prevent any person who may be holding the office of president, or acting as president, during the term within which this article becomes operative from holding the office of president or acting as president during the remainder of such term.

§ 2 WHEN OPERATIVE. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three–fourths of the several states within seven years from the date of its submission to the states by the congress.*

*Note: The certificate of adoption of the 22nd Amendment, dated March 1, 1951, was published in the Federal Register of March 3, 1951.

AMENDMENT XXIII

§ 1 GRANTING REPRESENTATION IN THE ELECTORAL COLLEGE TO THE DISTRICT OF COLUMBIA. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

§ 2 LEGISLATION. The Congress shall have power to enforce this article by appropriate legislation.*

*Note: The certificate of adoption of the 23rd Amendment, dated April 3, 1961, is published in Vol. 26 Federal Register, page 2808.

AMENDMENT XXIV

§ 1 FAILURE TO PAY TAX SHALL NOT DENY RIGHT TO VOTE FOR FEDERAL OFFICES. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

§ 2 The Congress shall have power to enforce this article by appropriate legislation.*

*Note: The certificate of adoption of the 24th Amendment dated February 4, 1964, is published in Vol. 29 Federal Register, page 1715.

AMENDMENT XXV

SUCCESSION TO THE PRESIDENCY AND VICE PRESIDENCY——INABILITY OF PRESIDENT TO DISCHARGE POWERS AND DUTIES OF OFFICE

§ 1 In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

§ 2 Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

§ 3 Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

§ 4 Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty–eight hours for that purpose if not in session. If the Congress, within twenty–one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty–one days after Congress is required to assemble, determines by two–thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.*

*Note: The certificate of adoption of the 25th Amendment dated February 23, 1967 is published in Vol. 32 Federal Register, page 3287.

AMENDMENT XXVI

EXTENDING THE RIGHT TO VOTE TO CITIZENS EIGHTEEN YEARS OF AGE OR OLDER

§ 1 The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

§ 2 The Congress shall have power to enforce this article by appropriate legislation.*

*Note: The certificate of adoption of the 26th Amendment dated July 5, 1971 is published in Vol. 36, No. 130, Federal Register, page 12726.

ORGANIC ACT

Reviser's note: The original organic act to establish the territorial government of Washington is set forth herein. Note however that the organic act was completely revised in the 1873 United States Revised Statutes which was enacted by Congress in 1874. The 1873 United States Revised Statutes contained a construction section (Title 74, section 5596) which has been construed by the United States Supreme Court (Dwight v. Merrit, 140 U.S. 213, 11 S.Ct. 768, 35 U.S. (L. ed.) 45) as abrogating or repealing all prior statutes on the same subject as those revised. As the twenty–one sections of the original organic act were rewritten and combined with the organic acts of other territories the disposition of the original sections into the 1873 United States Revised Statutes cannot be traced with absolute accuracy. A schedule of the disposition of the original organic act sections based on the audit contained in the United States Revised Statutes of 1878, is published herein following section 21 of the organic act.

AN ACT TO ESTABLISH THE TERRITORIAL GOVERNMENT OF WASHINGTON.

(Approved March 2, 1853.) [10 U.S. Statutes at Large, c 90 p 172.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that portion of Oregon Territory lying and being south of the forty–ninth degree of north latitude, and north of the middle of the main channel of the Columbia River, from its mouth to where the forty–sixth degree of north latitude crosses said river, near Fort Wallawalla, thence with said forty–sixth degree of latitude to the summit of the Rocky Mountains, be organized into and constitute a temporary government by the name of the Territory of Washington: *Provided*, That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said Territory, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided further*, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the Territorial government of Oregon, together with the improvements thereon, be, and is hereby, confirmed and established to the several religious societies to which said missionary stations respectively belong.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Washington shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside in said Territory, shall be the commander–in–chief of the militia thereof, shall perform the duties and receive the emoluments of Superintendent of Indian Affairs; he may grant pardons and remit fines and forfeitures for offenses against the laws of said Territory, and respites for offenses against the laws of the United States until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his Executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi–annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or absence of the Governor from the Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the Legislative power and authority of said Territory shall be vested in a Legislative Assembly, which shall consist of a Council and House of Representatives. The Council shall consist of nine members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of their first election, they shall be divided as equally as may be into three classes. The seats of the members of Council of the first class, shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one third may be chosen every year; and if vacancies happen, by resignation or otherwise, the same shall be filled at the next ensuing election. The House of Representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of

qualified voters: *Provided*, That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county or counties, for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken, by such persons, and in such mode, as the Governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act; and the Governor shall, by his proclamation, give at least sixty days' previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said council districts for members of the Council shall be declared by the Governor to be duly elected to the Council, and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of said House: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place, and on such day, within ninety days after such elections, as the Governor shall appoint. But thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular session of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not exceed one hundred days.

SEC. 5. *And be it further enacted*, That every white male inhabitant above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared on oath their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act: *And provided further*, That no officer, soldier, seaman, mariner, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said Territory, by reason of being on service therein, unless said Territory is, and has been for the period of six months, his permanent domicil: *Provided further*, That no person belonging to the army or navy of the United States shall ever be elected to or hold any civil office or appointment in said Territory.

SEC. 6. *And be it further enacted*, That the Legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect: *Provided*, That nothing in this act shall be construed to give power to incorporate a bank or any institution with banking powers, or to borrow money in the name of the Territory, or to pledge the faith of the people of the same for any loan whatever, directly or indirectly. No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank-notes, or any bonds, scrip, drafts, bills of exchange, or obligations, or granting any other banking powers or privileges, shall be passed by the Legislative Assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said Territory; nor shall said Legislative Assembly authorize the issue of any obligation, scrip, or evidence of debt, by said Territory, in any mode or manner whatever, except certificates for service to said Territory. And all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void. And all taxes shall be equal and uniform; and no distinctions shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

SEC. 7. And be it further enacted, That all township, district, and county officers not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the Legislative Assembly of the Territory of Washington.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold or be appointed to

any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

SEC. 9. *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any case in which the title to land shall in any wise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district court to the supreme court under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases where the constitution of the United States, or acts of Congress, or a treaty of the United States, is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States and the laws of said Territory, as is vested in the circuit and district courts of the United States; writs of error and appeal in all such cases shall be made to the supreme court of said Territory the same as in other cases. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed and may be taken to the supreme court of the United States in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars, and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and also of all cases arising under the laws of said Territory, and otherwise. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of the Territory of Oregon receive for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said Territory, who shall continue in office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as is provided by law for the attorney of the United States for the Territory of Oregon. There shall also be a marshal for the Territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as are provided by law for the marshal of the Territory of Oregon, and shall, in addition, be paid the sum of two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said Territory duly authorized to administer oaths and affirmations by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken; and such certificates shall be received and recorded by the said Secretary among the executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to

the Secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and fifteen hundred dollars as Superintendent of Indian affairs. The Chief Justice, and Associate Justices, shall each receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of fifteen hundred dollars. The said salaries shall be paid quarterly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually traveled route. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for each house; and the chief clerk shall receive five dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the Governor shall deem it expedient and proper to call the legislature together. There shall be appropriated, annually, the sum of fifteen hundred dollars, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid sums of money shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by said legislative assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted*, That the laws now in force in said Territory of Washington, by virtue of the legislation of Congress in reference to the Territory of Oregon, which have been enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the said Territory of Washington, together with the legislative enactments of the Territory of Oregon, enacted and passed prior to the passage of, and not inconsistent with, the provisions of this act, and applicable to the said Territory of Washington, be, and they are hereby, continued in force in said Territory of Washington until they shall be repealed or amended by future legislation.

SEC. 13. *And be it further enacted*, That the legislative assembly of the Territory of Washington shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the legislative assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by said legislative assembly. And the sum of five thousand dollars, out of any money in the Treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Washington, to be there applied by the Governor to the erection of suitable buildings at the seat of government.

SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other Territories of the United States to the House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time, and places, and be conducted in such manner, as the Governor shall appoint and direct; of which, and the time, place, and manner of holding such elections, he shall give at least sixty days' notice by proclamation; and at all subsequent elections the time, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said Territory shall be entitled to receive the same per diem compensation and mileage at present allowed the delegate from the Territory of Oregon.

SEC. 15. *And be it further enacted*, That all suits, plaints, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations, which shall be pending and undetermined in the courts established within and for said Territory of Oregon, by act of Congress, entitled "An act to establish the territorial government of Oregon," approved August fourteen, one thousand eight hundred and forty-eight, wherein the venue in said cases, suits at law, or in chancery, or criminal proceedings, shall be included within the limits hereinbefore declared and established for the said Territory of Washington; then, and in that case, said actions so pending in the Supreme or Circuit Courts of the Territory of Oregon shall be, by the clerks of said courts, duly certified to the proper courts of said Territory of Washington; and thereupon said causes shall, in all things concerning the same, be proceeded on, and judgments, verdicts, decrees, and sentences rendered thereon, in the same manner as if

the said Territory had not been divided. All bonds, recognizances, and obligations of every kind whatsoever, valid, under the existing laws, within the limits of said Territory of Oregon, shall be held valid under this act, and all crimes and misdemeanors against the laws now in force within the said limits of the Territory of Washington may be prosecuted, tried, and punished in the courts established by this act, and all penalties, forfeitures, actions, and causes of action, may be recovered and enforced, under this act, before the Supreme and Circuit Courts established by this act as aforesaid: *Provided*, That no right of action whatever shall accrue against any person for any act done in pursuance of any law heretofore passed by the legislative assembly of the Territory of Oregon, and which may be declared contrary to the Constitution or laws of the United States.

SEC. 16. *And be it further enacted*, That all justices of the peace, constables, sheriffs, and other judicial and ministerial officers, who shall be in office within the limits of said Territory of Washington when this act shall take effect, shall be and they are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of said Territory, until they or others shall be duly elected or appointed, and qualified, to fill their places in the manner herein directed, or until their offices shall be abolished.

SEC. 17. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated, to be expended, by and under the direction of the Governor of Washington, in the purchase of a library, to be kept at the seat of government for the use of the Governor, legislative assembly, Judges of the Supreme Court, secretary, marshal, and Attorney of said Territory, and such other persons, and under such regulations, as shall be prescribed by law.

SEC. 18. *And be it further enacted*, That until otherwise provided for by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem expedient and proper.

SEC. 19. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Washington, who, by virtue of the provisions of any law of Congress now existing, or which may be enacted during the present session of Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and place, and in such manner, as the Secretary of the Treasury may prescribe.

SEC. 20. *And be it further enacted*, That when the lands in said Territory shall be surveyed under the direction of the Government of the United States preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said Territory. And in all cases where said sections sixteen and thirty-six, or either or any of them, shall be occupied by actual settlers prior to survey thereof, the County Commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby, authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said sections so occupied as aforesaid.

SEC. 21. *And be it further enacted*, That the Territory of Oregon and the Territory of Washington shall have concurrent jurisdiction over all offenses committed on the Columbia River, where said river forms a common boundary between said Territories.

Organic Act

Approved, March 2, 1853. [10 U.S. Statutes at Large, c 90 p 172.]

Disposition of Organic Act of 1853:

Organic Act of 1853 (10 St. at Large 172)	1873 Revised Statutes	Repealed by	Placement in United States Code
Section 1	§ 1839		T.48 § 1451
	§ 1840		T.48 § 1452
	§ 1898	Repealed by 47 S.L. 1429	T.48 § 1453
Section 2	§ 1841		T.48 § 1453
Section 3	§ 1843		T.48 § 1454
	§ 1844		T.48 § 1455
Section 4	§ 1846	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1847	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1848	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1849	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1922	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1923	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
Section 5	§ 1859	Repealed by 47 S.L. 1429	
	§ 1860		
Section 6	§ 1850	Repealed by 47 S.L. 1429	
	§ 1851	Repealed by 47 S.L. 1429	
	§ 1924	Repealed by 47 S.L. 1429	
Section 7	§ 1857		T.48 § 1458
Section 8	§ 1854		
	§ 1860		T.48 § 1460
Section 9	§ 1854		T.48 § 1460a
	§ 1868		T.48 § 1463
	§ 1864		T.48 § 1463a
	§§ 702, 1865, 1866, 1867, 1869, 1870, 1871, 1872, 1883, 1907, 1909, 1910, 1911, 1912, 1926	Repealed by 47 S.L. 1429	
Section 10	§§ 1875, 1876, 1881, 1882	Repealed by 47 S.L. 1429	
Section 11	§ 1877	Repealed by 47 S.L. 1429	
	§ 1878		T.48 § 1465
	§ 1938	Repealed by 47 S.L. 1429	
	§ 1940	Repealed by 47 S.L. 1429	
	§ 1941	Repealed by 47 S.L. 1429	
Section 12	§ 1852	Repealed by 47 S.L. 1429	
Section 13	§ 1885	Repealed by 47 S.L. 1429	
	§ 1944	Repealed by 47 S.L. 1429	
Section 14	§ 1862	Repealed by 47 S.L. 1429	
	§ 1863	Repealed by 47 S.L. 1429	
	§ 1906	Repealed by 47 S.L. 1429	
Section 15	No record	No record	No record
Section 16	No record	No record	No record
Section 17	§ 1953	Repealed by 47 S.L. 1429	
Section 18	§ 1873		T.48 § 1453a
	§§ 1913, 1918	Repealed by 47 S.L. 1429	
Section 19	§ 1951	Repealed by 47 S.L. 1429	
Section 20	§ 1947	Repealed by 47 S.L. 1429	
Section 21	§ 1950	Repealed by 47 S.L. 1429	

ENABLING ACT

AN ACT to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States.

(Approved February 22, 1889.) [25 U.S. Statutes at Large, c 180 p 676.]

[President's proclamation declaring Washington a state: 26 St. at Large, Proclamations, p 10, Nov. 11, 1889.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

SEC. 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

SEC. 3. That all persons who are qualified by the laws of said Territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed States; and the qualifications for delegates to such conventions shall be such as by the laws of said Territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed States, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief-justice, and the secretary of said Territories; and the governors of said Territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed States, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said Territories regulating elections therein for Delegates to Congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be seventy-five; and all persons resident in said proposed States, who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said States:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said States shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said States shall

never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territories shall be assumed and paid by said States, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control.

SEC. 5. That the convention which shall assemble at Bismarck shall form a constitution and State government for a State to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and State government for a State to be known as South Dakota: *Provided*, That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls constitution," or the words "Against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at the election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed State, to the re-apportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the State of South Dakota shall be admitted as a State in the Union under said constitution as hereinafter provided; but the archives, records, and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said States. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution", then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and State government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

SEC. 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively.

SEC. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the Territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the Territory so rejecting its proposed constitution shall continue under the Territorial government of the present Territory of Dakota, but shall, after the State adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be: *Provided*, That if either of the proposed States provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the Territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed State.

SEC. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance

for resubmitting the Sioux Falls constitution of eighteen hundred and eighty–five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty–nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed State on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana, and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed States, respectively, for ratification or rejection at elections to be held in said proposed States on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed States shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said Territories, who with the governor and chief–justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed States are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation.

SEC. 9. That until the next general census, or until otherwise provided by law, said States shall be entitled to one Representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the fifty–first Congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said State officers are elected and qualified under the provisions of each constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.

SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty–six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one–quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty–sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre–emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Reviser's note: Section 11 has at various times been amended by Congress as follows:

(1) August 11, 1921:

AN ACT To amend an Act approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," approved February 22, 1889, be, and the same hereby is, amended by adding the following: *Provided, however*, That the State may, upon such terms as it may prescribe, grant such easements or rights in such lands as may be acquired in, to, or over the lands of private properties through proceedings in eminent domain: *And provided further*, That any of such granted lands found, after title thereto has vested in the State, to be mineral in character, may be leased for a period not longer than twenty years upon such terms and conditions as the legislature may prescribe. [42 U.S. Statutes at Large, c 61 p 158. Approved, August 11, 1921.]

(2) May 7, 1932:

AN ACT To amend section 11 of the Act approved February 22, 1889 (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Act approved February 22, 1889 (25 Stat. 676), be, and the same is hereby, amended to read as follows:

"That all lands granted by this Act shall be disposed of only at public sale after advertising——tillable lands capable of producing agricultural crops for not less than $10 per acre and lands principally

valuable for grazing purposes for not less than $5 per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the State.

"The said lands may be leased under such regulations as the legislature may prescribe; but leases for grazing and agricultural purposes shall not be for a term longer than five years; mineral leases, including leases for exploration for oil and gas and the extraction thereof, for a term not longer than twenty years; and leases for development of hydroelectric power for a term not longer than fifty years.

"The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however,* That none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the State.

"With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various State institutions for which the lands have been granted. Rentals on leased lands, interest on deferred payments on lands sold, interest on funds arising from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any State may, however, in its discretion, add a portion of the annual income to the permanent funds.

"The lands hereby granted shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted."

SEC. 2. Anything in the said Act approved February 22, 1889, inconsistent with the provisions of this Act is hereby repealed. [47 U.S. Statutes at Large c 172 p 150. Approved, May 7, 1932.]

(3) June 25, 1938:

AN ACT To increase the period for which leases may be made for grazing and agricultural purposes of public lands donated to the States of North Dakota, South Dakota, Montana, and Washington by the Act of February 22, 1889, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the second paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, as reads "but leases for grazing and agricultural purposes shall not be for a term longer than five years", is amended to read as follows: "but leases for grazing and agricultural purposes shall not be for a term longer than ten years". [52 U. S. Statutes at Large c 700 p 1198. Approved, June 25, 1938.]

(4) April 13, 1948:

AN ACT To authorize the States of Montana, North Dakota, South Dakota, and Washington to lease their State lands for production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, for such terms of years and on such conditions as may be from time to time provided by the legislatures of the respective States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the second paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, is amended to read as follows: "Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective States; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years." [62 U.S. Statutes at Large c 183 p 170. Approved April 13, 1948.]

(5) June 28, 1952:

AN ACT To authorize each of the States of North Dakota, South Dakota, and Washington to pool moneys derived from lands granted to it for public schools and various State institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourth paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended (47 Stat. 151), is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this section, each of the States of North Dakota, South Dakota, and Washington may pool the moneys received by it from oil and gas and other mineral leasing of said lands. The moneys so pooled shall be apportioned among the public schools and the various State institutions in such manner that the public schools and each of such institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres (including any that may have been disposed of) granted for such public schools or for such institutions bears to the total number of acres (including any that may have been disposed of) granted by this Act. Not less than 50 per centum of each such amount shall be covered into the appropriate permanent fund." [66 U.S. Statutes at Large c 480 p 283. Approved June 28, 1952.]

(6) May 31, 1962:

AN ACT To amend the Act admitting the State of Washington into the Union in order to authorize the use of funds from the disposition of certain lands for the construction of State charitable, educational, penal, or reformatory institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676, as amended), is amended by inserting before the period at the end of the first sentence in the fourth paragraph of section 11 a comma and the following: "except that proceeds from the sale and other permanent disposition of the two hundred thousand acres granted to the State of Washington for State charitable, educational, penal, and reformatory institutions may be used by such State for the construction of any such institution". [Public Law 87-473. 76 U.S. Statutes at Large p 91. Approved May 31, 1962.]

(7) June 30, 1967:

AN ACT To authorize the States of North Dakota, South Dakota, Montana, and Washington to use the income from certain lands for the construction of facilities for State charitable, educational, penal, and reformatory institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of the fourth paragraph of section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676), as amended, is amended to read as follows: "Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions." [Public Law 90-41. 81 U.S. Statutes at Large p 106. Approved June 30, 1967.]

(8) October 16, 1970:

AN ACT To amend section 11 of the Act approved February 22, 1889 (25 Stat. 676) as amended by the Act of May 7, 1932 (47 Stat. 150), and as amended by the Act of April 13, 1948 (62 Stat. 170) relating to the admission to the Union of the States of North Dakota, South Dakota, Montana, and Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of the first paragraph of section 11 of the Act approved

February 22, 1889 (25 Stat. 676), as amended by the Act of May 7, 1932 (47 Stat. 150), is hereby amended to read as follows:

"Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to Federal lands that are surveyed, nonmineral, unreserved public lands within the State, or are reserved public lands within the State that are subject to exchange under the laws governing the administration of such Federal reserved public lands."

and that a new paragraph be added immediately following the above, as follows:

"All exchanges heretofore made under section 11 of the Act approved February 22, 1889 (25 Stat. 676), as amended by the Act approved May 7, 1932 (47 Stat. 150), for reserved public lands of the United States that were subject to exchange under law pursuant to which they were being administered and the requirements thereof have been met, are hereby approved to the same extent as though the lands exchanged were unreserved public lands."

and that the present paragraph 2 of section 11 be amended to read as follows:

"The said lands may be leased under such regulations as the legislature may prescribe." [Public Law 91–463. 84 U.S. Statutes at Large p 987. Approved October 16, 1970.]

SEC. 12. That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said States, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said States for the purpose of erecting public buildings at the capital of said States for legislative, executive, and judicial purposes.

Reviser's note: Section 12 has been amended by Congress as follows:

AN ACT To amend section 12 of the Act approved February 22, 1889 (25 Stat. 676) relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, by providing for the use of public lands granted to the States therein for the purpose of construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvement of public buildings at the capital of said States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 12 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, is amended to read as follows:

"That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this Act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes."

SEC. 2. This Act shall take effect as of February 22, 1889. [Public Law 85–6. 71 U.S. Statutes at large p 5. Approved February 26, 1957.]

SEC. 13. That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively.

SEC. 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the Territory of Dakota, for an asylum for the insane shall, upon the admission of said State of South Dakota into the Union, become the property of said State.

SEC. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby, granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota, for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana.

SEC. 16. That ninety thousand acres of land, to be selected and located as provided in section 10 of this act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said States, as provided in the acts of Congress making donations of lands for such purpose.

SEC. 17. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to wit:

To the State of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for State normal schools, eighty thousand acres; for public buildings at the capital of said State, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said State may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the State of North Dakota a like quantity of land as in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for State normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a State reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the State, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide.

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivisions or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects.

SEC. 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to each of said Territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States.

SEC. 21. That each of said States, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the States, respectively; and the circuit and district courts therefor shall be held at the capital of such State for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said State. The regular terms of said courts shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same

powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The Marshal, district attorney, and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Nebraska.

SEC. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of either of the Territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said Supreme Court of the United States. And the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the State succeeding the Territory from which such record is or may be pending, or to the supreme court of such State, as the nature of the case may require: *Provided*, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be directed by the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, or to the supreme court of the Territory of North Dakota, as the nature of the case may require. And each of the circuit, district, and State courts, herein named, shall, respectively, be the successor of the supreme court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the Territories mentioned in this act, in any case arising within the limits of any of the proposed States prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

SEC. 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the Territories mentioned in this act at the time of the admission into the Union of either of the States mentioned in this act, and arising within the limits of any such State, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the Territories mentioned in this act at the time of the admission of such Territory into the Union, arising within the limits of said proposed State, the courts established by such State shall, respectively, be the successors of said supreme and district Territorial courts; and all the files, records, indictments, and proceedings relating to any such cases, shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the States mentioned in this act, shall be pending in any Territorial court in any of the Territories mentioned in this act, shall abate by the admission of any such State into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district or State court, as the case may be: *Provided, however*, That in all civil actions, causes, and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request such cases shall be proceeded with in the proper State courts.

SEC. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full State governments, including members of the legislatures and Representatives in the fifty-first Congress; but said State governments shall remain in abeyance until the States shall be admitted into the Union, respectively, as provided in this act. In case the constitution of any of said proposed States shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States; and the governor and secretary of state of such proposed State shall certify the election of the Senators and Representatives in the manner required by law; and when such State is admitted into the Union, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such State officers; and all laws in force made by said Territories, at the time of their admission into the Union, shall be in force in said States, except as modified or changed by this act or by the constitutions of the States, respectively.

SEC. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said Territories or by Congress, are hereby repealed.

Approved, February 22, 1889. [25 U.S. Statutes at Large, c 180 p 676.]

THE CONSTITUTION OF THE STATE OF WASHINGTON

This Constitution was framed by a convention of seventy-five delegates, chosen by the people of the Territory of Washington at an election held May 14, 1889, under section 3 of the Enabling Act. The convention met at Olympia on the fourth day of July, 1889, and adjourned on the twenty-second day of August, 1889. The Constitution was ratified by the people at an election held on October 1, 1889, and on November 11, 1889, in accordance with section 8 of the Enabling Act, the president of the United States proclaimed the admission of the State of Washington into the Union.

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(B) Constitutional Amendments (in order of adoption)
(C) Index to State Constitution.

In part (A), for convenience of the reader, the latest constitutional amendments have been integrated with the currently effective original sections of the Constitution with the result that the Constitution is herein presented in its currently amended form.

All current sections, whether original sections or constitutional amendments, are carried in Article and section order and are printed in regular type.

Following each section which has been amended, the original section and intervening amendments (if any) are printed in italics.

Appended to each amendatory section is a history note stating the amendment number and date of its approval as well as the citation to the session law wherein may be found the legislative measure proposing the amendment; e.g. "[**AMENDMENT 27,** 1951 House Joint Resolution No. 8, p 961. Approved November 4, 1952.]"

In part (B), the constitutional amendments are also printed separately, in order of their adoption.

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PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

ARTICLE 1
DECLARATION OF RIGHTS

§ 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

§ 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

§ 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

§ 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

§ 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

§ 6 OATHS——MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

§ 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

§ 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

§ 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

§ 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

§ 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: *Provided, however*, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [**AMENDMENT 34,** 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904)——Art. 1 § 11 RELIGIOUS FREEDOM——*Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 4, 1903 p 283 § 1. Approved November, 1904.]

Original text——Art. 1 § 11 RELIGIOUS FREEDOM——*Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.*

§ 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

§ 13 HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

§ 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

§ 15 CONVICTIONS, EFFECT OF. No conviction shall work corruption of blood, nor forfeiture of estate.

§ 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [**AMENDMENT 9,** 1919 p 385 § 1. Approved November, 1920.]

Original text——Art. 1 § 16 EMINENT DOMAIN——*Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for*

agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

§ 17 **IMPRISONMENT FOR DEBT.** There shall be no imprisonment for debt, except in cases of absconding debtors.

§ 18 **MILITARY POWER, LIMITATION OF.** The military shall be in strict subordination to the civil power.

§ 19 **FREEDOM OF ELECTIONS.** All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

§ 20 **BAIL, WHEN AUTHORIZED.** All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

§ 21 **TRIAL BY JURY.** The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

§ 22 **RIGHTS OF THE ACCUSED.** In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trail by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided*, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [**AMENDMENT 10,** 1921 p 79 § 1. Approved November, 1922.]

Original text——Art. 1 § 22 RIGHTS OF ACCUSED PERSONS——*In criminal prosecution, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.*

§ 23 **BILL OF ATTAINDER, EX POST FACTO LAW, ETC.** No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

§ 24 **RIGHT TO BEAR ARMS.** The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

§ 25 **PROSECUTION BY INFORMATION.** Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

§ 26 **GRAND JURY.** No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

§ 27 **TREASON, DEFINED, ETC.** Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

§ 28 **HEREDITARY PRIVILEGES ABOLISHED.** No hereditary emoluments, privileges, or powers, shall be granted or conferred in this state.

§ 29 **CONSTITUTION MANDATORY.** The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

§ 30 **RIGHTS RESERVED.** The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

§ 31 **STANDING ARMY.** No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

§ 32 **FUNDAMENTAL PRINCIPLES.** A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

§ 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [**AMENDMENT 8,** 1911 p 504 § 1. Approved November, 1912.]

§ 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty–three (33) of this article, and to facilitate its operation and effect without delay: *Provided*, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty–five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty–five per cent. [**AMENDMENT 8,** 1911 p 504 § 1. Approved November, 1912.

ARTICLE II
LEGISLATIVE DEPARTMENT

§ 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. *Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition*, and every such petition shall include the full text of the measure so proposed. [**Note:** Signature requirements superseded by Art. 2 Sec. 1(A), **AMENDMENT 30.**] Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. *Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition.* [**Note:** Signature requirements superseded by Art. 2 Sec. 1(A), **AMENDMENT 30.**]

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people

thereon. [**Note**: Subsection (c) is expressly superseded by Art. 2 Sec. 41, **AMENDMENT 26.**]

(d) The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filled with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: *Provided*, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. *The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted.* [**Note:** Cf. Art. 2 Sec. 1(A), **AMENDMENT 30.**] All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred, so that each voter of the state shall receive the publication at least fifty days before the election at which they are to be voted upon. [**Note:** This paragraph is expressly superseded by subsection (e) of this section, which was added by **AMENDMENT 36.**]

(e) The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. These provisions supersede the provisions set forth in the last paragraph of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [**AMENDMENT 7,** 1911 p 136 § 1. Approved November, 1912; Subsection (e) added by **AMENDMENT 36,** 1961 Senate Joint Resolution No. 9, p 2751. Approved November, 1962.]

Original text——Art. 2, § 1. LEGISLATIVE POWERS, WHERE VESTED——*The legislative powers shall be vested in a senate and house of representatives, which shall be called the legislature of the State of Washington.*

Note: Art. 2, Sec. 31 was also stricken by **AMENDMENT 7.**

§ 1A INITIATIVE AND REFERENDUM, SIGNATURES REQUIRED. Hereafter, the number of valid signatures of legal voters required upon a petition for an initiative measure shall be equal to eight percentum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. Hereafter, the number of valid signatures of legal voters required upon a petition for a referendum of an act of the legislature or any part thereof, shall be equal to four percentum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. These provisions supersede the requirements specified in section 1 of this article as amended by the seventh amendment to the Constitution of this state. [**AMENDMENT 30,** 1955 Senate Joint Resolution No. 4, p 1860. Approved November, 1956.]

§ 2 HOUSE OF REPRESENTATIVES AND SENATE. The house of representatives shall be composed of not less than sixty-three nor more than ninety-nine members. The number of senators shall not be more than one-half nor less than one-third of the number of members of the house of representatives. The first legislature shall be composed of seventy members of the house of representatives, and thirty-five senators.

§ 3 THE CENSUS. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter; and at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed, soldiers, sailors and officers of the United States army and navy in active service.

§ 4 ELECTION OF REPRESENTATIVES AND TERM OF OFFICE. Members of the house of representatives shall be elected in the year eighteen hundred and eighty-nine at the time and in the manner provided by this Constitution, and shall hold their offices for the term of one year and until their successors shall be elected.

§ 5 ELECTIONS, WHEN TO BE HELD. The next election of the members of the house of representatives after the adoption of this Constitution shall be on the first Tuesday after the first Monday of November, eighteen hundred and ninety, and thereafter, members of the house of representatives shall be

elected biennially and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise changed by law.

§ 6 ELECTION AND TERM OF OFFICE OF SENATORS. After the first election the senators shall be elected by single districts of convenient and contiguous territory, at the same time and in the same manner as members of the house of representatives are required to be elected; and no representative district shall be divided in the formation of a senatorial district. They shall be elected for the term of four years, one-half of their number retiring every two years. The senatorial districts shall be numbered consecutively, and the senators chosen at the first election had by virtue of this Constitution, in odd numbered districts, shall go out of office at the end of the first year; and the senators, elected in the even numbered districts, shall go out of office at the end of the third year.

§ 7 QUALIFICATIONS OF LEGISLATORS. No person shall be eligible to the legislature who shall not be a citizen of the United States and a qualified voter in the district for which he is chosen.

§ 8 JUDGES OF THEIR OWN ELECTION AND QUALIFICATION——QUORUM. Each house shall be the judge of the election, returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Governmental continuity during emergency periods: Art. 2 § 42.

§ 9 RULES OF PROCEDURE. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same offense.

§ 10 ELECTION OF OFFICERS. Each house shall elect its own officers; and when the lieutenant governor shall not attend as president, or shall act as governor, the senate shall choose a temporary president. When presiding, the lieutenant governor shall have the deciding vote in case of an equal division of the senate.

§ 11 JOURNAL, PUBLICITY OF MEETINGS——ADJOURNMENTS. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall adjourn for more than three days, nor to any place other than that in which they may be sitting, without the consent of the other.

§ 12 SESSIONS, WHEN——DURATION. The first legislature shall meet on the first Wednesday after the first Monday in November, A. D., 1889. The second legislature shall meet on the first Wednesday after the first Monday in January, A. D., 1891, and sessions of the legislature shall be held biennially thereafter, unless specially convened by the governor, but the times of meeting of subsequent sessions may be changed by the legislature. After the first legislature the sessions shall not be more than sixty days.

Sessions to convene on the second Monday in January: RCW 44.04.010.

§ 13 LIMITATION ON MEMBERS HOLDING OFFICE IN THE STATE. No member of the legislature, during the term for which he is elected, shall be appointed or elected to any civil office in the state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

§ 14 SAME, FEDERAL OR OTHER OFFICE. No person, being a member of congress, or holding any civil or military office under the United States or any other power, shall be eligible to be a member of the legislature; and if any person after his election as a member of the legislature, shall be elected to congress or be appointed to any other office, civil or military, under the government of the United States, or any other power, his acceptance thereof shall vacate his seat, provided, that officers in the militia of the state who receive no annual salary, local officers and postmasters, whose compensation does not exceed three hundred dollars per annum, shall not be ineligible.

§ 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE. Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: *Provided*, That the person appointed to fill the vacancy must be from the same legislative district, county or county commissioner district and the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district, county or county commissioner district and of the same political party as the legislator or partisan county elective officer whose office has been vacated, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: *Provided*, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill

the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [**AMENDMENT 52,** part, 1967 Senate Joint Resolution No. 24, part. Approved November 5, 1968.]

Governmental continuity during emergency periods: Art. 2 § 42.

Vacancies in county, etc., offices, how filled: Art. 11 § 6.

Amendment 32 (1956)——Art. 2 § 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE. Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: Provided, That the person appointed to fill the vacancy must be from the same legislative district and the same political party as the legislator whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [AMENDMENT 32, 1955 Senate Joint Resolution No. 14, p 1862. Approved November, 1956.]

Amendment 13 (1930)——Art. 2 § 15 VACANCIES IN LEGISLATURE——*Such vacancies as may occur in either house of the legislature shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the office of joint senator, the vacancy shall be filled by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial district.* [AMENDMENT 13, 1929 p 690. Approved November, 1930.]

Original text——Art. 2 § 15 WRITS OF ELECTION TO FILL VACANCIES——*The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.*

§ 16 PRIVILEGES FROM ARREST. Members of the legislature shall be privileged from arrest in all cases except treason, felony and breach of the peace; they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session.

§ 17 FREEDOM OF DEBATE. No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.

§ 18 STYLE OF LAWS. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill.

§ 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

§ 20 ORIGIN AND AMENDMENT OF BILLS. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

§ 21 YEAS AND NAYS. The yeas and nays of the members of either house shall be entered on the journal, on the demand of one-sixth of the members present.

§ 22 PASSAGE OF BILLS. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

Governmental continuity during emergency periods: Art. 2 § 42.

§ 23 COMPENSATION OF MEMBERS. Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route.

Compensation of state officers: Art. 28 § 1, Art. 30.

Salaries of elective state officers: RCW 43.03.010.

§ 24 LOTTERIES AND DIVORCE. The legislature shall never grant any divorce. Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon. [**AMENDMENT 56,** 1971 Senate Joint Resolution No. 5, p 1828. Approved November 7, 1972.]

Original text——Art. 2, § 24. LOTTERIES AND DIVORCE——*The legislature shall never authorize any lottery or grant any divorce.*

§ 25 EXTRA COMPENSATION PROHIBITED. The legislature shall never grant any extra compensation to any public officer, agent, employee, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office. Nothing in this section shall be deemed to prevent increases in pensions after such pensions shall have been granted. [**AMENDMENT 35,** 1957 Senate Joint Resolution No. 18, p 1301. Approved November, 1958.]

Compensation of state officers: Art. 28.

Increase during term of certain officers, authorized: Art. 30 § 1.

Increase or diminution of compensation during term of office prohibited.

county, city, town or municipal officers: Art. 11 § 8.

judicial officers: Art. 4 § 13.

state officers: Art. 3 § 25.

Original text——Art. 2 § 25 EXTRA COMPENSATION, PROHIBITED——The legislature shall never grant any extra compensation to

any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office.

§ 26 **SUITS AGAINST THE STATE.** The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

§ 27 **ELECTIONS——VIVA VOCE VOTE.** In all elections by the legislature the members shall vote viva voce, and their votes shall be entered on the journal.

§ 28 **SPECIAL LEGISLATION.** The legislature is prohibited from enacting any private or special laws in the following cases:

1. For changing the names of persons, or constituting one person the heir at law of another.
2. For laying out, opening or altering highways, except in cases of state roads extending into more than one county, and military roads to aid in the construction of which lands shall have been or may be granted by congress.
3. For authorizing persons to keep ferries wholly within this state.
4. For authorizing the sale or mortgage of real or personal property of minors, or others under disability.
5. For assessment or collection of taxes, or for extending the time for collection thereof.
6. For granting corporate powers or privileges.
7. For authorizing the apportionment of any part of the school fund.
8. For incorporating any town or village or to amend the charter thereof.
9. From giving effect to invalid deeds, wills or other instruments.
10. Releasing or extinguishing in whole or in part, the indebtedness, liability or other obligation, of any person, or corporation to this state, or to any municipal corporation therein.
11. Declaring any person of age or authorizing any minor to sell, lease, or encumber his or her property.
12. Legalizing, except as against the state, the unauthorized or invalid act of any officer.
13. Regulating the rates of interest on money.
14. Remitting fines, penalties or forfeitures.
15. Providing for the management of common schools.
16. Authorizing the adoption of children.
17. For limitation of civil or criminal actions.
18. Changing county lines, locating or changing county seats, provided, this shall not be construed to apply to the creation of new counties.

Corporations for municipal purposes shall not be created by special laws: Art. 11 § 10.

§ 29 **CONVICT LABOR.** After the first day of January eighteen hundred and ninety the labor of convicts of this state shall not be let out by contract to any person, copartnership, company or corporation, and the legislature shall by law provide for the working of convicts for the benefit of the state.

§ 30 **BRIBERY OR CORRUPT SOLICITATION.** The offense of corrupt solicitation of members of the legislature, or of public officers of the state or any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practice of solicitation, and shall not be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding——except for perjury in giving such testimony——and any person convicted of either of the offenses aforesaid, shall as part of the punishment therefor, be disqualified from ever holding any position of honor, trust or profit in this state. A member who has a private interest in any bill or measure proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

§ 31 **LAWS, WHEN TO TAKE EFFECT.** (This section stricken by **AMENDMENT 7,** see Art. 2 §§ 1 and 41.)

Original text——Art. 2 § 31 LAWS, WHEN TO TAKE EFFECT——*No law, except appropriation bills, shall take effect until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act) the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house; said vote to be taken by yeas and nays and entered on the journals.*

§ 32 **LAWS, HOW SIGNED.** No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session, and under such rules as the legislature shall prescribe.

§ 33 **ALIEN OWNERSHIP.** [This section repealed by **AMENDMENT 42,** 1965 ex.s. Senate Joint Resolution No. 20, p 2816. Approved November 8, 1966.]

Amendment 29 (1953)——Art. 2 § 33 ALIEN OWNERSHIP——*The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom: And provided further, That the provisions of this section shall not apply to the citizens of such of the Provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state.* [AMENDMENT 29, 1953 House Joint Resolution No. 16, p 853. Approved November 2, 1954.]

Amendment 24 (1950)——Art. 2 § 33 ALIEN OWNERSHIP——*The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing*

valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom: And provided further, That the provisions of this section shall not apply to the citizens of such of the Provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition. [AMENDMENT 24, 1949 Senate Joint Resolution No. 9, p 999. Approved November, 1950.]

Original text——Art. 2 § 33 OWNERSHIP OF LANDS BY ALIENS, PROHIBITED——EXCEPTIONS——*The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered on alien for the purposes of this prohibition.*

§ 34 BUREAU OF STATISTICS, AGRICULTURE AND IMMIGRATION. There shall be established in the office of the secretary of state, a bureau of statistics, agriculture and immigration, under such regulations as the legislature may provide.

§ 35 PROTECTION OF EMPLOYEES. The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.

§ 36 WHEN BILLS MUST BE INTRODUCED. No bill shall be considered in either house unless the time of its introduction shall have been at least ten days before the final adjournment of the legislature, unless the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, said vote to be taken by yeas and nays and entered upon the journal, or unless the same be at a special session.

§ 37 REVISION OR AMENDMENT. No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.

§ 38 LIMITATION ON AMENDMENTS. No amendment to any bill shall be allowed which shall change the scope and object of the bill.

§ 39 FREE TRANSPORTATION TO PUBLIC OFFICER PROHIBITED. It shall not be lawful for any person holding public office in this state to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as the same may be purchased by the general public, and the legislature shall pass laws to enforce this provision.

§ 40 HIGHWAY FUNDS. All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue intended to be used for highway purposes, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. Such highway purposes shall be construed to include the following:

(a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets;

(b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street;

(c) The payment or refunding of any obligation of the State of Washington, or any political subdivision thereof, for which any of the revenues described in section 1 may have been legally pledged prior to the effective date of this act;

(d) Refunds authorized by law for taxes paid on motor vehicle fuels;

(e) The cost of collection of any revenues described in this section:

Provided, That this section shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway purposes, or apply to vehicle operator's license fees or any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles. [**AMENDMENT 18,** 1943 House Joint Resolution No. 4, p 938. Approved November, 1944.]

§ 41 LAWS, EFFECTIVE DATE, INITIATIVE, REFERENDUM——AMENDMENT OR REPEAL. No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided*, That any such act, law or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. These provisions supersede the provisions of subsection (c) of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [**AMENDMENT 26,** 1951 Substitute Senate Joint Resolution No. 7, p 959. Approved November 4, 1952.]

Reviser's note: In third sentence, comma between "general" and "regular" omitted in conformity with enrolled resolution.

§ 42 GOVERNMENTAL CONTINUITY DURING EMERGENCY PERIODS. The legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from enemy attack, shall have the power and the duty, immediately upon and after adoption of this amendment, to enact legislation providing for prompt and temporary succession to the powers and duties of public offices of whatever nature and whether filled by election or appointment, the incumbents and legal successors of which may become unavailable for carrying on the powers and duties of such offices; the legislature shall likewise enact such other measures as may be necessary and proper for insuring the continuity of governmental operations during such emergencies. Legislation enacted under the powers conferred by this amendment shall in all respects conform to the remainder of the Constitution: *Provided*, That if, in the judgment of the legislature at the time of disaster, conformance to the provisions of the Constitution would be impracticable or would admit of undue delay, such legislation may depart during the period of emergency caused by enemy attack only, from the following sections of the Constitution.

Article 14, Sections 1 and 2, Seat of Government;

Article 2, Sections 8, 15 (Amendments 13 and 32), and 22, Membership, Quorum of Legislature and Passage of Bills;

Article 3, Section 10 (Amendment 6), Succession to Governorship: *Provided*, That the legislature shall not depart from Section 10, Article III, as amended by Amendment 6 of the state Constitution relating to the Governor's office so long as any successor therein named is available and capable of assuming the powers and duties of such office as therein prescribed;

Article 3, Section 13, Vacancies in State Offices;

Article 11, Section 6, Vacancies in County Office;

Article 11, Section 2, Seat of County Government;

Article 3, Section 24, State Records. **[AMENDMENT 39,** 1961 House Joint Resolution No. 9, p 2758. Approved November, 1962.]

Continuity of government act: Chapter 42.14 RCW.

ARTICLE III
THE EXECUTIVE

§ 1 EXECUTIVE DEPARTMENT. The executive department shall consist of a governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and a commissioner of public lands, who shall be severally chosen by the qualified electors of the state at the same time and place of voting as for the members of the legislature.

§ 2 GOVERNOR, TERM OF OFFICE. The supreme executive power of this state shall be vested in a governor, who shall hold his office for a term of four years, and until his successor is elected and qualified.

§ 3 OTHER EXECUTIVE OFFICERS, TERMS OF OFFICE. The lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and commissioner of public lands, shall hold their offices for four years respectively, and until their successors are elected and qualified.

§ 4 RETURNS OF ELECTIONS, CANVASS, ETC. The returns of every election for the officers named in the first section of this article shall be sealed up and transmitted to the seat of government by the returning officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to such person, signed by the presiding officers of both houses; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for such officers shall be decided by the legislature in such manner as shall be determined by law. The terms of all officers named in section one of this article shall commence on the second Monday in January after their election until otherwise provided by law.

§ 5 GENERAL DUTIES OF GOVERNOR. The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

§ 6 MESSAGES. He shall communicate at every session by message to the legislature the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action.

§ 7 EXTRA LEGISLATIVE SESSIONS. He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for which the legislature is convened.

§ 8 COMMANDER-IN-CHIEF. He shall be commander-in-chief of the military in the state except when they shall be called into the service of the United States.

§ 9 PARDONING POWER. The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law.

§ 10 VACANCY IN OFFICE OF GOVERNOR. In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor; and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of the governor shall devolve upon the secretary of state. In addition to the line of succession to the office and duties of governor as hereinabove indicated, if the necessity shall arise, in order to fill the vacancy in

the office of governor, the following state officers shall succeed to the duties of governor and in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. In case of the death, disability, failure or refusal of the person regularly elected to the office of governor to qualify at the time provided by law, the duties of the office shall devolve upon the person regularly elected to and qualified for the office of lieutenant governor, who shall act as governor until the disability be removed, or a governor be elected; and in case of the death, disability, failure or refusal of both the governor and the lieutenant governor elect to qualify, the duties of the governor shall devolve upon the secretary of state; and in addition to the line of succession to the office and duties of governor as hereinabove indicated, if there shall be the failure or refusal of any officer named above to qualify, and if the necessity shall arise by reason thereof, then in that event in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor in the order named, viz: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. Any person succeeding to the office of governor as in this section provided, shall perform the duties of such office only until the disability be removed, or a governor be elected and qualified; and if a vacancy occur more than thirty days before the next general election occurring within two years after the commencement of the term, a person shall be elected at such election to fill the office of governor for the remainder of the unexpired term. [**AMENDMENT 6,** 1909 p 642 § 1. Approved November, 1910.]

Governmental continuity during emergency periods: Art. 2 § 42.

Original text——Art. 3 § 10 VACANCY IN——In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant governor, and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor elected.

§ 11 REMISSION OF FINES AND FORFEITURES. The governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the legislature at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted and the reasons for the remission.

§ 12 VETO POWER. Every act which shall have passed the legislature shall be, before it becomes a law, presented to the governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider. If, after such reconsideration, two–thirds of the members present shall agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two–thirds of the members present, it shall become a law; but in all cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall be presented to him, it shall become a law without his signature, unless the general adjournment shall prevent its return, in which case it shall become a law unless the governor, within ten days next after the adjournment, Sundays excepted, shall file such bill with his objections thereto, in the office of secretary of state, who shall lay the same before the legislature at its next session in like manner as if it had been returned by the governor. If any bill presented to the governor contain several sections or items, he may object to one or more sections or items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the section, or sections; item or items to which he objects and the reasons therefor, and the section or sections, item or items so objected to, shall not take effect unless passed over the governor's objection, as hereinbefore provided.

Veto power does not extend to initiated or referred measures: Art. 2 § 1(d).

§ 13 VACANCY IN APPOINTIVE OFFICE. When, during a recess of the legislature, a vacancy shall happen in any office, the appointment to which is vested in the legislature, or when at any time a vacancy shall have occurred in any other state office, for the filling of which vacancy no provision is made elsewhere in this Constitution, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

Appointment of governing boards of educational, reformatory and penal institutions: Art. 13 § 1.

Governmental continuity during emergency periods: Art. 2 § 42.

§ 14 SALARY. The governor shall receive an annual salary of four thousand dollars, which may be increased by law, but shall never exceed six thousand dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.

Salaries of elective state officers: RCW 43.03.010.

§ 15 COMMISSIONS, HOW ISSUED. All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of state.

§ 16 LIEUTENANT GOVERNOR, DUTIES AND SALARY. The lieutenant governor shall be presiding officer of the state senate, and shall discharge such other duties as may be prescribed by law. He shall receive an annual salary of one thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.

Salaries of elective state officers: RCW 43.03.010.

§ 17 SECRETARY OF STATE, DUTIES AND SALARY. The secretary of state shall keep a record of the official acts of the legislature, and executive department of the state, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as shall be assigned him by law. He shall receive an annual salary of twenty–five hundred dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.
Salaries of elective state officers: RCW 43.03.010.

§ 18 SEAL. There shall be a seal of the state kept by the secretary of state for official purposes, which shall be called, "The Seal of the State of Washington."

Design of the Seal: Art. 18 § 1.
State seal: RCW 1.20.080.

§ 19 STATE TREASURER, DUTIES AND SALARY. The treasurer shall perform such duties as shall be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed four thousand dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.
Salaries of elective state officers: RCW 43.03.010.

§ 20 STATE AUDITOR, DUTIES AND SALARY. The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.
Salaries of elective state officers: RCW 43.03.010.

§ 21 ATTORNEY GENERAL, DUTIES AND SALARY. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed thirty–five hundred dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.
Salaries of elective state officers: RCW 43.03.010.

§ 22 SUPERINTENDENT OF PUBLIC INSTRUCTION, DUTIES AND SALARY. The superintendent of public instruction shall have supervision overall matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty–five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.

Compensation of state officers: Art. 28 § 1, Art. 30.
Salaries of elective state officers: RCW 43.03.010.

§ 23 COMMISSIONER OF PUBLIC LANDS—— COMPENSATION. The commissioner of public lands shall perform such duties and receive such compensation as the legislature may direct.

§ 24 RECORDS, WHERE KEPT, ETC. The governor, secretary of state, treasurer, auditor, superintendent of public instruction, commissioner of public lands and attorney general shall severally keep the public records, books and papers relating to their respective offices, at the seat of government, at which place also the governor, secretary of state, treasurer and auditor shall reside.

Governmental continuity during emergency periods: Art. 2 § 42.

§ 25 QUALIFICATIONS, COMPENSATION, OFFICES WHICH MAY BE ABOLISHED. No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands. **[AMENDMENT 31,** 1955 Senate Joint Resolution No. 6, p 1861. Approved November, 1956.]

Authorizing compensation increase during term: Art. 30 § 1.
Increase or diminution of compensation during term of office prohibited.
county, city, town or municipal officers: Art. 11 § 8.
judicial officers: Art. 4 § 13.
public officers: Art. 2 § 25.

Original text——Art. 3 § 25 QUALIFICATIONS——No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office, and the state treasurer shall be ineligible for the term succeeding that for which he was elected. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands.

ARTICLE IV
THE JUDICIARY

§ 1 JUDICIAL POWER, WHERE VESTED. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Court of appeals: Art. 4 § 29.

§ 2 SUPREME COURT. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, and pronounce a decision. The said court shall always be open for the transaction of business except on nonjudicial days. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time and may provide for separate departments of said court.

§ 2(a) TEMPORARY PERFORMANCE OF JUDICIAL DUTIES. When necessary for the prompt and orderly administration of justice a majority of the Supreme Court is empowered to authorize judges or retired judges of courts of record of this state, to perform, temporarily, judicial duties in the Supreme Court, and to authorize any superior court judge to perform judicial duties in any superior court of this state.

[**AMENDMENT 38,** 1961 House Joint Resolution No. 6, p 2757. Approved November, 1962.]

§ 3 ELECTION AND TERMS OF SUPREME JUDGES. The judges of the supreme court shall be elected by the qualified electors of the state at large at the general state election at the times and places at which state officers are elected, unless some other time be provided by the legislature. The first election of judges of the supreme court shall be at the election which shall be held upon the adoption of this Constitution and the judges elected thereat shall be classified by lot, so that two shall hold their office for the term of three years, two for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of state, and filed in his office. The judge having the shortest term to serve not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice. In case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of office of the judges of the supreme court, first elected, shall commence as soon as the state shall have been admitted into the Union, and continue for the term herein provided, and until their successors are elected and qualified. The sessions of the supreme court shall be held at the seat of government until otherwise provided by law.

§ 3(a) RETIREMENT OF SUPREME COURT AND SUPERIOR COURT JUDGES. A judge of the supreme court or the superior court shall retire from judicial office at the end of the calendar year in which he attains the age of seventy-five years. The legislature may, from time to time, fix a lesser age for mandatory retirement, not earlier than the end of the calendar year in which any such judge attains the age of seventy years, as the legislature deems proper. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to, or at the time of approval and ratification of this provision. Notwithstanding the limitations of this section, the legislature may by general law authorize or require the retirement of judges for physical or mental disability, or any cause rendering judges incapable of performing their judicial duties. [**AMENDMENT 25,** 1951 House Joint Resolution No. 6, p 960. Approved November 4, 1952.]

§ 4 JURISDICTION. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars ($200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

§ 5 SUPERIOR COURT——ELECTION OF JUDGES, TERMS OF, ETC. There shall be in each of the organized counties of this state a superior court for which at least one judge shall be elected by the qualified electors of the county at the general state election: *Provided*, That until otherwise directed by the legislature one judge only shall be elected for the counties of Spokane and Stevens; one judge for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield and Asotin; one judge for the counties of Kittitas, Yakima and Klickitat; one judge for the counties of Clarke, Skamania, Pacific, Cowlitz and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason and Lewis; one judge for the county of Pierce; one judge for the county of King; one judge for the counties of Jefferson, Island, Kitsap, San Juan and Clallam; and one judge for the counties of Whatcom, Skagit and Snohomish. In any county where there shall be more than one superior judge, there may be as many sessions of the superior court at the same time as there are judges thereof, and whenever the governor shall direct a superior judge to hold court in any county other than that for which he has been elected, there may be as many sessions of the superior court in said county at the same time as there are judges therein or assigned to duty therein by the governor, and the business of the court shall be so distributed and assigned by law or in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this Constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and

thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election and until their successors are elected and qualified. The first election of judges of the superior court shall be at the election held for the adoption of this Constitution. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Supreme court may authorize superior court judge to perform judicial duties in any superior court: Art. 4 § 2(a).

§ 6 JURISDICTION OF SUPERIOR COURTS. The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to one thousand dollars, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [**AMENDMENT 28,** part, 1951 Substitute House Joint Resolution No. 13, p 962. Approved November 2, 1952.]

Note: Amendment 28 also amended Art. 4 § 10.

Original text——Art. 4 § 6 JURISDICTION OF SUPERIOR COURTS—— *The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice's and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on non-judicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days.*

§ 7 EXCHANGE OF JUDGES——JUDGE PRO TEMPORE. The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.

§ 8 ABSENCE OF JUDICIAL OFFICER. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office: *Provided*, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

§ 9 REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

§ 10 JUSTICES OF THE PEACE. The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: *Provided*, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed one thousand dollars, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use. [**AMENDMENT 28,** part, 1951 Substitute House Joint Resolution No. 13, p 962. Approved November 2, 1952.]

Note: Amendment 28 also amended Art. 4 § 6.

Original text——Art. 4 § 10 JUSTICES OF THE PEACE——*The legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace; Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities or towns having* more than five thousand inhabitants *the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.*

§ 11 **COURTS OF RECORD.** The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

§ 12 **INFERIOR COURTS.** The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

§ 13 **SALARIES OF JUDICIAL OFFICERS——HOW PAID, ETC.** No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the supreme court and judges of the superior courts shall severally at stated times, during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the supreme court shall be paid by the state. One–half of the salary of each of the superior court judges shall be paid by the state, and the other one–half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

Authorizing compensation increase during term: Art. 30 § 1.

Increase or diminution of compensation during term of office prohibited

county, city or municipal officers: Art. 11 § 8.

public officers: Art. 2 § 25.

state officers: Art. 3 § 25.

§ 14 **SALARIES OF SUPREME AND SUPERIOR COURT JUDGES.** Each of the judges of the supreme court shall receive an annual salary of four thousand dollars ($4,000); each of the superior court judges shall receive an annual salary of three thousand dollars ($3,000), which said salaries shall be payable quarterly. The legislature may increase the salaries of judges herein provided.

Salaries of supreme court judges: RCW 2.04.090.

Salaries of superior court judges: RCW 2.08.090.

§ 15 **INELIGIBILITY OF JUDGES.** The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office, or employment, during the term for which they shall have been elected.

§ 16 **CHARGING JURIES.** Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

§ 17 **ELIGIBILITY OF JUDGES.** No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

§ 18 **SUPREME COURT REPORTER.** The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

§ 19 **JUDGES MAY NOT PRACTICE LAW.** No judge of a court of record shall practice law in any court of this state during his continuance in office.

§ 20 **DECISIONS, WHEN TO BE MADE.** Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; *Provided*, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

§ 21 **PUBLICATION OF OPINIONS.** The legislature shall provide for the speedy publication of opinions of the supreme court, and all opinions shall be free for publication by any person.

§ 22 **CLERK OF THE SUPREME COURT.** The judges of the supreme court shall appoint a clerk of that court who shall be removable at their pleasure, but the legislature may provide for the election of the clerk of the supreme court, and prescribe the term of his office. The clerk of the supreme court shall receive such compensation by salary only as shall be provided by law.

§ 23 **COURT COMMISSIONERS.** There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

§ 24 **RULES FOR SUPERIOR COURTS.** The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

§ 25 REPORTS OF SUPERIOR COURT JUDGES. Superior judges, shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall on or before the first day of January in each year report in writing to the governor such defects and omissions in the laws as they may believe to exist.

§ 26 CLERK OF THE SUPERIOR COURT. The county clerk shall be by virtue of his office, clerk of the superior court.

§ 27 STYLE OF PROCESS. The style of all process shall be, "The State of Washington," and all prosecutions shall be conducted in its name and by its authority.

§ 28 OATH OF JUDGES. Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

§ 29 ELECTION OF SUPERIOR COURT JUDGES. Notwithstanding any provision of this Constitution to the contrary, if, after the last day as provided by law for the withdrawal of declarations of candidacy has expired, only one candidate has filed for any single position of superior court judge in any county containing a population of one hundred thousand or more, no primary or election shall be held as to such position, and a certificate of election shall be issued to such candidate. If, after any contested primary for superior court judge in any county, only one candidate is entitled to have his name printed on the general election ballot for any single position, no election shall be held as to such position, and a certificate of election shall be issued to such candidate: *Provided*, That in the event that there is filed with the county auditor within ten days after the date of the primary, a petition indicating that a write in campaign will be conducted for such single position and signed by one hundred registered voters qualified to vote with respect of the office, then such single position shall be subject to the general election. Provisions for the contingency of the death or disqualification of a sole candidate between the last date for withdrawal and the time when the election would be held but for the provisions of this section and such other provisions as may be deemed necessary to implement the provisions of this section, may be enacted by the legislature. **[AMENDMENT 41** 1965 ex.s. Substitute Senate Joint Resolution No. 6, p 2815. Approved November 8, 1966.]

§ 30 COURT OF APPEALS. (1) *Authorization.* In addition to the courts authorized in section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute.

(2) *Jurisdiction.* The jurisdiction of the court of appeals shall be as provided by statute or by rules authorized by statute.

(3) *Review of Superior Court.* Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute.

(4) *Judges.* The number, manner of election, compensation, terms of office, removal and retirement of judges of the court of appeals shall be as provided by statute.

(5) *Administration and Procedure.* The administration and procedures of the court of appeals shall be as provided by rules issued by the supreme court.

(6) *Conflicts.* The provisions of this section shall supersede any conflicting provisions in prior sections of this article. **[AMENDMENT 50,** 1967 Senate Joint Resolution No. 6. Approved November 5, 1968.]

Note: This section which was adopted as Sec. 29 is herein renumbered Sec. 30 to avoid confusion with Sec. 29, supra.

ARTICLE V
IMPEACHMENT

§ 1 IMPEACHMENT——POWER OF AND PROCEDURE. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two–thirds of the senators elected.

§ 2 OFFICERS LIABLE TO. The governor and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit, in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

§ 3 REMOVAL FROM OFFICE. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

ARTICLE VI
ELECTIONS AND ELECTIVE RIGHTS

§ 1 QUALIFICATIONS OF ELECTORS. All persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: *Provided*, That Indians not taxed shall never be allowed the elective franchise: *And further provided*, That this amendment shall not affect the rights of franchise of any person who is now a qualified elector of this state. The legislative authority shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provision of this section. There shall be no denial of the elective franchise at any election on account of sex. [**AMENDMENT 5,** 1909 p 26 § 1. Approved November, 1910.

Amendment 2 (1896)——Art. 6 § 1 QUALIFICATIONS OF VOTERS. *All male persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: Provided, That Indians not taxed shall never be allowed the elective franchise: And further provided, That this amendment shall not effect [affect] the right of franchise of any person who is now a qualified elector of this state. The legislature shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provisions of this section.* [AMENDMENT 2, 1895 p 60 § 1. Approved November, 1896.]

Original text——Art. 6 § 1 QUALIFICATIONS OF ELECTORS——*All male persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; They shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; Provided, that Indians not taxed shall never be allowed the elective franchise; Provided, further; that all male persons who at the time of the adoption of this Constitution are qualified electors of the Territory, shall be electors.*

§ 1A VOTER QUALIFICATIONS FOR PRESIDENTIAL ELECTIONS. In consideration of those citizens of the United States who become residents of the state of Washington during the year of a presidential election with the intention of making this state their permanent residence, this section is for the purpose of authorizing such persons who can meet all qualifications for voting as set forth in section 1 of this article, except for residence, to vote for presidential electors or for the office of President and Vice-President of the United States, as the case may be, but no other: *Provided*, That such persons have resided in the state at least sixty days immediately preceding the presidential election concerned.

The legislature shall establish the time, manner and place for such persons to cast such presidential ballots. [**AMENDMENT 46,** 1965 ex.s. Substitute House Joint Resolution No. 4, p 2820. Approved November 8, 1966.]

§ 2 SCHOOL ELECTIONS——FRANCHISE HOW EXTENDED. This section stricken by **AMENDMENT 5,** see Art. 6 § 1.

Original text——Art. 6 § 2 SCHOOL ELECTIONS——FRANCHISE, HOW EXTENDED——*The legislature may provide that there shall be no denial of the elective franchise at any school election on account of sex.*

§ 3 WHO DISQUALIFIED. All idiots, insane persons, and persons convicted of infamous crime unless restored to their civil rights are excluded from the elective franchise.

§ 4 RESIDENCE, CONTINGENCIES AFFECTING. For the purpose of voting and eligibility to office no person shall be deemed to have gained a residence by reason of his presence or lost it by reason of his absence, while in the civil or military service of the state or of the United States, nor while a student at any institution of learning, nor while kept at public expense at any poor-house or other asylum, nor while confined in public prison, nor while engaged in the navigation of the waters of this state or of the United States, or of the high seas.

§ 5 VOTER——WHEN PRIVILEGED FROM ARREST. Voters shall in all cases except treason, felony, and breach of the peace be privileged from arrest during their attendance at elections and in going to, and returning therefrom. No elector shall be required to do military duty on the day of any election except in time of war or public danger.

§ 6 BALLOT. All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.

§ 7 REGISTRATION. The legislature shall enact a registration law, and shall require a compliance with such law before any elector shall be allowed to vote; *Provided*, that this provision is not compulsory upon the legislature except as to cities and towns having a population of over five hundred inhabitants. In all other cases the legislature may or may not require registration as a pre-requisite to the right to vote, and the same system of registration need not be adopted for both classes.

§ 8 ELECTIONS, TIME OF HOLDING. The first election of county and district officers not otherwise provided for in this Constitution shall be on the Tuesday next after the first Monday in November 1890, and thereafter all elections for such officers shall be held biennially on the Tuesday next succeeding the first Monday in November. The first election of all state officers not otherwise provided for in this Constitution, after the

election held for the adoption of this Constitution, shall be on the Tuesday next after the first Monday in November, 1892, and the elections for such state officers shall be held in every fourth year thereafter on the Tuesday succeeding the first Monday in November.
Cf. Art. 27 § 14.

ARTICLE VII
REVENUE AND TAXATION

§ 1 **TAXATION.** The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: *Provided*, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation. Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three hundred ($300.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner. [**AMENDMENT 14,** 1929 p 499 § 1. Approved November, 1930.]

Reviser's note: Amendment 14 amended Art. 7 by striking all of §§ 1, 2, 3 and 4. Subsequently, Amendment 17 added a new § 2, and Amendment 19 added a new § 3.

Original text——Art. 7 § 1 ANNUAL STATE TAX——*All property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The legislature shall provide by law for an annual tax sufficient, with other sources of revenue to defray the estimated ordinary expenses of the state for each fiscal year. And for the purpose of paying the state debt, if there be any, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and principal of such debt within twenty years from the final passage of the law creating the debt.*

Amendment 3 (1900)——Art. 7 § 2, was amended by adding the following proviso: *"And provided further, That the legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three hundred dollars ($300) for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual and bona fide owner."* [AMENDMENT 3, 1899 p 121 § 1. Approved November, 1900.]

Original text——Art. 7 § 2 TAXATION——UNIFORMITY AND EQUALITY——EXEMPTION——*The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property; Provided, that a deduction of debts from credits may be authorized: Provided, further, that the property of the United States and of the state, counties, school districts and other municipal corporations, and such other property as the legislature may by general laws provide, shall be exempt from taxation.*

Original text——Art. 7 § 3 ASSESSMENT OF CORPORATE PROPERTY——*The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.*

Original text——Art. 7 § 4 NO SURRENDER OF POWER OR SUSPENSION OF TAX ON CORPORATE PROPERTY——*The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.*

§ 2 **LIMITATION ON LEVIES.** Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one per centum of the true and fair value of such property in money: *Provided, however*, That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only

(a) By any taxing district when specifically authorized so to do by a majority of at least three–fifths of the electors thereof voting on the proposition to levy such additional tax submitted not more than twelve months prior to the date on which the proposed levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of such taxing district, at which election the number of persons voting "yes" on the proposition shall constitute three–fifths of a number equal to forty per centum of the total votes case in such taxing district at the last preceding general election when the number of electors voting on the proposition does not exceed forty per centum of the total votes cast in such taxing district in the last preceding general election; or by a majority of at least three–fifths of the electors thereof voting on the proposition to levy when the number of electors voting on the proposition exceeds forty percentum of the total votes cast in such taxing district in the last preceding general election;

(b) By any taxing district otherwise authorized by law to issue general obligation bonds for capital purposes, for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment, when authorized so to do by majority of at least three–fifths of the electors thereof voting on the proposition to issue such bonds and to pay the principal and interest thereon by an annual tax levy in excess of the limitation herein provided during the term of such bonds, submitted not oftener than

twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, at which election the total number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election: *Provided*, That any such taxing district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitation provided for herein, *And provided further*, That the provisions of this section shall also be subject to the limitations contained in Article VIII, Section 6, of this Constitution;

(c) By the state or any taxing district for the purpose of paying the principal or interest on general obligation bonds outstanding on December 6, 1934; or for the purpose of preventing the impairment of the obligation of a contract when ordered so to do by a court of last resort. [(i) **AMENDMENT 59,** 1971 House Joint Resolution No. 47, p 1834. Approved November, 1972. (ii) **AMENDMENT 55,** 1971 Senate Joint Resolution No. 1, p 1827. Approved November, 1972.]

Note: Article 7 § 2 was twice amended in different respects at the November 1972 general election by the ratification of both S.J.R. No. 1. (AMENDMENT 55) and H.J.R. No. 47. (AMENDMENT 59.) 1971 HJR No. 47 contained the following paragraph:

"Be It Further Resolved, That the foregoing amendment shall be submitted to the qualified electors of the state in such a manner that they may vote for or against it separately from the proposed amendment to Article VII, section 2, (Amendment 17) of the Constitution of the State of Washington contained in Senate Joint Resolution No. 1: Provided, That if both proposed amendments are approved and ratified, both shall become part of the Constitution" [1971 House Joint Resolution No. 47, part, p 1834]

The section as printed above reflects the content of both amendments.

Amendment 17 (1944)——Art. 7 Sec. 2 FORTY MILL LIMIT—— *Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed forty mills on the dollar of assessed valuation, which assessed valuation, shall be fifty per centum of the true and fair value of such property in money:* Provided, however, *That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only*

(a) By any taxing district when specifically authorized so to do by a majority of at least three-fifths of the electors thereof voting on the proposition to levy such additional tax submitted not more than twelve months prior to the date on which the proposed levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of such taxing district, at which election the number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election;

(b) By any taxing district otherwise authorized by law to issue *general obligation bonds for capital purposes, for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment, when authorized so to do by majority of at least three-fifths of the electors thereof voting on the proposition to issue such bonds and to pay the principal and interest thereon by an annual tax levy in excess of the limitation herein provided during the term of such bonds, submitted not oftener than twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, at which election the total number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election:* Provided, *That any such taxing district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitation provided for herein,* and Provided further, *That the provisions of this section shall* also be subject to the limitations contained in Article VIII, Section 6, *of this Constitution;*

(c) By the state or any taxing district for the purpose of paying the principal or interest on general obligation bonds outstanding on December 6, 1934; or for the purpose of preventing the impairment of the obligation of a contract when ordered so to do by a court of last resort. [AMENDMENT 17, *1943 House Joint Resolution No. 1, p 936. Approved November, 1944.]*

Original Section 2, as amended by Amendment 3, was stricken by Amendment 14: The original section and Amendment 3 are set out following Art. 7, Sec. 1, above.

§ 3 TAXATION OF FEDERAL AGENCIES AND PROPERTY. The United States and its agencies and instrumentalities, and their property, may be taxed under any of the tax laws of this state, whenever and in such manner as such taxation may be authorized or permitted under the laws of the United States, notwithstanding anything to the contrary in the Constitution of this state. [**AMENDMENT 19,** 1945 House Joint Resolution No. 9, p 932. Approved November, 1946.]

Reviser's note: Original section 3 was stricken by Amendment 14. The original section is set out following Art. 7 § 1, above.

§ 4 NO SURRENDER OF POWER OR SUSPENSION OF TAX ON CORPORATE PROPERTY.

Reviser's note: § 4 was stricken by Amendment 14. It is set out following Art. 7 § 1, above.

§ 5 TAXES, HOW LEVIED. No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.

§ 6 TAXES, HOW PAID. All taxes levied and collected for state purposes shall be paid in money only into the state treasury.

§ 7 ANNUAL STATEMENT. An accurate statement of the receipts and expenditures of the public moneys shall be published annually in such manner as the legislature may provide.

§ 8 TAX TO COVER DEFICIENCIES. Whenever the expenses of any fiscal year shall exceed the income, the legislature may provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year.

§ 9 SPECIAL ASSESSMENTS OR TAXATION FOR LOCAL IMPROVEMENTS. The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes

and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

§ 10 RETIRED PERSONS PROPERTY TAX EXEMPTION. Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:

The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements. [**AMENDMENT 47,** 1965 ex.s. House Joint Resolution No. 7, p 2821. Approved November 8, 1966.]

§ 11 TAXATION BASED ON ACTUAL USE. Nothing in this Article VII as amended shall prevent the legislature from providing, subject to such conditions as it may enact, that the true and fair value in money (a) of farms, agricultural lands, standing timber and timberlands, and (b) of other open space lands which are used for recreation or for enjoyment of their scenic or natural beauty shall be based on the use to which such property is currently applied, and such values shall be used in computing the assessed valuation of such property in the same manner as the assessed valuation is computed for all property. [**AMENDMENT 53,** 1967 House Joint Resolution No. 1. Approved November 5, 1968.]

ARTICLE VIII
STATE, COUNTY AND MUNICIPAL INDEBTEDNESS

§ 1 STATE DEBT. (a) The state may contract debt, the principal of which shall be paid and discharged within thirty years from the time of contracting thereof, in the manner set forth herein.

(b) The aggregate debt contracted by the state shall not exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than nine percent of the arithmetic mean of its general state revenues for the three immediately preceding fiscal years as certified by the treasurer. The term "fiscal year" means that period of time commencing July 1 of any year and ending in June 30 of the following year.

(c) The term "general state revenues" when used in this section, shall include all state money received in the treasury from each and every source whatsoever except: (1) Fees and revenues derived from the ownership or operation of any undertaking, facility, or project; (2) Moneys received as gifts, grants, donations, aid, or assistance or otherwise from the United States or any department, bureau, or corporation thereof, or any person, firm, or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid, or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (3) Moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (4) Moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; (5) Proceeds received from the sale of bonds or other evidences of indebtedness.

(d) In computing the amount required for payment of principal and interest on outstanding debt under this section, debt shall be construed to mean borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be repaid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation, or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, but shall not include obligations for the payment of current expenses of state government, nor shall it include debt hereafter incurred pursuant to section 3 of this article, obligations guaranteed as provided for in subsection (f) of this section, principal of bond anticipation notes or obligations issued to fund or refund the indebtedness of the Washington state building authority.

(e) The state may, without limitation, fund or refund, at or prior to maturity, the whole or any part of any existing debt or of any debt hereafter contracted pursuant to section 1, section 2, or section 3 of this article, including any premium payable with respect thereto and interest thereon, or fund or refund, at or prior to maturity, the whole or any part of any indebtedness incurred or authorized prior to the effective date of this amendment by any entity of the type described in subsection (g) of this section, including any premium payable with respect thereto and any interest thereon. Such funding or refunding shall not be deemed to be contracting debt by the state.

(f) Notwithstanding the limitation contained in subsection (b) of this section, the state may pledge its full faith, credit, and taxing power to guarantee the payment of any obligation payable from revenues received from any of the following sources: (1) Fees collected by the state as license fees for motor vehicles; (2) Excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel; and (3) Interest on the permanent common school fund: *Provided,* That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due

on all obligations for which said source of revenue is pledged.

(g) No money shall be paid from funds in custody of the treasurer with respect to any debt contracted after the effective date of this amendment by the Washington state building authority, the capitol committee, or any similar entity existing or operating for similar purposes pursuant to which such entity undertakes to finance or provide a facility for use or occupancy by the state of any agency, department or instrumentality thereof.

(h) The legislature shall prescribe all matters relating to the contracting, funding or refunding of debt pursuant to this section, including: The purposes for which debt may be contracted; by a favorable vote of three-fifths of the members elected to each house, the amount of debt which may be contracted for any class of such purposes; the kinds of notes, bonds, or other evidences of debt which may be issued by the state; and the manner by which the treasurer shall determine and advise the legislature, any appropriate agency, officer, or instrumentality of the state as to the available debt capacity within the limitation set forth in this section. The legislature may delegate to any state officer, agency, or instrumentality any of its powers relating to the contracting, funding or refunding of debt pursuant to this section except its power to determine the amount and purposes for which debt may be contracted.

(i) The full faith, credit, and taxing power of the state of Washington are pledged to the payment of the debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and installments of principal of all such debt as the same falls due, but in any event, any court of record may compel such payment.

(j) Notwithstanding the limitations contained in subsection (b) of this section, the state may issue certificates of indebtedness in such sum or sums as may be necessary to meet temporary deficiencies of the treasury, to preserve the best interests of the state in the conduct of the various state institutions, departments, bureaus, and agencies during each fiscal year; such certificates may be issued only to provide for appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of incurrence.

(k) Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this article shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof and shall be incontestable in the hands of a bona fide purchaser or holder thereof. [**AMENDMENT 60**, part, 1971 House Joint Resolution No. 52, part, p 1836. Approved November, 1972.]

Original text——Art. 8, Sec. 1. LIMITATION OF STATE DEBT——*The state may to meet casual deficits or failure in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars ($400,000), and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debts so contracted, and to no other purpose whatever.*

§ 2 POWERS EXTENDED IN CERTAIN CASES. In addition to the above limited power to contract debts the state may contract debts to repel invasion, suppress insurrection, or to defend the state in war, but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and to no other purpose whatever.

§ 3 SPECIAL INDEBTEDNESS, HOW AUTHORIZED. Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein. No such law shall take effect until it shall, at a general election, hereafter or a special election called for that purpose, have been submitted to the people and have received a majority of all the votes cast for and against it at such election. [**AMENDMENT 60,** part, 1971 House Joint Resolution No. 52, part, p 1836. Approved November, 1972.]

Amendment 48 (1966)——Art. 8, Sec. 3. SPECIAL INDEBTEDNESS, HOW AUTHORIZED——*Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and notice that such law will be submitted to the people shall be published at least four times during the four weeks next preceding the election in every legal newspaper in the state:* Provided, *That failure of any newspaper to publish this notice shall not be interpreted as affecting the outcome of the election.* [AMENDMENT 48, 1965 ex.s. House Joint Resolution No. 39, p 2822. Approved November 8, 1966.]

Original text——Art. 8, Sec. 3. SPECIAL INDEBTEDNESS HOW AUTHORIZED——*Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people.*

§ 4 MONEYS DISBURSED ONLY BY APPROPRIATIONS. No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other

law to fix such sum. [**AMENDMENT 11,** 1921 p 80 § 1. Approved November, 1922.]

Original text——Art. 8 § 4 MONEYS DISBURSED ONLY BY APPROPRIATIONS——*No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years from the first day of May next after the passage of such appropriation act, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.*

§ 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

§ 6 LIMITATIONS UPON MUNICIPAL INDEBTEDNESS. No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding one and one-half percentum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five percentum on the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes: *Provided,* That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly county, city, town, school district, or other municipal purposes: *Provided further,* That (a) any city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five percentum additional for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipality and (b) any school district with such assent, may be allowed to become indebted to a larger amount but not exceeding five percentum additional for capital outlays. [**AMENDMENT 27,** 1951 House Joint Resolution No. 8, p 961. Approved November 4, 1952.]

Provisions of Art. 7 § 2 (Limitation on Levies) also subject to limitations contained in Art. 8 § 6: Art. 7 § 2 (b).

Original text——Art. 8 § 6 LIMITATIONS UPON MUNICIPAL INDEBTEDNESS——No county, city, town, school district or other municipal corporation, shall for any purpose become indebted in any manner to an amount exceeding one and one-half percentum of the taxable property in such county, city, town, school district or other municipal corporation, without the assent of three-fifths of the voters therein, voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state, and county purposes previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes; Provided, That no part of the indebtedness allowed in this section, shall be incurred for any purpose other than strictly county, city, town, school district, or other municipal purposes. Provided further, that any city or town, with such assent may be allowed to become indebted to a larger amount but not exceeding five per centum additional for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipality.

§ 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

§ 8 PORT EXPENDITURES——INDUSTRIAL DEVELOPMENT——PROMOTION. The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 7 of this Article. [**AMENDMENT 45,** 1965 ex.s. Senate Joint Resolution No. 25, p 2819. Approved November 8, 1966.]

§ 9 STATE BUILDING AUTHORITY. The legislature is empowered notwithstanding any other provision in this Constitution, to provide for a state building authority in corporate and politic form which may contract with agencies or departments of the state government to construct upon land owned by the state or its agencies, or to be acquired by the state building authority, buildings and appurtenant improvements which such state agencies or departments are hereby empowered to lease at reasonable rental rates from the Washington state building authority for terms up to seventy-five years with provisions for eventual vesting of title in the state or its agencies. This section shall not be construed as authority to provide buildings through lease or otherwise to nongovernmental entities. The legislature may authorize the state building authority to borrow funds solely upon its own credit and to issue bonds or other evidences of indebtedness therefor to be repaid from its revenues and to secure the same by pledging its income or mortgaging its leaseholds. The provisions of sections 1 and 3 of this article shall not apply to indebtedness incurred pursuant to this section. [**AMENDMENT 51,** 1967 Senate Joint Resolution No. 17. Approved November 5, 1968.]

Note: This section which was adopted as Sec. 8, is herein renumbered Sec. 9, to avoid confusion with Sec. 8, supra.

ARTICLE IX
EDUCATION

§ 1 PREAMBLE. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

§ 2 **PUBLIC SCHOOL SYSTEM.** The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

§ 3 **FUNDS FOR SUPPORT.** The principal of the common school fund as the same existed on June 30, 1965, shall remain permanent and irreducible. The said fund shall consist of the principal amount thereof existing on June 30, 1965, and such additions thereto as may be derived after June 30, 1965, from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of stone, minerals, or property other than timber and other crops from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating stone, minerals or property other than timber and other crops from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund.

There is hereby established the common school construction fund to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from the sale or appropriation of timber and other crops from school and state lands subsequent to June 30, 1965, other than those granted for specific purposes; (2) the interest accruing on said permanent common school fund from and after July 1, 1967, together with all rentals and other revenues derived therefrom and from lands and other property devoted to the permanent common school fund from and after July 1, 1967; and (3) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section during the period after the effective date of this amendment and prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. [**AMENDMENT 43,** 1965 ex.s. Senate Joint Resolution No. 22, part 1, p 2817. Approved November 8, 1966.]

Original text——Art. 9 § 3. FUNDS FOR SUPPORT. *The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund. The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools.*

§ 4 **SECTARIAN CONTROL OR INFLUENCE PROHIBITED.** All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

§ 5 **LOSS OF PERMANENT FUND TO BECOME STATE DEBT.** All losses to the permanent common school or any other state educational fund, which shall be occasioned by defalcation, mismanagement or fraud of the agents or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized and limited elsewhere in this Constitution.

Investment of permanent school fund: Art. 16 § 5.

ARTICLE X
MILITIA

§ 1 **WHO LIABLE TO MILITARY DUTY.** All able-bodied male citizens of this state between the ages of eighteen (18) and forty-five (45) years except such as are exempt by laws of the United States or by the laws of this state, shall be liable to military duty.

§ 2 **ORGANIZATION——DISCIPLINE——OFFICERS——POWER TO CALL OUT.** The legislature shall provide by law for organizing and disciplining the militia in such manner as it may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct and shall be commissioned by the governor. The governor shall have power to call forth the militia to execute the laws of the state to suppress insurrections and repel invasions.

§ 3 **SOLDIERS' HOME.** The legislature shall provide by law for the maintenance of a soldiers' home for honorably discharged Union soldiers, sailors, marines and members of the state militia disabled while in the line of duty and who are *bona fide* citizens of the state.

§ 4 **PUBLIC ARMS.** The legislature shall provide by law, for the protection and safe keeping of the public arms.

§ 5 **PRIVILEGE FROM ARREST.** The militia shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at musters and elections of officers, and in going to and returning from the same.

§ 6 **EXEMPTION FROM MILITARY DUTY.** No person or persons, having conscientious scruples against bearing arms, shall be compelled to do militia duty in time of peace: *Provided*, such person or persons shall pay an equivalent for such exemption.

ARTICLE XI
COUNTY, CITY AND TOWNSHIP ORGANIZATION

§ 1 **EXISTING COUNTIES RECOGNIZED.** The several counties of the Territory of Washington existing at the time of the adoption of this Constitution are hereby recognized as legal subdivisions of this state.

§ 2 **COUNTY SEATS——LOCATION AND REMOVAL.** No county seat shall be removed unless three-fifths of the qualified electors of the county, voting on the proposition at a general election shall vote in favor of such removal, and three-fifths of all votes cast on the proposition shall be required to relocate a county seat. A proposition of removal shall not be submitted in the same county more than once in four years.

Governmental continuity during emergency periods: Art. 2 § 42.

§ 3 **NEW COUNTIES.** No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken: *Provided*, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use, or under construction, which shall fall within and be retained by the county: *Provided further*, That this shall not be construed to affect the rights of creditors.

§ 4 **COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION.** The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general law.

Any county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state, and for such purpose the legislative authority of such county may cause an election to be had, at which election there shall be chosen by the qualified voters of said county not less than fifteen (15) nor more than twenty-five (25) freeholders thereof, as determined by the legislative authority, who shall have been residents of said county for a period of at least five (5) years preceding their election and who are themselves qualified electors, whose duty it shall be to convene within thirty (30) days after their election and prepare and propose a charter for such county. Such proposed charter shall be submitted to the qualified electors of said county, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said county and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, or any existing form of county government, and all special laws inconsistent with such charter. Said proposed charter shall be published in two (2) legal newspapers published in said county, at least once a week for four (4) consecutive weeks prior to the day of submitting the same to the electors for their approval as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election and shall

be given for at least ten (10) days before the day of election in all election districts of said county. Said elections may be general or special elections and except as herein provided, shall be governed by the law regulating and controlling general or special elections in said county. Such charter may be amended by proposals therefor submitted by the legislative authority of said county to the electors thereof at any general election after notice of such submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others.

Any home rule charter proposed as herein provided, may provide for such county officers as may be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation, but shall not affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts.

Notwithstanding the foregoing provision for the calling of an election by the legislative authority of such county for the election of freeholders to frame a county charter, registered voters equal in number to ten (10) per centum of the voters of any such county voting at the last preceding general election, may at any time propose by petition the calling of an election of freeholders. The petition shall be filed with the county auditor of the county at least three (3) months before any general election and the proposal that a board of freeholders be elected for the purpose of framing a county charter shall be submitted to the vote of the people at said general election, and at the same election a board of freeholders of not less than fifteen (15) or more than twenty-five (25), as fixed in the petition calling for the election, shall be chosen to draft the new charter. The procedure for the nomination of qualified electors as candidates for said board of freeholders shall be prescribed by the legislative authority of the county, and the procedure for the framing of the charter and the submission of the charter as framed shall be the same as in the case of a board of freeholders chosen at an election initiated by the legislative authority of the county.

In calling for any election of freeholders as provided in this section the legislative authority of the county shall apportion the number of freeholders to be elected in accordance with either the legislative districts or the county commissioner districts, if any, within said county, the number of said freeholders to be elected from each of said districts to be in proportion to the population of said districts as nearly as may be.

Should the charter proposed receive the affirmative vote of the majority of the electors voting thereon, the legislative authority of the county shall immediately call such special election as may be provided for therein, if any, and the county government shall be established in accordance with the terms of said charter not more than six (6) months after the election at which the charter was adopted.

The terms of all elective officers, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, who are in office at the time of the adoption of a Home Rule Charter shall terminate as provided in the quarter. All appointive officers in office at the time the charter goes into effect, whose positions are not abolished thereby, shall continue until their successors shall have qualified.

After the adoption of such charter, such county shall continue to have all the rights, powers, privileges and benefits then possessed or hereafter conferred by general law. All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court and the justices of the peace, shall be vested in the legislative authority of the county unless expressly vested in specific officers by the charter. The legislative authority may by resolution delegate any of its executive or administrative powers, authority or duties not expressly vested in specific officers by the charter, to any county officer or officers or county employee or employees.

The provisions of sections 5, 6, 7, and the first sentence of section 8 of this Article as amended shall not apply to counties in which the government has been established by charter adopted under the provisions hereof. The authority conferred on the board of county commissioners by Section 15 of Article II as amended, shall be exercised by the legislative authority of the county. [**AMENDMENT 21,** 1947 Senate Joint Resolution No. 5, p 1372. Approved November 2, 1948.]

Original text——Art. 11 § 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION——*The legislature shall establish a system of county government which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine, and whenever a county shall adopt township organization the assessment and collection of the revenue shall be made and the business of such county, and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.*

§ 5 **COUNTY GOVERNMENT.** The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office: *Provided*, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population: *Provided*, That it may delegate to the legislative authority of the counties the right to prescribe the salaries of its own members and the salaries of other county officers. And it shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys

which may be paid to them, or officially come into their possession. [**AMENDMENT 57,** part, 1971 Senate Joint Resolution No. 38, part, p 1829. Approved November, 1972.]

Amendment 12 (1924)——Art. 11. Sec. 5. COUNTY GOVERNMENT——*The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office: Provided,* That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys which may be paid to them or officially come into their possession. [AMENDMENT 12, 1923 p 254 § 1. Approved November, 1924.]

Original text——Art. 11, Sec. 5. ELECTION AND COMPENSATION OF COUNTY OFFICERS——*The legislature by general and uniform laws shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them, and for all public moneys which may be paid to them, or officially come into their possession.*

§ 6 VACANCIES IN TOWNSHIP, PRECINCT OR ROAD DISTRICT OFFICE. The board of county commissioners in each county shall fill all vacancies occurring in any township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified. [**AMENDMENT 52,** part, 1967 Senate Joint Resolution No. 24, part. Approved November 5, 1968.]

Governmental continuity during emergency periods: Art. 2 § 42.

Vacancies in legislature and in partisan county elective office: Art. 2 § 15.

Original text——Art. 11 § 6 VACANCIES IN COUNTY, ETC., OFFICES, HOW FILLED——The board of county commissioners in each county shall fill all vacancies occurring in any county, township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified.

§ 7 TENURE OF OFFICE LIMITED TO TWO TERMS. [Repealed by **AMENDMENT 22,** 1947 House Joint Resolution No. 4, p 1385. Approved November 2, 1948.]

Original text——Art. 11 § 7 TENURE OF OFFICE LIMITED TO TWO TERMS——*No county officer shall be eligible to hold his office more than two terms in succession.*

§ 8 SALARIES AND LIMITATIONS AFFECTING. The salary of any county, city, town, or municipal officers shall not be increased except as provided in section 1 of Article XXX or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed. [**AMENDMENT 57,** part, 1971 Senate Joint Resolution No. 38, part, p 1829. Approved November, 1972.]

Original text——Art. 11, Sec. 8. SALARIES AND LIMITATIONS AFFECTING——*The legislature shall fix the compensation by salaries of all county officers, and of constables in cities having a population of five thousand and upwards; except that public administrators, surveyors and coroners may or may not be salaried officers. The salary of any county, city, town, or municipal officers shall not be increased or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.*

§ 9 STATE TAXES NOT TO BE RELEASED OR COMMUTED. No county, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever.

§ 10 INCORPORATION OF MUNICIPALITIES. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. Any city containing a population of ten thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen by the qualified electors of said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in the daily newspaper of largest general circulation published in the area to be incorporated as a first class city under the charter or, if no daily newspaper is published therein, then in the newspaper having the largest general circulation within such area at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given as required by law. Said elections may be general or special elections,

and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [**AMENDMENT 40,** 1963 ex.s. Senate Joint Resolution No. 1, p 1526. Approved November 3, 1964.]

Original text——Art. 11 § 10 INCORPORATION OF MUNICIPALITIES——*Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to, and controlled by general laws. Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen by the qualified electors of said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily newspapers published in said city, for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given for at least ten days before the day of election, in all election districts of said city. Said elections may be general or special elections, and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefore submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.*

Authority to incur and limit of indebtedness: Art. 8 § 6.

§ 11 POLICE AND SANITARY REGULATIONS. Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

§ 12 ASSESSMENT AND COLLECTION OF TAXES IN MUNICIPALITIES. The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

§ 13 PRIVATE PROPERTY, WHEN MAY BE TAKEN FOR PUBLIC DEBT. Private property shall not be taken or sold for the payment of the corporate debt of any public or municipal corporation, except in the mode provided by law for the levy and collection of taxes.

§ 14 PRIVATE USE OF PUBLIC FUNDS PROHIBITED. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

§ 15 DEPOSIT OF PUBLIC FUNDS. All moneys, assessments and taxes belonging to or collected for the use of any county, city, town or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depositary to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they belong.

§ 16 COMBINED CITY–COUNTY. Any county may frame a "Home Rule" charter subject to the Constitution and laws of this state to provide for the formation and government of combined city and county municipal corporations, each of which shall be known as "city–county". Registered voters equal in number to ten (10) per cent of the voters of any such county voting at the last preceding general election may at any time propose by a petition the calling of an election of freeholders. The provisions of section 4 of this Article with respect to a petition calling for an election of freeholders to frame a county home rule charter, the election of freeholders, and the framing and adoption of a county home rule charter pursuant to such petition shall apply to a petition proposed under this section for the election of freeholders to frame a city–county charter, the election of freeholders, and to the framing and adoption of such city–county charter pursuant to such petition. Except as otherwise provided in this section, the provisions of section 4 applicable to a county home rule charter shall apply to a city–county charter. If there are not sufficient legal newspapers published in the county to meet the requirements for publication of a proposed charter under section 4 of this Article, publication in a legal newspaper circulated in the county may be substituted for publication in a legal newspaper published in the county. No such "city–county" shall be formed except by a majority vote of the qualified electors voting thereon in the county. The charter shall designate the respective officers of such city–county who shall perform the duties imposed by law upon county officers. Every such city–county shall have and enjoy all rights, powers and privileges asserted in its charter, and in addition thereto, such rights, powers and privileges as may be granted to it, or to any city or county or class or classes of cities and counties. In the event of a conflict

in the constitutional provisions applying to cities and those applying to counties or of a conflict in the general laws applying to cities and those applying to counties, a city–county shall be authorized to exercise any powers that are granted to either the cities or the counties.

No legislative enactment which is a prohibition or restriction shall apply to the rights, powers and privileges of a city–county unless such prohibition or restriction shall apply equally to every other city, county, and city–county.

The provisions of sections 2, 3, 5, 6, and 8 and of the first paragraph of section 4 of this article shall not apply to any such city–county.

Municipal corporations may be retained or otherwise provided for within the city–county. The formation, powers and duties of such municipal corporations shall be prescribed by the charter.

No city–county shall for any purpose become indebted in any manner to an amount exceeding three per centum of the taxable property in such city–county without the assent of three–fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed ten per centum of the value of the taxable property therein, to be ascertained by the last assessment for city–county purposes previous to the incurring of such indebtedness: *Provided*, That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly city–county or other municipal purposes: *Provided further*, That any city–county, with such assent may be allowed to become indebted to a larger amount, but not exceeding five per centum additional for supplying such city–county with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the city–county.

No municipal corporation which is retained or otherwise provided for within the city–county shall for any purpose become indebted in any manner to an amount exceeding one and one–half per centum of the taxable property in such municipal corporation without the assent of three–fifths of the voters therein voting at an election to be held for that purpose, nor shall the total indebtedness at any time exceed five per centum of the value of the taxable property therein, to be ascertained by the last assessment for city–county purposes previous to the incurring of such indebtedness: *Provided*, That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly municipal purposes: *Provided further*, That any such municipal corporation, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five per centum additional for supplying such municipal corporation with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipal corporation. All taxes which are levied and collected within a municipal corporation for a specific purpose shall be expended within that municipal corporation.

The authority conferred on the city–county government shall not be restricted by the second sentence of Article 7, section 1, or by Article 8, section 6 of this Constitution. [**AMENDMENT 58**, 1971 House Joint Resolution No. 21, p 1831. Approved November, 1972.]

Amendment 23 (1948)——Art. 11, Sec. 16 COMBINED CITY AND COUNTY——*The legislature shall, by general law, provide for the formation of combined city and county municipal corporations, and for the manner of determining the territorial limits thereof, each of which shall be known as a "city and county," and, when organized, shall contain a population of at least three hundred thousand (300,000) inhabitants. No such city and county shall be formed except by a majority vote of the qualified electors of the area proposed to be included therein and also by a majority vote of the qualified electors of the remainder of that county from which such area is to be taken. Any such city and county shall be permitted to frame a charter for its own government, and amend the same, in the manner provided for cities by section 10 of this article:* Provided, *however, That the first charter of such city and county shall be framed and adopted in a manner to be specified in the general law authorizing the formation of such corporations:* Provided further, *That every such charter shall designate the respective officers of such city and county who shall perform the duties imposed by law upon county officers. Every such city and county shall have and enjoy all rights, powers and privileges asserted in its charter, not inconsistent with general laws, and in addition thereto, such rights, powers and privileges as may be granted to it, or possessed and enjoyed by cities and counties of like population separately organized.*

No county or county government existing outside the territorial limits of such county and city shall exercise any police, taxation or other powers within the territorial limits of such county and city, but all such powers shall be exercised by the city and county and the officers thereof, subject to such constitutional provisions and general laws as apply to either cities or counties: Provided, *That the provisions of sections 2, 3, 4, 5, 6, 7, and 8 of this article shall not apply to any such city and county:* Provided further, *That the salary of any elective or appointive officer of a city and county shall not be changed after his election or appointment or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed. In case an existing county is divided in the formation of a city and county, such city and county shall be liable for a just proportion of the existing debts or liabilities of the former county, and shall account for and pay the county remaining a just proportion of the value of any real estate or other property owned by the former county and taken over by the county and city, the method of determining such just proportion to be prescribed by general law, but such division shall not affect the rights of creditors. The officers of a city and county, their compensation, qualifications, term of office and manner of election or appointment shall be as provided for in its charter, subject to general laws and applicable constitutional provision.* [AMENDMENT 23, 1947 House Joint Resolution No. 13, p 1386. Approved November 2, 1948.]

ARTICLE XII
CORPORATIONS OTHER THAN MUNICIPAL

§ 1 **CORPORATIONS, HOW FORMED.** Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended or repealed by the legislature at any time, and all corporations doing business in this state may, as to such business, be regulated, limited or restrained by law.

§ 2 **EXISTING CHARTERS.** All existing charters, franchises, special or exclusive privileges, under which an actual and *bona fide* organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution shall thereafter have no validity.

§ 3 EXISTING CHARTERS NOT TO BE EXTENDED NOR FORFEITURE REMITTED. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this state.

§ 4 LIABILITY OF STOCKHOLDERS. Each stockholder in all incorporated companies, except corporations organized for banking or insurance purposes, shall be liable for the debts of the corporation to the amount of his unpaid stock and no more; and one or more stockholders may be joined as parties defendant in suits to recover upon this liability.

§ 5 TERM "CORPORATION," DEFINED—— RIGHT TO SUE AND BE SUED. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

§ 6 LIMITATIONS UPON ISSUANCE OF STOCK. Corporations shall not issue stock, except to *bona fide* subscribers therefor, or their assignees; nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received or labor done. The stock of corporations shall not be increased, except in pursuance of a general law, nor shall any law authorize the increase of stock, without the consent of the person or persons holding the larger amount in value of the stock, nor without due notice of the proposed increase having been previously given in such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

§ 7 FOREIGN CORPORATIONS. No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

§ 8 ALIENATION OF FRANCHISE NOT TO RELEASE LIABILITIES. No corporation shall lease or alienate any franchise, so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor, or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

§ 9 STATE NOT TO LOAN ITS CREDIT OR SUBSCRIBE FOR STOCK. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association or corporation.

§ 10 EMINENT DOMAIN AFFECTING. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

§ 11 STOCKHOLDER LIABILITY. No corporation, association, or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any banking or insurance corporation or joint stock association shall be individually and personally liable equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.

The legislature may provide that stockholders of banking corporations organized under the laws of this state which shall provide and furnish, either through membership in the Federal Deposit Insurance Corporation, or through membership in any other instrumentality of the government of the United States, insurance or security for the payment of the debts and obligations of such banking corporation equivalent to that required by the laws of the United States to be furnished and provided by national banking associations, shall be relieved from liability for the debts and obligations of such banking corporation to the same extent that stockholders of national banking associations are relieved from liability for the debts and obligations of such national banking associations under the laws of the United States. [**AMENDMENT 16,** 1939 Senate Joint Resolution No. 8, p 1024. Approved November, 1940.]

Original text——Art. 12 § 11 PROHIBITION AGAINST ISSUANCE OF MONEY AND LIABILITY OF STOCKHOLDERS IN BANKS——*No corporation, association, or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any banking or insurance corporation or joint stock association, shall be individually and personally liable equally and ratably and not one for another, for all contracts, debts and engagements of such corporation or association accruing while they remain such stockholders to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.*

§ 12 RECEIVING DEPOSITS BY BANK AFTER INSOLVENCY. Any president, director, manager, cashier, or other officer of any banking institution, who shall receive or assent to the reception of deposits, after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances, shall be individually responsible for such deposits so received.

§ 13 COMMON CARRIERS, REGULATION OF. All railroad, canal and other transportation companies are declared to be common carriers and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road, whether the same be now constructed or may hereafter be constructed, to intersect, cross or connect with any other railroad, and when such railroads are of the same or similar gauge they shall at all

crossings and at all points, where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies shall receive and transport each the other's passengers, tonnage and cars without delay or discrimination.

§ 14 PROHIBITION AGAINST COMBINATIONS BY CARRIERS. No railroad company, or other common carrier, shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

§ 15 PROHIBITION AGAINST DISCRIMINATING CHARGES. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any other transportation company, or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port or landing. Excursion and commutation tickets may be issued at special rates.

§ 16 PROHIBITION AGAINST CONSOLIDATING OF COMPETING LINES. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a competing line.

§ 17 ROLLING STOCK, PERSONALTY FOR PURPOSE OF TAXATION. The rolling stock and other movable property belonging to any railroad company or corporation in this state, shall be considered personal property, and shall be liable to taxation and to execution and sale in the same manner as the personal property of individuals and such property shall not be exempted from execution and sale.

§ 18 MAXIMUM RATES FOR TRANSPORTATION. The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the state, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established and its powers and duties fully defined by law.

§ 19 TELEGRAPH AND TELEPHONE COMPANIES. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this state, and said companies shall receive and transmit each other's messages without delay or discrimination and all of such companies are hereby declared to be common carriers and subject to legislative control. Railroad corporations organized or doing business in this state shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies, and no railroad corporation organized or doing business in this state shall allow any telegraph corporation or company any facilities, privileges or rates for transportation of men or material or for repairing their lines not allowed to all telegraph companies. The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.

Eminent domain: Art. 1 § 16.

§ 20 PROHIBITION AGAINST FREE TRANSPORTATION FOR PUBLIC OFFICERS. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any person holding any public office within this state. The legislature shall pass laws to carry this provision into effect.

§ 21 EXPRESS COMPANIES. Railroad companies now or hereafter organized or doing business in this state, shall allow all express companies organized or doing business in this state, transportation over all lines of railroad owned or operated by such railroad companies upon equal terms with any other express company, and no railroad corporation organized or doing business in this state shall allow any express corporation or company any facilities, privileges or rates for transportation of men or materials or property carried by them or for doing the business of such express companies not allowed to all express companies.

§ 22 MONOPOLIES AND TRUSTS. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchises.

ARTICLE XIII
STATE INSTITUTIONS

§ 1 EDUCATIONAL, REFORMATORY AND PENAL INSTITUTIONS. Educational, reformatory and penal institutions; those for the benefit of blind, deaf, dumb, or otherwise defective youth; for the insane or idiotic; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law. The regents, trustees, or commissioners of all such institutions existing at the time of the adoption of this Constitution, and of such as shall thereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by ayes and noes, and entered upon the journal.

ARTICLE XIV
SEAT OF GOVERNMENT

§ 1 STATE CAPITAL, LOCATION OF. The legislature shall have no power to change, or to locate the seat of government of this state; but the question of the permanent location of the seat of government of the state shall be submitted to the qualified electors of the Territory, at the election to be held for the adoption of this Constitution. A majority of all the votes cast at said election, upon said question, shall be necessary to determine the permanent location of the seat of government for the state; and no place shall ever be the seat of government which shall not receive a majority of the votes cast on that matter. In case there shall be no choice of location at said first election the legislature shall, at its first regular session after the adoption of this Constitution, provide for submitting to the qualified electors of the state, at the next succeeding general election thereafter, the question of choice of location between the three places for which the highest number of votes shall have been cast at the said first election. Said legislature shall provide further that in case there shall be no choice of location at said second election, the question of choice between the two places for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors of the state at the next ensuing general election: *Provided*, That until the seat of government shall have been permanently located as herein provided, the temporary location thereof shall remain at the city of Olympia.

§ 2 CHANGE OF STATE CAPITAL. When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed except by a vote of two-thirds of all the qualified electors of the state voting on that question, at a general election, at which the question of location of the seat of government shall have been submitted by the legislature.

Governmental continuity during emergency periods: Art. 2 § 42.

§ 3 RESTRICTIONS ON APPROPRIATIONS FOR CAPITOL BUILDINGS. The legislature shall make no appropriations or expenditures for capitol buildings or grounds, except to keep the Territorial capitol buildings and grounds in repair, and for making all necessary additions thereto, until the seat of government shall have been permanently located, and the public buildings are erected at the permanent capital in pursuance of law.

ARTICLE XV
HARBORS AND TIDE WATERS

§ 1 HARBOR LINE COMMISSION AND RESTRAINT ON DISPOSITION. The legislature shall provide for the appointment of a commission whose duty it shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side. Any harbor line so located or established may thereafter be changed, relocated or reestablished by the commission pursuant to such provision as may be made therefor by the legislature. The state shall never give, sell, or lease to any private person, corporation, or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high water, and within not less than fifty feet nor more than two thousand feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its rights to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [**AMENDMENT 15,** 1931 p 417 § 1. Approved November, 1932.]

Tide lands: Art. 17.

Original text——Art. 15 § 1 HARBOR LINE COMMISSION AND RESTRAINT ON DISPOSITION OF CERTAIN TIDE LANDS——The legislature shall provide for the appointment of a commission whose duty it shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city or within one mile thereof on either side. The state shall never give, sell or lease to any private person, corporation or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high tide, and within not less than fifty feet nor more than six hundred feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its right to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce.

§ 2 LEASING AND MAINTENANCE OF WHARVES, DOCKS, ETC. The legislature shall provide general laws for the leasing of the right to build and maintain wharves, docks and other structures, upon the areas mentioned in section one of this article, but no lease shall be made for any term longer than thirty years, or the legislature may provide by general laws for the building and maintaining upon such area wharves, docks, and other structures.

§ 3 **EXTENSION OF STREETS OVER TIDE LANDS.** Municipal corporations shall have the right to extend their streets over intervening tide lands to and across the area reserved as herein provided.

ARTICLE XVI
SCHOOL AND GRANTED LANDS

§ 1 **DISPOSITION OF.** All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

§ 2 **MANNER AND TERMS OF SALE.** None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder, the value thereof, less the improvements shall, before any sale, be appraised by a board of appraisers to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of the improvements thereon shall be excluded: *Provided*, That the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, may be confirmed by the legislature.

§ 3 **LIMITATIONS ON SALES.** No more than one-fourth of the land granted to the state for educational purposes shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1905: *provided*, that nothing herein shall be so construed as to prevent the state from selling the timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law: and *provided, further*, that no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state.

§ 4 **HOW MUCH MAY BE OFFERED IN CERTAIN CASES——PLATTING OF.** No more than one hundred and sixty (160) acres of any granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or within two miles of the boundary of any incorporated city where the valuation of such land shall be found by appraisement to exceed one hundred dollars ($100) per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel.

§ 5 **INVESTMENT OF PERMANENT COMMON SCHOOL FUND.** The permanent common school fund of this state may be invested as authorized by law. [**AMENDMENT 44,** 1965 ex.s. Senate Joint Resolution No. 22, part 2, p 2817. Approved November 8, 1966.]

Amendment 1 (1894)——Art. 16 § 5 INVESTMENT OF SCHOOL FUND——*None of the permanent school fund of this state shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds.* [AMENDMENT 1, 1893 p 9 § 1. Approved November, 1894.]

Original text——Art. 16 § 5 INVESTMENT OF PERMANENT SCHOOL FUND——*None of the permanent school fund shall ever be loaned to private persons or corporations, but it may be invested in national, state, county or municipal bonds.*

Funds for support of education: Art. 9 § 3.

ARTICLE XVII
TIDE LANDS

§ 1 **DECLARATION OF STATE OWNERSHIP.** The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: *Provided*, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

Harbors and tide waters: Art. 15.

§ 2 **DISCLAIMER OF CERTAIN LANDS.** The state of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States: *Provided*, the same is not impeached for fraud.

ARTICLE XVIII
STATE SEAL

§ 1 **SEAL OF THE STATE.** The seal of the State of Washington shall be, a seal encircled with the words: "The Seal of the State of Washington," with the vignette of General George Washington as the central figure, and beneath the vignette the figures "1889."

Custody of seal: Art. 3 § 18.

State seal: RCW 1.20.080.

ARTICLE XIX
EXEMPTIONS

§ 1 **EXEMPTIONS——HOMESTEADS, ETC.** The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

ARTICLE XX
PUBLIC HEALTH AND VITAL STATISTICS

§ 1 BOARD OF HEALTH AND BUREAU OF VITAL STATISTICS. There shall be established by law a state board of health and a bureau of vital statistics in connection therewith, with such powers as the legislature may direct.

§ 2 REGULATIONS CONCERNING MEDICINE, SURGERY AND PHARMACY. The legislature shall enact laws to regulate the practice of medicine and surgery, and the sale of drugs and medicines.

ARTICLE XXI
WATER AND WATER RIGHTS

§ 1 PUBLIC USE OF WATER. The use of the waters of this state for irrigation, mining and manufacturing purposes shall be deemed a public use.

ARTICLE XXII
LEGISLATIVE APPORTIONMENT

§ 1 SENATORIAL APPORTIONMENT Until otherwise provided by law, the state shall be divided into twenty–four (24) senatorial districts, and said districts shall be constituted and numbered as follows: The counties of Stevens and Spokane shall constitute the first district, and be entitled to one senator; the county of Spokane shall constitute the second district, and be entitled to three senators; the county of Lincoln shall constitute the third district, and be entitled to one senator; the counties of Okanogan, Lincoln, Adams and Franklin shall constitute the fourth district, and be entitled to one senator; the county of Whitman shall constitute the fifth district, and be entitled to three senators; the counties of Garfield and Asotin shall constitute the sixth district, and be entitled to one senator; the county of Columbia shall constitute the seventh district, and be entitled to one senator; the county of Walla Walla shall constitute the eighth district, and be entitled to two senators; the counties of Yakima and Douglas shall constitute the ninth district, and be entitled to one senator; the county of Kittitas shall constitute the tenth district and be entitled to one senator; the counties of Klickitat, and Skamania shall constitute the eleventh district, and be entitled to one senator; the county of Clarke shall constitute the twelfth district, and be entitled to one senator; the county of Cowlitz shall constitute the thirteenth district, and be entitled to one senator; the county of Lewis shall constitute the fourteenth district, and be entitled to one senator; the counties of Pacific and Wahkiakum shall constitute the fifteenth district, and be entitled to one senator; the county of Thurston shall constitute the sixteenth district, and be entitled to one senator; the county of Chehalis shall constitute the seventeenth district, and be entitled to one senator; the county of Pierce shall constitute the eighteenth district, and be entitled to three senators; the county of King shall constitute the nineteenth district, and be entitled to five senators; the counties of Mason and Kitsap shall constitute the twentieth district, and be entitled to one senator; the counties of Jefferson, Clallam and San Juan shall constitute the twenty–first district, and be entitled to one senator; the county of Snohomish shall constitute the twenty–second district, and shall be entitled to one senator; the counties of Skagit and Island shall constitute the twenty–third district, and be entitled to one senator; the county of Whatcom shall constitute the twenty–fourth district, and be entitled to one senator.

Districts and apportionment: Chapter 44.07 RCW.

§ 2 APPORTIONMENT OF REPRESENTATIVES. Until otherwise provided by law the representatives shall be divided among the several counties of the state in the following manner; the county of Adams shall have one representative; the county of Asotin shall have one representative; the county of Chehalis shall have two representatives; the county of Clarke shall have three representatives; the county of Clallam shall have one representative; the county of Columbia shall have two representatives; the county of Cowlitz shall have one representative; the county of Douglas shall have one representative; the county of Franklin shall have one representative; the county of Garfield shall have one representative; the county of Island shall have one representative; the county of Jefferson shall have two representatives; the county of King shall have eight representatives; the county of Klickitat shall have two representatives; the county of Kittitas shall have two representatives; the county of Kitsap shall have one representative; the county of Lewis shall have two representatives; the county of Lincoln shall have two representatives; the county of Mason shall have one representative; the county of Okanogan shall have one representative; the county of Pacific shall have one representative; the county of Pierce shall have six representatives; the county of San Juan shall have one representative; the county of Skamania shall have one representative; the county of Snohomish shall have two representatives; the county of Skagit shall have two representatives; the county of Spokane shall have six representatives; the county of Stevens shall have one representative; the county of Thurston shall have two representatives; the county of Walla Walla shall have three representatives; the county of Wahkiakum shall have one representative; the county of Whatcom shall have two representatives; the county of Whitman shall have five representatives; the county of Yakima shall have one representative.

Districts and apportionment: Title 44 RCW.

ARTICLE XXIII
AMENDMENTS

§ 1 HOW MADE. Any amendment or amendments to this Constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two–thirds of the members elected to each

of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes thereon, and be submitted to the qualified electors of the state for their approval, at the next general election; and if the people approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this Constitution, and proclamation thereof shall be made by the governor: *Provided*, That if more than one amendment be submitted, they shall be submitted in such a manner that the people may vote for or against such amendments separately. The legislature shall also cause notice of the amendments that are to be submitted to the people to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state: *Provided*, That failure of any newspaper to publish this notice shall not be interpreted as affecting the outcome of the election. [**AMENDMENT 37,** 1961 Senate Joint Resolution No. 25, p 2753. Approved November, 1962.]

Original text——Art. 23 § 1 How MADE——*Any amendment or amendments to this Constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes thereon, and be submitted to the qualified electors of the state for their approval, at the next general election; and if the people approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this Constitution, and proclamation thereof shall be made by the governor: Provided, that if more than one amendment be submitted, they shall be submitted in such a manner that the people may vote for or against such amendments separately. The legislature shall also cause the amendments that are to be submitted to the people to be published for at least three months next preceding the election, in some weekly newspaper, in every county where a newspaper is published throughout the state.*

§ 2 CONSTITUTIONAL CONVENTIONS. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote at the next general election, for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session, provide by law for calling the same; and such convention shall consist of a number of members, not less than that of the most numerous branch of the legislature.

§ 3 SUBMISSION TO THE PEOPLE. Any Constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.

ARTICLE XXIV
BOUNDARIES

§ 1 STATE BOUNDARIES. The boundaries of the state of Washington shall be as follows: Beginning at a point in the Pacific ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia river thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty-sixth parallel of north latitude crosses said river near the mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of Shoshone or Snake river, thence follow down the middle of the main channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river, thence due north to the forty-ninth parallel of north latitude, thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent, that is to say to a point in longitude 123 degrees, 19 minutes and 15 seconds west, thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific ocean equidistant between Bonnilla point on Vancouver's island and Tatoosh island light house, thence running in a southerly course and parallel with the coast line, keeping one marine league off shore to place of beginning; until such boundaries are modified by appropriate interstate compacts duly approved by the Congress of the United States. [**AMENDMENT 33,** 1957 Senate Joint Resolution No. 10, p 1292. Approved November 4, 1958.]

Original text——Art. 24 § 1 STATE BOUNDARIES——*The boundaries of the State of Washington shall be as follows: Beginning at a point in the Pacific ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia river thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty-sixth parallel of north latitude crosses said river near the mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of the Shoshone or Snake river, thence follow down the middle of the main channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river, thence due north to the forty-ninth parallel of north latitude, thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent, that is to say to a point in longitude 123 degrees, 19 minutes and 15 seconds west, thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific ocean equi distant between Bonnilla point on Vancouver's island and Tatoosh island light house, thence running in a southerly course and parallel with the coast line, keeping one marine league off shore to place of beginning.*

ARTICLE XXV
JURISDICTION

§ 1 AUTHORITY OF THE UNITED STATES. The consent of the State of Washington is hereby given to the exercise, by the congress of the United States, of exclusive legislation in all cases whatsoever over such tracts or parcels of land as are now held or reserved by the government of the United States for the purpose of erecting or maintaining thereon forts, magazines, arsenals, dockyards, lighthouses and other needful buildings, in accordance with the provisions of the seventeenth paragraph of the eighth section of the first

article of the Constitution of the United States, so long as the same shall be so held and reserved by the United States. *Provided:* That a sufficient description by metes and bounds, and an accurate plat or map of each such tract or parcel of land be filed in the proper office of record in the county in which the same is situated, together with copies of the orders, deeds, patents or other evidences in writing of the title of the United States: and provided, That all civil process issued from the courts of this state and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservations, may be served and executed thereon in the same mode and manner, and by the same officers, as if the consent herein given had not been made.

ARTICLE XXVI
COMPACT WITH THE UNITED STATES

The following ordinance shall be irrevocable without the consent of the United States and the people of this state:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying with the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: *Provided*, That nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exemption shall continue so long and to such an extent as such act of congress may prescribe.

Third. The debts and liabilities of the Territory of Washington and payment of the same are hereby assumed by this state.

Fourth. Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control which shall be open to all the children of said state.

ARTICLE XXVII
SCHEDULE

In order that no inconvenience may arise by reason of a change from a Territorial to a State government, it is hereby declared and ordained as follows:

§ 1 EXISTING RIGHTS, ACTIONS AND CONTRACTS SAVED. No existing rights, actions, suits, proceedings, contracts or claims shall be affected by a change in the form of government, but all shall continue as if no such change had taken place; and all process which may have been issued under the authority of the Territory of Washington previous to its admission into the Union shall be as valid as if issued in the name of the state.

§ 2 LAWS IN FORCE CONTINUED. All laws now in force in the Territory of Washington, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature: *Provided*, That this section shall not be so construed as to validate any act of the legislature of Washington Territory granting shore or tide lands to any person, company or any municipal or private corporation.

§ 3 DEBTS, FINES, ETC., TO INURE TO THE STATE. All debts, fines, penalties and forfeitures, which have accrued, or may hereafter accrue, to the Territory of Washington, shall inure to the State of Washington.

§ 4 RECOGNIZANCES. All recognizances heretofore taken, or which may be taken before the change from a territorial to a state government shall remain valid, and shall pass to, and may be prosecuted in the name of the state; and all bonds executed to the Territory of Washington or to any county or municipal corporation, or to any officer or court in his or its official capacity, shall pass to the state authorities and their successors in office, for the uses therein expressed, and may be sued for and recovered accordingly, and all the estate, real, personal and mixed, and all judgments decrees, bonds, specialties, choses in action, and claims or debts, of whatever description, belonging to the Territory of Washington, shall inure to and vest in the State of Washington, and may be sued for and recovered in the same manner, and to the same extent, by the State of Washington, as the same could have been by the Territory of Washington.

§ 5 CRIMINAL PROSECUTIONS AND PENAL ACTIONS. All criminal prosecutions and penal actions which may have arisen, or which may arise, before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment, and execution in the name of the state. All offenses committed against the laws of the Territory of Washington, before the change from a territorial to a state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Washington, with like

effect as though such change had not taken place; and all penalties incurred shall remain the same as if this Constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the Territory of Washington, at the time of the change from a territorial to a state government, shall be continued, and transferred to the court of the state having jurisdiction of the subject matter thereof.

§ 6 RETENTION OF TERRITORIAL OFFICERS. All officers now holding their office under the authority of the United States, or of the Territory of Washington, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state.

§ 7 CONSTITUTIONAL OFFICERS, WHEN ELECTED. All officers provided for in this Constitution including a county clerk for each county when no other time is fixed for their election, shall be elected at the election to be held for the adoption of this Constitution on the first Tuesday of October, 1889.

§ 8 CHANGE OF COURTS——TRANSFER OF CAUSES. Whenever the judge of the superior court of any county, elected or appointed under the provisions of this Constitution shall have qualified the several causes then pending in the district court of the territory except such causes as would have been within the exclusive jurisdiction of the United States district court had such court existed at the time of the commencement of such causes, within such county, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the superior court for such county. And where the same judge is elected for two or more counties, it shall be the duty of the clerk of the district court having custody of such papers and records to transmit to the clerk of such county, or counties, other than that in which such records are kept the original papers in all cases pending in such district court and belonging to the jurisdiction of such county or counties together with transcript of so much of the records of said district court as relate to the same; and until the district courts of the Territory shall be superseded in manner aforesaid, the said district courts and the judges thereof, shall continue with the same jurisdiction and powers, to be exercised in the same judicial districts respectively, as heretofore constituted under the laws of the Territory. Whenever a quorum of the judges of the supreme court of the state shall have been elected and qualified, the causes then pending in the supreme court of the Territory, except such causes as would have been within the exclusive jurisdiction of the United States, circuit court had such court existed at the time of the commencement of such causes, and the papers, records and proceedings of said court and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the state, and until so superseded, the supreme court of the Territory and the judges thereof, shall continue with like powers and jurisdiction as if this Constitution had not been adopted.

§ 9 SEALS OF COURTS AND MUNICIPALITIES. Until otherwise provided by law, the seal now in use in the supreme court of the Territory shall be the seal of the supreme court of the state. The seals of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington with the words: "Seal of the Superior Court of _____ county" surrounding the vignette. The seal of municipalities, and of all county officers of the Territory, shall be the seals of such municipalities, and county officers respectively under the state, until otherwise provided by law.

§ 10 PROBATE COURT, TRANSFER OF. When the state is admitted into the Union, and the superior courts in the respective counties organized, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein, shall, upon the expiration of the term of office of the probate judges, on the second Monday in January, 1891, pass into the jurisdiction and possession of the superior court of the same county created by this Constitution, and the said court shall proceed to final judgment or decree, order of other determination in the several matters and causes, as the territorial probate court might have done, if this Constitution had not been adopted. And until the expiration of the term of office of the probate judges, such probate judges shall perform the duties now imposed upon them by the laws of the Territory. The superior courts shall have appellate and revisory jurisdiction over the decisions of the probate courts, as now provided by law, until such latter courts expire by limitation.

§ 11 DUTIES OF FIRST LEGISLATURE. The legislature, at its first session, shall provide for the election of all officers whose election is not provided for elsewhere in this Constitution, and fix the time for the commencement and duration of their term.

§ 12 ELECTION CONTESTS FOR SUPERIOR JUDGES, HOW DECIDED. In case of a contest of election between candidates, at the first general election under this Constitution, for judges of the superior courts, the evidence shall be taken in the manner prescribed by the Territorial laws, and the testimony so taken shall be certified to the secretary of state; and said officer, together with the governor and treasurer of state, shall review the evidence and determine who is entitled to the certificate of election.

§ 13 REPRESENTATION IN CONGRESS. One representative in the congress of the United States shall be elected from the state at large, at the first election provided for in this Constitution; and, thereafter, at such times and places, and in such manner, as may be prescribed by law. When a new apportionment shall be made by congress, the legislature shall divide the state into congressional districts, in accordance with such

apportionment. The vote cast for representative in congress, at the first election, shall be canvassed, and the result determined in the manner provided for by the laws of the Territory for the canvass of the vote for delegate in congress.

§ 14 DURATION OF TERM OF CERTAIN OFFICERS. All district, county and precinct officers, who may be in office at the time of the adoption of this Constitution, and the county clerk of each county elected at the first election, shall hold their respective offices until the second Monday of January, A. D., 1891, and until such time as their successors may be elected and qualified, in accordance with the provisions of this Constitution; and the official bonds of all such officers shall continue in full force and effect as though this Constitution had not been adopted. And such officers shall continue to receive the compensation now provided, until the same be changed by law.

§ 15 ELECTION ON ADOPTION OF CONSTITUTION, HOW TO BE CONDUCTED. The election held at the time of the adoption of this Constitution shall be held and conducted in all respects according to the laws of the Territory, and the votes cast at said election for all officers (where no other provisions are made in this Constitution), and for the adoption of this Constitution and the several separate articles and the location of the state capital, shall be canvassed and returned in the several counties in the manner provided by Territorial law, and shall be returned to the secretary of the Territory in the manner provided by the Enabling Act.

§ 16 WHEN CONSTITUTION TO TAKE EFFECT. The provisions of this Constitution shall be in force from the day on which the president of the United States shall issue his proclamation declaring the State of Washington admitted into the Union, and the terms of all officers elected at the first election under the provisions of this Constitution shall commence on the Monday next succeeding the issue of said proclamation, unless otherwise provided herein.

§ 17 SEPARATE ARTICLES. The following separate articles shall be submitted to the people for adoption or rejection at the election for the adoption of this Constitution:

SEPARATE ARTICLE, NO. 1

"All persons male and female of the age of twenty–one years or over, possessing the other qualifications, provided by this Constitution, shall be entitled to vote at all elections."

SEPARATE ARTICLE, NO. 2

"It shall not be lawful for any individual, company or corporation, within the limits of this state, to manufacture, or cause to be manufactured, or to sell, or offer for sale, or in any manner dispose of any alcoholic, malt or spirituous liquors, except for medicinal, sacramental or scientific purposes."

If a majority of the ballots cast at said election on said separate articles be in favor of the adoption of either of said separate articles, then such separate article so receiving a majority shall become a part of this Constitution and shall govern and control any provision of the Constitution in conflict therewith.

§ 18 BALLOT. The form of ballot to be used in voting for or against this Constitution, or for or against the separate articles, or for the permanent location of the seat of government, shall be:

1. For the Constitution _____
   Against the Constitution _____
2. For Woman Suffrage Article _____
   Against Woman Suffrage Article _____
3. For Prohibition Article _____
   Against Prohibition Article _____
4. For the Permanent Location of the Seat of Government (Name of place voted for) _____

The result of the election was against both woman suffrage and prohibition.

§ 19 APPROPRIATION. The legislature is hereby authorized to appropriate from the state treasury sufficient money to pay any of the expenses of this convention not provided for by the Enabling Act of Congress.

ARTICLE XXVIII
COMPENSATION OF STATE OFFICERS

§ 1 COMPENSATION OF STATE OFFICERS. All elected state officials shall each severally receive such compensation as the legislature may direct. The compensation of any state officer shall not be increased or diminished during his term of office, except that the legislature, at its thirty–first regular session, may increase or diminish the compensation of all state officers whose terms exist on the Thursday after the second Monday in January, 1949.

The provisions of sections 14, 16, 17, 19, 29, 21, and 22 of Article III and section 23 of Article II in so far as they are inconsistent herewith, are hereby repealed. [**AMENDMENT 20,** 1947 Senate Joint Resolution No. 4, p 1371. Approved November 2, 1948.]

Authorizing compensation increase during term: Art. 30 § 1.
Compensation of state officers: RCW 43.03.010.

ARTICLE XXIX
INVESTMENTS OF PUBLIC PENSION AND RETIREMENT FUNDS

§ 1 MAY BE INVESTED AS AUTHORIZED BY LAW. Notwithstanding the provisions of sections 5, and 7 of Article VIII and section 9 of Article XII or any other section or article of the Constitution of the state of Washington, the moneys of any public pension or retirement fund may be invested as authorized by law. [**AMENDMENT 49,** 1967 Senate Joint Resolution No. 5. Approved November 5, 1968.]

ARTICLE XXX
COMPENSATION OF PUBLIC OFFICERS

§ 1 AUTHORIZING COMPENSATION INCREASE DURING TERM. The compensation of all elective and appointive state, county, and municipal officers who do not fix their own compensation, including judges of courts of record and the justice courts may be increased during their terms of office to the end that such officers and judges shall each severally receive compensation for their services in accordance with the law in effect at the time the services are being rendered.

The provisions of section 25 of Article II (Amendment 35), section 25 of Article III (Amendment 31), section 13 of Article IV, section 8 of Article XI, and section 1 of Article XXVIII (Amendment 20) insofar as they are inconsistent herewith are hereby repealed. [**AMENDMENT 54,** 1967 House Joint Resolution No. 13. Approved November 5, 1968.]

Reviser's Note: (1) Amendment 49 (1967 SJR No. 5) and Amendment 54 (1967 HJR No. 13) each added a new Article XXIX to the Constitution. Amendment 49 is carried herein as Article XXIX while Amendment 54 has been herein redesignated as Article XXX.

(2) The name of this article has been supplied by the reviser.

ARTICLE XXXI
SEX EQUALITY——RIGHTS AND RESPONSIBILITIES

§ 1 Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

§ 2 The legislature shall have the power to enforce by appropriate legislation, the provisions of this article. [**AMENDMENT 61,** 1972 House Joint Resolution No. 61, p 526. Approved November, 1972.]

Reviser's Note: The name of this article has been supplied by the reviser.

CERTIFICATE

We, the undersigned, members of the convention to form a Constitution for the State of Washington; which is to be submitted to the people for their adoption or rejection, do hereby declare this to be the Constitution formed by us, and in testimony thereof, do hereunto set our hands, this twenty-second day of August *Anno Domini*, one thousand eight hundred and eighty-nine.

John P. Hoyt,
President
J. J. Browne
N. G. Blalock
John F. Gowey
Frank M. Dallam
James Z. Moore
E. H. Sullivan
George Turner
Austin Mires
M. M. Godman
Gwin Hicks
Wm. F. Prosser
C. H. Warner
J. P. T. McCroskey
S. G. Cosgrove
Thos. Hayton
Charles P. Coey
Edward Eldridge
George H. Stevenson
Louis Sohns
A. A. Lindsley
J. J. Weisenburger
P. C. Sullivan
R. S. More
Thomas T. Minor
J. J. Travis
Arnold J. West
Charles T. Fay
George W. Tibbetts
H. W. Fairweather
Thomas C. Griffitts
J. F. Van Name
Albert Schooley
H. C. Willison
T. M. Reed
Robert F. Sturdevant
John A. Shoudy
Allen Weir
W. B. Gray
Trusten P. Dyer
Geo. H. Jones
B. L. Sharpstein
H. M. Lillis
James A. Burk
John McReavy
R. O. Dunbar
Morgan Morgans
Jas. Power
B. B. Glascock
O. A. Bowen
Sam'l H. Berry
D. J. Crowley
J. T. McDonald
John M. Reed
S. H. Manly
Richard Jeffs
Francis Henry
George Comegys
Oliver H. Joy
David E. Durie
D. Buchanan
John R. Kinnear
Sylvious A. Dickey
Henry Winsor
Theodore L. Stiles
Harrison Clothier
Matt. J. McElroy
J. T. Eshelman
Robert Jamieson
Hiram E. Allen
H. F. Suksdorf
J. C. Kellogg
J. A. Hungate

Attest: JNO. I. BOOGE, Chief Clerk.

The above names are not in the order in which subscribed to the Constitution.

(B) Constitutional Amendments (in order of adoption)

Amendment No.		
1	Art. 16 § 5	Investment of school fund.
2	Art. 6 § 1	Qualifications of voters.
3	Art. 7 § 2	(original) Taxation——Uniformity and equality——Exemption.
4	Art. 1 § 11	Religious freedom.
5	Art. 6 § 1	Qualifications of electors.
6	Art. 3 § 10	Vacancy in office of governor.
7	Art. 2 § 1	Legislative powers, where vested.
8	Art. 1 §§ 33, 34	Recall of elective officers.
9	Art. 1 § 16	Eminent domain.
10	Art. 1 § 22	Rights of the accused.
11	Art. 8 § 4	Moneys disbursed only by appropriation.
12	Art. 11 § 5	County government.
13	Art. 2 § 15	Vacancies in legislature.
14	Art. 7 § 1	Taxation (and repealing Art. 7 §§ 1-4.)
15	Art. 15 § 1	Harbor line commission and restraint on disposition.
16	Art. 12 § 11	Stockholder liability.
17	Art. 7 § 2	Forty mill limit.
18	Art. 2 § 40	Highway funds.
19	Art. 7 § 3	Taxation of federal agencies and property.
20	Art. 28 § 1	Compensation of state officers.
21	Art. 11 § 4	County government and township organization.
22	Art. 11 § 7	Tenure of office limited to two terms. (Repealed.)
23	Art. 11 § 16	Combined city and county.
24	Art. 2 § 33	Alien ownership.
25	Art. 4 § 3 (a)	Retirement of supreme court and superior court judges.

Amendment No.		
26	Art. 2 § 41	Laws, effective date. Initiative, Referendum——Amendment or repeal.
27	Art. 8 § 6	Limitations upon municipal indebtedness.
28	Art. 4 § 6	Jurisdiction of superior courts.
	Art. 4 § 10	Justices of the peace.
29	Art. 2 § 33	Alien ownership.
30	Art. 2 § 1A	Initiative and referendum, signatures required.
31	Art. 3 § 25	Qualifications, compensation, offices which may be abolished.
32	Art. 2 § 15	Vacancies in legislature and in partisan county elective office.
33	Art. 24 § 1	State boundaries.
34	Art. 1 § 11	Religious freedom.
35	Art. 2 § 25	Extra compensation prohibited.
36	Art. 2 § 1	Legislative powers, where vested (publicity of laws referred to the people).
37	Art. 23 § 1	(Amendments to Constitution) How made.
38	Art. 4 § 2 (a)	Temporary performance of judicial duties.
39	Art. 2 § 42	Governmental continuity during emergency periods.
40	Art. 11 § 10	Incorporation of municipalities.
41	Art. 4 § 29	Election of superior court judges.
42		(Repeals Art. 2 § 33 and Amendments 24 and 29.)
43	Art. 9 § 3	(Schools) Funds for support.
44	Art. 16 § 5	Investment of permanent common school fund.
45	Art. 8 § 8	Port expenditures——Industrial development——Promotion.
46	Art. 6 § 1A	Voter qualifications for presidential elections.
47	Art. 7 § 10	Retired persons property tax exemption.
48	Art. 8 § 3	Special indebtedness, how authorized.
49	Art. 29 § 1	(Investments of public pension and retirement funds.) May be invested as authorized by law.
50	Art. 4 § 30	Court of appeals.
51	Art. 8 § 9	State building authority.
52	Art. 2 § 15	Vacancies in legislature and in partisan county elective office.
	Art. 11 § 6	Vacancies in township, precinct or road district offices.
53	Art. 7 § 11	Taxation based on actual use.
54	Art. 30 § 1	(Compensation of public officials) Authorizing compensation increase during term.
55	Art. 7 § 2	Limitation on levies.
56	Art. 2 § 24	Lotteries and divorce.
57	Art. 11 §§ 5, 8	County government. Salaries and limitations affecting.
58	Art. 11 § 16	Combined city-county.
59	Art. 7 § 2	Limitation on levies.
60	Art. 8 §§ 1, 3	State debt. Special indebtedness, how authorized.
61	Art. 31 §§ 1, 2	Equality not denied because of sex. Enforcement power of legislature.

AMENDMENT 1

Art. 16 § 5 INVESTMENT OF SCHOOL FUND. None of the permanent school fund of this state shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds. [1893 p 9 § 1. Adopted November, 1894.]

Art. 16 § 5 was later amended by Amendment 44.

AMENDMENT 2

Art. 6 § 1 QUALIFICATIONS OF VOTERS. All male persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: *Provided*, That Indians not taxed shall never be allowed the elective franchise: *And further provided*, That this amendment shall not effect [affect] the right of franchise of any person who is now a qualified elector of this state. The legislature shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provisions of this section. [1895 p 60 § 1. Approved November, 1896.]

Art. 6 § 1 was later amended by Amendment 5.

AMENDMENT 3

Art. 7 § 2, was amended by adding the following proviso: "*And provided further*, That the legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three hundred dollars ($300) for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual and *bona fide* owner." [1889 p 121 § 1. Approved November, 1900.]

Original Art. 7 § 2 and Amendment 3 were stricken by Amendment 14.

AMENDMENT 4

Art. 1 § 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. *Provided, however*, That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [1903 p 283 § 1. Approved November, 1904.]

Art. 1 § 11 was later amended by Amendment 34.

AMENDMENT 5

Art. 6 was amended by striking from said article all of sections one (1) and two (2) and inserting in lieu thereof the following, to be known as section one (1):

§ 1 QUALIFICATIONS OF ELECTORS. All person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: *Provided*, That Indians not taxed shall never be allowed the elective franchise: *And further provided*, That this amendment shall not affect the rights of franchise of any person who is now a qualified elector of this state. The legislative authority shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provision of this section. There shall be no denial of the elective franchise at any election on account of sex. [1909 p 26 § 1. Approved November, 1910.]

Prior amendment of Art. 6, see Amendment 2.

AMENDMENT 6

Art. 3 § 10 VACANCY IN OFFICE OF GOVERNOR. In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor; and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of the governor shall devolve upon the secretary of state. In addition to the line of succession to the office and duties of governor as hereinabove indicated, if the necessity shall arise, in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor and in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. In case of the death, disability, failure or refusal of the person regularly elected to the office of governor to qualify at the time provided by law, the duties of the office shall devolve upon the person regularly elected to and qualified for the office of lieutenant governor, who shall act as governor until the disability be removed, or a governor be elected; and in case of the death, disability, failure or refusal of both the governor and the lieutenant governor elect to qualify, the duties of the governor shall devolve upon the secretary of state; and in addition to the line of succession to the office and duties of governor as hereinabove indicated, if there shall be the failure or refusal of any officer named above to qualify, and if the necessity shall arise by reason thereof, then in that event in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. Any person succeeding to the office of governor as in this section provided, shall perform the duties of such office only until the disability be removed, or a governor be elected and qualified; and if a vacancy occur more than thirty days before the next general election occurring within two years after the commencement of the term, a person shall be elected at such election to fill the office of governor for the remainder of the unexpired term. [1909 p 642 § 1. Approved November, 1910.]

AMENDMENT 7

Article 2 was amended by striking all of sections 1 and 31, and inserting in lieu thereof as section 1 the following, so that the same shall read as follows:

Art. 2 § 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less

than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measure shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

Portion of subdivision (a) is superseded by the 30th amendment.

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition.

Portion of subdivision (b) is superseded by the 30th amendment.

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

Subdivision (c) is superseded by the 26th amendment.

(d) The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: Provided, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

The legislature shall prove methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred, so that each voter of the state shall receive the publication at least fifty days before the election at which they are to be voted upon. [1911 p 136 § 1. Approved November, 1912.]

Last paragraph is superseded by the 36th amendment.

AMENDMENT 8

Art. I was amended by adding the two following sections:

§ 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election is filed with the

officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided.

§ 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty–three (33) of this article, and to facilitate its operation and effect without delay: *Provided*, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of law–making nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty–five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty–five per cent. [1911 p 504 § 1. Approved November, 1912.]

AMENDMENT 9

Art. 1 § 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right–of–way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, that the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [1919 p 385 § 1. Approved November, 1920.]

AMENDMENT 10

Art. 1 § 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided*, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [1921 p 79 § 1. Approved November, 1922.]

AMENDMENT 11

Art. 8 § 4 MONEYS DISBURSED ONLY BY APPROPRIATIONS. No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum. [1921 p 80 § 1. Approved November, 1922.]

AMENDMENT 12

Art. 11 § 5 COUNTY GOVERNMENT. The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office: *Provided*, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys which may be paid to them, or officially come into their possession. [1923 p 254 § 1. Approved November, 1924.]

Art. 11 § 5 was later amended by Amendment 57.

AMENDMENT 13

Art. 2 § 15 VACANCIES IN LEGISLATURE. Such vacancies as may occur in either house of the legislature shall be filled by appointment by the board of county

commissioners of the county in which the vacancy occurs, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: *Provided*, That in case of a vacancy occurring in the office of joint senator, the vacancy shall be filled by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial district. [1929 p 690. Approved November, 1930.]

Art. 2 § 15 was later amended by Amendments 32 and 52.

AMENDMENT 14

Article 7 is amended by striking out all of sections 1, 2, 3 and 4, and inserting in lieu thereof the following, to be known as section 1:

Art. 7 § 1 TAXATION. The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: *Provided*, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation. Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power by appropriate legislation, to exempt personal property to the amount of three hundred ($300.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner. [1929 p 499 § 1: Approved November, 1930. New § 2 added through Amendment 17: Approved November, 1944. New § 3 added through Amendment 19: Approved November, 1946.]

AMENDMENT 15

Art. 15 § 1 HARBOR LINE COMMISSION AND RESTRAINT ON DISPOSITION. The legislature shall provide for the appointment of a commission whose duty it shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side. Any harbor line so located or established may thereafter be changed, relocated or reestablished by the commission pursuant to such provision as may be made therefor by the legislature. The state shall never give, sell or lease to any private person, corporation, or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high water, and within not less than fifty feet nor more than two thousand feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its rights to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [1931 p 417 § 1. Approved November, 1932.]

AMENDMENT 16

Art. 12 § 11 STOCKHOLDER LIABILITY. No corporation, association, or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any banking or insurance corporation or joint stock association shall be individually and personally liable equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.

The legislature may provide that stockholders of banking corporations organized under the laws of this state which shall provide and furnish, either through membership in the Federal Deposit Insurance Corporation, or through membership in any other instrumentality of the government of the United States, insurance or security for the payment of the debts and obligations of such banking corporation equivalent to that required by the laws of the United States to be furnished and provided by national banking associations, shall be relieved from liability for the debts and obligations of such banking corporation to the same extent that stockholders of national banking associations are relieved from liability for the debts and obligations of such national banking associations under the laws of the United States. [1939 Senate Joint Resolution No. 8, p 1024. Approved November, 1940.]

AMENDMENT 17

Art. 7 § 2 FORTY MILL LIMIT. Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed forty mills on the dollar of assessed valuation, which assessed valuation shall be fifty per centum of the true and fair value of such property in money: *Provided, however*, That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only.

(a) By any taxing district when specifically authorized so to do by a majority of at least three–fifths of the electors thereof voting on the proposition to levy such additional tax submitted not more than twelve months prior to the date on which the proposed levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of such taxing district, at which election the number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election;

(b) By any taxing district otherwise authorized by law to issue general obligation bonds for capital purposes, for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment, when authorized so to do by majority of at least three–fifths of the electors thereof voting on the proposition to issue such bonds and to pay the principal and interest thereon by an annual tax levy in excess of the limitation herein provided during the term of such bonds, submitted not oftener than twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, at which election the total number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election: *Provided*, That any such taxing district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitation provided for herein, *and Provided, further*, That the provisions of this section shall also be subject to the limitations contained in Article VIII, Section 6, of this Constitution.

(c) By the state or any taxing district for the purpose of paying the principal or interest on general obligation bonds outstanding on December 6, 1934; or for the purpose of preventing the impairment of the obligation of a contract when ordered so to do by a court of last resort. [1943 House Joint Resolution No. 1, p 936. Approved November, 1944.]

Art. 7 § 2 was later amended by Amendments 55 and 59.

AMENDMENT 18

Art. 2 § 40 HIGHWAY FUNDS. All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue intended to be used for highway purposes, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. Such highway purposes shall be construed to include the following:

(a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets;

(b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights–of–way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street;

(c) The payment or refunding of any obligation of the State of Washington, or any political subdivision thereof, for which any of the revenues described in section 1 may have been legally pledged prior to the effective date of this act;

(d) Refunds authorized by law for taxes paid on motor vehicle fuels;

(e) The cost of collection of any revenues described in this section:

Provided, That this section shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway purposes, or apply to vehicle operator's license fees or any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles. [1943 House Joint Resolution No. 4, p 938. Approved November, 1944.]

AMENDMENT 19

Art. 7 § 3 TAXATION OF FEDERAL AGENCIES AND PROPERTY. The United States and its agencies and instrumentalities, and their property, may be taxed under any of the tax laws of this state, whenever and in such manner as such taxation may be authorized or permitted under the laws of the United States, notwithstanding anything to the contrary in the Constitution of this state. [1945 House Joint Resolution No. 9, p 932. Approved November, 1946.

AMENDMENT 20

Art. 28 § 1 COMPENSATION OF STATE OFFICERS. All elected state officials shall each severally receive such compensation as the legislature may direct. The compensation of any state officer shall not be increased or diminished during his term of office, except that the legislature, at its thirty–first regular session, may increase or diminish the compensation of all state officers whose terms exist on the Thursday after the second Monday in January, 1949.

The provisions of sections 14, 16, 17, 19, 20, 21, and 22 of Article III and section 23 of Article II in so far as they are inconsistent herewith, are hereby repealed. [1947 Senate Joint Resolution No. 4, p 1371. Approved November 2, 1948.]

Authorizing compensation increase during term: See Amendment 54.

AMENDMENT 21

Art. 11 § 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION. The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general law.

Any county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state, and for such purpose the legislative authority of such county may cause an election to be had, at which election there shall be chosen by the qualified voters of said county not less than fifteen (15) nor more than twenty–five (25) freeholders thereof, as determined by the legislative authority, who shall have been residents of said county for a period of at least five (5) years preceding their election and who are themselves qualified electors, whose duty it shall be to convene within thirty (30) days after their election and prepare and propose a charter for such county. Such proposed charter shall be submitted to the qualified electors of said county, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said county and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, or any existing form of county government, and all special laws inconsistent with such charter. Said proposed charter shall be published in two (2) legal newspapers published in said county, at least once a week for four (4) consecutive weeks prior to the day of submitting the same to the electors for their approval as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election and shall be given for at least ten (10) days before the day of election in all election districts of said county. Said elections may be general or special elections and except as herein provided, shall be governed by the law regulating and controlling general or special elections in said county. Such charter may be amended by proposals therefor submitted by the legislative authority of said county to the electors thereof at any general election after notice of such submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others.

Any home rule charter proposed as herein provided, may provide for such county officers as may be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation, but shall not affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts.

Notwithstanding the foregoing provision for the calling of an election by the legislative authority of such county for the election of freeholders to frame a county charter, registered voters equal in number to ten (10) per centum of the voters of any such county voting at the last preceding general election, may at any time propose by petition the calling of an election of freeholders. The petition shall be filed with the county auditor of the county at least three (3) months before any general election and the proposal that a board of freeholders be elected for the purpose of framing a county charter shall be submitted to the vote of the people at said general election, and at the same election a board of freeholders of not less than fifteen (15) or more than twenty–five (25), as fixed in the petition calling for the election, shall be chosen to draft the new charter. The procedure for the nomination of qualified electors as candidates for said board of freeholders shall be prescribed by the legislative authority of the county, and the procedure for the framing of the charter and the submission of the charter as framed shall be the same as in the case of a board of freeholders chosen at an election initiated by the legislative authority of the county.

In calling for any election of freeholders as provided in this section, the legislative authority of the county shall apportion the number of freeholders to be elected in accordance with either the legislative districts or the county commissioner districts, if any, within said county, the number of said freeholders to be elected from each of said districts to be in proportion to the population of said districts as nearly as may be.

Should the charter proposed receive the affirmative vote of the majority of the electors voting thereon, the legislative authority of the county shall immediately call such special election as may be provided for therein, if any, and the county government shall be established in accordance with the terms of said charter not more than six (6) months after the election at which the charter was adopted.

The terms of all elective officers, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, who are in office at the time of the adoption of a Home Rule Charter shall terminate as provided in the charter. All appointive officers in office at the time the charter goes into effect, whose positions are not abolished thereby, shall continue until their successors shall have qualified.

After the adoption of such charter, such county shall continue to have all the rights, powers, privileges and benefits then possessed or thereafter conferred by general law. All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court and the justices of the peace, shall be vested in the legislative authority of the county unless expressly vested in specific officers

by the charter. The legislative authority may by resolution delegate any of its executive or administrative powers, authority or duties not expressly vested in specific officers by the charter, to any county officer or officers or county employee or employees.

The provisions of sections 5, 6, 7, and the first sentence of section 8 of this Article as amended shall not apply to counties in which the government has been established by charter adopted under the provisions hereof. The authority conferred on the board of county commissioners by Section 15 of Article II as amended, shall be exercised by the legislative authority of the county. [1947 Senate Joint Resolution No. 5, p 1372. Approved November 2, 1948.]

AMENDMENT 22

Section 7, Article XI, Constitution of the State of Washington is hereby repealed. [1947 House Joint Resolution No. 4, p 1385. Approved November 2, 1948.]

AMENDMENT 23

Art. 11 § 16 COMBINED CITY AND COUNTY. The legislature shall, by general law, provide for the formation of combined city and county municipal corporations, and for the manner of determining the territorial limits thereof, each of which shall be known as a "city and county," and, when organized, shall contain a population of at least three hundred thousand (300,000) inhabitants. No such city and county shall be formed except by a majority vote of the qualified electors of the area proposed to be included therein and also by a majority vote of the qualified electors of the remainder of that county from which such area is to be taken. Any such city and county shall be permitted to frame a charter for its own government, and amend the same, in the manner provided for cities by section 10 of this article: *Provided, however,* That the first charter of such city and county shall be framed and adopted in a manner to be specified in the general law authorizing the formation of such corporations: *Provided further,* That every such charter shall designate the respective officers of such city and county who shall perform the duties imposed by law upon county officers. Every such city and county shall have and enjoy all rights, powers and privileges asserted in its charter, not inconsistent with general laws, and in addition thereto, such rights, powers and privileges as may be granted to it, or possessed and enjoyed by cities and counties of like population separately organized.

No county or county government existing outside the territorial limits of such county and city shall exercise any police, taxation or other powers within the territorial limits of such county and city, but all such powers shall be exercised by the city and county and the officers thereof, subject to such constitutional provisions and general laws as apply to either cities or counties: *Provided,* That the provisions of sections 2, 3, 4, 5, 6, 7, and 8 of this article shall not apply to any such city and county: *Provided further,* That the salary of any elective or appointive officer of a city and county shall not be changed after his election or appointment or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed. In case an existing county is divided in the formation of a city and county, such city and county shall be liable for a just proportion of the existing debts or liabilities of the former county, and shall account for and pay the county remaining a just proportion of the value of any real estate or other property owned by the former county and taken over by the county and city, the method of determining such just proportion to be prescribed by general law, but such division shall not affect the rights of creditors. The officers of a city and county, their compensation, qualifications, term of office and manner of election or appointment shall be as provided for in its charter, subject to general laws and applicable constitutional provision. [1947 House Joint Resolution No. 13, p 1386. Approved November 2, 1948.]

Art. 11 § 16 was later amended by Amendment 58.

AMENDMENT 24

[Repealed by **AMENDMENT 42,** 1965 ex.s. Senate Joint Resolution No. 20, p 2816. Approved November 8, 1966.]

Text of Amendment 24——Art. 2 § 33 ALIEN OWNERSHIP——*The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and in all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom: And provided further, That the provisions of this section shall not apply to the citizens of such of the Provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.* [1949 Senate Joint Resolution No. 9, p 999. Approved November 7, 1950.]

Art. 2 § 33 was also amended by Amendment 29.

AMENDMENT 25

Art. 4 was amended by adding the following section:

Art. 4 § 3 (a) RETIREMENT OF SUPREME COURT AND SUPERIOR COURT JUDGES. A judge of the supreme court or the superior court shall retire from judicial office at the end of the calendar year in which he attains the age of seventy–five years. The legislature may, from time to time, fix a lesser age for mandatory retirement, not earlier than the end of the calendar year in which any such judge attains the age of seventy years, as the legislature deems proper. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to, or at the time of, approval and ratification of this provision. Notwithstanding the limitations of this section, the legislature may by general law authorize or require the

retirement of judges for physical or mental disability, or any cause rendering judges incapable of performing their judicial duties. [1951 House Joint Resolution No. 6, p 960. Approved November 4, 1952.]

AMENDMENT 26

Art. 2 was amended by adding the following section:

Art. 2 § 41 LAWS, EFFECTIVE DATE. INITIATIVE, REFERENDUM——AMENDMENT OR REPEAL. No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided*, That any such act, law or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two–thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. These provisions supersede the provisions of subsection (c) of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [1951 Substitute Senate Joint Resolution No. 7, p 959. Approved November 4, 1952.]

Reviser's note: In third sentence, comma between "general" and "regular" omitted in conformity with enrolled resolution.

AMENDMENT 27

Art. 8 § 6 LIMITATIONS UPON MUNICIPAL INDEBTEDNESS. No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding one and one–half percentum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of three–fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five percentum on the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes: *Provided*, That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly county, city, town, school district, or other municipal purposes: *Provided further*, That (a) any city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five percentum additional for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipality and (b) any school district with such assent, may be allowed to become indebted to a larger amount but not exceeding five percentum additional for capital outlays. [1951 House Joint Resolution No. 8, p 961. Approved November 4, 1952.]

AMENDMENT 28

Art. 4 § 6 JURISDICTION OF SUPERIOR COURTS. The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine and in all other cases in which the demand or the value of the property in controversy amounts to one thousand dollars, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

Art. 4 § 10 JUSTICES OF THE PEACE. The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of peace: *Provided*, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed one thousand dollars, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use. [1951 Substitute House Joint Resolution No. 13, p 962. Approved November 4, 1952.]

AMENDMENT 29

[Repealed **AMENDMENT 42,** 1965 ex.s. Senate Joint Resolution No. 20, p 2816. Approved November 8, 1966.]

Text of Amendment 29——Art. 2 § 33 ALIEN OWNERSHIP——*The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom: And provided further, That the provisions of this section shall not apply to the citizens of such of the Provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state.* [1953 House Joint Resolution No. 16, p 853. Approved November 2, 1954.]

Prior amendment of Art. 2 § 33, see Amendment 24.

AMENDMENT 30

Art. 2 was amended by adding the following section:

Art. 2 § 1A INITIATIVE AND REFERENDUM, SIGNATURES REQUIRED. Hereafter, the number of valid signatures of legal voters required upon a petition for an initiative measure shall be equal to eight percentum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. Hereafter, the number of valid signatures of legal voters required upon a petition for a referendum of an act of the legislature or any part thereof, shall be equal to four percentum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. These provisions supersede the requirements specified in section 1 of this article as amended by the seventh amendment to the Constitution of this state. [1955 Senate Joint Resolution No. 4, p 1860. Approved November 6, 1956.]

AMENDMENT 31

Art. 3 § 25 QUALIFICATIONS, COMPENSATION, OFFICES WHICH MAY BE ABOLISHED. No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands. [1955 Senate Joint Resolution No. 6, p 1861. Approved November 6, 1956.]

Authorizing compensation increase during term: See Amendment 54.

AMENDMENT 32

Art. 2 § 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE. Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: *Provided,* That the person appointed to fill the vacancy must be from the same legislative district and the same political party as the legislator whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: *Provided,* That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the board of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [1955 Senate Joint Resolution No. 14, p 1862. Approved November 6, 1956.]

Prior amendment of Art. 2 § 15, see Amendment 13.

Later amendment of Art. 2 § 15, see Amendment 52.

AMENDMENT 33

Art. 24 § 1 STATE BOUNDARIES. The boundaries of the state of Washington shall be as follows: Beginning at a point in the Pacific ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia river thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty–sixth parallel of north latitude crosses said river near the mouth of the Walla Walla river; thence east on said forty–sixth parallel of latitude to the middle of the main channel of the Snoshone or Snake river, thence follow down the middle of the main channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river, thence due north to the forty–ninth parallel of north latitude, thence west along said forty–ninth parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent, that is to say to a point in longitude 123 degrees, 19 minutes and 15 seconds west, thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific ocean equidistant between Bonnilla point on Vancouver's island and Tatoosh island light house, thence running in a southerly course and parallel with the coast line,

keeping one marine league off shore to place of beginning; until such boundaries are modified by appropriate interstate compacts duly approved by the Congress of the United States. [1957 Senate Joint Resolution No. 10, p 1292. Approved November 4, 1958.]

AMENDMENT 34

Art. 1 § 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: *Provided, however*, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Prior amendment of Art. 1 § 11, see Amendment 4.

AMENDMENT 35

Art. 2 § 25 EXTRA COMPENSATION PROHIBITED. The legislature shall never grant any extra compensation to any public officer, agent, employee, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office. Nothing in this section shall be deemed to prevent increases in pensions after such pensions shall have been granted. [1957 Senate Joint Resolution No. 18, p 1301. Approved November 4, 1958.]

Increase during term in compensation of certain officers authorized: See Amendment 54.

AMENDMENT 36

Art. 2, section 1 (LEGISLATIVE POWERS, WHERE VESTED) as amended by **AMENDMENT 7** was amended by adding the following subsection:

Article 2, section 1, subsection (e). The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. These provisions supersede the provisions set forth in the last paragraph of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [1961 Senate Joint Resolution No. 9, p 2751. Approved November, 1962.]

AMENDMENT 37

Article XXIII, section 1. HOW MADE. Any amendment or amendments to this Constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes thereon, and be submitted to the qualified electors of the state for their approval, at the next general election; and if the people approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this Constitution, and proclamation thereof shall be made by the governor: *Provided*, That if more than one amendment be submitted, they shall be submitted in such a manner that the people may vote for or against such amendments separately. The legislature shall also cause notice of the amendments that are to be submitted to the people to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state: *Provided*, That failure of any newspaper to publish this notice shall not be interpreted as affecting the outcome of the election. [1961 Senate Joint Resolution No. 25, p 2753. Approved November, 1962.]

AMENDMENT 38

Art. 4 was amended by adding the following section:

Sec. 2 (a). TEMPORARY PERFORMANCE OF JUDICIAL DUTIES. When necessary for the prompt and orderly administration of justice a majority of the Supreme Court is empowered to authorize judges or retired judges of courts of record of this state, to perform, temporarily, judicial duties in the Supreme Court, and to authorize any superior court judge to perform judicial duties in any superior court of this state. [1961 House Joint Resolution No. 6, p 2757. Approved November, 1962.]

AMENDMENT 39

Article II, section 42. GOVERNMENTAL CONTINUITY DURING EMERGENCY PERIODS. The legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from enemy attack, shall have the power and the duty, immediately upon and after adoption of this amendment, to enact legislation providing for prompt and temporary succession to the powers and duties of

public offices of whatever nature and whether filled by election or appointment, the incumbents and legal successors of which may become unavailable for carrying on the powers and duties of such offices; the legislature shall likewise enact such other measures as may be necessary and proper for insuring the continuity of governmental operations during such emergencies. Legislation enacted under the powers conferred by this amendment shall in all respects conform to the remainder of the Constitution: *Provided*, That if, in the judgment of the legislature at the time of disaster, conformance to the provisions of the Constitution would be impracticable or would admit of undue delay, such legislation may depart during the period of emergency caused by enemy attack only, from the following sections of the Constitution:

Article 14, Sections 1 and 2, Seat of Government;

Article 2, Sections 8, 15 (Amendments 13 and 32), and 22, Membership, Quorum of Legislature and Passage of Bills;

Article 3, Section 10 (Amendment 6), Succession to Governorship: *Provided*, That the legislature shall not depart from Section 10, Article III, as amended by Amendment 6, of the state Constitution relating to the Governor's office so long as any successor therein named is available and capable of assuming the powers and duties of such office as therein prescribed;

Article 3, Section 13, Vacancies in State Offices;

Article 11, Section 6, Vacancies in County Office;

Article 11, Section 2, Seat of County Government;

Article 3, Section 24, State Records. [1961 House Joint Resolution No. 9, p 2758. Approved November, 1962.]

AMENDMENT 40

Article XI, Section 10. INCORPORATION OF MUNICIPALITIES. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to, and controlled by general laws. Any city containing a population of ten thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen by the qualified electors of said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in the daily newspaper of largest general circulation published in the area to be incorporated as a first class city under the charter or, if no daily newspaper is published therein, then in the newspaper having the largest general circulation within such area at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given as required by law. Said elections may be general or special elections, and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [1963 ex.s. Senate Joint Resolution No. 1, p 1526. Approved November 3, 1964.]

AMENDMENT 41

Art. 4 § 29 ELECTION OF SUPERIOR COURT JUDGES. Notwithstanding any provision of this Constitution to the contrary, if, after the last day as provided by law for the withdrawal of declarations of candidacy has expired, only one candidate has filed for any single position of superior court judge in any county containing a population of one hundred thousand or more, no primary or election shall be held as to such position, and a certificate of election shall be issued to such candidate. If, after any contested primary for superior court judge in any county, only one candidate is entitled to have his name printed on the general election ballot for any single position, no election shall be held as to such position, and a certificate of election shall be issued to such candidate: *Provided*, That in the event that there is filed with the county auditor within ten days after the date of the primary, a petition indicating that a write in campaign will be conducted for such single position and signed by one hundred registered voters qualified to vote with respect of the office, then such single position shall be subject to the general election. Provisions for the contingency of the death or disqualification of a sole candidate between the last date for withdrawal and the time when the election would be held but for the provisions of this section, and such other provisions as may be deemed necessary to

implement the provisions of this section, may be enacted by the legislature. [1965 ex.s. Substitute Senate Joint Resolution No. 6, p 2815. Approved November 8, 1966.]

AMENDMENT 42

Section 33, Article II and Amendments 24 and 29 amendatory thereof, of the Constitution of the State of Washington are each hereby repealed. [1965 ex.s. Senate Joint Resolution No. 20, p 2816. Approved November 8, 1966.]

AMENDMENT 43

Art. 9 § 3 FUNDS FOR SUPPORT. The principal of the common school fund as the same existed on June 30, 1965, shall remain permanent and irreducible. The said fund shall consist of the principal amount thereof existing on June 30, 1965, and such additions thereto as may be derived after June 30, 1965, from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of stone, minerals, or property other than timber and other crops from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating stone, minerals or property other than timber and other crops from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund.

There is hereby established the common school construction fund to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from the sale or appropriation of timber and other crops from school and state lands subsequent to June 30, 1965, other than those granted for specific purposes; (2) the interest accruing on said permanent common school fund from and after July 1, 1967, together with all rentals and other revenues derived therefrom and from lands and other property devoted to the permanent common school fund from and after July 1, 1967; and (3) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section during the period after the effective date of this amendment and prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. [1965 ex.s. Senate Joint Resolution No. 22, part 1, p 2817. Approved November 8, 1966.]

AMENDMENT 44

Art. 16 § 5 INVESTMENT OF PERMANENT COMMON SCHOOL FUND. The permanent common school fund of this state may be invested as authorized by law. [1965 ex.s. Senate Joint Resolution No. 22, part 2, p 2817. Approved November 8, 1966.]

Prior amendment of Art. 16 § 5, see Amendment 1.

AMENDMENT 45

Art. 8 § 8 PORT EXPENDITURES——INDUSTRIAL DEVELOPMENT——PROMOTION. The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 7 of this Article. [1965 ex.s. Senate Joint Resolution No. 25, p 2819. Approved November 8, 1966.]

AMENDMENT 46

Art. 6 § 1A VOTER QUALIFICATIONS FOR PRESIDENTIAL ELECTIONS. In consideration of those citizens of the United States who become residents of the state of Washington during the year of a presidential election with the intention of making this state their permanent residence, this section is for the purpose of authorizing such persons who can meet all qualifications for voting as set forth in section 1 of this article, except for residence, to vote for presidential electors or for the office of President and Vice-President of the United States, as the case may be, but no other: *Provided*, That such persons have resided in the state at least sixty days immediately preceding the presidential election concerned.

The legislature shall establish the time, manner and place for such persons to cast such presidential ballots.

[1965 ex.s. Substitute Joint House Resolution No. 4, p 2820. Approved November 8, 1966.]

AMENDMENT 47

Art. 7 § 10 RETIRED PERSONS PROPERTY TAX EXEMPTION. Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:

The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements. [1965 ex.s. House Joint Resolution No. 7, p 2821. Approved November 8, 1966.]

AMENDMENT 48

Art. 8 § 3 SPECIAL INDEBTEDNESS, HOW AUTHORIZED. Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and notice that such law will be submitted to the people shall be published at least four times during the four weeks next preceding the election in every legal newspaper in the state: *Provided*, That failure of any newspaper to publish this notice shall not be interpreted as affecting the outcome of the election. [1965 ex.s. House Joint Resolution No. 39, p 2822. Approved November 8, 1966.]

Art. 8 § 3 was later amended by Amendment 60.

AMENDMENT 49

The Constitution was amended by adding the following new article;

ARTICLE XXIX
INVESTMENTS OF PUBLIC PENSION AND RETIREMENT FUNDS

and section 1 thereof:

Art. 29 § 1 MAY BE INVESTED AS AUTHORIZED BY LAW. Notwithstanding the provisions of sections 5, and 7 of Article VIII and section 9 of Article XII or any other section or article of the Constitution of the state of Washington, the moneys of any public pension or retirement fund may be invested as authorized by law. [1967 Senate Joint Resolution No. 5, Approved November 5, 1968.]

AMENDMENT 50

Art. 4 was amended by adding the following section:

Art. 4 § 30 COURT OF APPEALS. (1) *Authorization.* In addition to the courts authorized in section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute.

(2) *Jurisdiction.* The jurisdiction of the court of appeals shall be as provided by statute or by rules authorized by statute.

(3) *Review of Superior Court.* Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute.

(4) *Judges.* The number, manner of election, compensation, terms of office, removal and retirement of judges of the court of appeals shall be as provided by statute.

(5) *Administration and Procedure.* The administration and procedures of the court of appeals shall be as provided by rules issued by the supreme court.

(6) *Conflicts.* The provisions of this section shall supersede any conflicting provisions in prior sections of this article. [1967 Senate Joint Resolution No. 6. Approved November 5, 1968.]

Note: This section which was adopted as Art. 4 § 29 is herein renumbered Art. 4 § 30 to avoid confusion with Amendment 41.

AMENDMENT 51

Art. 8 was amended by adding the following section:

Art. 8 § 9 STATE BUILDING AUTHORITY. The legislature is empowered notwithstanding any other provision in this Constitution, to provide for a state building authority in corporate and politic form which may contract with agencies or departments of the state government to construct upon land owned by the state or its agencies, or to be acquired by the state building authority, buildings and appurtenant improvements which such state agencies or departments are hereby empowered to lease at reasonable rental rates from the Washington state building authority for terms up to

seventy-five years with provisions for eventual vesting of title in the state or its agencies. This section shall not be construed as authority to provide buildings through lease or otherwise to nongovernmental entities. The legislature may authorize the state building authority to borrow funds solely upon its own credit and to issue bonds or other evidences of indebtedness therefor to be repaid from its revenues and to secure the same by pledging its income or mortgaging its leaseholds. The provisions of sections 1 and 3 of this article shall not apply to indebtedness incurred pursuant to this section. [1967 Senate Joint Resolution No. 17. Approved November 5, 1968.]

Note: This section which was adopted as Art. 8 § 8 is herein renumbered as Art. 8 § 9 to avoid confusion with Amendment 45.

AMENDMENT 52

Art. 2 § 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE. Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: *Provided*, That the person appointed to fill the vacancy must be from the same legislative district, county or county commissioner district and the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district, county or county commissioner district and of the same political party as the legislator or partisan county elective officer whose office has been vacated, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: *Provided*, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days hereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated.

Art. 11 § 6 VACANCIES IN TOWNSHIP, PRECINCT OR ROAD DISTRICT OFFICE. The board of county commissioners in each county shall fill all vacancies occurring in any township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified. [1967 Senate Joint Resolution No. 24. Approved November 5, 1968.]

Prior amendments of Art. 2 § 15, see Amendments 13 and 32.

AMENDMENT 53

Art. 7 was amended by adding the following section:

Art. 7 § 11 TAXATION BASED ON ACTUAL USE. Nothing in this Article VII as amended shall prevent the legislature from providing, subject to such conditions as it may enact, that the true and fair value in money (a) of farms, agricultural lands, standing timber and timberlands, and (b) of other open space lands which are used for recreation or for enjoyment of their scenic or natural beauty shall be based on the use to which such property is currently applied, and such values shall be used in computing the assessed valuation of such property in the same manner as the assessed valuation is computed for all property. [1967 House Joint Resolution No. 1. Approved November 5, 1968.]

AMENDMENT 54

The Constitution was amended by adding the following new article;

ARTICLE XXX

COMPENSATION OF PUBLIC OFFICERS

and section 1 thereof:

Art. 30 § 1 AUTHORIZING COMPENSATION INCREASE DURING TERM. The compensation of all elective and appointive state, county, and municipal officers who do not fix their own compensation, including judges of courts of record and the justice courts may be increased during their terms of office to the end that such officers and judges shall each severally receive compensation for their services in accordance with the law in effect at the time the services are being rendered.

The provisions of section 25 of Article II (Amendment 35), section 25 of Article III (Amendment 31), section 13 of Article IV, section 8 of Article XI, and section 1 of Article XXVIII (Amendment 20) insofar as they are inconsistent herewith are hereby repealed. [1967 House Joint Resolution No. 13. Approved November 5, 1968.]

Reviser's Note: (1) Amendment 49 (1967 SJR No. 5) and Amendment 54 (1967 HJR No. 13) each added a new Article XXIX to the Constitution. Amendment 49 is carried herein as Article XXIX while Amendment 54 has been herein redesignated as Article XXX.

(2) The name of this article has been supplied by the reviser.

AMENDMENT 55

Art. 7 § 2. LIMITATION ON LEVIES. Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax

levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed one percentum of the true and fair value of such property in money: *Provided, however*, That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only

(a) By any taxing district when specifically authorized so to do by a majority of at least three–fifths of the electors thereof voting on the proposition to levy such additional tax submitted not more than twelve months prior to the date on which the proposed levy is to be made and not oftener than twice in such twelve month period either at a special election or at the regular election of such taxing district, at which election the number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election;

(b) By any taxing district otherwise authorized by law to issue general obligation bonds for capital purposes, for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment, when authorized so to do by majority of at least three–fifths of the electors thereof voting on the proposition to issue such bonds and to pay the principal and interest thereon by an annual tax levy in excess of the limitation herein provided during the term of such bonds, submitted not oftener than twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, at which election the total number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election: *Provided*, That any such taxing district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitation provided for herein, *And Provided Further*, That the provisions of this section shall also be subject to the limitations contained in Article VIII, section 6 of this Constitution;

(c) By the state or any taxing district for the purpose of paying the principal or interest on general obligation bonds outstanding on December 6, 1934; or for the purpose of preventing the impairment of the obligation of a contract when ordered so to do by a court of last resort. [1971 Senate Joint Resolution No. 1. Approved November 7, 1972.]

Note: Art. 7 § 2 was also amended at the November 7, 1972 general election by Amendment 59. (HJR 47.)

Prior amendment of Art. 7 § 2, see Amendment 17.

AMENDMENT 56

Art. 2 § 24 LOTTERIES AND DIVORCE. The legislature shall never grant any divorce. Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon. [1971 Senate Joint Resolution No. 5. Approved November 7, 1972.]

AMENDMENT 57

Art. 11 § 5. COUNTY GOVERNMENT. The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office: *Provided*, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population: *Provided*, That it may delegate to the legislative authority of the counties the right to prescribe the salaries of its own members and the salaries of other county officers. And it shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys which may be paid to them, or officially come into their possession.

Art. 11 § 8. SALARIES AND LIMITATIONS AFFECTING. The salary of any county, city, town, or municipal officers shall not be increased except as provided in section 1 of Article XXX or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed. [1971 Senate Joint Resolution No. 38. Approved November 7, 1972.]

Prior amendment of Art. 11 § 5, see Amendment 12.

AMENDMENT 58

Art. 11 § 16. COMBINED CITY–COUNTY. Any county may frame a "Home Rule" charter subject to the Constitution and laws of this state to provide for the formation and government of combined city and county municipal corporations, each of which shall be known as "city–county". Registered voters equal in number to ten (10) percent of the voters of any such county voting at the last preceding general election may at any time propose by a petition the calling of an election of freeholders. The provisions of section 4 of this Article with respect to a petition calling for an election of freeholders to frame a county home rule charter, the election of freeholders, and the framing and adoption of

a county home rule charter pursuant to such petition shall apply to a petition proposed under this section for the election of freeholders to frame a city–county charter, the election of freeholders, and to the framing and adoption of such city–county charter pursuant to such petition. Except as otherwise provided in this section, the provisions of section 4 applicable to a county home rule charter shall apply to a city–county charter. If there are not sufficient legal newspapers published in the county to meet the requirements for publication of a proposed charter under section 4 of this Article, publication in a legal newspaper circulated in the county may be substituted for publication in a legal newspaper published in the county. No such "city–county" shall be formed except by a majority vote of the qualified electors voting thereon in the county. The charter shall designate the respective officers of such city–county who shall perform the duties imposed by law upon county officers. Every such city–county shall have and enjoy all rights, powers and privileges asserted in its charter, and in addition thereto, such rights, powers and privileges as may be granted to it, or to any city or county or class or classes of cities and counties. In the event of a conflict in the constitutional provisions applying to cities and those applying to counties or of a conflict in the general laws applying to cities and those applying to counties, a city–county shall be authorized to exercise any powers that are granted to either the cities or the counties.

No legislative enactment which is a prohibition or restriction shall apply to the rights, powers and privileges of a city–county unless such prohibition or restriction shall apply equally to every other city, county, and city–county.

The provisions of sections 2, 3, 5, 6, and 8 and of the first paragraph of section 4 of this Article shall not apply to any such city–county.

Municipal corporations may be retained or otherwise provided for within the city–county. The formation, powers and duties of such municipal corporations shall be prescribed by the charter.

No city–county shall for any purpose become indebted in any manner to an amount exceeding three per centum of the taxable property in such city–county without the assent of three–fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed ten per centum of the value of the taxable property therein, to be ascertained by the last assessment for city–county purposes previous to the incurring of such indebtedness: *Provided*, That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly city–county or other municipal purposes: *Provided further*, That any city–county, with such assent may be allowed to become indebted to a larger amount, but not exceeding five per centum additional for supplying such city–county with water, artificial light, and sewers, when the works for supplying such water, light and sewers shall be owned and controlled by the city–county.

No municipal corporation which is retained or otherwise provided for within the city–county shall for any purpose become indebted in any manner to an amount exceeding one and one–half per centum of the taxable property in such municipal corporation without the assent of three–fifths of the voters therein voting at an election to be held for that purpose, nor shall the total indebtedness at any time exceed five per centum of the value of the taxable property therein, to be ascertained by the last assessment for city–county purposes previous to the incurring of such indebtedness: *Provided*, That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly municipal purposes: *Provided further*, That any such municipal corporation, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five per centum additional for supplying such municipal corporation with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipal corporation. All taxes which are levied and collected within a municipal corporation for a specific purpose shall be expended within that municipal corporation.

The authority conferred on the city–county government shall not be restricted by the second sentence of Article 7, section 1, or by Article 8, section 6 of this Constitution. [1971 House Joint Resolution No. 21. Approved November 7, 1972.]

Prior amendment of Art. 11 § 16, see Amendment 23.

AMENDMENT 59

Art. 7 § 2. LIMITATION ON LEVIES. Except as hereinafter provided and notwithstanding any other provision of this Constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereafter created, shall not in any year exceed forty mills on the dollar of assessed valuation, which assessed valuation shall be fifty per centum of the true and fair value of such property in money: *Provided, however*, That nothing herein shall prevent levies at the rates now provided by law by or for any port or public utility district. The term "taxing district" for the purposes of this section shall mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy, or have levied for it, ad valorem taxes on property, other than a port or public utility district. Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only

(a) By any taxing district when specifically authorized so to do by a majority of at least three–fifths of the electors thereof voting on the proposition to levy such additional tax submitted not more than twelve months prior to the date on which the proposed levy is to be made and not oftener than twice in such twelve month period, either at a special election or at the regular election of such taxing district, at which election the number of persons voting "yes" on the proposition shall constitute three–fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election when the number of

electors voting on the proposition does not exceed forty per centum of the total votes cast in such taxing district in the last preceding general election; or by a majority of at least three–fifths of the electors thereof voting on the proposition to levy when the number of electors voting on the proposition exceeds forty per centum of the total votes cast in such taxing district in the last preceding general election;

(b) By any taxing district otherwise authorized by law to issue general obligation bonds for capital purposes, for the sole purpose of making the required payments of principal and interest on general obligation bonds issued solely for capital purposes, other than the replacement of equipment when authorized so to do by majority of at least three–fifths of the electors thereof voting on the proposition to issue such bonds and to pay the principal and interest thereon by an annual tax levy in excess of the limitation herein provided during the term of such bonds, submitted not oftener than twice in any calendar year, at an election held in the manner provided by law for bond elections in such taxing district, at which election the total number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election: *Provided*, That any such taxing district shall have the right by vote of its governing body to refund any general obligation bonds of said district issued for capital purposes only, and to provide for the interest thereon and amortization thereof by annual levies in excess of the tax limitation provided for herein, *And provided further*, That the provisions of this section shall also be subject to the limitations contained in Article VIII, section 6, of this Constitution;

(c) By the state or any taxing district for the purpose of paying the principal or interest on general obligation bonds outstanding on December 6, 1934; or for the purpose of preventing the impairment of the obligation of a contract when ordered so to do by a court of last resort. [1971 House Joint Resolution No. 47. Approved November 7, 1972.]

Note: Art. 7 § 2 was also amended at the November 7, 1972 general election by Amendment 55 (SJR 1). 1971 HJR No. 47 contained the following paragraph:

"*Be It Further Resolved*, That the foregoing amendment shall be submitted to the qualified electors of the state in such a manner that they may vote for or against it separately from the proposed amendment to Article VII, section 2, (Amendment 17) of the Constitution of the State of Washington contained in Senate Joint Resolution No. 1: *Provided*, That if both proposed amendments are approved and ratified, both shall become part of the Constitution."

Prior amendment of Art. 7 § 2, see Amendment 17.

AMENDMENT 60

Art. 8 § 1. STATE DEBT. (a) The state may contract debt, the principal of which shall be paid and discharged within thirty years from the time of contracting thereof, in the manner set forth herein.

(b) The aggregate debt contracted by the state shall not exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than nine percent of the arithmetic mean of its general state revenues for the three immediately preceding fiscal years as certified by the treasurer. The term "fiscal year" means that period of time commencing July 1 of any year and ending on June 30 of the following year.

(c) The term "general state revenues" when used in this section, shall include all state money received in the treasury from each and every source whatsoever except: (1) Fees and revenues derived from the ownership or operation of any undertaking, facility, or project; (2) Moneys received as gifts, grants, donations, aid, or assistance or otherwise from the United States or any department, bureau, or corporation thereof, or any person, firm, or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid, or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (3) Moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (4) Moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; (5) Proceeds received from the sale of bonds or other evidences of indebtedness.

(d) In computing the amount required for payment of principal and interest on outstanding debt under this section, debt shall be construed to mean borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be repaid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation, or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, but shall not include obligations for the payment of current expenses of state government, nor shall it include debt hereafter incurred pursuant to section 3 of this Article, obligations guaranteed as provided for in subsection (f) of this section, principal of bond anticipation notes or obligations issued to fund or refund the indebtedness of the Washington state building authority.

(e) The state may, without limitation, fund or refund, at or prior to maturity, the whole or any part of any existing debt or of any debt hereafter contracted pursuant to section 1, section 2, or section 3 of this Article, including any premium payable with respect thereto and interest thereon, or fund or refund, at or prior to maturity, the whole or any part of any indebtedness incurred or authorized prior to the effective date of this amendment by any entity of the type described in subsection (g) of this section, including any premium payable with respect thereto and any interest thereon. Such funding or refunding shall not be deemed to be contracting debt by the state.

(f) Notwithstanding the limitation contained in subsection (b) of this section, the state may pledge its full faith, credit, and taxing power to guarantee the payment of any obligation payable from revenues received from any of the following sources: (1) Fees collected by the state as license fees for motor vehicles; (2) Excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel; and (3) Interest on the permanent common school fund: *Provided*, That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due on all obligations for which said source of revenue is pledged.

(g) No money shall be paid from funds in custody of the treasurer with respect to any debt contracted after the effective date of this amendment by the Washington state building authority, the capitol committee, or any similar entity existing or operating for similar purposes pursuant to which such entity undertakes to finance or provide a facility for use or occupancy by the state or any agency, department, or instrumentality thereof.

(h) The legislature shall prescribe all matters relating to the contracting, funding or refunding of debt pursuant to this section including: The purposes for which debt may be contracted; by a favorable vote of three–fifths of the members elected to each house, the amount of debt which may be contracted for any class of such purposes; the kinds of notes, bonds, or other evidences of debt which may be issued by the state; and the manner by which the treasurer shall determine and advise the legislature, any appropriate agency, officer, or instrumentality of the state as to the available debt capacity within the limitation set forth in this section. The legislature may delegate to any state officer, agency, or instrumentality any of its powers relating to the contracting, funding or refunding of debt pursuant to this section except its power to determine the amount and purposes for which debt may be contracted.

(i) The full faith, credit, and taxing power of the state of Washington are pledged to the payment of the debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and installments of principal of all such debt as the same falls due, but in any event, any court of record may compel such payment.

(j) Notwithstanding the limitations contained in subsection (b) of this section, the state may issue certificates of indebtedness in such sum or sums as may be necessary to meet temporary deficiencies of the treasury, to preserve the best interests of the state in the conduct of the various state institutions, departments, bureaus, and agencies during each fiscal year; such certificates may be issued only to provide for appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of incurrence.

(k) Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this Article shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof and shall be incontestable in the hands of a bona fide purchaser or holder thereof.

Art. 8 § 3. SPECIAL INDEBTEDNESS, HOW AUTHORIZED. Except the debt specified in sections one and two of this Article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein. No such law shall take effect until it shall, at a general election, or a special election called for that purpose, have been submitted to the people and have received a majority of all the votes cast for and against it at such election. [House Joint Resolution No. 52. Approved November 7, 1972.]

Prior amendment of Art. 8 § 3, see Amendment 48.

AMENDMENT 61

The Constitution was amended by adding the following new Article:

ARTICLE XXXI

SEX EQUALITY——RIGHTS AND RESPONSIBILITIES

and sections 1 and 2 thereof:

Art. 31 § 1. EQUALITY NOT DENIED BECAUSE OF SEX. Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

Art. 31 § 2. ENFORCEMENT POWER OF LEGISLATURE. The legislature shall have the power to enforce, by appropriate legislation, the provisions of this Article. [1972 House Joint Resolution No. 61. Approved November 7, 1972.]

The name of this Article has been supplied by the reviser.

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(3) Amendments amended or repealed:

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ADOPTED BY THE SUPREME COURT OF THE STATE OF WASHINGTON

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PREFACE

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF RULES BY THE SUPREME COURT OF THE STATE OF WASHINGTON. }

The Supreme Court of the state of Washington, in conformity with its rule-making power, hereby adopts, prescribes and promulgates the following:

Rules peculiar to the business of the supreme court;
Rules on appeal;
Rules of pleading, procedure and practice;
General rules of the superior courts;
A code of ethics;
Rules for admission to practice; and
Rules for the discipline of attorneys.

These rules are prescribed and promulgated by this court by virtue of and under the authority conferred on it by the constitution of the state of Washington.

This court reserves the power granted to it by the constitution to prescribe from time to time the forms of writs and all other process; the mode and manner of framing and filing of proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by itself, the superior courts and justices of the peace of the state of Washington.

These rules will take effect on the 2nd day of January, 1951, and thereafter all laws and rules in conflict therewith shall be of no further force or effect.

2. Order Adopting Rules for Admission to Practice——January 29, 1965. (See footnote following Admission to Practice Rules, Rule 1.)

3. Order Adopting Rules for Discipline of Attorneys——June 16, 1965. (See footnote following Discipline Rules for Attorneys, Rule 1.)

4. Order Adopting Revision of Rules on Appeal Rule 42——June 28, 1965. (See footnote following Rules on Appeal, Rule 42.)

5. Order Superseding the Existing Rules on Appeal, Rules 46, 47 and 55(g)——May 4, 1966. (See footnote following Rules on Appeal, Rule 46.)

6. **Order Establishing Special Account for Indigent Appeals——May 24, 1966.** (See footnote following Rules on Appeal, Rule 55.)

7. **Order Adopting Rules of Court——May 5, 1967.** (See Appendix to Part IV.)

8. **Order Correcting and Amending the Order Adopting Rules——June 28, 1967.** (See Appendix to Part IV.)

9. **Orders Relating to Courts of Limited Jurisdiction.** (See Appendix to Part V.)

10. **History Notes, Cross Reference Notes, and Index Entries.**

(1) The history notes, which are set forth in brackets following each rule, refer to adoptive and effective dates commencing with November 22, 1950 and January 2, 1951, which are, respectively, the adoptive and effective dates of the recompilation of court rules published in 34 Wn. (2d). Rules of court in effect prior to January 2, 1951, are published in the Washington Reports as follows:

25 Wash. (1901)	178 Wash. (1935)
51 Wash. (1909)	186 Wash. (1937)
63 Wash. (1911)	193 Wash. (1938)
71 Wash. (1913)	6 Wn. (2d) (1941)
81 Wash. (1914)	11 Wn. (2d) (1942)
82 Wash. (1915)	15 Wn. (2d) (1943)
124 Wash. (1923)	16 Wn. (2d) (1943)
140 Wash. (1926)	17 Wn. (2d) (1943)
143 Wash. (1927)	18 Wn. (2d) (1944)
150 Wash. (1929)	23 Wn. (2d) (1945)
157 Wash. (1930)	32 Wn. (2d) (1949)
159 Wash. (1931)	34 Wn. (2d) (1951)
169 Wash. (1933)	

(2) A major change in the rules of court was adopted May 5, 1967, further amended June 28, 1967, and became effective July 1, 1967. The changes are incorporated herein and also appear in 71 Wn. (2d) (1967). Rules of court adopted or amended prior to July 1, 1967 and subsequent to the January 2, 1951, recompilation are published in the Washington Reports as follows:

44 Wn. (2d) (1954)	57 Wn. (2d) (1961)
45 Wn. (2d) (1955)	59 Wn. (2d) (1962)
46 Wn. (2d) (1955)	61 Wn. (2d) (1963)
47 Wn. (2d) (1955)	63 Wn. (2d) (1964)
48 Wn. (2d) (1956)	65 Wn. (2d) (1965)
49 Wn. (2d) (1957)	66 Wn. (2d) (1965)
51 Wn. (2d) (1958)	67 Wn. (2d) (1966)
52 Wn. (2d) (1959)	68 Wn. (2d) (1966)
54 Wn. (2d) (1960)	69 Wn. (2d) (1966)
55 Wn. (2d) (1960)	70 Wn. (2d) (1967)

(3) Cross reference notes, referring to the statutes, have been inserted following some of the rules. Note however the provisions of chapter 118, Laws of 1925, ex. sess. (RCW 2.04.180–2.04.200) and particularly section 2 thereof (RCW 2.04.200) to the effect that

> "When and as the rules of court herein authorized shall be promulgated all laws in conflict therewith shall be and become of no further force and effect."

Note also similar language contained in the adoptive order published herein, and the language contained in the Foreword appearing in Vol. 34 (2d) of the Washington Reports which states

> ". . . In this volume the members of the bench and bar will find all of the rules and regulations which have to do with appeals to this court, so that, in taking the necessary steps to perfect an appeal, attorneys will not have to refer to other than this volume."

(4) Index entries: The rules of court are indexed separately from the main RCW Subject Index. The index for parts I, II, III and IV of Rules of Court may be found following part IV, while the index to part V (Rules for Courts of Limited Jurisdiction) may be found following part V.

Part I
RULES OF GENERAL APPLICATION

Title of Rules	Abbreviation	Formerly
General Rules	(GR)	
Code of Judicial Conduct	(CJC)	(CJE)
Code of Professional Responsibility	(CPR)	(CPE)
Admission to Practice Rules	(APR)	(RAP)
Discipline Rules for Attorneys	(DRA)	(RDA)

GENERAL RULES (GR)

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Rule 1 Classification system for court rules

PART I. RULES OF GENERAL APPLICATION

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PART V. RULES FOR COURTS OF LIMITED JURISDICTION

Justice Court Administrative Rules	JAR
Justice Court Civil Rules	JCR
Justice Court Criminal Rules	JCrR
Justice Court Traffic Rules	JTR

[Adopted June 28, 1967, effective July 1, 1967; amended, adopted Jan. 31, 1974, effective July 1, 1974.]

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PREAMBLE

1. Compliance with the Code of Judicial Conduct. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. *Part-time Judge.* A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;

(2) should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. *Judge Pro Tempore.* A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. *Retired Judge.* If a retired appellate court judge engages in the practice of law, he shall be ineligible to serve as a judge pro tempore of an appellate court.

2. Effective Date of Compliance. A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or non-legal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family. [Adopted Oct. 31, 1973, effective Jan. 1, 1974; 1(C), amended, adopted June 19, 1974, effective July 1, 1974; PRIOR Canons of Judicial Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 1
A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. [Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 2
A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Oct. 31, 1950, effective Jan. 2, 1951.]

CANON 3
A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex *parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him, by *amicus curiae* only, if he affords the parties reasonable opportunity to respond.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief *amicus curiae*.

(5) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the *Code of Professional Responsibility*.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify

himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer–relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer–relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

Commentary: According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify him if a cousin were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary: This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1974.]

CANON 4

A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi–judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund–granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra–judicial activities are governed by Canon 5.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 5

A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at any organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary: A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

Commentary: The Preamble, section 2, of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6C.

Commentary: This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary: Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

Commentary: The Preamble, section 2, of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary: A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary: Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 6
A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court. [Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 7
A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a nonjudicial candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or nonjudicial candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates or candidates for such office, may, attend political gatherings and speak to such gatherings on his own behalf. The judge or candidate shall not identify himself as a member of a political party, and he shall not contribute to a political party or organization.

(3) A judge shall resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers or others. A candidate's committees may solicit funds for his campaign no earlier than 120 days from the date when filing for that office is first permitted and no later than 30 days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Commentary: Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2). [Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CODE OF PROFESSIONAL RESPONSIBILITY (CPR)

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CODE OF PROFESSIONAL RESPONSIBILITY PREAMBLE AND PRELIMINARY STATEMENT

PREAMBLE

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self–government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self–government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this rule requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever–changing relationships of society.

The Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

PRELIMINARY STATEMENT

In furtherance of the principles stated in the Preamble this Code of Professional Responsibility has been promulgated consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules. The Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non–lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also

of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Consideration and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances. An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

CANON 1
A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge or evidence of a violation of DR 1-102 concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

Ethical Considerations

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules. A lawyer should upon request serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 2
A Lawyer Should Assist the Legal Profession in Fulfilling its Duty to Make Legal Counsel Available

DR 2-101 Publicity in General.

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public

communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when his professional status in germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(C) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located; but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.

(6) A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2-105(A)(4); date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public of quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language

ability; names and addresses of references, and, with their consent, names of clients regularly represented.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2–103 Recommendation of Professional Employment.

(A) A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non–lawyer who has not sought his advice regarding employment of a lawyer.

(B) Except as permitted under DR 2–103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide nonprofit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(4) A bar association representative of the general bar of the geographical area in which the association exists.

(5) Any other organization that recommends, furnishes or pays for legal services to its members or beneficiaries, but only when and if the following conditions are met:

(a) The lawyer shall not have solicited the use of his services by the organization or its members in violation of any Disciplinary Rule in this Code of Professional Responsibility.

(b) The organization shall not derive a profit or commercial benefit from the rendition of legal services by the lawyer.

(c) A written agreement between the lawyer and the organization is in force containing provisions insuring that:

(i) Any member of the organization may obtain legal services independently of the arrangement from any attorney of his choice;

(ii) No unlicensed person will provide legal services under the arrangement;

(iii) Neither the organization nor any member thereof shall interfere or attempt to interfere with the lawyer's independent exercise of his professional judgment;

(iv) The member to whom the legal services are rendered, and not the organization, is the client of the lawyer;

(v) All parties agree that in providing legal services the lawyer must comply with all the Disciplinary Rules contained in this Code;

(vi) The nature and extent of the legal services to be rendered to the members of the group are fully disclosed;

(vii) Any publicity given by the organization to its members will not describe the lawyer beyond giving his name, address and telephone number and such other information as may be required to facilitate the access

of a member to the services of the lawyer; and any publicity disseminated by the organization to non-members will not identify the lawyer; and

(viii) The agreement will be terminated in the event of any substantial violation of the foregoing provisions.

(d) Such written agreement has been filed with the regulatory agency having authority to discipline the lawyer.

(e) The lawyer shall advise the State Bar, on forms provided by it, of the following matters: The name of the group, its address, whether it is incorporated, its primary purposes and activities, the number of its members and a general description of the types of legal services offered pursuant to the written agreement. Annually on January 31, he shall report to the State Bar, on forms provided by it, any changes in such matters, and the number of members of the group to whom legal services were rendered during the calendar year. Each report filed pursuant hereto and the information contained therein, except the name and address of the group, the fact that it has a written agreement for the provision of legal services and the names of members of the State Bar providing such services shall be confidential.

(f) In the case of such an organization created or operated solely or primarily for the purpose of providing legal services, the lawyer shall not render any legal services until there has been obtained from the regulatory agency having authority to discipline the lawyer a certificate stating that the operation of the legal services program complies with all applicable laws and court rules and with these Disciplinary Rules. The certificate shall provide that it will be revoked and the lawyer will terminate his services in the event of any substantial breach of these rules or of the agreement provided for herein.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2–104 Suggestion of Need of Legal Services.

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services, if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2–103(D)(1) through (5), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2–103(D)(1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not understand to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

DR 2–105 Limitation of Practice.

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as permitted under DR 2–102(A)(6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation Patent Attorney, Patent Lawyer, Trademark Attorney, or Trademark Lawyer, or any combination of those terms, on his letterhead and office sign, and a lawyer actively engaged in the admiralty practice may use the designation Admiralty or Admiralty Lawyer on his letterhead and office sign.

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in local legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in local legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.

DR 2–106 Fees for Legal Services.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant is a criminal case.

DR 2–107 Division of Fees Among Lawyers.

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2–108 Agreements Restricting the Practice of a Lawyer.

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

DR 2–109 Acceptance of Employment.

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2–110 Withdrawal From Employment.

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2–110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

ETHICAL CONSIDERATIONS

EC 2-1 The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

Recognition of Legal Problems

EC 2-2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.

EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer: Generally

EC 2-6 Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.

EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties——relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.

Selection of a Lawyer: Professional Notices and Listings

EC 2-9 The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

EC 2-10 Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2-13 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.

EC 2-14 In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.

EC 2-15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

EC 2–16 The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2–17 The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.

EC 2–18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. Suggested fee schedules and economic reports of state and local bar associations provide some guidance on the subject of reasonable fees. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family.

EC 2–19 As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2–20 Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid. Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2–21 A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.

EC 2–22 Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

EC 2–23 A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2–24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

EC 2–25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Acceptance and Retention of Employment

EC 2–26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.

EC 2–27 History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

EC 2–28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2–29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case.

EC 2–30 Employment should not be accepted by a lawyer when he is unable to render competent service or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

EC 2–31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawn is permitted by the appropriate court.

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 3
A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

DR 3-101 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-102 Dividing Legal Fees With a Non-Lawyer.

(A) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103 Forming a Partnership With a Non-Lawyer.

(A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

Ethical Considerations

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2 The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3 A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards. The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4 A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5 It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6 A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

EC 3-7 The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 4
A Lawyer Should Preserve the Confidences and Secrets of a Client

DR 4–101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney–client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4–101(C) and (D), a lawyer shall not knowingly during or after termination of the professional relationship to his client:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4–101(C) through an employee.

Ethical Considerations

EC 4–1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4–2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure, when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non–lawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in this professional relationship. Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4–3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4–4 The attorney–client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney–client privilege and timely to assert the privilege unless it is waived by the client.

EC 4–5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

EC 4–6 The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment. Thus an attorney, as successor to another practice, must preserve inviolate the secrets and confidences reflected in the files in the same respect as required by his predecessor. A lawyer should take all reasonable steps, providing safeguards from disclosing the confidences and secrets reflected in the files of his client, following the termination of his practice of the law whether termination is due from disability or retirement. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 5
A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

DR 5–101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5–102 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5–101(B) (1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

DR 5–103 Avoiding Acquisition of Interest in Litigation.

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5–104 Limiting Business Relations With a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

DR 5–105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5–105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5–105(C).

(C) In the situations covered by DR 5–105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interests of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5–105, no partner or associate of his or his firm may accept or continue such employment.

DR 5–106 Settling Similar Claims of Clients.

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5–107 Avoiding Influence by Others Than the Client.

(A) Except with the consent of his client after full disclosure, a lawyer shall not:

(1) Accept compensation for his legal services from one other than his client.

(2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.

(B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non–lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A non–lawyer is a corporate director or officer thereof; or

(3) A non–lawyer has the right to direct or control the professional judgment of a lawyer.

ETHICAL CONSIDERATIONS

EC 5-1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Interests of a Lawyer That May Affect His Judgment

EC 5-2 A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5-3 The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5-5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or over-reached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.

EC 5-6 A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

EC 5-7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of the litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by a lawyer to his client. Although this assistance is generally not encouraged, there are instances when it is not improper to advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and the cost of obtaining and presenting evidence, provided that the client remains ultimately liable for such expenses.

EC 5-9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10 Problems incident to the lawyer-witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.

EC 5-11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5-12 Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.

EC 5-13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5-14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

EC 5-15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he

must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5–16 In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.

EC 5–17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co–defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5–18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5–19 A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty. Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5–20 A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5–21 The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5–22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5–23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.

EC 5–24 To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a non–lawyer. Although a lawyer may be employed by a business corporation with non–lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 6
A Lawyer Should Represent a Client Competently

DR 6–101 Failing to Act Competently.

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6–102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

ETHICAL CONSIDERATIONS

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.

EC 6-2 A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6-3 While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6-5 A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

EC 6-6 A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; prior Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 7

A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected tribunal and may reveal the fraud to the affected person.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has

no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7–104 Communicating With One of Adverse Interest.

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7–105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7–106 Trial Conduct.

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7–107 Trial Publicity.

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7–107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7–107 also apply to professional disciplinary proceedings and juvenile disciplinary proceeding when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7–107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees, associates and clients from making an extrajudicial statement that he would be prohibited from making under DR 7–107.

DR 7–108 Communication With or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) Dr 7–108(A) and (B) do not prohibit a lawyer from necessary communication with veniremen or jurors solely in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7–108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7–109 Contact With Witnesses.

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR 7–110 Contact With Officials.

(A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal which might be reasonably construed as being for the purpose of influencing his official acts.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) As required in the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law.

ETHICAL CONSIDERATIONS

EC 7–1 The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations. The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

EC 7–2 The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well–settled rules through areas of conflicting authority to areas without precedent.

EC 7–3 Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7–4 The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

EC 7–5 A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision. He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.

EC 7–6 Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7–7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

EC 7–8 A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision–making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision–making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non–legal factors is ultimately for the client and not for himself. In the event that the client in a non–adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

EC 7–9 In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interests of his client. However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.

EC 7–10 The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7–11 The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7–12 Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representatives, his lawyer may be compelled in

court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7–13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice; the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.

EC 7–14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7–15 The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged, and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

EC 7–16 The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of his client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.

EC 7–17 The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7–18 The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself, except that he may advise him to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7–19 Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.

EC 7–20 In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the basis for standards of professional conduct set forth in the Disciplinary Rules.

EC 7–21 The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7–22 Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.

EC 7–23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.

EC 7–24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a

witness, as the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7–25 Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7–26 The law and Disciplinary Rules prohibit the use of fraudulent false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

EC 7–27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

EC 7–28 Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a non–expert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.

EC 7–29 To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

EC 7–30 Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7–31 Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7–32 Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7–33 A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out–of–court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7–34 The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or an employee of a tribunal which might reasonably be construed as being for the purpose of influencing his official actions.

EC 7–35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7–36 Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and aboveboard in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7–37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7–38 A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7–39 In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 8
A Lawyer Should Assist in Improving the Legal System

DR 8–101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8–102 Statements Concerning Judges and Other Adjudicatory Officers.

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

Ethical Considerations

EC 8–1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

EC 8–2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8–3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8–4 Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8–5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8–6 Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8–7 Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8–8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

EC 8–9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 9
A Lawyer Should Avoid Even the Appearance of Professional Impropriety

DR 9–101 Avoiding Even the Appearance of Impropriety.

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9–102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the

lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(2) "Law firm" includes a professional legal corporation.

(3) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(4) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(5) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(6) "Tribunal" includes all courts and all other adjudicatory bodies. [Adopted Aug. 26, 1971, effective Nov. 9, 1971; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

**"Confidence" and "secret" are defined in DR 4-101(A).*

ADMISSION TO PRACTICE RULES (APR)

(Formerly: Rules for Admission to Practice)

RULE 1 Classification of applicants

RULE 2 General applicants
- A. Definitions
- B. Qualifications
- C. Time for filing applications and fees payable
- D. Law clerks

RULE 3 Attorney applicants
- A. Definition
- B. Qualifications

RULE 4 Examinations
- A. General applicant's examination——How conducted
- B. Attorney applicant's examination
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RULE 5 Certificate of results——Admission oath——Payment of membership fee

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RULE 7 Practice by members of bar from other jurisdictions prohibited——Exception
- A. In general
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RULE 9 Legal interns
- A. Admission to limited practice as a legal intern
- B. Application for limited license as a legal intern——Qualifications——Procedure
- C. Scope of practice by legal intern under the limited license
- D. Supervising attorneys——Requirements
- E. Term of limited license
- F. Termination of this Rule

RULE 10 Revocation of order admitting to practice

Rules of General Application

TABLE OF DISTRIBUTION OF RULES FOR ADMISSION TO PRACTICE IN EFFECT PRIOR TO FEBRUARY 12, 1965 INTO THE NEW ADMISSION TO PRACTICE RULES IN EFFECT ON AND AFTER FEBRUARY 12, 1965

(For order of adoption, see note following APR Rule 1)

Old RAP Number	New APR Number
Rule 1	Rule 1
Rule 2 A	Rule 2 A
Rule 2 B 1	Rule 2 B 1
Rule 2 B 2	Rule 2 B 2
Rule 2 B 3	None
Rule 2 B 4	Cf.Rule 5 B
Rule 2 B 5	Rule 2 B 3
Rule 2 B 6	Rule 2 B 4
Rule 2 B 7	Rule 2 B 5
	Cf.Rule 2 C 1 and Rule 2 C 2
Rule 2 C	Rule 2 C
Rule 2 D 1	Rule 2 D 1
Rule 2 D 2	Rule 2 D 2
Rule 2 D 3	Rule 2 D 3
Rule 2 D 4	Rule 2 D 4
Rule 2 D 5	None
Rule 2 D 6	Rule 2 D 5
Rule 2 D 7	Cf.Rule 2 C 1—— Rule 2 C 3
Rule 3 A	Rule 3 A
Rule 3 B 1	Rule 3 B 1
Rule 3 B 2	None
Rule 3 B 3	Rule 3 B 2
Rule 3 B 4	Rule 3 B 3
Rule 3 B 5	Rule 3 B 4
Rule 3 B 6	Rule 3 B 5
Rule 3 B 7	Rule 3 B 6
Rule 3 B 8	Rule 3 B 7
Rule 3 B 9	Rule 3 B 8
Rule 3 B 10	Rule 3 B 9
Rule 3 B 11	Rule 3 B 10
Rule 4	Rule 4
Rule 5 A	Rule 5 A
Rule 5 B	Cf.Rule 5 B and Rule 5 C
Rule 5 C	None
Rule 5 D	Cf.Rule 5 D and Rule 5 E (1)
Rule 5 E	Rule 5 E (2)
Rule 6	Rule 6
Rule 7	Rule 7
Rule 8	Rule 8 and Rule 2 D 6
Appendix—— List of Approved Law Schools	Cf.Rule 2 A

[By order of the Supreme Court dated May 5, 1967, and effective July 1, 1967, the Rules for Admission to Practice (RAP) were redesignated "Admission to Practice Rules (APR)".]

Rule 1 Classification of applicants. Every person desiring to be admitted to the bar of the State of Washington must pass a bar examination and satisfy all of the requirements of these Rules applicable to the classification of applicant to which he belongs.

For the purpose of these Rules, applicants for admission to practice in the State of Washington are classified either as "general applicants" or as "attorney applicants." [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Order of Supreme Court adopting rules for admission to practice and abrogating former rules:

"The Supreme Court of the State of Washington, in conformity with its rule-making power, herewith abrogates the existing Rules for Admission to Practice Law in the State of Washington, as the same appear in RCW Vol. 0, as of the effective date of the new Rules for Admission to Practice Law in the State of Washington adopted herewith.

The attached Rules for Admission to Practice Law in the State of Washington (proposed by the Board of Governors of the Washington State Bar Association and modified in minor respects by this court) are herewith adopted effective as of the date of their publication in the Washington Decisions.

Dated at Olympia, Washington, this 29th day of January, 1965."

Reviser's note: "Rules for Admission to Practice" were redesignated as "Admission to Practice Rules," by order of the Supreme Court adopted May 5, 1967, effective July 1, 1967.

Rule 2 General applicants.

A. Definitions

A "general applicant" means either (1) a graduate of an approved law school who does not qualify as an attorney applicant under Rule 3, or (2) a registered law clerk who has satisfactorily completed the course of study prescribed by these Rules.

An "approved law school" means a law school approved by the board of governors. The board of governors shall keep a list of approved law schools on file with the State Bar Association and the Clerk of the Supreme Court.

B. Qualifications

A general applicant, in order to be permitted to take the bar examination, must

(1) present satisfactory proof of either (a) graduation from an approved law school, or (b) satisfactory completion of the course of study prescribed for a registered law clerk by these Rules;

(2) Be either: (a) a citizen of the United States, or (b) an alien permanently residing in the United States in accordance with Federal Immigration and Naturalization Law who has legally declared his intent to become a citizen and is proceeding with due diligence toward naturalization;

(3) be of good moral character;

(4) execute under oath and file with the State Bar Association within the time specified in Section C of this Rule 2, two copies of his application, one of which shall be in his own handwriting, in such form as may be required by the board of governors. Additional proof of any fact stated in the application may be required by the board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatories of the board pertinent to the pending application, the board may deny the application. The form of application shall be provided by the board, and the contents thereof shall be such as the board may direct from time to time;

(5) pay, upon the filing of the application, an examination and admission fee in the amount prescribed in Section C of this Rule 2 and also an investigation fee in the amount prescribed in Section C of this Rule 2. The

investigation shall cover all phases of the applicant's qualifications for admission, as the board may deem necessary. No refund of any examination and admission fee shall be made unless the request to withdraw the application is made at least ten (10) days in advance of the examination date. The investigation fee is not subject to refund.

C. Time for Filing Applications and Fees Payable

(1) A general applicant who has not been admitted to the bar in another state or territory prior to the filing of his application shall pay an examination and admission fee of twenty–five dollars ($25), and all other general applicants shall pay an examination and admission fee of fifty dollars ($50).

(2) A general applicant who has not been admitted to the bar anywhere in the world prior to the filing of his application, must file his application to take each bar examination not less than 30 days prior to the examination date, and pay an investigation fee of one hundred dollars ($100). In the case of late filing the Board of Governors may, for good cause, reduce the time requirement for filing the application to take the bar examination.

(3) A general applicant who has been admitted to the bar anywhere in the world prior to the filing of his application, must file his application to take each bar examination:

(a) ninety days prior to the examination date if he is applying to take the Washington state bar examination for the first time, or

(b) thirty days in advance of the examination date in the case of a repeater.

In the case of late filing the Board of Governors may, for good cause, reduce the time requirement for filing the application to take the bar examination. Said general applicant shall pay at the time of filing his application an investigation fee of one hundred seventy–five dollars ($175).

D. Law Clerks

(1) *Requisites*

Every person who desires subsequently to qualify as a general applicant for admission to practice in the State of Washington, without having been graduated from an approved law school, shall register as a law clerk as hereinafter provided. He must be a bona fide resident of the State of Washington and shall present satisfactory proof that he has been granted a bachelor's degree (other than bachelor of laws) by a college or university offering such degree on the basis of a four–year course of study.

(2) *Registrations——Employment in Law Office——Application——Statement of Employer*

Such applicant shall obtain regular and full–time employment as a law clerk in the office of a judge of a court of record or an attorney or firm of attorneys licensed to practice law in the State of Washington and engaged in the general practice of law. The person by whom he is employed, or if he be employed by a firm, the person under whose direction he is to study, must have been admitted to practice law in this state for at least ten (10) years at the time the application for registration is filed, and be otherwise eligible to act as tutor. Prior to the commencement of the study of law under this Rule 2 D the applicant shall file with the State Bar Association an application to register as a law clerk. Such application shall be made on a form to be provided by the State Bar Association and shall require answers to such interrogatories as the board may determine from time to time to be relevant to a consideration of the application. Proof of any fact stated in the application may be required by the board. If the applicant fails or refuses to furnish any information or proof or answer any interrogatory required by the application, or independently thereof by the Board, in a manner satisfactory to the board, the application may be denied.

Accompanying the application there must be submitted a statement under oath of the person by whom such applicant is employed as a law clerk, or, if he is employed by a firm, of the person under whose direction he is to study, certifying to the fact of such employment, and that such person will act as tutor for the applicant and will faithfully instruct the applicant in the branches of the law prescribed by the course of study adopted by the board of governors. No person shall be eligible to act as tutor while disciplinary proceedings (following the service of a formal complaint) are pending against him, or if he has ever been censured, reprimanded, suspended or disbarred. If a registered law clerk finds it necessary to change his tutor during his period of study, a new application for registration as a law clerk shall be required and such credit given for study under his prior tutor as the board may determine.

(3) *Course of Study——How Pursued*

A law clerk whose registration has been approved by the board must pursue a course of study for four (4) calendar years of at least forty–eight (48) weeks each year, with a minimum each week of thirty (30) hours of study (it being understood that the time actually spent in the performance of the duties of law clerk is to be considered as time spent in the study of law). The tutor must give personal direction regularly and frequently to the clerk, must examine him at least once a month on the work done in the previous month, and must certify monthly as to compliance with the requirements of subsections 3 and 4 of this Rule D.

The examinations shall be written and not oral, and shall be answered by the clerk without research or assistance during the examination. The monthly certificate of compliance submitted by the tutor shall be accompanied by the originals of all written examinations and answers thereto given during the period reported.

If the certificates, together with the required attachments be not filed timely in the office of the State Bar Association, no credit shall be given for any period of such default.

If a registered law clerk does not furnish evidence of completion of his law studies hereunder within a period of six years after registration, the board may cancel such registration.

(4) *Course of Study——Subjects——Books*

The course of study to be pursued by a registered law clerk shall cover subjects, and such text books, case books, and other material, as the board of governors may from time to time require.

(5) *Advanced Standing——Special Students*

A registered law clerk who has attended either an approved or a nonapproved law school, may, in the discretion of the board, receive credit for work done and obtain advanced standing. In no event will credit be given for fractional parts of semesters or terms, or for correspondence school work.

(6) *Change of Rules——Effect*

This latest (1964) revision of these Rules shall not be retroactive as to a law clerk whose registration has been approved by the board of governors prior to the effective date of this revision. Each such person may complete his course of study in accordance with the rules in force at the time of his registration or enrollment and with the same effect as if said rules were still in force. [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Former para. B(3) repealed and succeeding three paragraphs redesignated, adopted June 25, 1965, effective July 9, 1965: Rule 2, subsection D(1) amended by order dated May 9, 1967. Subsections C(2) and (3) amended by order dated June 26, 1968, effective August 1, 1968; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971. Subsections C(2) and (3) amended, adopted Sept. 18, 1968, effective Sept. 27, 1968; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971; Subsection C amended, adopted Nov. 16, 1973, effective Jan. 1, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 3 Attorney applicants.

A. Definition

An "attorney applicant" means an attorney who (1) has been in the active general private practice of law in a state or territory of the United States or a foreign country for a period of five (5) years or more, or (2) has held a judicial position at least equal to a judge of the superior court of the State of Washington for a period of five (5) years or more in a state or territory of the United States or a foreign country, or (3) has held a full-time teaching position in an approved law school for a period of five (5) years or more.

B. Qualifications

To qualify as an attorney applicant for admission to practice law in the State of Washington, a person must

(1) satisfy the requirements of Rule 2B(2);

(2) have been a bona fide resident of the State of Washington for a period beginning at least one hundred and eighty (180) days prior to the date of the examination;

(3) be of good moral character;

(4) execute under oath and file with the executive director of the State Bar Association

(a) not less than ninety (90) days prior to the examination date, if he is applying to take the Washington State Bar examination for the first time, or

(b) thirty (30) days in advance of each examination date, in the case of a repeater

two copies of his application, one of which shall be in his own handwriting, in such form as may be required by the board of governors. Additional proof of any fact stated in the application may be required by the board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatory of the board pertinent to the pending application, the board may deny the application. In the case of late filing, the board may, for good cause, reduce the time requirement for filing the application to take the bar examination;

(5) pay, upon the filing of each application, an examination and admission fee of fifty ($50) dollars plus an investigation fee of one hundred seventy-five ($175) dollars. The investigation shall cover all phases of the applicant's qualifications for admission. No refund of any examination and admission fee shall be made unless the request to withdraw the application is made at least ten (10) days in advance of the examination date. The investigation fee is not subject to refund;

(6) have been admitted to practice in another state, territory of the United States or foreign country, where the common law of England exists as a basis of its jurisprudence, and where the requirements for admission are substantially equivalent to those of this state. The applicant shall submit with his application a certificate from the clerk or other officer of the highest court of record of such state, territory of the United States or foreign country, in which he has previously been admitted, or from the clerk of the court of such state, territory of the United States or foreign country, by which attorneys are admitted, under the seal of the court, showing that the applicant has been admitted to, and is entitled to, practice in such state, territory of the United States or foreign country, and the date of his admission;

(7) submit with his application satisfactory evidence that he has been actively and continuously engaged in the general private practice in such state, territory of the United States or foreign country, or has held a judicial position or full-time law-teaching position therein for a total period of at least five (5) years. Admission to practice and such continuous practice or the holding of a judicial position or full-time law-teaching position in two (2) or more states, territories of the United States or foreign countries for a total period of at least five (5) years, shall be equivalent to such admission and practice in one (1) state. The application of such applicant shall not be approved by the board of governors unless it shall be presented within a period of three (3) years from the termination of the period during which the applicant was actually engaged in such practice or was holding such judicial position or full-time law-teaching position: Provided, however, the board may in its discretion approve such application if a longer period has elapsed, upon a showing to the board that the occupation of the applicant during such intervening period was of such character as to keep the applicant in close relationship to the practice of the law; and provided further that the aforesaid three-year period shall not be deemed to include the time necessarily taken in diligent effort to secure citizenship;

(8) submit with his application a certificate from the chief justice or other member of the court of the state in which he has previously been admitted to practice, under the seal of the court, certifying that the applicant is in good standing at the bar of the court and is an honorable and worthy member of the profession, and if the applicant comes from a place where there is a local bar association, he shall also submit a recommendation from the president and secretary of such association. If either of these certificates cannot be procured on account of lack of acquaintance or lack of existence of a local bar association, then the applicant may present in lieu thereof a certificate of the judge of the highest court of record in the county or counties within which such applicant was so engaged in practice or was holding such judicial or teaching position, and recommendations from at least three (3) members of the local bar of the county where he last practiced. If for sufficient reason the applicant cannot obtain any of the recommendations required, the board of governors may accept other satisfactory proof of his character and reputation. The certificates required by this subsection 8 of this Rule 3 B shall not be conclusive upon the board on the question of the moral or ethical fitness of the applicant, but the board shall in all cases have the right to make such further independent investigation as it may desire upon said questions. If, upon consideration of all the evidence in respect thereto, the board is of the opinion that the applicant does not possess such moral and ethical qualifications, or such character and reputation as is consistent with the standards of the profession, the application shall be rejected;

(9) present himself before the board of governors at such time and place as may be required, for oral examination as to his moral character and as to any other qualifications;

(10) after having satisfied the foregoing requirements, have passed the attorney's examination as prescribed in these Rules, and complied with the provisions concerning enrollment and fees prescribed herein. [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Subsections B (4) and (5) as amended by order dated June 26, 1968, effective August 1, 1968. Subsection B(4) amended, adopted Sept. 18, 1968, effective Sept. 27, 1968; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971; amended, adopted Mar. 5, 1971, effective Mar. 10, 1971. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 4 Examinations.

A. General Applicant's Examination——How Conducted

The general applicant's examination shall be conducted by and under the direction of the board of governors, who shall, for the purpose of conducting such examination, appoint a committee of three (3) or more active members of the state bar, and this committee shall be known as the committee of law examiners. The examination shall consist of such questions as the committee may select on such subjects as may be listed by the committee and approved by the board of governors. The board shall furnish to this committee such clerical or other assistance as in the discretion of the board shall be deemed necessary. The State Bar Association shall certify to this committee, on or prior to the morning of the first day of each examination, the names of those whose applications for examinations have been approved by the board of governors. The committee of law examiners shall have charge of the conduct of such examination and shall, as soon as practicable, after the completion thereof, certify to the board of governors the grades of those who have taken the examination.

Examinations for admission to the bar will be held on the third Monday, Tuesday and Wednesday of January and July of each year, commencing at 9 a.m. or on such other dates and at such times as the board of governors may designate, at such location as the board of governors may designate.

B. Attorney Applicant's Examination

Before being certified for admission, each attorney applicant must pass a written examination, which shall be conducted by the committee of law examiners and which shall be held on the third Monday of January and July of each year, commencing at 9 a.m. or on such other dates and at such times as the board of governors may designate, at such location as the board of governors may designate.

The examination shall consist of such questions as the committee may select on general law and on Washington procedure and Washington substantive, constitutional, and statutory law. The State Bar Association shall certify to the committee, on or prior to the morning of the examination, the names of those whose applications for examination have been approved by the board of governors. As soon as practicable after the completion of the examination, the committee of law examiners shall certify to the board of governors the grades of those who have taken the attorney's examination.

C. Examination——Failure

Any applicant failing to pass an examination which he or she takes may apply to take another examination, but after the third failure, no such applicant shall take any subsequent examination unless 11 months have elapsed since the date upon which the last preceding examination was taken. [Adopted Jan. 29, 1965, effective Feb. 12, 1965; adopted, amended June 19, 1974, effective July 1, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 5 Certificate of results——Admission oath——Payment of membership fee. A. Upon completion of the examination and the receipt of the certificate from the committee of law examiners, the board of governors shall cause each applicant to be notified of the result of the examination and shall recommend to the supreme court of the State of Washington the admission or rejection of each applicant who has passed the examination.

B. No applicant shall be recommended to the Supreme Court for admission nor shall any applicant be permitted to take the oath of attorney unless he is then a resident of and domiciled in the State of Washington.

Applications for permission to take the bar examination must state the residence of the applicant at the time of application. Applicants who are not residents of the State of Washington at the time of taking the examination, shall submit to the Board as a prerequisite to the taking of the oath of attorney and being recommended for admission by the Board of Governors, an affidavit that he is a resident of and domiciled in the State of Washington.

C. In all cases the oath of attorney must be taken within one year from the date of the examination, except for good cause shown.

D. The recommendation of the board of governors to the court shall be accompanied by the successful candidates' applications for examination and any other documents deemed pertinent by the board. Such recommendation and all other documents and papers forwarded shall be kept by the clerk of the supreme court in a separate file and such file shall not be a public record. The supreme court may thereupon examine the recommendation and accompanying papers and make such order in each case as it deems advisable. Upon the request of the court, the board shall forward to the court the examination papers of, and all documents presented in connection with, any registration, whether for "clerkship" or "examination", and all papers in connection with the examination of such applicant.

E. The supreme court shall enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicants

(1) taking, and filing with the clerk of the supreme court, the Oath of Attorney as provided herein, and

(2) paying to the Washington State Bar Association its membership fee for the current year.

Upon the entry of such order, the taking and filing of the oath, and payment of said annual membership fee, an applicant shall be enrolled as a member of the bar and shall be entitled to practice law in the State of Washington.

F. The Oath of Attorney must be taken before a court of record in the State of Washington sitting in open court, provided that in the event a successful applicant is outside the State of Washington and the chief justice is satisfied that it is impossible or impractical for him to take the oath below prescribed before a court of record of this state, the chief justice may, upon proper application setting forth all the circumstances designate the person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

G. The oath which all applicants shall take is as follows:

"OATH OF ATTORNEY

State of Washington, County of _____, ss.

I, _____, do solemnly swear:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same;

2. I will support the constitution of the State of Washington and the constitution of the United States;

3. I will abide by the Code of Professional Responsibility approved by the Supreme Court of the State of Washington;

4. I will maintain the respect due to the courts of justice and judicial officers;

5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.

So help me God.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Judge."

[Adopted Jan. 29, 1965, effective Feb. 12, 1965. Para. B and C added and succeeding paragraphs redesignated, adopted June 25, 1965, effective July 9, 1965; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971; amended, adopted Apr. 26, 1974, effective Apr. 26, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955; Rule 5 B amended Feb. 6, 1964.]

Rule 6 Special investigation. The board of governors may refer any application for admission, examination, or registration as a law clerk to any existing committee of the state bar association or to a special committee thereof for the purpose of investigating and making recommendations on any matter connected with said application. Any applicant for admission, examination, or registration as a law clerk may be required to appear before the board or any committee of the state bar association upon reasonable notice and submit to an examination touching any matter deemed by the board of governors relevant to a proper consideration of the pending application. Failure to appear before the board or any committee as directed shall be sufficient reason for rejection of the application. The board of governors shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents in connection with any such investigation. [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 7 Practice by members of bar from other jurisdictions prohibited——Exception.

A. In General.

(1) No person shall appear as attorney or counsel in any of the courts of this state, unless he is an active member of the state bar: Provided, that a member in good standing of the bar of any other state who is a resident of and who maintains a practice in such other state may, with permission of the court, appear as counsel in the trial of an action or proceeding in association only with an active member of the state bar, who shall be the attorney of record therein and responsible for the conduct thereof and shall be present at all court proceedings.

(2) Application to appear as such counsel shall be made to the court before whom the action or proceeding in which it is desired to appear as counsel is pending. The application shall be heard by the court after such notice to the adverse parties as the court shall direct; and an order granting or rejecting the application made, and if rejected, the court shall state the reasons therefor.

(3) No member of the state bar shall lend his name for the purpose of, or in any way assist in, avoiding the effect of this rule.

B. Indigent Representation.

(1) A member in good standing of the bar of another state, while rendering service in a Bar Association or governmental or sponsored Legal Services, Public Defender or similar program providing legal assistance to indigents, and solely in one's capacity as a member of that office, may for a period not to exceed one year, upon application and approval, practice law and appear as counsel before the courts of this state in any action or proceeding in association with an active member of the state bar, who shall be the attorney of record therein and be responsible for the conduct thereof.

(2) Application to appear under the rules shall be made to the Supreme Court of the State of Washington and said applicant shall be subject to the Rules for Discipline of Attorneys and the Code of Professional Responsibility. The granting of an application shall be effective for the period of one's service, not to exceed one year or until such time as the individual shall take and fail the Washington State Bar examination, or until such time as the Supreme Court deems it necessary to terminate such privilege. [Adopted Jan. 29, 1965, effective Feb. 12, 1965; amended, adopted Nov. 5, 1973, effective Jan. 1, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 8 Admission for educational purposes. Notwithstanding any provision of any other rule to the contrary, an attorney who has been regularly admitted to practice in another state or the District of Columbia and who is enrolled and in good standing as a post graduate student or faculty member in a program of an approved law school of this state involving clinical work in the courts or in the practice of law which has been approved by the Board of Governors for the purposes of this rule, may, upon application to the Washington State Bar Association and without payment of fee, be admitted to the limited practice of law in this state for the period such applicant actively participates in said program and complies with the Canons of Professional Ethics. An applicant hereunder shall establish in the manner specified by the Board of Governors that he:

(1) Satisfy the requirements of Rule 2B(2);

(2) Is of good moral character;

(3) Is admitted to practice in another state or the District of Columbia, and is in good standing as an attorney of such bar;

(4) Is enrolled and in good standing in such an approved program.

Upon approval of such application by the Board, the applicant shall take the oath of attorney and the Board shall recommend to the Supreme Court the admission of such applicant for the purposes herein stated; such oath, together with any other documents the Board deems pertinent, shall be sent to the Supreme Court which shall enter an appropriate order upon the limited admission of such applicant.

Practice of an applicant so admitted shall be limited to the clinical work of the particular approved course of study in which he is enrolled; no charge shall be made for any services so rendered. When such applicant ceases to actively participate in such program the dean of the law school shall immediately notify the Washington State Bar Association and the clerk of the court so that the right of the applicant to practice may be terminated of record. [Adopted May 20, 1966, effective May 20, 1966; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971.]

Reviser's note: Former Rule 8 captioned "Change of rules——Effect" adopted December 2, 1955, effective December 15, 1955, was abrogated January 29, 1965, effective February 12, 1965. For later rule on this subject, see APR 2 (D) (6).

Rule 9 Legal interns.

A. Admission to Limited Practice as a Legal Intern.

Notwithstanding any provision of any other rule to the contrary, qualified law students, registered law clerks and graduates of approved law schools, upon application and approval in accordance with the requirements set forth in Rule 9B, may be admitted to the status of "legal intern" and may be granted a limited license to engage in the practice of law in any trial court of this state under the direction and supervision of an active member of the Washington State Bar Association who has been actively engaged in the practice of law in the State of Washington or elsewhere as a full-time occupation for at least three years at the time the application is filed. Such supervising and direction of the practice of a legal intern shall be in accordance with the requirements and limitations set forth in Rule 9D.

B. Application for Limited License as a Legal Intern——Qualifications——Procedure.

(1) *Qualifications*——The applicant must:

(a) Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds of a prescribed three-year course of study or five-eighths of

a prescribed four–year course of study, and have the written approval of his law school dean or a person designated by such dean; or

(b) Be a registered law clerk in compliance with the provision APR 2(d) with not less than three–fourths of the prescribed four–year course of study completed and have the written approval of his tutor; or

(c) Be a graduate of an approved law school and submit satisfactory evidence thereof to the Washington State Bar Association.

(2) *Procedure*

(a) The applicant shall make his application on a form provided by the Washington State Bar Association, which shall conform to the requirements set forth in Rule 9B1. There shall be no fee for filing such application.

(b) The application shall give the name of the active member of the Washington State Bar Association who is to be the applicant's supervising attorney, as provided in Rule 9C. The application shall be signed by such active member who, in doing so, shall assume the responsibilities of supervising attorney set forth in Rule 9D if the applicant is granted a limited license as a legal intern. Such active member shall be relieved of such responsibilities upon the termination of such limited license or at such earlier time as he or the applicant shall give written notice to the Washington State Bar Association and the Supreme Court of the State of Washington requesting that such active member be so relieved. In the latter event another active member of the Bar may be substituted as such supervising attorney by giving written notice of such substitution, signed by the applicant and by such other active member, to the Washington State Bar Association and the Supreme Court of the State of Washington.

(c) Upon receipt of the application, the Washington State Bar Association shall endorse thereon its approval or disapproval and forward the same to the Supreme Court of the State of Washington.

(d) The Supreme Court of the State of Washington shall issue or refuse the issuance of a limited license as a legal intern. The Court's decision shall be forwarded to the Washington State Bar Association, and the applicant shall be informed of the Court's decision.

C. Scope of Practice by Legal Intern Under the Limited License.

A legal intern shall be authorized to engage in the practice of law, including appearance in the trial courts of this state in civil and criminal matters, as limited by the provisions of this Rule 9.

D. Supervising Attorneys——Requirements.

(1) The supervising attorney shall maintain direction and supervision over the work of the legal intern and shall assume personal professional responsibility for any work undertaken by the legal intern while under his supervision. All pleadings, motions, briefs, and other documents prepared by the legal intern shall be reviewed by the supervising attorney or an attorney from the same office as the supervising attorney. When a legal intern signs any legal document, his signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising attorney or an attorney from the same office as the supervising attorney.

(2) Supervision shall not require that the supervising attorney be present in the room while the legal intern is advising or negotiating on behalf of a person referred to him by the supervising attorney, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(3) The supervising attorney need not be present in the courtroom during the legal intern's appearance in matters before and cases tried in a trial court from the judgment of which there is a right of trial de novo on appeal, except in the representation of a defendant in preliminary criminal hearings. However, if the supervising attorney or an attorney from the same office as the supervising attorney is present, the legal intern may appear in the representation of a defendant in preliminary criminal hearings.

(4) A legal intern may not appear in any superior court proceeding without the presence of the supervising attorney or an attorney from the same office as the supervising attorney except in ex parte matters and other non–contested cases.

(5) A judge may exclude a legal intern from active participation in proceedings before the court in the interest of orderly administration of justice or for the protection of a client or witness, and shall thereupon grant a continuance to secure the attendance of the supervising attorney.

(6) No supervising attorney shall have supervision over more than one (1) legal intern at any one time; however, in the case of recognized legal aid, legal assistance, public defender and similar programs furnishing legal assistance to indigents, or of state, county or municipal legal departments, the supervising attorney may have supervision over two (2) legal interns at one time.

(7) No legal intern may receive payment from a client for his services; however, nothing contained herein shall prevent a legal intern from being paid for his services by his employer or to prevent his employer from making such charges for the service of the legal intern as may otherwise be proper.

(8) Without prior approval of the Board of Governors of the Washington State Bar Association, no person shall be eligible to act as a supervising attorney while disciplinary proceedings (following the service of a formal complaint) are pending against him, or if he has ever been censured, reprimanded, suspended or disbarred.

(9) For purposes of the provisions of this Rule 9D which permit an attorney from the same office as the supervising attorney to sign documents or be present with a legal intern during court appearances, the attorney so acting must be one who meets all of the qualifications for becoming a supervising attorney under this Rule 9.

E. Term of Limited License.

(1) A limited license as a legal intern shall not be granted for a period in excess of twelve (12) months, and may be renewed only once.

(2) In no event shall any law school student or graduate be licensed as a legal intern if application is made more than nine (9) months after graduation from law school. In no event shall any registered law clerk be licensed as a legal intern if application is made more than nine (9) months after completion of his law studies under APR 2(d). No legal intern shall be permitted to practice beyond a date twelve (12) months after graduation from law school or completion of law studies under APR 2(d) or beyond a date when the results are announced of the second Washington State Bar exam taken by the legal intern, whichever date first occurs. The time period set forth in this paragraph shall not include periods of active military service following graduation from law school or the completion of law studies under APR 2(d).

(3) The approval given to a law student by his law school dean or his designee may be withdrawn at any time by mailing notice to that effect to the Clerk of the Supreme Court and to the Washington State Bar Association, and shall be withdrawn if the student ceases to be duly enrolled as a student prior to his graduation or ceases to be in good academic standing. The approval given to a registered law clerk by a tutor shall be withdrawn if the law clerk ceases to comply with APR 2(d).

(4) A limited license is granted at the sufferance of the Supreme Court of the State of Washington and may be revoked at any time upon the Court's own motion, or upon the motion of the Board of Governors of the Washington State Bar Association, in either case with or without stated cause.

F. Termination of this Rule. This rule shall expire on December 31, 1976, unless continued by order of the Supreme Court. [Adopted June 4, 1970, effective June 4, 1970; amended, adopted May 21, 1971, effective May 21, 1971; amended, adopted Feb. 29, 1972, effective Feb. 29, 1972; amended, adopted Sept. 26, 1973, effective Dec. 31, 1973.]

Rule 10 Revocation of order admitting to practice. The order admitting to practice an applicant under Rule 2B(2) (b) may be revoked by the Supreme Court, upon the recommendation of the Board of Governors, for failure of the applicant to proceed with due diligence in completing his naturalization process. [Adopted Dec. 29, 1970, effective Mar. 10, 1971.]

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TABLE OF DISTRIBUTION OF DISCIPLINE RULES FOR ATTORNEYS IN EFFECT FROM JULY 16, 1965 THROUGH JUNE 30, 1969, INTO THE REVISED DISCIPLINE RULES FOR ATTORNEYS IN EFFECT ON AND AFTER JULY 1, 1969

(For orders of adoption and savings clause, see note following DRA Rule 1.1)

Original DRA Number	Revised DRA Number
Rule I	Rule 9.1
Rule II	Rule 9.2
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A–F, G	Rule 2.1
H	Rule 2.6
Rule V	Rule 2.5
Rule VI	Rule 2.7
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A, B	Rule 2.2
C, D & E	Rule 2.3
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Original DRA Number	Revised DRA Number
N	Rule 4.1
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TABLE OF DISTRIBUTION OF RULES FOR DISCIPLINE OF ATTORNEYS IN EFFECT PRIOR TO JULY 16, 1965, INTO THE NEW DISCIPLINE RULES FOR ATTORNEYS IN EFFECT ON AND AFTER JULY 16, 1965

(For order of adoption, see note following DRA Rule 1.1)

Old RDA Number	New DRA Number
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Rule 2	Rule IV
Rule 3	Rule V
Rule 4	Rule VI
Rule 5	Rule VII
Rule 6	Rule VIII
Rule 7	Rule IX
Rule 8	Rule X
Rule 9	Rule XII
Rule 10	Rule XIII
Rule 11	Rule XV

[By order of the Supreme Court dated May 5, 1967, and effective July 1, 1967, the Rules for Discipline of Attorneys (RDA) have been redesignated as "Discipline Rules for Attorneys (DRA)."]

I. GROUNDS FOR DISCIPLINARY ACTION

Rule 1.1 Grounds. An attorney at law may be censured, reprimanded, suspended, or disbarred for any of the following causes, hereinafter sometimes referred to as violations of the rules of professional conduct:

(a) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his relations as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence, at the ensuing disciplinary hearing of the guilt of the respondent attorney of the crime described in the indictment or information, and of his violation of the statute upon which it is based. A disciplinary hearing as provided in Rule 3.2 of these rules shall be had to determine, (1) whether moral turpitude was in fact an element of the crime committed by the respondent attorney and, (2) the disciplinary action recommended to result therefrom.

(b) Wilful disobedience or violation of a court order directing him to do or cease doing an act connected with his practice of law, which he ought in good faith to do or forbear.

(c) Violation of his oath or duties as an attorney.

(d) Corruptly or, without authority, wilfully appearing as an attorney for a party to an action or proceeding.

(e) Lending his name to be used as attorney by another person who is not an attorney authorized to practice law in the State of Washington.

(f) Misrepresentation or concealment of a material fact made in his application for admission or reinstatement or in support thereof.

(g) Suspension or disbarment by competent authority in any state, federal or foreign jurisdiction.

(h) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney, or with any person not authorized to practice law.

(i) Gross incompetency in the practice of law.

(j) Violation of the Code of Professional Responsibility of the profession adopted by the Supreme Court of the State of Washington.

(k) Membership in any party or organization knowing that it has for its purpose and object the overthrow of the United States Government by force or violence.

(l) Wilful violation of Rule 2.6 or wilful disregard of the subpoena or notice of a local administrative committee, panel, Disciplinary Board, or Board of Governors of the Washington State Bar Association.

(m) A course of conduct demonstrating unfitness to practice law. [Adopted May 12, 1969, effective July 1, 1969; amended Mar. 27, 1972, effective Mar. 27, 1972; amended Dec. 15, 1972, effective Jan 2, 1973.]

Order of Supreme Court adopting rules for discipline of attorneys and superseding prior rules:

"WHEREAS, the Board of Governors of the Washington State Bar Association has recommended to the Supreme Court for adoption the attached Discipline Rules for Attorneys, and the Court having considered the proposed Rules; it is hereby

ORDERED that the existing Discipline Rules for Attorneys are superseded by the Discipline Rules for Attorneys attached hereto and by reference made a part hereof; and

It is further ORDERED that the attached rules be published expeditiously in the Washington Decisions with notification that criticism, comment or objection be received in the office of the Clerk of the Supreme Court by June 18, 1969 for the purpose of consideration and evaluation by the Supreme Court; and

It is further ORDERED that the attached rules will become effective on July 1, 1969, subject to such revision or modification as is made by the Supreme Court prior thereto, and

It is further ORDERED that disciplinary proceedings wherein the formal complaint has been served on the respondent prior to July 1, 1969 shall continue to be governed by and disposed of under the presently existing rules.

Dated at Olympia, Washington this 12th May, 1969."

Order of Supreme Court adopting rules for discipline of attorneys and abrogating former rules: "The Supreme Court of the State of Washington in conformity with its rule-making power herewith abrogates the existing Rules for Discipline of Attorneys in the State of Washington as the same appear in RCW Vol. 0 as of the effective date of the new Rules for Discipline of Attorneys in the State of Washington adopted herewith, except as to proceedings then pending before the Board of Governors of the Washington State Bar Association, or before the Supreme Court of the State of Washington.

The attached Rules for Discipline of Attorneys (proposed by the Board of Governors of the Washington State Bar Association and modified in minor respects by this court) are herewith adopted, effective as of the date of their publication in the Washington Decisions.

Dated at Olympia, Washington this 25th day of June, 1965."

Reviser's note: By order of the Supreme Court dated May 5, 1967, and effective July 1, 1967, the Rules for Discipline of Attorneys (RDA) have been redesignated as "Discipline Rules for Attorneys (DRA)."

II. PROCEDURE

Rule 2.1 Local administrative committees.

(a) Appointment. The board of Governors shall appoint a Local Administrative Committee consisting of three or more members in each county or district as herein defined. The Board of Governors may create districts consisting of two or more counties, a portion of one or more counties, or one or more counties and a portion of one or more counties. These Committees shall be known as "Local Administrative Committee of _____ County (or _____ District)." All members of the Local Administrative Committees shall be chosen by the Board of Governors from the active members of the Association whose residences are in the county or district for which they are appointed.

(b) Term of Office. The members of the Local Administrative Committees shall be appointed for terms of three years or until their successors are appointed, and their terms shall be so staggered that one or more shall be appointed each year. The Board of Governors shall designate each year one member of each Local Administrative Committee to serve as chairman thereof for one year or until his successor is appointed. Members heretofore appointed by the Board of Governors shall serve out their regular terms. Members may be removed from office at any time and their successors appointed to serve during the remainder of the unexpired term.

(c) Duties. It shall be the duty of a Local Administrative Committee to:

(1) *Investigate Complaints.* Investigate promptly all complaints referred to it by the association or received directly by the committee in writing concerning any attorney who has his residence within the county or district of such committee.

(2) *Surveillance.* Take cognizance of any alleged violation of the rules of professional conduct brought to its attention whether or not a complaint be received.

(3) *Reports.*

(i) *Case.* Make prompt reports to the Disciplinary Board containing complete findings of fact and its opinion as to whether or not reasonable cause exists for further proceedings as hereinafter provided.

(ii) *Quarterly.* Each Local Administrative Committee shall, not later than the 10th day of January, April, July and October of each year, prepare and file with the Disciplinary Board, upon forms prepared by the Disciplinary Board, a list of all matters and proceedings before the Committee, and note thereon the progress, if any, of each of the matters and proceedings since the last report of the Committee.

(iii) *Confidential.* Except as provided in these rules, reports made by the Local Administrative Committees with regard to all matters investigated by them are confidential; provided, if requested in writing by the attorney investigated, that he shall be advised whether or not the Local Administrative Committee found that reasonable cause exists for further proceedings. Such reports shall form a part of the permanent records of the Association and may be used as a basis for disciplinary proceedings.

(4) *General.* Perform such other duties and transact such other business of a local nature for and on behalf of the Association as shall be referred to it from time to time by the Disciplinary Board or the Board of Governors.

(5) *Perpetuation of Testimony.* Where, in the discretion of a Local Administrative Committee, there is reasonable cause to believe that testimony should be perpetuated, the Committee may, upon reasonable notice to the attorney investigated, cause the deposition of any witness to be taken under oath before a notary public or before any other officer authorized by the law of the jurisdiction where the deposition is taken to administer an oath, and have the same transcribed for use in any further proceedings under these rules to which the said attorney may be a party. Save as in this paragraph specifically provided, proceedings before a Local Administrative Committee shall be informal and witnesses shall not be sworn.

(d) Authority.

(1) *Trivial Matters.* The committee shall have power to settle and dispose of complaints of a trivial nature; provided, that a complete report of the disposition of each such complaint shall be made to the Disciplinary Board.

(2) *Settlement, Compromise or Restitution.* Settlement of, compromise of, or restitution in a matter shall not justify the Committee in failing to undertake or complete its investigation and report thereon to the Disciplinary Board.

(e) Special Circumstances. The Board of Governors in lieu of referring a matter to a Local Administrative Committee for investigation, in its discretion, may:

(1) Appoint a special committee composed of Local Administrative Committee members from more than one county or district to conduct an investigation, or

(2) Refer a complaint to bar counsel for investigation, or

(3) Direct the filing of a formal complaint without investigation if in its opinion investigation would be of no value. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.2 Trial committee.

(a) Appointment. The Board of Governors shall appoint a Trial Committee consisting of three or more members in each county or special district as herein defined. The Board of Governors may create special district consisting of two or more counties, a portion of one or more counties, or one or more counties and a portion of one or more counties. Those committees shall be known as "Local Trial Committee of _____ County (or _____ Special District _____)." All members of Local Trial Committees shall be chosen by the Board of Governors from the active members of the Association whose residences are in the county or special district for which they are appointed.

(b) Term of Office. The members of Local Trial Committees shall be appointed for terms of three years or until their successors are appointed, and their terms shall be so staggered that one or more shall be appointed each year. Members heretofore appointed by the Board of Governors shall serve out their regular terms. Members may be removed from office at any time and their successors appointed to serve during the remainder of the unexpired term. Any member designated to serve on a hearing panel, in accordance with these rules, shall continue as a member of the Local Trial Committee until the completion of his duties as a member of the panel to which he was assigned notwithstanding his appointed term as a member of the Local Trial Committee expires after his assignment to the panel. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.3 Hearing panel.

(a) Hearing Panel. Each disciplinary matter referred for hearing shall be heard by a three-member Hearing Panel appointed by the Chairman of the Disciplinary Board. The Panel shall be composed of one member from the Disciplinary Board and two members from the Local Trial Committee of the county or special district where the respondent attorney had his residence at the time of the alleged violation of the rules of professional conduct. The Disciplinary Board may direct a hearing which has been assigned to a Panel in one county or special district to be transferred to another county or special district or to a special Panel appointed by the Chairman, the Local Trial Committee members of which two last mentioned Panels need not have their residences in the same county or special district as that in which the respondent attorney had his residence at the time of the alleged violation.

(b) Duties. It shall be the duty of the Panel to whom a cause has been referred for hearing to conduct the hearing in the manner hereinafter provided. The Panel shall pass on all questions of procedure and admission of evidence, and in case of disagreement a majority of the members of the Panel shall decide each point or objection as the same shall arise. The Panel shall make its findings, conclusions and recommendation, submitting them to the Disciplinary Board together with all pleadings, documents and exhibits promptly after the taking of evidence is concluded.

(c) Disagreement. In the event of disagreement the members shall file independent findings, conclusions and recommendation within the time aforesaid.

(d) Members of the Disciplinary Board on Panels. Each Panel shall have as its chairman a member of the Disciplinary Board, but such member shall not be a resident of the congressional district in which the respondent attorney had his residence at the time of the occurrence of the alleged violation of the rules of professional conduct. Notwithstanding the foregoing provisions and those of Rule 2.3(a), the Panel chairman may be a lawyer not a member of the Disciplinary Board if the Disciplinary Board determines that such action is necessary or desirable to prevent an undue burden upon its members. The Chairman shall settle the necessary pleadings, preside at the hearing, conduct the hearing with the assistance of the other members of the Panel, see that the findings, conclusions and recommendation are submitted to the Disciplinary Board and perform such other duties as shall be required of him by the Disciplinary Board.

(e) Continuity. Notwithstanding the expiration of the term of office of any member or members of a Panel, the Panel as constituted at the time a matter is referred to it shall have jurisdiction to proceed and render its decision and recommendation in such matter. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.4 Disciplinary board.

(a) Membership.

(1) *Composition.* The Board of Governors shall appoint a Disciplinary Board composed of at least seven members, with one, or more, having his residence in each Congressional District.

(2) *Qualification.* No person shall be appointed to the Disciplinary Board who has not been an active member of the State Bar Association for at least fifteen years, and no one shall be eligible to serve two consecutive three-year terms.

(3) *Quorum.* Five members shall constitute a quorum, and concurrence of a majority of the members present shall constitute the action of the Disciplinary Board.

(b) Term of Office. Members of the Disciplinary Board shall serve for terms of three years, or until their successors are appointed. Terms shall be so staggered

that two or more are appointed each year. Two of those first appointed shall serve for one year, two for two years.

(c) Continuity. Notwithstanding the expiration of the term of office of a member of the Disciplinary Board, he shall have the authority to act in any matter assigned to him prior to the expiration of his term.

(d) Chairman. The Board of Governors shall designate one member of the Disciplinary Board to act as its chairman and another as its vice chairman for terms of one year. The chairman shall have such duties and powers as are specified in the Rules for Discipline of Attorneys, and shall preside at Disciplinary Board meetings. The vice chairman shall serve in the absence or at the request of the chairman.

(e) Vacancies. Vacancies in membership on the Disciplinary Board and in the office of chairman and vice chairman shall be filled by the Board of Governors for the unexpired terms.

(f) Responsibilities.

(1) *General.* The Disciplinary Board shall have the powers and duties expressly provided in these rules for Discipline of Attorneys, together with those delegated to it by the Board of Governors. It shall make such reports of its work in statistical or other form to the Board of Governors as may be required by the Board of Governors.

(2) *Review of Local Administrative Committee Reports.* The Disciplinary Board shall review each report of alleged misconduct submitted to it, and in its discretion may refer such complaint for trial, request further investigation, dismiss the complaint, or take other appropriate action.

(3) *Letter of Admonition.* Where it appears to the Disciplinary Board that, if the findings of the Local Administrative Committee are true, the attorney has been guilty of misconduct, but not of sufficient magnitude to warrant a trial, the Disciplinary Board, in its discretion may dismiss the complaint and send the attorney a letter of admonition warning against such conduct in the future. Such a letter shall not constitute a finding of misconduct.

(4) *Division of Authority.* The Board of Governors shall have no right or responsibility to review decisions or recommendations of the Disciplinary Board. It shall, however, have responsibility for the proper functioning of the Local Administrative Committees and bar counsel. Any publicity with reference to pending disciplinary proceedings shall be released only through the Board of Governors.

(5) *Meetings.* The Disciplinary Board shall hold at least six meetings a year at such times and places as it may determine.

(g) Lay Members

(1) *General.* Two (2) lay members shall be appointed to the Disciplinary Board by the Supreme Court.

(2) *Term of Office.* The lay members of the Disciplinary Board shall serve for terms of one year, or until their successors are appointed.

(3) *Duties.* The lay members shall serve as advisory non-voting members of the Disciplinary Board. A lay member shall not serve on a hearing panel.

(4) This paragraph of DRA 2.4 shall expire on December 31, 1974, unless continued by order of the Supreme Court. [Adopted May 12, 1969, effective July 1, 1969; amended, adopted Dec. 15, 1972, effective Jan. 2, 1973; amended, adopted Nov. 14, 1973, effective Jan. 1, 1974.]

Rule 2.5 State bar counsel.

(a) Appointment and Duties. The Board of Governors shall employ a suitable person or persons from among the members of the Association to act as counsel for the Association with respect to matters of discipline and reinstatement of members, including the investigations, hearings and appeals incident thereto, and to perform such duties as shall be required by such Board.

(b) Not a Prosecutor. The general function of the State Bar Counsel in all investigations and hearings shall be to present all the material facts to the appropriate Panel, Board or Court. His function is not that of a prosecutor.

(c) Discovery Prior to Formal Complaint. Where Bar Counsel deems it essential to take the discovery deposition of the attorney being investigated or of a witness prior to the filing of a formal complaint, the Disciplinary Board, in its discretion, may authorize the taking of such deposition upon such terms and with such limitations as it deems proper.

(1) *Procedure.* Such depositions may be taken within or without the state and either orally or upon written interrogatories, before any officer authorized to administer an oath by law in the jurisdiction where the deposition is taken. The manner of taking such depositions shall conform as nearly as practical to that prescribed for the taking of depositions in the Superior Court of the State of Washington except as otherwise provided in these rules.

(2) *Notice.* If it is a witness who is to be deposed, the deposition may be taken with or without notice to the attorney being investigated, but if such attorney is not given reasonable prior notice thereof the deposition shall not be introduced in evidence at any hearing without his consent.

(3) *Subpoenas.* Each member of the Disciplinary Board shall have the power to issue subpoenas to compel the attendance of the attorney being investigated or of a witness, or the production of books or documents at the taking of such depositions. Subpoenas shall be served in the same manner as in civil cases in the Superior Court of the State of Washington. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.6 Respondent Attorney.

(a) Responsibility. It shall be the duty and the obligation of an attorney against whom a complaint has been

made and who is being investigated by the Local Administrative Committee to cooperate with Committee as requested by it by:

(1) furnishing any papers or documents,

(2) furnishing in writing a full and complete explanation covering the matter contained in such complaint,

(3) appearing before the Committee at the time and place designated.

(b) Dereliction. Should such attorney fail so to cooperate with the Committee in the manner herein provided, the Committee shall report the same to the Disciplinary Board, and such failure may constitute a violation of the rules of professional conduct. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 2.7 Complainant.

Duties of Complainant. Upon request, the person complaining shall furnish to the Local Administrative Committee or State Bar Counsel documentary and other evidence in his possession and the names and addresses of witnesses, and assist in securing evidence in relation to the facts charged. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

III. DISCIPLINARY PROCEEDINGS

Rule 3.1 Pleadings.

(a) Pleadings. The only pleadings permissable upon proceedings before a Panel are a formal complaint, a notice to answer, answer to complaint, and motions to make more definite and certain or in the alternative for a bill of particulars, and, if directed, a bill of particulars. Informality in the complaint or answer shall be disregarded.

(1) *Formal Complaint.* If the Disciplinary Board finds a hearing should be had to determine whether a violation of the rules of professional conduct has occurred, a formal complaint shall be prepared and filed in the office of the Association and proceedings shall be had thereon as hereinafter provided. The formal complaint, which need not be verified, shall set forth the particular acts or omissions of the respondent attorney in such detail as to enable him to know the charge against him and shall be signed by the President and State Bar Counsel.

(i) *Prior record a separate count.* Prior disciplinary proceedings and complaints against the respondent attorney, excluding dismissals after a hearing before a hearing panel, shall be made a separate count of the complaint if they indicate a course of conduct demonstrating unfitness to practice law or gross incompetency in the practice of law.

(ii) Prior record as professional history. If a prior record of the respondent attorney is not made a separate count of the complaint, any prior record of censure, reprimand, suspension or disbarment, or any absence of such record, shall be included in the complaint as an allegation of the professional history of respondent.

(iii) *Joinder of charges.* The Disciplinary Board in its discretion may consolidate for hearing two or more charges as to the same attorney, or may join the charges as to two or more attorneys in one formal complaint.

(iv) *Commencement of proceeding.* A disciplinary proceeding shall be deemed commenced when the formal complaint has been filed in the office of the Association as provided by these rules.

(v) *Procedural irregularity.* No procedural irregularity which occurs prior to the filing of a formal complaint shall affect the validity of such complaint or of any proceeding subsequent thereto.

(2) *Form of Notice to Answer.* The notice to answer shall be substantially in the following form:

STATE OF WASHINGTON BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSOCIATION

In re _____, An Attorney at Law: Notice to Answer To the above named attorney at law:

You are notified that a formal complaint has been filed against you, a copy of which is hereto attached and herewith served upon you.

You are notified that you may answer said complaint by filing the original and four copies of your answer in the office of the Washington State Bar Association, at the address below stated. If the complaint was served upon you personally in the State of Washington you may have twenty days, exclusive of the date of service, in which to file such answer. If the complaint was served upon you in any other manner, or outside the State of Washington, or mailed to you, then you may have thirty days from the date of service, or the date of the mailing of the complaint to you, in which to answer.

Upon the filing of your answer a hearing will be had upon the allegations of the complaint, and such further proceedings will be had as the facts and the law shall warrant.

In case of your failure to answer, further proceedings will be had in accordance with the rules of discipline.

Washington State Bar Association
By _____
State Bar Counsel
Address: _____
_____, Washington
Date of Mailing: The _____ day of _____ 19___.

(3) *Form of Answer and Verification.* The answer must contain:

(i) *Denials.* A general or specific denial of each material allegation of the complaint that is controverted by the respondent attorney, or of any knwoledge or information thereof sufficient to form a belief.

(ii) *Affirmative defenses.* A statement of any matter constituting a defense or justification, in ordinary and concise language without repetition.

(iii) *Address.* An address at which all further pleadings, notices and other documents in relation to the proceeding may be served upon the respondent attorney.

(iv) *Verification.* A verification before some officer authorized to administer oaths.

(4) *Filing of Answer.* The original and four copies of the answer shall be filed in the office of the Association.

(5) *Amendments.* A complaint may be amended at any time to set forth additional facts, whether occurring before or after commencement of the hearing, either in amplification of the original charge or to add new charges. In case of such amendment, the respondent attorney shall be given a reasonable time, to be fixed by the chairman of the Panel, to answer the amendment, to procure evidence, and to defend against the charges set forth therein. The chairman of the Panel may at any time allow or require other amendments to the complaint or to the answer.

(6) *Time Within Which to Answer.* If personal service is made upon the respondent attorney in the State of Washington, he shall be allowed twenty (20) days from the date of service, exclusive of the date of service, in which to answer; if service is made in any other manner or place, the respondent attorney shall be allowed thirty (30) days from the date of service, or the date of mailing, exclusive of the date of service or mailing, in which to answer.

(7) *Extension of Time to Answer.* For good cause shown the chairman of the Panel may extend time for answer.

(b) Service.

(1) *Formal Complaint and Notice to Answer.* A copy of the formal complaint with notice to answer shall be served on the respondent attorney in the following manner:

(i) Personal service in Washington. If the respondent attorney is found in the State of Washington, by personal service upon him in the manner as is required for personal service of summons in civil actions in the Superior Court in the State of Washington on the effective date of these rules.

(ii) *Service if not found in Washington.* If the respondent attorney cannot be found, either by leaving a copy at his place of usual abode, if in the State of Washington, with some person of suitable age and discretion then resident therein, or by mailing by registered or certified mail, postage prepaid, a copy addressed to him at his last known (a) place of abode, (b) office address maintained by him for the practice of law, or (c) post office address.

(iii) *Service outside Washington.* If the respondent attorney is found outside of the State of Washington, then by personal service.

(iv) *Service on guardian.* If the respondent attorney has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, service shall also be had on his guardian or guardian ad litem.

(2) *Other Pleadings, Notices or Other Documents.* Service upon the respondent attorney of any pleadings, notices or other documents required by these rules to be served, other than the formal complaint and notice to answer, may be made by mailing the same, postage prepaid, to or leaving the same at the address set forth in his answer, or in the absence of an answer, by mailing the same, postage prepaid, to or leaving the same at the address of the respondent attorney on file in the office of the Association.

(3) *Service Upon the Association.* Service upon the Association of any pleadings, notices, or documents may be made by filing the same in the office of the Association.

(4) *Mailing.* When such other pleadings, notices, or documents are to be served by mail they shall be sent by registered or certified mail with postage prepaid.

(5) *Proof of Service.* An affidavit of service, sheriff's return of service, or a signed acknowledgement of service, upon being filed in the office of the Association, shall be proof of such service. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 3.2 Hearings.

(a) Where Held. All disciplinary hearings shall be held in the county where the attorney complained against had his residence at the time of the alleged violation of the rules of professional conduct, unless otherwise directed by the Disciplinary Board or the Panel.

(b) Date of Hearing. The chairman of the Panel shall fix the time and place for hearing and shall cause notice thereof to be given to respondent attorney at least twenty (20) days prior thereto. The hearing shall occur not earlier than thirty (30) days or later than sixty (60) days after service of the complaint, unless delayed for good cause.

(c) Postponements. At the time and place appointed for the hearing the Panel shall proceed with the hearing, unless for good cause the Panel shall grant a postponement, but no postponement shall be longer than thirty (30) days and the total period of time of all postponements shall not exceed sixty (60) days unless approved by the Disciplinary Board.

(d) Representation. The Association shall be represented at hearings before the Panels by State Bar Counsel. The respondent attorney may be represented by counsel if he so desires.

(e) Disqualification. The names and office addresses of the Panel who will conduct the hearing shall be served upon respondent attorney at the same time that the formal complaint is served or within a reasonable time thereafter. If the respondent attorney desires to challenge for cause any such member or members he shall do so in writing stating his reasons for such challenge or challenges at least ten (10) days prior to the hearing. The unchallenged members or member of the Panel shall rule upon the challenge or challenges. If a challenge is sustained, the chairman of the Disciplinary Board shall forthwith appoint some person or persons of the stated qualifications to fill the vacancy or vacancies on the Panel. In the event challenges are directed against all the members of the Panel, the chairman of the Disciplinary Board shall rule upon the challenges. The respondent attorney shall have the right to challenge any appointee to fill the vacancy on the Panel in the same manner and within such period as shall be provided in the order sustaining the prior challenge.

(f) Default. In no event shall a default be entered against the respondent attorney. If he fails to answer the complaint within the time allowed by these rules the Panel shall proceed to a determination of the matter in the same manner as though the respondent attorney were present and had answered by a general denial. No notice of the date of hearing or the names of the Panel members or of the taking of depositions of witnesses to be used at the hearing shall be required to be given to such respondent attorney failing to answer. If the respondent attorney has answered but fails to attend the hearing at the time set, the Panel shall proceed to a determination of the matter in the same manner as though the respondent attorney were present.

(g) Public Excluded from Hearing. Unless a public hearing is requested in writing by the respondent attorney, the hearing of a disciplinary matter before a Panel shall not be public.

(h) Procedure. Each member of the Disciplinary Board shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents at such hearings. The respondent attorney shall have the opportunity to make his defense and may have issued such subpoenas as he may desire and as any member of the Disciplinary Board deems necessary. Subpoenas shall be served in the same manner as in civil cases in the Superior Court of the State of Washington. Witnesses shall testify under oath administered by the chairman of the Panel. Testimony shall be taken in writing and may be taken by deposition in accordance with these rules.

(i) Depositions. Depositions for use at the hearing may be taken either within or without the state, upon either written or oral interrogatories before any member of the Panel or before any other officer authorized to administer an oath by the law of the jurisdiction where the deposition is taken. The manner of taking such depositions shall conform as nearly as practicable to that prescribed for the taking of depositions in the Superior Court of the State of Washington except as otherwise provided in these rules.

(1) *Authority for Taking.*

(i) *Within State.* The chairman of the Disciplinary Board or chairman of the Panel shall have the power to order the taking of depositions and to make such further orders relative thereto, including provision for the expense thereof, as will insure a fair and impartial hearing to the respondent attorney.

(ii) *Outside State.* Where depositions are taken without the State a commission need not issue, but a copy of the order so made certified to be such by the chairman of the Disciplinary Board or the chairman of the Panel shall be sufficient authority to authorize the taking of such depositions.

(2) *Filing.* All depositions when taken shall be filed in the office of the Association.

(j) Discovery, Admissions, Inspection of Documents. After the filing of a complaint against an attorney by direction of the Disciplinary Board, the respondent attorney and the Bar Association shall have the rights afforded to Superior Court litigants under Rules 33, 34 and 36 of the Civil Rules for the Superior Court, limited and prescribed as follows: Such rights shall be available only upon such terms, and with such limitations, as the Panel chairman deems just. The Panel chairman shall have discretion to decide whether to permit such limited discovery and the terms or limitations thereon. In exercising such discretion the chairman shall consider whether undue delay or expense in bringing the matter to hearing will result, and whether the interests of justice will be promoted. Any determinations or orders required under said Rules to be made by a Superior Court judge shall be made by the chairman.

(k) Cooperation. It shall be the duty of an attorney who has been served with a formal complaint to respond to all lawful orders made by the chairman of the Panel as provided in the preceding paragraph. Should such attorney fail so to do, the chairman of the Panel shall report the same to the Disciplinary Board, and such failure may constitute a violation of the rules of professional conduct.

(l) Findings, Conclusions and Recommendations. Promptly after the hearing, the chairman of the Panel shall cause findings, conclusions and recommendations to be filed with the Disciplinary Board. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 3.3 Stipulation. Any disciplinary matter or proceeding may be disposed of by a stipulation for discipline entered into at any time, the stipulation to be signed by the respondent attorney and by the State Bar Counsel. No such stipulation shall be effective unless approved by the Supreme Court. The stipulation may be presented to the Disciplinary Board and the Supreme Court for approval without notice.

(a) Form. A stipulation for discipline shall

(1) set forth the material facts relating to the particular acts or omissions of the respondent attorney in such detail as to enable the Disciplinary Board and the Supreme Court to form an opinion as to the propriety of the discipline being agreed upon, and to make the stipulation useful in any subsequent disciplinary proceedings against the respondent attorney;

(2) set forth the respondent attorney's prior record of censure, reprimand, suspension or disbarment, or any absence of such records;

(3) state that the stipulation is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent attorney, but that any additional existing facts may be proven in any subsequent disciplinary proceedings; and

(4) fix the amount of the costs and expenses to be paid by the respondent attorney.

(b) Stipulation Approved. If the stipulation is approved by the Disciplinary Board and the Supreme Court it shall be followed by the disciplinary action agreed to in the stipulation. If it is stipulated that the

respondent attorney be censured or reprimanded, the stipulation shall be retained in the office of the Association, with notice thereof sent to the Supreme Court, which notice shall remain confidential.

(c) Stipulation Not Approved. If the stipulation is not approved by the Disciplinary Board or the Supreme Court, as the case may be, then the stipulation shall be of no force and effect and neither it nor the fact of its execution shall be admissable in evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action. [Adopted May 12, 1969, effective July 1, 1969.]

IV. MENTAL ILLNESS AS A DEFENSE

Rule 4.1 Notice.

(a) Where Guardian Appointed. If the respondent attorney has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and a guardian of his person has been appointed in this state, all pleadings, notices or other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian.

(b) Where No Guardian Appointed. If a guardian of his person has not been appointed in this state, the Chief Justice of the Supreme Court shall, on application of the Association, appoint a member of the Washington State Bar Association as guardian ad litem for the respondent attorney. The file in such proceedings shall be kept sealed. All pleadings, notices or other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian ad litem and the guardian of the person of the respondent attorney, if any, appointed in another state, and all proceedings on the complaint as to the respondent attorney shall be determined as hereinafter provided. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 4.2 Hearing.

(a) Where No Judicial Determination of Incompetency. If the respondent attorney has not been judicially declared to be of unsound mind, or incapable of conducting his own affairs, but it shall appear to the chairman of the Panel that there is reasonable cause to believe that the respondent attorney is of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him, the chairman of the Panel shall fix a time and place for a hearing before the Panel on the sole issue of the respondent attorney's mental capacity to defend the formal complaint against him. It shall be the duty of the chairman of the Panel to appoint counsel to act for and on behalf of the respondent attorney in the proceeding in this subsection provided, should the respondent attorney not have counsel of his own choosing.

(b) Procedure after Determination by Panel. If it shall be determined by the Panel that said respondent attorney is mentally capable of conducting a proper defense, the proceeding shall continue. If, however, it shall be determined by the Panel that the respondent attorney is not mentally capable of conducting a proper defense, the Chief Justice of the Supreme Court, on application of the Association, shall appoint a member of the Washington State Bar Association as guardian ad litem for the respondent attorney. The file in such proceeding shall be kept sealed. All pleadings, notices and other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian ad litem and all proceedings on the complaint made as to the respondent attorney shall be determined as hereinafter provided.

(c) Hearing Held in Abeyance. Should the respondent attorney have been judicially declared to be of unsound mind, or incapable of conducting his own affairs, or, upon the hearing as provided in this rule, have been found to be of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him, all proceedings based upon the formal complaint for alleged violation of the rules of professional conduct shall be held in abeyance until such time as it shall appear that the respondent attorney is mentally capable of conducting a proper defense thereto.

(d) Submission of Mental Illness Record to Supreme Court. If the respondent attorney has been judicially declared to be of unsound mind or incapable of conducting his own affairs a certified copy of the judgment or order of the court so declaring shall be forthwith filed with the Disciplinary Board which shall transmit such record to the Supreme Court with its recommendation.

(e) Consideration of Record by Disciplinary Board. If the decision of the Panel after the hearing provided herein, is that the respondent attorney is of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him the evidence relating thereto shall be filed with the Disciplinary Board. If such Board concurs in the decision of the Panel, the Disciplinary Board shall transmit the record to the Supreme Court with its recommendation; if the Disciplinary Board does not concur, the Panel shall continue in accordance with the Rules.

(f) Action by Supreme Court. After the receipt of the record relating to the judicial proceedings or to the decision of the Panel the Supreme Court, in its discretion, after a hearing following twenty (20) days' notice to the respondent attorney, and to his guardian or counsel if such there be, may strike the name of the respondent attorney from the roll of active members of the Association and place his name upon the roll of inactive members. If the attorney's name is so stricken the court shall direct all further proceedings on the formal complaint be held in abeyance until such time as it shall appear to the Disciplinary Board, upon application made by or on behalf of the respondent attorney, that he is mentally capable of conducting a proper defense to the formal complaint in question. Thereafter a hearing on the formal complaint and proceedings thereunder shall be had as is provided by these rules in other

cases. If the Disciplinary Board concludes the charge or charges in the formal complaint have not been sustained or, having been sustained, do not warrant suspension or disbarment, the respondent attorney shall thereupon be restored to the roll of active members of the Association. [Adopted May 12, 1969, effective July 1, 1969.]

V. REVIEW BY THE DISCIPLINARY BOARD

Rule 5.1 Notices. When the findings, conclusions and recommendation of a Panel are filed in the office of the Association, a copy thereof and a notice of filing with a copy of DRA 5 shall be served upon the respondent attorney or his counsel. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 5.2 Statement in support or opposition. At any time within twenty days after the service of the above-mentioned notice the State Bar Counsel and the respondent attorney shall have the right to file with the Disciplinary Board a typewritten statement in support of or in opposition to the findings, conclusions and recommendations of the Panel, setting forth facts, alleged errors of law or any other matter in support of such statement. A copy of such statement, when filed, shall be served on the respondent attorney or his counsel, or State Bar Counsel, as the case may be. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.3 Additional hearing. In making the above statement in support of or in opposition to the findings, conclusions and recommendation of the Panel, State Bar Counsel or the respondent attorney may request an additional hearing before the Panel based on the ground of additional evidence; provided, however, that such statement shall contain a complete outline of such additional evidence and shall set forth the reasons why the same was not presented at the hearing, all supported by affidavit or affidavits. Such request may be granted or denied in the discretion of the Disciplinary Board. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.4 Disciplinary board of review. Each proceeding in which a hearing has occurred shall be reviewed by the Disciplinary Board upon the record made and filed in the office of the Association, together with the statements in support of or in opposition to such findings, conclusions and recommendation as provided by these rules. Neither State Bar Counsel nor the respondent attorney shall be entitled to be heard orally in such review, unless otherwise ordered by the Disciplinary Board. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.5 Transcript of the record. The Disciplinary Board or the chairman of the Panel may have all of the testimony transcribed. If a transcript of the testimony is made, a copy thereof shall be served upon the respondent attorney or his counsel and State Bar Counsel, each of whom shall have ten days from the date of service of the transcript to file objections to the contents thereof with the chairman of the Panel. The objections shall clearly state the errors alleged to exist in the transcript and shall be deemed filed at the time the same are delivered to the office of the Association or are deposited in the United States mail, properly addressed to the said chairman, in care of the office of the Association, at its address, with postage prepaid. The Panel shall thereupon settle the transcript either upon the written objections of the respondent attorney or his counsel and State Bar Counsel or after argument, if argument is deemed necessary by the chairman of the Panel. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.6 Disciplinary board action.

(a) Decision of Disciplinary Board. Prompt decision of the Disciplinary Board upon such review shall be made. The Disciplinary Board shall adopt, modify or reverse the findings, conclusions and recommendation of the Panel by written order, a copy of which shall be served upon the respondent attorney or his counsel.

(b) Transcript Required for Suspension or Disbarment. No suspension or disbarment shall be recommended by the Disciplinary Board unless and until a transcript of the testimony before the Panel shall have been reduced to writing and settled as in this rule provided.

(c) Dissent. If any member or members of the Disciplinary Board shall dissent from the findings, conclusions or recommendation of the majority of the Disciplinary Board in a matter in which the majority recommends suspension or disbarment, he or they shall state briefly his or their reasons therefor, and a copy shall be served upon the respondent attorney or his counsel. Such dissent or dissents shall be a part of the record.

(d) Disposition not Requiring Supreme Court Action. If the formal complaint is dismissed or if there is no recommendation of discipline by the Disciplinary Board or if the recommendation is that the respondent attorney be censured or reprimanded and the censure or reprimand is accepted by the respondent attorney, the record of the proceeding shall be retained in the office of the Association.

(e) Acceptance or Refusal of Censure or Reprimand. If the Disciplinary Board determines that the respondent attorney should be censured or reprimanded, a formal order signed by the Chairman of the Disciplinary Board shall be entered, which shall provide that if the respondent attorney or his counsel does not file in the office of the Association a written refusal to accept such censure or reprimand within fifteen (15) days of the date such order is served, the censure or reprimand shall be deemed accepted. Within twenty (20) days after the respondent attorney has filed his written refusal to accept a censure or reprimand, he shall order a transcript of the testimony taken before the hearing panel and make arrangements with the court reporter for the payment of the cost thereof. When the proposed transcript is received by the respondent attorney, he shall file the original with the office of the Association. Thereafter,

the transcript shall be settled as provided for in Rule 5.5 herein. Should the respondent attorney prevail on appeal, the cost of the transcript shall be paid for by the Association. If a determination is made that the respondent attorney is insolvent, the Association shall pay for the cost of the transcript on appeal.

(f) Letter of Censure. A censure shall be administered to the respondent attorney by letter, signed by the President of the Association. Notice of the censure shall be sent to the Supreme Court where such information shall remain confidential unless the Court determines that further action shall be taken.

(g) Giving of Reprimand. If the respondent attorney has accepted the reprimand or, on appeal, the Supreme Court has ordered the same, the respondent attorney shall appear in person before the Board of Governors at a time and place directed by the Board and receive the reprimand. The reprimand shall be given privately by the Board of Governors and no other proceedings shall be had at the administration thereof, nor shall any statements in support of or in opposition thereto or in mitigation thereof be made. A copy of the reprimand shall be sent to the Supreme Court where the same shall remain confidential unless the Court determines that further action shall be taken.

(h) Record to Supreme Court. If a censure or reprimand is not accepted, or if the recommendation of the Disciplinary Board is that respondent attorney be suspended or disbarred, the record shall be transmitted to the Supreme Court.

(i) Chairmen not Disqualified. Neither the chairman of the Disciplinary Board nor the chairman of the Panel shall be disqualified from participating in the discussion of, or voting upon, any matter.

(j) Information to Local Administrative Committee. Upon referral to a Panel, final disposition of a complaint by the Disciplinary Board, or upon recommendation to the Supreme Court by the Disciplinary Board of disbarment or suspension, notice of the action taken shall be given by the Disciplinary Board to the chairman of the Local Administrative Committee which investigated the complaint.

(k) Information to Complainant. The complainant in all cases shall be advised by the Disciplinary Board of the final disposition of the complaint.

(l) Information to Members of Panel. Notice of the action taken by the Disciplinary Board on matters considered by a Panel shall be given to the members of the Panel, other than the Disciplinary Board member who acted as a Panel member. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973; amended, adopted Nov. 1, 1973, effective Jan. 1, 1974.]

VI. REVIEW BY THE SUPREME COURT

Rule 6.1 Notification of filing. Upon the filing of the record with the Supreme Court, the clerk of the court shall mail written notice of such filing to State Bar Counsel and the respondent attorney or his counsel. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 6.2 Objections by respondent attorney. The respondent attorney may file objections to the findings, conclusions and recommendations of the Disciplinary Board.

(a) Form. Objections shall be in the form of a brief containing arguments and citations of authority in support thereof.

(b) Time for Filing. The respondent attorney shall be allowed thirty (30) days after the filing of the record in which to file with the Disciplinary Board three copies and to file with the Supreme Court 25 copies of his objections. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 6.3 Answer of the bar association.

(a) If Objections Filed. The Association shall have thirty (30) days from the day of the service of the objections on the Association in which to serve upon the respondent attorney or his counsel and file with the Supreme Court a corresponding number of answering briefs.

(b) If Objections Not Filed. If the respondent attorney fails to file objections within the thirty-day period above provided, the Association shall have thirty (30) days from the expiration of such period in which to mail respondent attorney one copy and file with the Clerk of the Supreme Court fifteen (15) copies of the Association's brief. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 6.4 Reply of respondent attorney. The respondent attorney shall have twenty (20) days from the day of service of the answering brief in which to file with the Disciplinary Board and the Supreme Court a like number of reply briefs. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 6.5 Hearing.

(a) Setting. Disciplinary proceedings shall have priority and be set when they are ready.

(b) Readiness. A disciplinary proceeding becomes ready for hearing:

(1) If objections have been filed, ten (10) days after respondent attorney's reply was filed or was due to be filed.

(2) If no objections are filed, upon the filing of the Association's brief.

(c) Argument. The Association must file a brief and present oral argument. Respondent attorney may submit the cause on the record, but he may not present oral argument unless a brief has been filed in his behalf.

[Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 6.6 Rehearing.

(a) Finality. An opinion in a disciplinary proceeding is final when filed unless the court specifically provides otherwise.

(b) Petition for rehearing. A petition for rehearing may be filed as provided in ROA I–50, but the petition will not stay the judgment unless a stay is entered by the court. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

VII. COSTS

Rule 7.1 Costs and expenses. In all cases resulting in the administration of censure, reprimand, suspension or disbarment, counsel for the Association shall serve upon the respondent attorney and file in the office of the Association his verified statement of costs and expenses for the disciplinary proceedings to the time the Disciplinary Board makes its recommendation.

(a) Costs and Expenses Defined. The term "costs" is defined to be all sums so taxable in a civil proceeding. The term "expenses" is defined as all other obligations in money necessarily incurred by the Association in the complete performance of its duties under these rules. Expenses shall include, by way of illustration and not of limitation, necessary expenses of Panel members, bar counsel, charges of expert witnesses, charges of court reporters, as well as all other direct provable expenses of the office of the Association.

(b) Statement of Costs and Expenses. In all cases in which the Disciplinary Board determines that a censure or reprimand should be administered, the said statement of costs and expenses shall be served on the respondent attorney at the time he is notified of the proposed censure or reprimand, and if he accepts the censure or reprimand, the amount thereof shall be paid at the time the censure or reprimand is delivered. If the respondent attorney refuses to accept the censure or reprimand, the statement of costs and expenses shall be made a part of the record sent to the Supreme Court, together with any exceptions thereto by the respondent attorney, which exceptions shall be filed within ten (10) days after the service of the statement of costs and expenses upon the respondent attorney. A verified statement of any additional costs and expenses to the Association occasioned by the proceedings in the Supreme Court shall be served upon the respondent attorney and filed with the Clerk of the Supreme Court within ten (10) days after the hearing in that court, and the respondent attorney shall have ten (10) days after such service within which to file exceptions thereto.

(c) Assessment by Supreme Court. If the Supreme Court directs such censure or reprimand, it shall, in its judgment, fix the amount of the costs and expenses to be paid by the respondent attorney as it shall deem just, together with the terms and conditions of the payment thereof.

(d) Assessment Upon Suspension or Disbarment. In all cases in which the Disciplinary Board recommends suspension or disbarment, the said statement of costs and expenses shall be served on the respondent attorney at the time he is notified of the recommendation of the Disciplinary Board, and it shall be made a part of the record sent to the Clerk of the Supreme Court, together with any exceptions thereto by the respondent attorney, which exceptions shall be filed within ten (10) days after the service of the statement of costs and expenses upon the respondent attorney. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 7.2 Supreme court expenses.

(a) Cost Bill. A verified statement of any additional expenses to the Association occasioned by the proceedings in the Supreme Court, shall be served upon the respondent attorney and filed with the Clerk of the Supreme Court within ten (10) days after the hearing in that court.

(b) Exceptions. The respondent attorney shall have ten (10) days after such service within which to file exceptions thereto.

(c) Determination of Costs. The judgment of the Supreme Court, in any such disciplinary proceeding, shall fix the amount of the costs and expenses to be paid by the respondent attorney as it shall deem just. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 7.3 Termination of suspension.

(a) Condition Precedent. No suspended attorney shall resume practice until the amount of the costs and expenses fixed pursuant to these rules has been fully paid. [Adopted May 12, 1969, effective July 1, 1969.]

VIII. REINSTATEMENT AFTER DISBARMENT

Rule 8.1 Restrictions against petitioning.

(a) Time of Petition. No petition for reinstatement shall be filed within a period of one year next after disbarment or within a period of one year next after an adverse decision of the Supreme Court upon a former petition filed by or on behalf of the same person.

(b) Costs. No disbarred attorney may file a petition for reinstatement until the amount of the costs and expenses fixed pursuant to these rules has been fully paid. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.2 Form of petition. A petition for reinstatement as a member of the Association after disbarment therefrom shall be in writing and verified by the petitioner and filed with the Board of Governors. The petition shall set forth the age, residence and address of the petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.3 Fees. The petition shall be accompanied by the application and the total fees required of an attorney applicant under the Rules for Admission to Practice. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.4 Investigation. In its discretion the Board of Governors may refer the petition for reinstatement for investigation and report to the Proper Local Administrative Committee, Disciplinary Board, State Bar Counsel, or to such other person or persons as may be determined by the Board of Governors. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.5 Hearing before the board of governors.

(a) Notice. The board of Governors shall fix a time and place for hearing of the petition and serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such persons as may be ordered by the Board of Governors. Notice of the hearing shall also be published at least once in the Washington State Bar News or such other periodical as the Board of Governors may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and the time fixed for the hearing of the petition for reinstatement.

(b) Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Board of Governors written statements for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Rule 8.6. Except by its leave no person other than the petitioner shall be heard orally by the Board. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.6 Action by the board of governors.

(a) Requirement for favorable recommendations. Reinstatement may be recommended by the Board of Governors only upon affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth in the Rules for Admission to Practice for attorney applicants, and that his reinstatement will not be detrimental to the integrity and standing of the Bar and the administration of justice, or be contrary to the public interest.

(b) Disposition of Recommendation. The recommendation of the Board of Governors shall be served upon the petitioner, and, together with the record in connection therewith, shall be transmitted to the Supreme Court for disposition. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.7 Action on Supreme Court's Determination.

(a) Petition Approved. If the petition for reinstatement is granted by the Supreme Court, the action shall be subject to the petitioner's taking and passing the attorney applicant's examination as prescribed by the Rules for Admission to Practice.

(b) Petition Denied. If the petition for reinstatement is denied, the examination and admission fee shall be refunded to the petitioner. [Adopted May 12, 1969, effective July 1, 1969.]

IX. SUSPENSION FOR CONVICTION OF FELONY

Rule 9.1 Suspension.

(a) Suspension Automatic. An attorney shall be automatically suspended from the practice of law upon his conviction of a felony under either state or federal law, whether such conviction be after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of an appeal; provided, however, that the Disciplinary Board may recommend to the Supreme Court for final disposition the prevention or termination of the suspension if such Board affirmatively finds that moral turpitude was not in fact an element of the crime of which the attorney was convicted, or if the Disciplinary Board affirmatively finds that there is other good cause for preventing or terminating such suspension. Suspension in this manner shall not be a substitute or alternative for disciplinary proceedings against said attorney, but such proceedings shall be commenced by the Disciplinary Board upon said conviction, or prior thereto if reasonable cause therefor exists, and shall proceed without regard to said suspension.

(b) Duration of Suspension. When an attorney is suspended upon conviction of a felony as provided in this rule the duration of such suspension shall not exceed final disposition of the disciplinary proceedings commenced against said attorney. When the disciplinary proceedings are fully completed, after appeal or otherwise, the suspension occuring in this manner shall end and such disciplinary action as then occurs shall commence.

(c) Petition for Reinstatement. A petition for reinstatement after automatic suspension for conviction of a felony pending completion of disciplinary proceedings shall be in writing and verified by the petitioner and filed with the Disciplinary Board. The petition shall set forth the age, residence and address of the petitioner, the date of the conviction, and a concise statement of facts claimed to justify reinstatement pending completion of the disciplinary proceedings. The petition shall be accompanied by the application for admission and the total fees required of an attorney applicant under the Rules for Admission to Practice.

(d) Investigation. In its discretion the Disciplinary Board may refer the petition for reinstatement for investigation and report to the proper Local Administrative Committee, State Bar Counsel, or to such other person or persons as may be determined by the Disciplinary Board.

(e) Notice of Hearing. The Disciplinary Board shall fix a time and place for hearing of the petition by the Disciplinary Board and shall service notice thereof ten (10) days prior to the hearing upon the petitioner and upon such persons as may be ordered by such Board.

(f) Requirements and Procedures. Such petition for reinstatement shall be recommended to the Supreme Court only upon affirmative showing to the satisfaction of the Disciplinary Board that the petitioner possesses the qualifications and meets the requirements as set forth in Rule 3B of the Rules for Admission to Practice, excepting subsections 6, 7, 8 and 9 thereof, and that his reinstatement will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest.

(g) Granting or Denial of the Petition by the Supreme Court. The Disciplinary Board shall keep a record of the hearing upon the petition for reinstatement and shall make and file its findings, conclusions and recommendation thereon with the Supreme Court for final disposition. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 9.2 Reinstatement after suspension for conviction of felony.

(a) Court May Suspend. At any time after institution of a disciplinary proceeding under Rule 3.1, where it appears that a continuation of the practice of law by the attorney during the pendency of the disciplinary proceedings will result in substantial risk of serious injury to the public, the Association, on recommendation of the Disciplinary Board (with no more than one member dissenting), may petition the Supreme Court for an order suspending the respondent attorney during the pendency of the disciplinary proceedings. If the court, after an en banc hearing, finds a continuation of practice by the attorney will result in substantial risk of serious injury to the public, it may enter an order suspending such attorney from the practice of law. Such suspension shall not continue beyond the conclusion of the disciplinary proceedings.

(b) Petition and Notice to Answer. The petition to the Supreme Court under this rule shall set forth the facts or omissions of the respondent attorney contained in the pending complaint, together with such other facts as may constitute grounds for suspension pending disciplinary proceedings. The petition may be supported by documents or affidavits. The petition shall be accompanied by a notice to answer in substantially similar form as provided in Rule 3.1(a)(2), but shall refer to a petition for suspension pending disciplinary proceedings in lieu of formal complaint and shall require the answer to be filed with the Clerk of the Supreme Court.

(c) Service. Service of the petition and notice to answer shall be by copy thereof served in the manner provided in Rule 3.1(b)(1).

(d) Answer to Petition. The answer may contain additional facts relating only to the issue of substantial risk of serious injury to the public, shall be verified by respondent or his counsel, and may be supported by documents or affidavits. The answer shall be filed within the time specified in Rule 3.1(a)(6). For good cause shown, the Chief Justice may extend the time for answer.

(e) Service of Answer. Two copies of the answer shall be served on the Washington State Bar Association within the time specified in subsection (d) hereof by filing in the office of the Association.

(f) Hearing. Upon the filing of an answer or expiration of the time for filing an answer, a hearing will be held in accordance with the provision of Rule 6.5.

(g) Costs. No costs shall be taxed. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

X. INCOMPETENCY TO PRACTICE LAW

Rule 10.1 Transfer to inactive status.

(a) Automatic Transfer. In the event that an active member is determined by a court of competent jurisdiction to be mentally incompetent or mentally ill, such member shall automatically be transferred from active to inactive membership status upon the entry of such judgment, regardless of the pendency of an appeal.

(b) Discretionary Action. If it appears to the Board of Governors that there is reasonable cause to believe that an active member who has not been judicially determined to be mentally incompetent or mentally ill is unable to adequately conduct his practice because of mental or physical disability, a complaint in the name of the Association shall be served upon such attorney and shall be referred to a Panel for a hearing on the sole issue of the capacity of the member to adequately conduct his practice. The Panel, at the conclusion of its hearing, shall prepare findings, conclusions, and a recommendation as to whether or not the respondent attorney should be placed on the inactive roll. The record of such proceeding shall thereafter be reviewed by the Board of Governors, which shall make findings and conclusions based thereon and shall enter an appropriate order.

(c) Applicable Rules. The rules of procedure pertaining to disciplinary proceedings shall apply to a proceeding instituted pursuant to the preceding section, but such a proceeding shall not constitute a disciplinary proceeding, nor shall it in any manner reflect discredit upon the respondent member as an attorney. In the event that the respondent attorney does not appear by an attorney within the time prescribed by such rules for the filing of an answer, the Board of Governors shall appoint a member of the Bar to represent the member in such proceeding.

(d) Transfer to Inactive Status. An order of the Board of Governors transferring a member to inactive status shall become effective fifteen (15) days after the service of a copy of such order upon the respondent member or his attorney unless within said fifteen-day period a request for review by the Supreme Court is filed with the Association. Upon service of such a request, the Association shall file the record of the proceeding with the Supreme Court and the rules of procedure applicable to disciplinary proceedings before the Supreme Court shall apply. The order of the Board of Governors shall be

ineffective pending the review. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 10.2 Reinstatement.

(a) Reinstatement After Court Adjudication. Any member who has been placed on the inactive roll as herein provided by reason of having been judicially determined to be mentally incompetent or mentally ill, shall be reinstated to active membership by the Board of Governors (1) upon being determined by a court of competent jurisdiction to be restored to competency, and (2) upon compliance with any applicable requirement for transfer from inactive to active status.

(b) Reinstatement Where No Court Adjudication. Any member who has been placed on the inactive roll as herein provided without having been judicially determined to be mentally incompetent or mentally ill, may petition for reinstatement to active membership as hereinafter provided.

(1) *Petition.* The petition for reinstatement shall be in writing, verified by the petitioner, and shall be filed with the Board of Governors.

(2) *Investigation.* The Board of Governors in its discretion may refer the petition to the proper Local Administrative Committee, State Bar Counsel, or to such other person or persons as it may determine, for investigation and report.

(3) *Hearing Date.* The Board of Governors shall fix a time and place for a hearing upon the petition by the Board, and shall cause notice thereof to be served upon petitioner and upon such other persons as it may designate at least ten (10) days prior thereto. Such hearing shall be held within thirty (30) days of the date the petition is filed, unless continued for good cause.

(4) *Reinstatement.* The petition shall be approved by the Board of Governors upon an affirmative showing by the petitioner that he is again able to adequately engage in the practice of law; upon approval of the petition, the petitioner shall be reinstated to active membership upon compliance with any applicable requirement for transfer from inactive to active status.

(5) *Review by the Supreme Court.* If the petition is not granted, petitioner shall be entitled to request a review by the Supreme Court. Such request shall be filed with the Association within thirty (30) days after service upon the petitioner of a copy of the order of the Board of Governors denying the petition. Upon receipt of such request, the Association shall file the record of the proceedings with the Supreme Court and the rules of procedure applicable to disciplinary proceedings before the Supreme Court shall apply. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 10.3 Transfer by court.

(a) Court May Place on Inactive Status. At any time after the filing of a complaint pursuant to the provisions of Rule 10.1(b), where it appears that a continuation of the practice of law by the attorney during the pendency of such proceedings will result in substantial risk of serious injury to the public, the Association, on recommendation of the Board of Governors (with no more than one member dissenting) may petition the Supreme Court for an order transferring the respondent attorney to inactive membership status during the pendency of the proceedings. If the court, after an en banc hearing, finds that a continuation of the practice of law by the attorney will result in substantial risk of serious injury to the public, it may enter an order transferring such attorney to inactive status during, but not beyond the conclusion of, the proceedings commenced under Rule 10.1(b) and any review thereof.

(b) Petition and Notice to Answer. The petition to the Supreme Court under the provisions of this rule shall set forth the pertinent allegations contained in the pending complaint, together with such other facts as may constitute grounds for transfer to inactive status. The petition may be supported by documents or affidavits. The petition shall be accompanied by a notice to answer in substantially similar form as provided in Rule 3.1(a)(2), but shall refer to a petition for transfer to inactive status, in lieu of formal complaint, and shall require the answer to be filed with the Clerk of the Supreme Court.

(c) Service. Service of the petition and notice to answer shall be by copy thereof served in the manner provided in Rule 3.1(b)(1).

(d) Answer to Petition. The answer may contain additional facts relating only to the issue of substantial risk of serious injury to the public, shall be verified by respondent or his counsel, and may be supported by documents or affidavits. The answer shall be filed within the time specified in Rule 3.1(a)(6). For good cause shown, the Chief Justice may extend the time for answer.

(e) Service of Answer. Two copies of the answer shall be served on the Association within the time specified in subsection (c) hereof by filing in the office of the Association.

(f) Hearing. Upon the filing of an answer or expiration of the time for filing an answer, a hearing will be held in accordance with the provisions of Rule 6.5.

(g) Costs. No costs shall be taxed. [Adopted Dec. 15, 1972, effective Jan. 2, 1973.]

XI. SUSPENSION FOR CUMULATIVE DISCIPLINE

RULE 11.1 Criteria. (a) An attorney disciplined after the effective date of this rule who has a prior record of:

(1) Three or more censures or reprimands; or

(2) Any combination of a suspension or disbarment plus one or more censures or reprimands, shall be subject to suspension from the practice of law.

RULE 11.2 Procedure. (a) Upon an attorney's accumulation of discipline as provided in Rule 11.1, the Disciplinary Board may recommend to the Supreme Court suspension of said attorney.

(b) The Association shall file with the Supreme Court the respondent attorney's prior record of discipline and its recommendation for suspension. The respondent attorney shall be served with a copy of the record filed with the Supreme Court.

(c) The Supreme Court shall allow the Association and the respondent attorney the opportunity to submit written briefs or oral argument under such conditions and within such time as the court directs. [Adopted June 19, 1974, effective July 1, 1974.]

XII. GENERAL PROVISIONS

Rule 12.1 Definitions.

(a) Residence. For the purpose of these rules, a member of the Association is a resident of that county, district and congressional district in which he maintains, or last maintained, his principal office for the practice of law whether that county, district or congressional district is his place of abode or not; provided, notwithstanding and foregoing, that the term "residence" as used in Rules 2.3(d) and 2.4(a)(1) shall instead mean place of abode.

(b) District. When used alone in these rules, the term "district" shall refer to those districts only that are created under Rule 2.1 of these rules.

(c) Association. The word "Association" wherever it appears in these rules refers to the Washington State Bar Association.

(d) Board. The word "Board" when used alone in these rules refers to the Board of Governors of the Association, unless a contrary intention is indicated.

(e) Panel. The word "Panel" when used alone in these rules refers to a Hearing Panel. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 12.2 Papers. All pleadings, briefs, documents or notices in these rules provided for must be typewritten or printed. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 12.3 Filing. Whenever in these rules it is required that any document shall be filed with the Disciplinary Board or the Board of Governors, such document shall be served on the Association at its office. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 12.4 Expenses.

(a) Local Administrative Committee, Trial Committee, Disciplinary Board and Panels. The members of the Local Administrative Committees, Local Trial Committees, Panels, and the Disciplinary Board shall receive no compensation for their services, but their expenses, if any, incurred in connection with their duties, subject to the limitations established by resolution of the Board of Governors and except as otherwise provided in these rules, shall be paid from the funds of the Association; provided, that the Board of Governors shall have discretionary authority to provide compensation to members of Panels in cases which become unusually time consuming or where some other especially burdensome circumstance is involved.

(b) Guardian Ad Litem and Counsel. Except as otherwise provided by these rules, the fees for services rendered and costs expended and incurred by a guardian ad litem or counsel appointed under authority of these rules shall be paid by the Association. [Adopted May 12, 1969, effective July 1, 1969; amended, adopted and effective Jan. 27, 1971.]

Rule 12.5 Representation of Respondent. A former president of the Association, a former member of the Board of Governors or Disciplinary Board, shall not represent a respondent attorney in proceedings under these rules until after the lapse of two years following expiration of his term of office. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 12.6 Disclosure.

(a) Disciplinary Files and Records Confidential. Except as otherwise provided in these rules, the file in a disciplinary proceeding and a disciplinary record shall be open only to the Board of Governors, Disciplinary Board, State Bar Counsel, and the Supreme Court if filed for review or requested by a member of the Supreme Court, provided, however:

(1) The respondent attorney or his counsel may have access to the file consisting of the formal complaint, and all other pleadings, documents and instruments filed in the proceeding subsequent thereto.

(2) When requested by the official disciplinary body of another state in connection with a pending disciplinary action in that state, the Clerk of the Supreme Court will certify and transmit to the official disciplinary body of that state the record of the attorney involved.

(b) Advice to Media. Nothing in these rules shall make it improper for the Board of Governors to advise the news media of the pendency of disciplinary proceedings against an attorney when in such Board's judgment it is in the public interest to do so.

(c) Notice of Disciplinary Action Taken. (1) If an attorney is permitted to resign during the pendency of disciplinary hearings, or upon suspension or disbarment, the fact of such resignation, suspension or disbarment with the attorney's name shall be published in the Washington State Bar News.

(2) If a censure or reprimand is given and accepted by an attorney who has been previously disbarred, suspended or reprimanded, notice of such censure or reprimand, including the attorney's name, shall be published in the Washington State Bar News.

(d) Disciplinary Record. The disciplinary record of any attorney shall consist of a brief summary of any

complaint made against him and the disposition thereof. Information with reference thereto may be released by the Association:

(1) When specifically authorized by these rules; or

(2) When requested in writing by the attorney; or

(3) When requested by the chairman of a Local Administrative Committee who is investigating a complaint against the attorney; or

(4) When directed by the Board of Governors in the public interest; or

(5) When directed by the Supreme Court.

(e) Contempt. Disclosure, except as herein provided, of any matter made confidential by these rules by any person whomsoever, shall subject such person to a proceeding as for contempt. [Adopted May 12, 1969, effective July 1, 1969; amended July 21, 1972, effective July 21, 1972; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 12.7 Service at Pleasure of Board of Governors. Notwithstanding anything to the contrary in these rules provided, members of Local Administrative Committees, Trial Committees and the Disciplinary Board shall serve at the pleasure of the Board of Governors. [Adopted Dec. 15, 1972, effective Jan. 2, 1973.]

Part II
RULES FOR SUPREME COURT

Table of Rules	Abbreviation	Formerly
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SUPREME COURT ADMINISTRATIVE RULES (SAR)

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RULE 4 Sessions of the Supreme Court.
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RULE 19 Bailiff——Appointment——Duties.
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Rule 1 Seal. The seal of the supreme court shall be the vignette of General George Washington, with the words, "SEAL OF the supreme court——STATE OF WASHINGTON," surrounding the vignette. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Seal of court: RCW 2.04.060.

Rule 2 Style of Process. Process of the supreme court shall run in the name of the "state of Washington," bear attest in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to such rules or orders as are prescribed by the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Style of process: RCW 2.04.050.

Rule 3 Judgments. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Effect of supreme court judgments: RCW 2.04.220.

Rule 4 Sessions of the supreme court. The regular sessions of the supreme court shall be held in the supreme court, the Temple of Justice, at the capital, beginning on the second Monday of January, the second Monday of May, and the second Monday of September each year. The court will not sit for the regular hearing of cases in July and August.

Sessions of the court shall commence at 9:00 a.m. or at such other time as the court may order.

Hearings en banc, rehearings, and special hearings may be set by the court in its discretion at such other times as the court may order. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; last sentence of first paragraph added, adopted Aug. 2, 1955, effective Aug. 1, 1955.]

Sessions of court: RCW 2.04.030.

Rule 5 Adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court sitting at any time. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Adjournments, effect of: RCW 2.04.040.

Rule 6 Two departments——Assignment of justices. The court may be divided into two departments for the hearing of motions and such other matters as the chief justice may designate. The chief justice shall assign four of the associate justices to each department, and such assignment may be changed by him from time to time, provided that the associate justices shall be competent to sit in either department and may interchange with one another by agreement among themselves, or, if no such agreement is made, as ordered by the chief justice.

The chief justice shall sit in both departments and shall preside when so sitting. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Departments of court: State Constitution Art. 4 § 2.

Two departments, quorum: RCW 2.04.120.

Rule 7 Reserved.

Rule 8 Chief justice, choice of——Duty. The justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two justices having in like manner the same short term, the other justices of the supreme court shall determine which of them shall be chief justice.

The chief justice shall be the executive officer of the court and shall do and perform those duties required of him by the constitution and laws of the state of Washington and the rules of this court, and shall serve as coordinator between the two departments. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Acting chief justice: RCW 2.04.140.

Chief justice, selection: RCW 2.04.130.

Rule 9 Acting chief justice. The court shall elect from time to time an acting chief justice. The acting chief justice may be any member of the court not holding his office by appointment or election to fill a vacancy. The acting chief justice shall perform the duties, and exercise the powers of the chief justice during the absence or inability of the chief justice to act. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Acting chief justice: RCW 2.04.140.

Chief justice, selection, absence: RCW 2.04.130.

Rule 10 Right of senior justice to act. In the absence or inability of both the chief justice and the acting chief justice, the senior justice present at the capital shall act as chief justice. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 3, 1951.]

Rule 11 Seniority of justices. Seniority among the justices of the supreme court shall be determined by length of continuous service. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule 12 Acts in contempt of court. It shall be contempt of this court for anyone to divulge to others than the justices and employees of this court working upon an opinion, the results of any appeal prior to the time the opinion is filed by the clerk of the supreme court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Mar. 6, 1962.]

Rule 13 Minutes——Court business meetings. The court will cause to be recorded in a book kept for that purpose minutes of all business meetings. The justice junior in length of service shall act as secretary. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule 14 Opinions——When filed. All opinions filed with the clerk of this court shall be signed except per curiams. All opinions in any case shall be filed at the same time, and the time of filing shall be determined by the chief justice. Original opinions shall not be taken from the clerk's office. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Apr. 9, 1953, effective Apr. 9, 1953.]

Rule 15 Hearings, quorum, finality of opinion, costs. (a) Hearings.

(1) On the Merits. Argument on the merits of a cause shall be set for hearing by the en banc court.

(2) Motions. Argument on motions may be set for hearing by a department of the court.

(b) Quorum. A majority of the justices hearing argument in a cause shall be necessary for a pronouncement of decision.

(c) Finality.

(1) Orders. An order shall be final when entered.

(2) Decisions. A decision shall be final:

(i) Upon stipulation that no petition for rehearing will be filed and the cause may be remitted, or

(ii) When a majority of the justices so direct, or

(iii) Thirty days after the opinion is filed unless a petition for rehearing is filed.

(iv) If a timely petition for rehearing is filed, upon a denial of the petition. If a petition for rehearing is granted, the decision of the court filed after the rehearing shall become final in accordance with the above rules.

(d) Costs. If a cause is remitted prior to the taxing of costs and a cost bill is timely filed, jurisdiction solely for the taxing of costs on appeal is retained by the supreme court. Costs as finally taxed will be determined by a supplemental judgment. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; proviso added, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Apportionment of business, en banc hearings: RCW 2.04.150.

En banc hearings, quorum, finality of decision: RCW 2.04.170.

Finality of departmental decisions, rehearings: RCW 2.04.160.

Rule 16 Clerk of the supreme court——Appointment——Powers——Duties. (1) The justices of the supreme court shall appoint a clerk of that court, who may be removed at their pleasure. The clerk shall receive such compensation by salary only as shall be fixed by the court.

(2) The clerk of the supreme court may have one or more deputies, to be appointed by him in writing, to serve during his pleasure. The deputies shall have the power to perform any act or duty relating to the clerk's office that their principal has, and their principal is responsible for their conduct.

(3) The clerk and his deputies are prohibited, during their continuance in office, from acting or having a partner who acts as an attorney.

(4) Before entering upon the duties of his office, the clerk and each deputy clerk shall take an oath of office,

and give bond in such a sum, with surety and condition, as the court shall require, which oath and bond shall be deposited with the secretary of state.

(5) The clerk shall keep his office at the seat of government open at such hours as the court shall require, and shall keep such records and books as are prescribed by the court.

(6) The clerk of the supreme court is given the power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law. It is the duty of the clerk——

(a) To keep the seal of the court and affix it in all cases where he is required by law;

(b) To record the proceedings of the court;

(c) To keep the records, files and other books and papers appertaining to the court;

(d) To file all papers delivered to him for that purpose, in any action or proceeding in that court, except when by the rules of court he is directed to refuse to file papers under the conditions set out by the rules.

(7) The clerk of the supreme court shall keep the following books and records:

(1) Journal in which he shall record
(a) all judgments,
(b) orders of the court except those of a temporary nature which do not affect the final result of the case,
(c) original bonds,
(d) citations to supreme court of United States,
(e) mandates from the supreme court of the United States and certified copies of its orders;

(2) Appearance docket in which he shall show
(a) the substantial title of the case, the number in the superior court, the trial judge, the county whence comes the appeal, and names of attorneys;
(b) appearance fees and money paid into the clerk's trust fund;
(c) the date of filing each paper and part of the record;
(d) all minute entries directed by the court or chief justice;
(e) the date for hearing on the calendar and any continuance;
(f) the disposition of motions and petitions;
(g) the entry of judgment and where recorded;
(h) date remitted;
(i) citation of opinion in Washington Reports.

(3) General Index of Cases

(4) Motion docket, which shall show the number and title of the case, the attorneys, the nature of the motion and sufficient space for the chief justice to show the disposition;

(5) Cash Book, in which shall be shown all monies received and disbursed by the clerk;

(6) Trust Fund Journal, in which shall be shown all receipts and disbursements in clerk's trust fund;

(7) Appropriation Expenditure Ledger, showing all expenditures from appropriations for salaries and operations.

(8) Withholding Tax Ledger, showing withholdings from salaries of each employee and officer of the court for Federal income taxes and disbursement of the same.

(9) Court Room Docket, which shall show the title and number of each case argued, the department, names of the judges sitting, the attorneys arguing each side of the case, and the time used by each, together with the nature of the matter heard. The bailiff, at the direction of the clerk, will prepare and make entries.

(10) Clerk's Docket of Admission and Discipline of Attorneys, which shall show all papers covering the admission and discipline of attorneys.

(8) The clerk shall do and perform any and all other duties as may be prescribed by the supreme court.

(9) In all cases that are remanded for a new trial or for further proceedings, at the time the remittitur goes down, the clerk, at the expense of appellant, shall return the statement of facts and the exhibits to the clerk of the superior court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 2, 1950, effective Jan. 2, 1951; subdivision (9) added, adopted Dec. 2, 1954, effective Jan. 3, 1955.]

Supreme court clerk: Chapter 2.32 RCW; state Constitution Art. 4 § 22.

Rule 17 Reporter——Appointment——Duties. (1) The justices of the supreme court shall appoint a reporter for the decisions of the court, who shall be removable at their pleasure. He shall receive such annual salary as shall be fixed and determined by the supreme court.

(2) The reporter shall prepare the decisions of the supreme court for publication in the weekly advance sheets and in the permanent volumes of the Washington Reports. The decisions shall be published chronologically, unless otherwise directed by the court.

(3) When in any case, a petition for rehearing has been made and denied, he shall make a notation thereof at the conclusion of the decision as reported in the permanent volume.

(4) He shall prepare the decisions for publication in the weekly advance sheets by giving the title of each case, the classification of the points decided, and the names of counsel, and shall prepare a subject index to each book and prefix a table of cases reported. When the decisions published in a volume of advance sheets

approximately equal those to be published in the corresponding permanent volume, the volume of advance sheets shall be closed, and the reporter shall prepare a cumulative subject index covering such volume, to be published in the last book thereof.

(5) He shall prepare the decisions for publication in the permanent volumes by giving the title of each case, a syllabus of the points decided, and the names of counsel, and shall prepare a full and comprehensive index of each volume, and prefix a table of cases reported.

(6) He shall furnish to each of the justices proof sheets of the decisions written by such justice, as the same are to appear in the bound volume, and, after examination, the justice will return them to the reporter. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subd. (3) amended, adopted Nov. 2, 1960, effective Jan. 2, 1961; rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961.]

Supreme court reporter: Chapter 2.32 RCW; state Constitution Art. 4 § 18.

Rule 18 Law librarian——Selection and duties. The court will appoint a law librarian who may be removed at its pleasure. The law librarian shall——

(a) maintain as complete and up-to-date law library as possible;

(b) keep the entire library orderly and clean, and the material therein well arranged;

(c) do legal research for any supreme court justice when he requests it;

(d) maintain in the main reading room of the library a chronological listing of legal text books under appropriate classifications;

(e) maintain in the main reading room of the library a system whereby Shepard's Washington Citator will be kept up to date so far as affected by this court's printed opinions;

(f) maintain in the main reading room of the library a system whereby the current Washington Digest is kept up to date. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Duties of state law librarian relative to session laws, legislative journals and supreme court reports: Chapter 40.04 RCW.

State law librarian member of commission to supervise publication of decisions of supreme court: RCW 2.32.160.

State law library: Chapter 27.20 RCW.

Rule 19 Bailiff——Appointment——Duties. The court will appoint a bailiff whose duties shall be to attend the sessions of the court, circulate opinions and petitions, act as clerk to the chief justice, and do and perform such other duties as may be required by the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Supreme court bailiffs, compensation: RCW 2.32.340, 2.32.350.

Rule 20 Memorial exercises. During the week before the beginning of the May term of each year, the court will conduct suitable memorial exercises for members or former members of the supreme court who have died within the preceding year. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule 21 Justices pro tempore. (1) Selection and Use. When a member of the court is disqualified or unable to function on a case for good cause, a majority of the regular remaining members of the court may, by written order, designate a justice pro tempore to sit with the court en banc to hear and determine the cause. The designating order shall set forth the period of service. In no event shall more than two justices pro tempore sit with the court en banc.

(2) Qualification. A justice pro tempore shall take the oath of office required by Article 4, § 28 of the state Constitution. The oath of office, together with the original order of appointment, shall be filed forthwith in the office of the secretary of state. A copy of the oath and order of appointment shall be filed in the office of the clerk of the supreme court.

(3) Duties of the Justice Pro Tempore.

(a) A justice, while serving pro tempore, shall have the same power and authority as a justice of the supreme court, and he shall perform such duties as the court may direct.

(b) A justice pro tempore will function promptly on opinions and petitions for rehearing on which he is qualified to function. When such opinions are received by him after the period of his appointment has expired, his original period of office as a justice pro tempore shall be deemed to exist in order for him to function and to accomplish the ministerial act of filing the opinion.

(4) Publication of Opinions.

(a) Dissents and Concurrences. Dissents or concurrences written by a justice pro tempore shall be published in regular form, except that a reference symbol shall be placed after his name, directing attention to a footnote which shall read:

"Justice _____ is serving as a justice pro tempore of the supreme court pursuant to Const. Art. 4 § 2(a) (amendment 38)."

(b) Opinions signed by a justice pro tempore shall be published in the regular form, except that the name of the justice pro tempore shall follow the names of the justices of the supreme court signing such opinion, with the designation "Pro Tem." after his signature.

(c) There shall appear, in each bound volume of the Washington Reports, on the page following the page listing the justices of the supreme court, the names and terms of office of the justices pro tempore who served during the period covered by the published volume. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted March 13, 1963, effective March 13, 1963; amendment adopted April 29, 1963, effective April 29, 1963; Subsec. (2) amended, effective Mar. 19, 1964.]

Judges pro tempore of the supreme court, compensation and expenses: RCW 2.04.240, 2.04.250.

Rule 22 Reporting of criminal cases. On any criminal appeal taken to the Supreme Court from a determination made by a court of lesser jurisdiction, the court clerk shall, within five court days of the filing of a final decision on the merits in the matter, forward to the Washington State Patrol Section on Identification on a form approved by the Administrator for the Courts its disposition of the particular case. In the event that original or collateral proceedings are brought in the Supreme Court and the result of those original or collateral proceedings changes, or otherwise makes inaccurate, the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974, effective March 1, 1974.]

SUPREME COURT RULES ON APPEAL (ROA)

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PART I
RULES FOR ORIGINAL APPEALS TO THE SUPREME COURT FROM THE SUPERIOR COURT

Rule I–1 Method herein provided exclusive. The mode provided by these rules for appealing cases to the supreme court, and for securing a review of the same therein, shall be exclusive and shall supersede all other methods heretofore provided. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 6, 1955, effective Jan. 3, 1956.]

Rule I–2 Definitions. In these rules, unless the context or subject matter otherwise requires:

(a) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) The words "superior court" mean the court from which an appeal is taken pursuant to these rules.

(c) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(d) The words "shall" and "must" are mandatory, and the word "may" is permissive.

(e) The terms "party," "appellant," "respondent," "petitioner" or other designation of a party include such party's attorney of record.

(f) "Judgment" means any judgment, order or decree from which an appeal lies.

(g) The term "remittitur" means a certified copy of the judgment of the supreme court which is authenticated to the court from whence the appeal is taken, or over which or whom its controlling jurisdiction is exercised. In case the judgment or order appealed from is reversed or modified, a certified copy of the opinion of the supreme court shall be attached to the remittitur.

(h) The terms "written," "writing," "typewriting" and "typewritten" include other methods of duplication equivalent in legibility to typewriting.

(i) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 2, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 6, 1955, effective Jan. 3, 1956.]

Judgment, order, motion defined: RCW 4.56.010, 4.56.020, 7.16.020.

Rule I–3 Service of papers. (1) Service of papers must, in all cases, be made upon the attorney of record of a party, if he has one, unless the place of business or residence of such attorney is unknown, when it may be made upon the party.

(2) Service upon an attorney shall be made by delivering to him personally, or at his office by delivery to his clerk or to the person having charge thereof; or, if his office be not open, or there be no one in charge thereof, at his residence by delivery to some person of suitable age and discretion residing therein; or, if neither of the foregoing methods can be followed, by deposit in the post office to his address with postage prepaid. In capital causes, a motion to dismiss an appeal shall be served upon the defendant personally, as well as upon the attorney of record.

(3) Service upon a party shall be made by delivery to him personally, or at his residence, to some person of suitable age and discretion residing therein, between the hours of nine o'clock in the forenoon and nine o'clock in the evening.

(4) Where the residence of a party and that of his attorney of record, if he have one, are not known, and proof of such fact be shown by affidavit, the service may be made upon the clerk of the superior court in which the cause was tried, for the party or attorney.

(5) Service may be made by mail when the party making the service and the person on whom such service is to be made reside in different places; postage must in such cases be prepaid. Time shall begin to run from the date of deposit in the post office. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Commencement of actions: Chapter 4.28 RCW.

Certiorari, mandamus, prohibition: Chapter 7.16 RCW.

Rule I–4 Order of filing and serving immaterial. Whenever any rule or statute heretofore or hereafter enacted requires a motion for a new trial, statement of facts, notice of appeal or other documents concerning appeals or constituting a part of the record of appeals to the supreme court to be filed and served or served and filed, the serving and filing shall be equally valid and effective whether the document shall be filed or served first and no appeal shall be dismissed because of the order of the filing and serving. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–5 Personal appearance not necessary. Personal appearance of any party in the supreme court shall not be necessary. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 2, 1950, effective Jan. 2, 1951.]

Rule I–6 Submission on failure to appear. Where a party does not appear personally or by attorney when the cause is called for hearing, the cause, as to such party, shall be deemed submitted. This rule shall not preclude oral argument by the opposite party. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–7 Violation of rules. The court may impose terms and penalties for the violation of or failure to observe rules other than those relating to jurisdiction. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–8 Appeals——When dismissed. The supreme court will dismiss any civil or criminal appeal in which the jurisdictional requirement is not complied with. The court may at any time upon the giving of thirty days' notice dismiss any appeal for want of prosecution.

[Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–9 Computation of time. The time within which acts are to be done, as provided in these rules, shall be computed by excluding the first and including the last day. If the last day is a Saturday or Sunday or a holiday the act must be completed on the next business day. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]
Computation of time: RCW 1.12.040, 4.28.005.

Rule I–10 Docket fees. (a) Requirement. The clerk shall not file any paper on the part of a party to a proceeding until the statutory docket fee, chargeable against such party, has been paid or the party has been authorized to proceed without the payment of fee.

(1) *Waiver in Civil Cases.*

(i) Habeas Corpus. In habeas corpus proceedings filed originally in the Supreme Court, the Chief Justice may waive the requirement of payment of a filing fee pursuant to ROA I–56.

(ii) Certiorari. A determination pursuant to ROA I–46(c) (2)(i) that an appellant is authorized to appeal without the payment of a docket fee is authority for the appellant to petition for review of an order which allegedly denies him the means of perfecting his appeal without payment of a docket fee.

(iii) Indigent Cases. Upon a petition to proceed without the payment of a docket fee supported by an affidavit showing to the satisfaction of the Chief Justice that petitioner does not have the means to pay the docket fee and that the appeal is in good faith and not frivolous, the Chief Justice may waive the requirement of a docket fee.

(2) *Waiver in Criminal Cases.* Waiver of the requirement of docket fees in criminal cases is governed by ROA I–46. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Dec. 30, 1969, effective Jan. 16, 1970. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–11 Assignment of causes. (1) For the purpose of hearings in this court, causes from the several counties will be set by the clerk at the direction of the chief justice.

(2) Two weeks before the beginning of each term of the court, the clerk shall set for hearing such causes on the docket ready for hearing as the chief justice may direct. Also, twenty days before the date of the hearing on the last cause thus set, the clerk shall, in the same manner, set for hearing at the foot of the calendar all criminal causes ready for hearing. A cause on the docket of the court shall be deemed ready for hearing when it appears that the transcript is on file; and

(a) That the appellant's brief and respondent's brief are on file; or

(b) That the appellant's brief is on file, and has been served upon the respondent for a period of thirty days or more; or

(c) That the appellant's brief is on file, and all parties to the appeal have stipulated that the cause may be set for hearing at such term. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Apr. 15, 1955, effective April 15, 1955.]

Rule I–12 Calendar. As soon as the causes shall have been set for a regular term of the court, the clerk shall print a calendar thereof and shall mail a copy of the calendar to each attorney or firm of attorneys having any cause thereon. Causes becoming ready for hearing after the making up of the printed calendar may be set at the foot of the calendar, or at such other time as the court may fix; and counsel shall be notified thereof in such manner as the court may order. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Apr. 15, 1955, effective April 15, 1955.]

Rule I–13 Taking papers from clerk's office. No paper filed with the clerk of this court shall be taken from the court room or clerk's office except by permission of the court or one of the judges, and when so taken a receipt in writing therefor must be left with the clerk. Before the cause is finally determined in this court, permission to take papers will not be granted except to a party or his attorney who shall have entered an appearance in this court in the cause in which such papers are filed. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–14 Appeal to the supreme court——When allowed. (1) Appeal to the Supreme Court——When Allowed. Any party aggrieved by a final order or judgment or order for a new trial by the superior court in a case set forth below may appeal to the supreme court:

(a) Cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) Criminal cases where the death penalty has been decreed;

(c) Cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) Cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decision of the supreme court; and

(e) Cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination. [Adopted July 12, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Comment by the Court. Complete revision of ROA 14 setting forth cases which can be appealed directly from the superior court to the supreme court.

Exceptions: RCW 4.80.010–4.80.050.

Rule I–15 Jurisdiction. The supreme court shall acquire jurisdiction of a cause or proceeding when a petition for review is granted, a writ is issued, or upon the filing of a proper notice of appeal to the supreme court. Upon acquiring jurisdiction of a cause, the supreme court shall have control of the superior court and court of appeals and of all inferior officers in all matters pertaining thereto and may enforce such control by a mandate or otherwise and, if necessary, by fine and imprisonment, which imprisonment may be continued until obedience shall be rendered to the mandate of the supreme court. The superior court shall retain jurisdiction for the purpose of all proceedings by these rules provided to be had in such court, for the purpose of settlement and certification of the statement of facts, and for all other purposes as might be directed by order of the supreme court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Rule I–16 Powers of supreme court. Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the supreme court will affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and will direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and, if the appeal is from a part of a judgment or order, will affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing, and no cause shall be deemed decided until the decision in writing is filed with the clerk. In giving its decision, if a new trial is granted, the court may pass upon and determine all the questions of law involved in the cause presented upon such appeal and necessary to the final determination of the cause. Without the necessity of taking a cross–appeal, the respondent may present and urge in the supreme court any claimed errors by the trial court in instructions given or refused and other rulings which, if repeated upon a new trial, could constitute error prejudicial to the respondent. An appeal to the supreme court from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the supreme court shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; last sentence amended, adopted Dec. 2, 1954, effective Jan. 3, 1955; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Rule I–17 What may be reviewed. In a case reviewed by the supreme court, the court will review any intermediate order or determination of the superior court or the court of appeals which involves the merits and materially affects the judgment, appearing upon the record. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Exceptions: RCW 4.80.010–4.80.050.

Rule I–18 Designation of parties. The party appealing shall be known as the appellant, and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served; but the title of the cause shall in other respects remain unchanged. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–19 Voluntary withdrawal of appeal. After a notice of appeal has been filed but before oral arguments on the merits, the superior court from which the appeal was taken shall have jurisdiction to dismiss the appeal, upon the filing of a stipulation by all the parties to the cause asking that the appeal be dismissed. When any such order dismissing the appeal is entered by the superior court, the clerk thereof shall forthwith file in the supreme court a certified copy of such order and upon the filing thereof, the order shall be effective, the appeal shall be considered as never having been taken, the sureties discharged from all liability on the appeal bond if one has been filed, and the supreme court shall no longer have jurisdiction. Dismissals requested after oral argument on the merits shall be granted only by the supreme court in its discretion. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Dec. 17, 1970, effective April 16, 1971. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Apr. 16, 1957.]

Rule I–20 Second appeal. No withdrawal of an appeal, and no dismissal which does not go to the substance of or the right to the appeal, shall preclude any party from taking another appeal in the same cause, within the time limited by these rules. [Adopted July 2, 1969, effective July 8, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–21 Death of party not to affect appeal. The death of a party in a civil action after the rendition of a final judgment in the superior court shall not affect any appeal taken, or the right to take an appeal; but the proper representatives in personalty or realty of the deceased party, according to the nature of the case, may voluntarily appear and be admitted parties to the cause, or may be made parties at the instance of another party, as may be proper, as in the case of death of a party pending in action in the superior court, and thereupon the appeal may proceed or be taken as in other cases; and the time necessary to enable such representatives to be admitted or brought in as parties shall not be computed as part of the time in these rules limited for taking an appeal, or for taking any step in the progress thereof. [Adopted July 2, 1969, effective July 8, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–22 Bond for costs. (1) Bond for costs on appeal. A bond for costs on appeal shall be filed with the clerk of the superior court when the notice of appeal is given or within ten days thereafter, which bond shall be executed in behalf of the appellant by one or more sufficient sureties and shall be in a penalty of not less than three hundred dollars, conditioned to save the respondent harmless from costs and damages occasioned by the appeal; or money in an amount not less than three hundred dollars may be deposited with the clerk in lieu thereof. At the time the bond for cost on appeal is filed or a deposit in lieu thereof is made, a copy of the bond for costs on appeal or written notice of the deposit shall be served on the adverse party. No bond or deposit shall be required:

(a) When the appeal is taken by the state, or by a county, city, town or school district or by a defendant in a criminal action;

(b) When the appeal is taken from an order of the superior court denying an application for any writ applied for by or on behalf of any person confined and restrained of his liberty by any judgment or order of any court of the state of Washington, or by order of any state, county, or city authority within this state, or so restrained of his liberty by any state, county, or city official;

(c) When the appeal is from an order of the superior court denying the application of any person confined as aforesaid to vacate the judgment by virtue of which he is so confined, regardless of whether the application be by way of motion or petition.

(2) Superior court discretion in fixing amount of bond. The superior court may, upon application of the respondent and for good cause shown, increase the bond on appeal over the amount of three hundred dollars. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 20, 1950, effective Jan. 2, 1951; rule amended, adopted Sept. 25, 1951; rule amended, adopted Dec. 14, 1953, effective Mar. 1, 1954; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–23 Supersedeas bond. (1) Supersedeas bond. Whenever an appellant entitled thereto desires a stay of proceedings on appeal, he may present to the superior court for its approval a supersedeas bond executed by one or more sufficient sureties, which bond may, if desired, contain the terms and conditions contained in the bond for costs on appeal referred to in Rule I–22. The supersedeas bond, whether or not combined with the bond for costs on appeal, shall be conditioned for the satisfaction of the judgment in full, together with interest thereon, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, together with interest thereon, unless the court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy, as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff, or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property and the costs of the action, together with interest thereon.

If the supersedeas bond is intended to stay proceedings on only a part of the order, judgment, or decree appealed from, it shall be varied as circumstances may require to accomplish the purpose desired.

(2) Effect of supersedeas. When a supersedeas bond conditioned as above required has been filed, it shall operate, so long as it remains effectual, to stay proceedings upon the order, judgment or decree appealed from; but in case of an appeal from an order other than an order granting a new trial, no appeal or appeal bond shall operate to stay proceedings in the cause except proceedings upon the order appealed from; and no appeal or stay shall vacate or affect any part of a judgment or order not appealed from and where an appeal is taken from an order vacating a temporary injunction, the appellant cannot proceed further in the cause in the superior court during the pendency of the appeal except so far as may be rendered necessary by proceedings of an adverse party.

(3) Superior court discretion in fixing bond. In approving a supersedeas bond, the superior court shall exercise care to require adequate though not excessive security in every instance. Money in the amount of the penalty which would be designated in a bond may be deposited with the clerk of the superior court in lieu of bond. Money so deposited shall be subject to the conditions set out in these rules and subject particularly to the conditions of Rule I–25.

After a supersedeas bond has been approved and filed, the superior court may upon application of the respondent or on its own motion and for good cause shown, increase the amount of the bond, require additional security, or require a new bond. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–24 Temporary injunction to remain in force, when. In all cases where a final judgment shall be rendered by any superior court of this state in a cause wherein a temporary injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment, such injunction shall remain in force during the pendency of such appeal, if, within five days after service on him of notice of the entry of the final judgment, such appellant shall file with the clerk of the superior court a bond, with one or more sufficient sureties, in a penalty to be fixed by the court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason

of the injunction remaining in force. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–25 Obligees in bonds. Instead of the respondent or other party, the state of Washington for the benefit of whom it may concern, may be named as obligee in any bond for costs on appeal or supersedeas referred to in Rules I–22 and I–23 or required in any proceeding in the supreme court. Anyone who would have any right upon or concerning said bond had he been named as obligee therein, shall have the same right as if so named. Anyone having any interest in any such bond may sue thereon separately or jointly with anyone else also interested. It shall not be necessary to sue in the name of, or to join, the State of Washington in any suit upon such bond. The procedure provided by this rule is not exclusive but is optional and in addition to that otherwise provided. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; first sentence amended, adopted Dec. 14, 1953, effective Mar. 1, 1954; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–26 Justification of sureties. An appeal bond, whether conditioned to effect a stay of proceedings or not, signed as surety by any person, persons or corporation other than a surety company authorized to transact such business in this state as provided by law, shall be of no force unless accompanied by the affidavit of the surety or sureties therein attached thereto, in which each surety shall state that he is a resident of this state and is worth a certain sum mentioned in such affidavit, over and above all debts and liabilities, in property within this state, exclusive of property exempt from execution, and which sums so sworn to by the surety or sureties, shall be at least equal to the penalty named in the bond if there be but one surety, or shall amount in all to at least twice such penalty if there be more than one surety. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–27 Objection to surety——Certificate——New bond. Any respondent may object to the sufficiency of the surety or sureties in an appeal bond, other than a surety company authorized to transact business in this state as provided by law, within ten days after the service on him of the notice of appeal, or within five days after the service on him of the bond or written notice of the filing thereof, by serving on the appellant a notice stating that he so objects, and specifying a time, not less than three nor more than ten days distant, at which the surety or sureties are required to attend before the superior court in which the judgment or order appealed from was rendered or made, or before a judge thereof, and to justify their sufficiency as sureties. At the time and place named in such notice, or to which the proceeding may be thence adjourned by the court or judge, the surety or sureties must attend before the court or judge, and may be then and there examined in detail, under oath, as to their property and other qualifications as sureties, by any respondent or by the judge, or by both. If the judge upon such examination is satisfied that the surety or sureties are qualified as such, to the extent to which they are required by Rule I–26 to make affidavit, then he shall make a certificate to that effect indorsed upon or attached to the bond, which shall thereupon stand as a sufficient appeal bond to the effect expressed in the condition thereof; but if he is not so satisfied, or if the sureties fail to attend and justify, then the judge shall in like manner certify to that effect, and thereupon the bond shall become void: Provided, that in such case the appellant may, within five days after the making of such certificate, file a new appeal bond in conformity with the requirements of Rules I–22 and I–23, and subject to the requirement of justification of the sureties provided in Rule 26; but in case such new appeal bond be found insufficient, no new bond can thereafter be filed in lieu thereof. In case the original or new appeal bond be not conditioned to effect a stay of proceedings, however, an additional appeal bond may be filed at any time thereafter when the appellant desires to effect a stay as provided in Rule I–23, during the pendency of the appeal. The examination of the sureties taken upon their justification shall be reduced to writing and subscribed by the sureties, if either party so requires, and attached to the certificate made thereon. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Rule I–28 Defects in appeal bond——New bond. No appeal shall be dismissed because of any defect in the appeal bond, nor because an appeal bond which is given both as a cost bond and as a bond on supersedeas shall be insufficient by reason of the amount, but the appellant shall in all cases be allowed to give a new bond within such time and upon such terms as the court may order. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 1, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–29 Application for new bond. If any respondent shall have cause to believe, after any appeal bond shall have been filed and the sureties therein have justified or the time for requiring their justification has expired, that the sureties have since become disqualified as such, so that the bond is no longer an adequate security, he may apply by motion to the supreme court to require a new or additional bond. Upon the hearing of such motion the court may require the trial court to examine into the merits of the motion and the adequacy of the bond and certify the facts and his conclusions to this court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–30 Execution countermanded, when. When an appeal bond is conditioned so as to effect a stay of proceedings if execution has issued the clerk shall on demand of the appellant, issue to the sheriff a certificate that proceedings have been stayed, which shall countermand the execution; and thereupon the sheriff shall release any property levied on and not already sold, and return the execution into court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–31 Judgment against appellant and sureties. (a) If the judgment of the trial court is superseded and the judgment is affirmed on final review, the trial court shall, when the cause is remitted, enter the judgment also against the supersedeas bond, bondsman or sureties for the amount of the judgment and for damages and costs awarded on final review according to the conditions of the bond.

(b) If costs are taxed against an appellant, the trial court shall, when the cause is remitted, enter judgment for costs on appeal against the appellant and against the cost bond, bondsman or sureties according to the condition of the bond. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Comment by the Court. Complete revision of former ROA 31, providing new procedures.

Rule I–32 Jurisdictional requirement in civil cases. In order that the supreme court may secure jurisdiction of an appeal in a civil cause pursuant to ROA I–14, the appellant need only give timely notice of appeal (see Rule I–15, I–33).

Failure of the appellant to take any further steps to secure the review of the order, judgment, or decree appealed from does not affect the validity of the appeal, but is ground for such remedies as are specified in these rules or, when no remedy is specified, for such action as the supreme court deems appropriate, which may include contempt, assessment of terms, costs or damages, and dismissal of the appeal. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended; adopted Sept. 25, 1951; adopted Nov. 17, 1952, effective Jan. 2, 1953; adopted Dec. 14, 1953, effective Mar. 1, 1954; adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–33 Notice of appeal and cross–appeal in civil cases——Ordering statement of facts and transcript. (1) In civil actions appealable directly to the supreme court, in order for the supreme court to obtain jurisdiction of the cause, a written notice of appeal, together with a copy of the same, must be filed with, and filing fees paid to, the clerk of the superior court within thirty days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the supreme court, and transmit therewith the filing fee as above provided. Failure of the superior court clerk to file the copy with, and forward the filing fee to, the clerk of the supreme court, will not affect the validity of the appeal.

(2) Any coparty who did not join in the notice of appeal but who desires to join as an appellant shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice that he joins in the appeal. The requirements as to the giving of a bond for costs on appeal shall be as applicable to such coparty as to the original appellant. Any such party who does not so join shall not derive any benefit from the appeal, unless from the necessity of the case. All parties who so join in an appeal after the notice is given or served shall be liable for the expense thereof, and for costs and damages, to the same extent and upon the same conditions as if they had originally joined in the notice.

(3) Also to obtain jurisdiction, each respondent who desires to prosecute a cross–appeal from all or any part of the order, judgment, or decree appealed from shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice of cross–appeal, together with a copy of the same. The clerk of the superior court shall forthwith file the copy of the notice of cross–appeal with the clerk of the supreme court. The cross–appeal shall bring up for review only matters affecting appellant and such cross–appellant. The requirements as to the giving of a bond for costs on appeal shall be as applicable to cross–appellant as to the original appellant.

(4) No reference to the right of coparty to join in an appeal, or to the right of a respondent to cross–appeal, shall abridge or restrict the right of any party to take a general appeal as to any matters or parties involved in the litigation, provided notice of such appeal shall be given in the manner and within the time required by this rule.

(5) Unless the chief justice shall previously order otherwise, the appellant must, within forty–five days after filing notice of appeal, make arrangements with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and also make arrangements with the clerk of the superior court for the transcript which is to be filed with the supreme court pursuant to ROA I–44. Evidence that these arrangements have been made shall be in the form of a statement signed by the attorney for appellant or by the court reporter if there be no counsel of record. The above statement shall be filed with the clerk of the supreme court within fifty–five days after the filing of the notice of appeal. Failure to comply with provisions of this paragraph may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk.

(6) A notice of appeal shall be in substantially the following form:

(Caption)

NOTICE IS HEREBY GIVEN TO (other parties of record), represented by (names and addresses of counsel) that (name of appellant) appeals to the Supreme

Court from the (order, judgment, or decree) entered by the Superior Court in the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

Date _____

_____
(Address and telephone number of counsel for appellant, or of appellant if pro se)

(7) A statement that the statement of facts and transcript have been ordered and arrangement for payment made shall be in substantially the following form:

Appellant hereby states that the court reporter, (name and address), has been ordered to transcribe the statement of facts necessary for the appeal, and that arrangements accepted by the court reporter have been made for the payment of the cost. He further states that arrangements have been made with the clerk of the superior court for what he wishes to be included in the transcript.

Date _____

_____
(Address and telephone number of counsel for appellant or of court reporter if appellant is pro se)

(8) A party filing a notice of appeal, cross-appeal, or a coparty joining in an appeal shall notify all other parties in the case. The notification shall be given by mailing a copy of the notice of appeal, cross-appeal, or joinder in appeal, to the party's attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal, cross-appeal or joinder in appeal is filed and shall be sufficient notwithstanding the death of the party, or of his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; portion of subd. (4) amended, adopted Sept. 25, 1951; subd. (1) amended, adopted Dec. 6, 1955, effective Jan. 3, 1956; subd. (3) amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Comment by the Court. There is no provision in ROA I-33 for appeals for other than final orders since such appeals will be taken to the court of appeals.

Exceptions: RCW 4.80.010-4.80.050.

Rule I-34 Statement of facts——Time for ordering, serving, and filing——Certification. (1) Within forty-five days after filing notice of appeal, unless the chief justice shall have previously ordered otherwise, for good cause shown, the appellant shall order the statement of facts and make arrangements with the court reporter for the payment of the cost thereof.

(2) When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the clerk of the supreme court. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the chief justice in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety days, plus any additional time allowed by the chief justice, after the notice of appeal was filed with the clerk of the superior court, the clerk of the supreme court shall order counsel for the appellant or court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) The certifying of a statement of facts and the filing and service of the proposed statement, the notice of application for the settlement thereof, and all steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause.

(4) (Appeal on short record.) On any appeal or other proceeding for review, in any criminal cause, or in any civil cause whether cognizable at law or in equity, so much of the evidence as bears upon the question or questions sought to be reviewed may be brought before this court by a statement of facts without bringing up the evidence bearing on rulings on which no error is assigned. If the appellant does not include in his statement of facts the complete record and all the proceedings and evidence in the cause, he shall serve and file with such proposed statement of facts, a concise statement of the points on which he intends to rely on the appeal.

(5) (Appeal on agreed statement of facts.) When the question or questions presented by an appeal in any cause can be determined without an examination of all the pleadings, evidence, and proceedings in the superior court, the parties may prepare and sign a statement of the case showing how the question or questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the question or questions by this court. The statement shall include a copy of the judgment from which the appeal is taken, a copy of the notice of appeal and of the appeal bond, together with their respective filing dates, and a concise statement of the points to be relied on by the appellant, and shall be filed with the clerk of the superior court within the time provided for the filing of a statement of facts. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the question or questions raised by the appeal shall be approved in writing by the trial judge and, when so approved, shall constitute the record on appeal, and be transmitted to this court in the same manner as a statement of facts.

(6) Every statement of facts shall comply in form with the rule with reference to transcripts. The index thereto shall specify the page on which the testimony of each witness commences, the page on which exhibits are offered or introduced, the page on which depositions or affidavits are offered or introduced, the page on which motions made during the course of the trial are recorded, and the page of the ruling of the court thereon. At the bottom of each page there shall appear the name of the witness or witnesses testifying, and whether the examination be direct, cross, redirect, or recross.

(7) All exhibits shall be lettered or numbered in consecutive order, and, where practicable, shall be attached to the statement of facts. Each exhibit shall be identified by endorsing on the face thereof, in a conspicuous place, its letter or number, an abbreviated title of the cause, and the superior court number of the cause. Where, from the nature of the exhibit, it is not practicable to make such an endorsement, the exhibit may be identified by a tag, securely fastened thereto, on which is written or printed its letter or number, the title of the cause, and its superior court number.

(8) In all cases where the judge of the superior court has filed a written memorandum giving his reasons for his decision, the same shall be included as part of the statement of facts.

(9) In all cases whenever any error is predicted upon a ruling relative to an instruction given or proposed, it will be necessary to include in the statement of facts all of the instructions given by the court and those proposed instructions concerning which error is assigned. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subd. (5) amended, adopted Dec. 6, 1955, effective Jan. 3, 1956.]

Additional jury instructions: RCW 4.44.320.

Rule I–35 Statement of facts, what constitutes. Any party may after the entry of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and any objections or exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already a part of the record, made a part of the record in the cause by the certifying of a statement of facts, as in these rules provided. The certifying of a statement of facts shall not prevent the subsequent certifying of other statements of facts, comprising other matters in the cause, at the instance of the same or another party; but only one statement of facts can be settled or certified after the rendition of the final judgment in the cause. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended June 28, 1967, effective July 1, 1967.]

Exceptions: RCW 4.80.010–4.80.050.

Rule I–36 Statement of facts——Amendments——Notice to settle. A party desiring to have a statement of facts certified must prepare the same as proposed by him, file it in the cause and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any party may file and serve on the proposing party any amendments which he may propose to the statement: Provided, That the superior court may extend the time not to exceed an additional twenty days for filing and serving proposed amendments to the proposed statement of facts, if good cause be shown and the application for extension of time be made within the ten day period, and after notice to opposing counsel. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the statement. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. If no amendment shall be served within the time aforesaid, the proposed statement shall be deemed agreed to and may be certified by the judge at the instance of either party, at any time, without notice to any other party on proof being filed of its service, and that no amendments have been proposed; and if amendments be proposed and accepted, the statement as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective March 1, 1957.]

Rule I–37 Certificate, what to contain——How signed. The judge shall certify that the matters and proceedings embodied in the statement are matters and proceedings occurring in the cause and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein, or such thereof as the parties have agreed, to be all that are material therein. The certificate shall be signed by the judge, but need not be sealed; and thereupon all the matters and proceedings embodied in the statement of facts shall become and thenceforth remain a part of the record in the cause, for all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuses to settle or certify the statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the supreme court, either pending an appeal or prior thereto. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–38 Statement of facts——How certified upon change or death of judge. If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge or shall die, or shall be absent from the state or shall, by reason of disability, be unable to perform the duties of his office, which death, absence or disability may be shown by affidavit of any attorney in the cause served upon the attorney for the adverse party and filed in the cause, within the time within which a statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of Rule I–37, and before having certified such statement, such statement may be settled by stipulation of the parties with the same effect as if duly settled and certified by such judge while still in office. But if the parties cannot agree, the successor in office of the judge before whom the cause was pending or tried, or in case there be no successor, any judge of, or assigned to, the county where the cause was pending or tried, if such death, absence or disability shall appear to his satisfaction, shall settle and certify such statement in the manner in Rule I–37 provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by the judge before whom the cause was pending or tried, or by the reporter, if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, or any of them. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–39 How certified when cases consolidated. When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all of the original causes, to embody in a statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the statement shall be certified as in these rules prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–40 Statement of facts. (a) Notice of filing. When the proposed statement of facts is received by the clerk of the superior court, the clerk shall promptly notify the supreme court of the filing.

(b) Use by Counsel. The copy of a proposed statement of facts which is served as in these rules prescribed, shall be returned to the party serving the same upon the statement being certified, for his use in preparing his brief on appeal; and when he serves his brief he shall at that time return such copy to the party on whom it was originally served, and his brief shall not be deemed served until such copy is so returned by him. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Feb. 24, 1972, deleting subdivision (c), effective July 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended adding subdivisions (a) and (c) adopted June 28, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (c) follows and supersedes RPPP 77.16 W (4).

Rule I–41 Serving and filing of briefs on appeal. (1) Within forty–five days after the proposed statement of facts shall be filed, as provided in Rule I–34, or in those cases in which a statement of facts is not necessary in order to review a cause, within thirty days after the giving or service of notice of appeal, the appellant shall serve on the respondent three copies of a printed brief on the appeal upon his part, and shall file with the clerk of the supreme court twenty–five copies thereof, together with proof or written admission of service, as aforesaid. Appellant's brief shall clearly point out each error relied upon by him for a reversal, and shall conform to such regulations of its contents in other respects, and its form and size, as prescribed by Rule I–42. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the supreme court, with like proof of service, a like number of copies of a printed brief on the appeal upon his part, which shall likewise conform to the rules of the supreme court. Not less than twelve days prior to the hearing, the appellant may also serve and file with the clerk of the supreme court a like number of copies of a printed brief, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this rule prescribed, may be extended by order of the chief justice of the supreme court for good cause shown, or by stipulation of the parties concerned. Either party may, after the filing of his briefs, and not less than one day prior to the hearing of the appeal, submit to the supreme court and to the adverse party, in accordance with Rule I–42, a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief.

(2) The clerk of the supreme court, on the Wednesday of the week preceding the hearing, shall deliver to each of the justices a copy of each brief that has been filed in the cause. The respondent's brief must be on file with the clerk of the supreme court not less than twelve days prior to the Wednesday of the week preceding the week of the hearing. Reply brief in any cause must be filed with the clerk of the supreme court not later than Wednesday of the week preceding the date on which the cause is assigned for hearing. Costs for briefs filed later than such dates will not be allowed by the clerk, unless the failure of either party to file his brief within such time has been occasioned by the other party's failure to comply with this rule.

(3) The serving and filing of briefs in criminal causes shall be in accordance with Rule I–46.

(4) If the appellant fail to file a brief, an affirmance will be directed. If the respondent files no brief, the cause will be deemed submitted upon its merits as to

him. A respondent who has not filed a brief shall not be permitted to argue the cause orally without permission of the court given before the cause is called for argument.

(5) Any attorney authorized to practice in this state may file a brief amicus curiae in any case pending in the supreme court, after obtaining permission from the chief justice so to do. Such briefs shall conform in all respects to the requirements of Rule I–42, and shall be served on all parties and filed with the clerk of the supreme court not less than ten days prior to the hearing. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 20, 1950, effective Jan. 2, 1951; subd. (1) amended, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Rule I–42 Production, style and content of briefs for cases set for hearing on the appeal docket. (a) Production.

Briefs for cases set for hearing on the regular appeal docket shall be printed by either the letter–press or photo–offset method. If the photo–offset method is employed, the copy may be either linotyped or typed.

(1) Paper Stock.

If both sides of pages are to be used, the text shall be on 60–pound substance paper; if only one side is to be used, the text shall be on 20–pound or heavier substance paper. The paper shall be white opaque unglazed paper. The cover shall be book or cover stock of a weight heavier than the text and sufficient to prevent the brief from sagging when stood on end. The color of the cover shall be light so that the print will clearly show and shall be: Gray for appellant's or petitioner's opening brief; green for respondent's answering brief; blue for appellant's or petitioner's reply brief; and yellow for other types of briefs. When completed the pages of the brief shall measure 11 inches from top to bottom and 8 1/2 inches from side to side (letter size).

(2) Ink.

Black ink shall be used for both cover and text.

(3) Format.

Pages shall be numbered as follows: The index, table of cases, and table of authorities with small Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/4 includes. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition.

(i) Linotyped copy.

Type shall not be smaller than 12 point, double leaded, 30 picas wide. Quotations shall be in 12 point type, single leaded and indented two picas. Footnotes shall be in type not smaller than 9 point and unleaded. Headings shall be in bold face type. Left and right margins shall be justified.

(ii) Typed copy.

Typewritten text shall not be smaller than pica type equivalent to 11 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced. Heading shall be in capital letters, underlined. Left–hand margins shall be justified.

(5) Binding.

Briefs shall be bound along the folded edge or left side. Three saddle staples, machine sewing, or any permanent flush binding may be used. Ring plastic fasteners are not acceptable.

(b) Typed Briefs.

Briefs for cases set for hearing on the regular appeal docket may be typed and filed on behalf of any party authorized to proceed in forma pauperis or by the state or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

(1) Paper Stock.

The text of the brief shall be on 20–pound substance opaque white unglazed paper. The cover shall be of heavier book or cover stock and of a light color which will clearly show the typing.

(2) Ink.

Black typewriter ribbons shall be used for both cover and text.

(3) Format.

Pages shall be numbered as follows: The index, table of cases, and table of authorities with small Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text, or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/2 inches. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition.

Typewritten text shall not be smaller than pica type equivalent to 10 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Footnotes shall be single spaced. Headings shall be in capital letters, underlined. Left–hand margins shall be justified.

(5) Binding.

Typed briefs shall be stapled with 3 staples along the left side.

(6) Method of Production.

One side of the paper shall be used. Copies shall be produced by some method more legible and permanent than carbon except carbon copies may be filed by an indigent appealing a criminal conviction or a denial of a petition for writ of habeas corpus pro se, or by an indigent appellant filing a supplemental brief. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(c) Cover and Title Sheets.

The cover and title sheets shall be as follows and appropriately spaced to fill the sheet of paper within the margin requirements except the cause number shall be printed as close as possible to the top, right–hand corner of the page:

No. _____
(Supreme Court No.)

In the SUPREME COURT of the
State of Washington
(Superior court title except parties shall be designated "Appellant" or "Respondent," or, if not parties on appeal, "Plaintiff" or "Defendant.")

APPEAL FROM THE SUPERIOR COURT
FOR _____ COUNTY
THE HONORABLE _____ JUDGE,

BRIEF OF _____

Firm Name,
Counsel Responsible,
Address and Phone Number
of counsel filing brief.

(d) Citations.

Citations shall be in conformity with the form used in current volumes of Washington Reports. Decisions of the Supreme Court and of the Court of Appeals shall be cited to the official report thereof.

(e) Reference to the Record.

"St." shall be used for "Statement of Facts," "Tr." for "Transcript," and "Ex." for "Exhibits." A reference to the record shall clearly identify the portion of the record by one of the above abbreviations and in the case of the statement of facts or transcript, the page number. A reference to an exhibit shall include the identifying letter or number assigned. A reference to opposing counsel's brief shall set forth the page number.

(f) Length of Brief.

Except when authorized by the chief justice, briefs in excess of the number of pages indicated below, including the appendix, will not be accepted by the clerk for filing:

Opening and answering briefs
- Printed _____ 50
- Multilithed or typed _____ 62

Reply briefs
- Printed _____ 8
- Multilithed or typed _____ 10

Costs shall not be recovered for pages in excess of those set forth above even if authority for the filing of a brief with more pages has been granted.

(g) Contents.

In addition to the title and/or cover pages, briefs for the regular appeal calendar shall consist of the following subdivisions, titled with distinctive type and in the order indicated:

(1) Appellant's or Petitioner's Opening Brief.

(i) Tables of authority.

Authority cited shall be subdivided under: Table of cases, constitutional provisions, statutes, texts, and other authority. Cases shall be listed alphabetically with dates and citations. The dates and editions shall be indicated for texts. The page reference where cited in the brief shall be indicated opposite each authority.

(ii) Statement of the case.

Under this heading the following shall be included: A brief statement of the nature of the case; a short resume of the pleadings and proceedings; the nature of the judgment or appropriate ruling or order from which the appeal is taken; a clear and concise statement of the facts appropriate to an understanding of the nature of the controversy, with page references to the record.

(iii) Assignments of error.

Each error relied upon shall be clearly pointed out and discussed under appropriately designed headings. Where there are several errors relied on which present the same general questions, they may be discussed together. Whenever there is involved in any appeal a ruling or decision on the inclusion, omission, sufficiency or insufficiency of an instruction or instructions, as the case may be, the instruction or instructions shall be set out in the brief in full and reference made thereto by number in the "assignments of error." Whenever error is assigned to any finding or findings of fact, so much of the finding or findings made or refused as is claimed to be erroneous, shall be set out verbatim in the brief and reference made thereto by number the "assignments of error." No assignment of error is required when a petitioner is seeking a writ involving the original jurisdiction of this court.

(iv) Argument of counsel.

(2) Respondent's Brief.

The brief of respondent, in answer to a brief provided for in paragraph (1) above, shall consist of the following:

(i) Tables of authority.

(See paragraph (g)(1)(i) above.)

(ii) Statement of the case.

If the respondent does not accept appellant's or petitioner's statement of the case, he shall point out under the title "Counter-statement of the Case," such insufficiencies or inaccuracies as he believes exist. He may also set forth relevant facts he believes material to the cause, with supporting references to the pages of the record, but without unnecessary repetition of matters in appellant's or petitioner's statement.

(iii) Argument of counsel.

Argument shall be arranged and captioned under the following captions in the order listed:

Argument in support of judgment;

Argument in answer to appellant.

(h) Additional Authorities.

Additional authorities submitted in accordance with Rule 41 shall be produced in accordance with paragraphs (a) or (b) above except the cover page shall be white. Twelve copies shall be filed with the court and not less than one copy served on the adverse party. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. (b) amended, adopted May 1, 1970, effective July 1, 1970; subd. (b) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; amended, adopted May 8, 1972, effective July 1, 1972. Prior: Adopted Nov. 22, 1950,

effective Jan. 2, 1951; subd. (a)(7) amended, adopted Nov. 17, 1952, effective Jan. 2, 1953; subd. (c) amended, adopted Dec. 2, 1958, effective Jan. 12, 1959; subd. (g) added, adopted Nov. 12, 1959, effective May 1, 1960; subd. (a)(1), (a)(2), (a)(3), and (a)(4) amended, adopted Nov. 2, 1960, effective June 2, 1961; rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961; rule revised June 28, 1965; Item (g)(1)(iv) added Dec. 6, 1965, effective Jan. 2, 1966.]

Rule I–43 Errors considered. No alleged error of the superior court will be considered by this court unless the same be definitely pointed out in the "assignments of error" in appellant's brief. In appeals from all actions at law or in equity tried to the court without a jury, the findings of fact made by the court will be accepted as the established facts in the case unless error is assigned thereto. No error assigned to any finding or findings of fact made or refused will be considered unless so much of the finding or findings as is claimed to be erroneous shall be set out verbatim in the brief. No error assigned to the inclusion, omission, sufficiency, or insufficiency of an instruction or instructions, given or not given, will be considered unless such instruction or instructions, as the case may be, shall be set out in the brief in full. Provided, that the objection that the superior court had no jurisdiction of the cause or that the complaint does not state sufficient facts to constitute a cause of action, or that the supreme court has no jurisdiction of the appeal, may be taken at any time. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Nov. 17, 1952, effective Jan. 2, 1953.]
Exceptions: RCW 4.80.010–4.80.050.

Rule I–44 Transcript on appeal. (1) Within fifty–five days after an appeal shall have been taken by notice, as provided in Rule 33, the clerk of the superior court shall prepare, certify, and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal. This rule shall not apply to appeals on agreed statements of facts as provided in Rule 34(4). Within sixty days after the appeal shall have been taken by notice, as aforesaid, the clerk of the superior court shall, at the expense of appellant, send the transcript to the supreme court. The papers and copies so sent up, together with any thereafter delivered, as hereinafter provided, shall constitute the record on appeal. Any statement of facts on file when the record is so sent up shall be sent as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such statement. In the event any statement of facts shall be filed or certified, or any other addition to the records or files shall be made, after the record on appeal shall have been sent up, a supplementary record on appeal, embracing so much thereof as the appellant deems material or a copy thereof, may be prepared, certified, and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify, and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the supreme court prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the superior court or a judge thereof may order the clerk of the superior court to transmit the same to the clerk of the supreme court and the same shall be transmitted accordingly, and shall be under the control of the supreme court.

(2) Transcripts may be printed or typewritten, or may be prepared by photostatic copies of the original records in the office of the clerk of the superior court. If typewritten, the paper shall be of good quality of the size of legal cap, and only a black record ribbon shall be used. If printed, there shall be a compliance with the rule with reference to printed briefs as to size, spacing, and print. The transcript shall be free from interlineations and erasures, and shall be paged and prefixed with an alphabetical index of its contents, specifying the page of each separate paper, order, or proceeding.

(3) Transcripts must be certified by the clerk of the superior court in substantially the following form:

STATE OF WASHINGTON, COUNTY OF _____, ss.

I, _____, Clerk of the _____ Superior Court, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record and files in the above entitled cause as I have been directed by _____ to transmit to the Supreme Court.

In testimony whereof, I have hereunto set my hand and the seal of said Superior Court this _____ day of _____, 19__.

(SEAL)

_____ Clerk

By _____ Deputy.

(4) At the time the transcript is completed and certified, the appellant shall mail to each of the prevailing parties in the trial court, or his counsel, a copy of the clerk's index to the transcript. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. (1) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951, subd. (4) added, adopted Dec. 2, 1954, effective Jan. 3, 1955.]
Exceptions: RCW 4.80.010–4.80.050.

Rule I–45 Omissions from the record. If any paper, exhibit, or other part of the record directed to be sent up, has been omitted, such omission may be supplied

by any party, without leave, at any time before the cause is submitted to the court; notice of which shall be given all other parties. After a cause has been submitted, such omission may be supplied only by leave of court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–46 Appeals in criminal cases. (a) Superior Court Procedure at Time of Sentencing. The superior court shall, at the time of sentencing, unless the judgment and sentence are based on a plea of guilty, advise the defendant

(1) of his right to appeal,

(2) that unless a written notice of appeal is filed in accordance with subparagraph (b)(1) of this rule, the right of appeal is irrevocably waived,

(3) that the superior court clerk will, if requested by defendant appearing without counsel, file a notice of appeal in his behalf, and

(4) of his right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal.

These proceedings shall be made part of the record.

(b) Notice of Appeal.

(1) Filing. In order for the Supreme Court to obtain jurisdiction of an appeal in a criminal cause the original and a copy of a written notice of appeal must be filed with and the filing fee paid to the clerk of the superior court unless the appellant is authorized to proceed in forma pauperis, within thirty (30) days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty (30) days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the Clerk of the Supreme Court and transmit therewith the filing fee, if any. Failure of the superior court clerk to file the copy with, and forward the filing fee, if any, to the Clerk of the Supreme Court, will not affect the validity of the appeal.

(2) Contents. A notice of appeal shall be in substantially the following form:

(Caption——same as in Superior Court)

NOTICE IS HEREBY GIVEN TO: (Other parties of record) represented by (names and addresses of counsel) that (name of appellant) appeals to the Supreme Court from the (order, judgment, or decree) entered by the Superior Court of the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

The defendant is presently in confinement at _____. (or) The defendant has been released on bail and his address is _____.

DATED this _____ day of _____, _____.

(Signature)

_____

Address and telephone number of counsel for appellant or appellant if pro se, or clerk if notice prepared in accordance with (a)(3) above.

(3) Service. A party filing a notice of appeal shall notify all other parties in the case by mailing a copy of the notice of appeal to the party's attorney of record, or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal is filed and shall be sufficient notwithstanding the oath of the party, or his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged.

(c) Notice of Co–Party or Cross–Appeal. A co–party who did not join in the notice of appeal but who desires to join the appellant or a respondent who desires to prosecute a cross–appeal shall give notice in accordance with ROA I–33.

(d) Responsibility after Notice of Appeal.

(1) Superior Court Clerk. Immediately after the giving of a notice of appeal, the clerk of the superior court, at the expense of the public prosecution, shall prepare and transmit to the Clerk of the Supreme Court a certified copy of the judgment or order appealed from, together with a certified copy of the written notice of appeal. The clerk of the superior court shall notify the Clerk of the Supreme Court as soon as the proposed statement of facts is filed. Either appellant or respondent may have transmitted to the Supreme Court such additional portions of the record and files in the cause as they may believe have a bearing upon the issues involved.

(2) Superior Court.

(i) Determination of Resources and Costs. If the defendant files a timely notice of appeal or is a respondent and petitions the superior court for the expenditure of public funds for his costs on appeal, the superior court shall make findings as to the defendant's ability to pay and enter an order authorizing the expenditure of public funds for those costs allowable under ROA I–47 which the defendant cannot pay. If the defendant is found unable to pay the filing fee, the order shall also include authority to proceed in forma pauperis. Public funds for the payment of the statement of facts shall be limited to portions of the record necessary for review of assignments of error. Assignments of error so patently frivolous that reasonable minds could not differ as to their frivolity shall not be considered. If the defendant desires, but is unable to pay counsel, the superior court shall appoint counsel, preferably trial counsel. If, in the discretion of the trial court, other than trial counsel should be appointed, trial counsel shall be retained as co–counsel. No counsel shall withdraw without written authority of the trial court.

(ii) Denial of Costs. If a petition for the expenditure of public funds is denied in whole or in part, the defendant shall be advised of his right to have the order of denial reviewed by petitioning for a writ of certiorari and shall be advised of the limitations of time for filing such a petition.

(iii) Jurisdiction for Perfecting Appeal. The superior court shall retain jurisdiction for the purposes of fixing of bail, certification of the statement of facts, and appointment or withdrawal of counsel except a motion to withdraw as counsel for appellant on the ground that counsel can find no grounds on which he can in good faith base an appeal.

(3) Reports by Counsel. Counsel for defendant on appeal shall keep the Supreme Court currently advised of his appearance or withdrawal and the address of the appellant. Court appointed counsel shall serve the defendant with a copy of the brief prepared in his behalf and file proof of service with the Supreme Court.

(4) Supplemental Appellant's Brief. The Chief Justice may authorize the defendant to file a brief supplementing the brief of his counsel if good cause is shown and the motion for authority to file the brief is received within fifteen (15) days after the brief of his counsel is filed.

(e) Procedure to Perfect Appeal.

(1) Statement of Action. Within fifty–five (55) days after the filing of the notice of appeal, unless the Chief Justice shall previously order otherwise, the appellant or his counsel must file a statement that:

(i) Arrangements have been made with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and with the clerk of the superior court for the transcript which is to be filed pursuant to ROA I–44, or

(ii) A motion has been made in the superior court for a determination pursuant to (d)(2)(i) above.

Failure to comply with provisions of this subsection may be grounds for imposition of terms or dismissal upon the motion of the parties or the Clerk of the Supreme Court.

(2) Statement of Facts.

(i) When Transcribed. When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the Clerk of the Supreme Court. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the Chief Justice in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety (90) days, plus any additional time allowed by the Chief Justice, after the notice of appeal was filed with the clerk of the superior court, the Clerk of the Supreme Court shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard, unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(ii) Time Requirements. The statement of facts must be filed within ninety (90) days after the entry of the judgment or order from which the appeal is taken unless the time is extended for good cause by the Chief Justice. If the statement of facts is not timely filed, the Clerk of the Supreme Court shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) Appellant's Opening Brief. Within thirty (30) days after the date the proposed statement of facts is filed, the appellant shall serve on the respondent two copies and file with the Clerk of the Supreme Court 16 copies of his opening brief on appeal.

(4) Supplemental Brief. If an indigent defendant is authorized by the Chief Justice to supplement the brief of his appointed counsel, his appointed counsel shall have the copy of the statement of facts served on the defendant within ten (10) days after service of the appellant's opening brief. Proof of service will be promptly filed with the Supreme Court. The defendant will provide appointed counsel a copy of his supplemental brief for reproduction within sixty (60) days after the statement of facts was served upon him. The copy of the statement of facts will be returned to his appointed counsel with the supplement brief. If the copy of the statement of facts is not returned the supplemental brief will not be reproduced and the appeal will proceed as if a supplemental brief had not been authorized.

(5) Respondent's Answering Brief. Respondent shall, within thirty (30) days after service by appellant of his opening brief or, if a supplemental brief is authorized, within thirty (30) days after service by appellant of his supplemental brief, serve on the appellant not less than two copies and file with the Clerk of the Supreme Court 16 copies of his answering brief.

(6) Appellant's Reply Brief. Not less than five (5) court days prior to the hearing, appellant may also serve on the respondent two copies and file with the Clerk of the Supreme Court 16 copies of a reply brief.

(7) Transcript and Statement of Facts. Not later than one (1) week after service of respondent's brief, appellant will cause the transcript and statement of facts to be filed with the Clerk of the Supreme Court.

(8) Extensions of Time. Time limitations as set forth in this paragraph may be extended by order of the Chief Justice, for good cause shown by affidavit, provided the motion for extension is made before the time has expired. Stipulation of counsel does not constitute good cause.

(f) Reproduction of Briefs in Indigent Cases. When public funds have been authorized for the costs of briefs filed on behalf of a defendant, the briefs shall be reproduced by the Supreme Court. Within the time allowed, an original copy of such briefs ready and suitable for photocopying shall be filed with the Clerk of the Supreme Court. The clerk shall reproduce the briefs and make the following distribution:

To Whom Sent	Number of Copies
Defendant	1
Counsel for Defendant	2
Opposing Counsel	2
State Law Library	5
Supreme Court	As required

(g) Dismissal for Want of Prosecution. When time requirements set forth in section (e) are not met by the appellant, the Clerk of the Supreme Court shall note the cause on the next motion docket for dismissal for want of prosecution and give notice of the hearing date of the motion.

(h) Applicability of Civil Rules. The practice and procedure, except as in these rules otherwise provided, shall be, as nearly as possible, the same as in civil cases. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Mar. 7, 1973, effective July 1, 1973. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subd. (2) amended, adopted Nov. 17, 1952, effective Jan. 2, 1953; subd. (11) amended, adopted Dec. 14, 1953, effective Mar. 1, 1954; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; subd. (2) amended, adopted June 18, 1957, effective June 18, 1957; adopted May 4, 1966, effective June 1, 1966; subd. (a) amended, adopted July 19, 1966; subd. (c)(1) amended, adopted July 19, 1966; subd. (d)(1) and (2) amended, effective Dec. 13, 1968.]

Rule 1–47 Reimbursement of costs——Indigent criminal appeals. (a) Authorized Claims.

(1) Superior Court Clerk. The superior court clerk may submit a bill for the statutory allowance for preparation of a transcript and for the actual amounts incurred for transmittal of the record, briefs and exhibits to the supreme court.

(2) Court Reporter. The reporter may submit a bill at the rate of $1.50 per page for the original and one copy of that portion of the statement of facts ordered by the superior court. The statement of facts shall be on 8 1/2" by 13" paper; margins shall be lined 1 3/8" from the left and 5/8" from the right side of the page; indentations from the left lined margin shall be not more than one space for "Q" and "A", three spaces for the body of the testimony, eight spaces for commencement of a paragraph, and ten spaces for quoted authority; space between lined margins shall be used in so far as practicable; typing shall be double spaced thirty lines to a page except comments by the reporter shall be single spaced. Type shall be ten–point pica type or its equivalent. Additional copies when ordered shall be produced by the most economical method.

(3) Counsel. Counsel for defendant may submit a bill for:

(i) the actual expenses not including ordinary overhead incurred by counsel for perfecting the appeal including travel accomplished or to be accomplished not to exceed amounts allowable to state employees for travel by private vehicle, and

(ii) professional services.

(b) Conditions Precedent to Recovery.

(1) Order of Indigency. No costs shall be recovered unless there is on file in the supreme court a certified copy of an order of the superior court authorizing the expenditure of public funds for the purpose for which costs are claimed.

(2) Appointment of Counsel. No fees or costs of counsel shall be recoverable unless there is on file in the supreme court a certified copy of an order of the superior court appointing the counsel who is claiming recovery of fees or costs incident to review.

(c) Form.

(1) Copies. Each cost bill shall be filed with the clerk of the supreme court in an original and three duplicate copies.

(2) Social Security Number. Each claimant, except the superior court clerk, shall set forth his social security number under his signature.

(3) Court Reporter and Clerk. A cost bill submitted by the court reporter or clerk shall be identified by the supreme court case caption and entitled "Criminal Appeal Invoice Voucher." It shall itemize the number of pages, number of lines per page, and billing rate per page. It shall be signed by the claimant. It shall be certified in the following form:

(i) Clerk's Cost Bill. The clerk shall certify his cost bill as follows: "I hereby certify that the items and totals listed herein are correct charges for the preparation or actual costs of transmittal of portions of the record and files ordered by counsel or the trial court in the above–entitled appeal."

(ii) Reporter's Cost Bill. The superior court clerk shall certify the reporter's cost bill as follows: "I hereby certify that the amount claimed in this bill is for that portion of the statement of facts ordered by the trial court and the typing of the statement of facts and computing of the bill are in accordance with ROA I–47(a)(2)."

(4) Counsel. A cost bill submitted by counsel for the defendant shall be in the following form:

(i) identified by the supreme court case caption,

(ii) entitled "Cost Bill of Counsel for Defendant,"

(iii) itemized as to actual hours expended by counsel in preparation of the appeal and amount of compensation claimed therefor, expenses paid by counsel incident to appeal, actual travel expenses of counsel incurred or to be incurred for argument in the supreme court, and

(iv) subscribed with the affidavit of counsel that the items and totals listed therein are correct charges for actual labor or costs necessarily incident to the proper consideration of the appeal by the supreme court.

(d) Time of Filing Cost Bills.

(1) By Court Reporter and Clerk. The reporter and clerk may file a cost bill as soon as the services for which the claim is submitted have been performed, but not later than ten days after the filing of the opinion.

(2) By Counsel. Counsel for defendant shall file his cost bill not later than ten days after the opinion in the case becomes final as provided in SAR 15. Only one cost bill shall be filed by counsel.

(e) Disallowance of Costs.

(1) Waiver of Costs. When a cost bill has not been filed within the time allowed, such claim will be deemed to have been waived.

(2) Improper Brief. When, in the opinion of the supreme court, a brief by counsel is improper in substance, or unnecessarily long, the court may, in its discretion, disallow all or a portion of the costs thereof claimed by counsel.

(3) Unnecessary Delay. When, in the opinion of the supreme court, the court reporter or counsel has been dilatory, the court may, in its discretion, disallow all or a portion of the cost bill.

(f) Allowance of Costs.

(1) Court Reporter and Superior Court Clerk. Within ten days after a cost bill of the court reporter or superior court clerk has been filed in the supreme court, the clerk of the supreme court shall either approve it for payment or notify the claimant of his objections to its allowance by a Clerk's Ruling. Unless the Claimant notes exceptions to the Clerk's Ruling within ten days for hearing on a regular motion day, the amount will be deemed approved in accordance with the Clerk's Ruling.

(2) Counsel. The supreme court clerk shall present counsel's cost bill to the supreme court on the day of argument. The supreme court, in its discretion, will make such allowance as it determines is fair and equitable, consistent with funds available and projected budgetary requirements. Allowances shall be made by order of the chief justice. If all or a portion of the counsel's claim be disallowed by the order, notice of such disallowance shall be transmitted to the claimant by the supreme court clerk. Unless exceptions to the order are noted by the claimant within ten days after the date of the letter of notification for hearing on a regular motion day, exceptions will be deemed to have been waived. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Aug. 5, 1970, effective July 1, 1969; amended Aug. 24, 1972, effective Sept. 1, 1972; amended, adopted Nov. 1, 1973, effective Jan. 1, 1974. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951, 2nd para. amended, adopted Dec. 6, 1960, effective Jan. 2, 1961; adopted May 4, 1966, effective June 1, 1966; subd. (a)(3) amended, adopted July 19, 1966; subd. (b)(4)(iii) amended, adopted July 19, 1966.]

Defendant's fee, forma pauperis: RCW 2.32.080.

Habeas corpus, proceeding in forma pauperis: RCW 7.36.250.

Rule I–48 Proceedings in case of reversal in criminal cases. When in a criminal action the judgment against the defendant is reversed and it appears that no offense whatever has been committed, the supreme court will direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense although defectively charged in the indictment or information, the supreme court, if the defendant is in prison, will direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–49 Arguments. No more than two counsel on a side will be heard upon the argument, unless the court shall direct otherwise: Provided, That each party who has appeared separately and by different counsel in the superior court shall, if he so desire, be heard through his own counsel. The counsel for the appellant shall be entitled to open and close the argument upon the merits in all cases. In argument of motions, except motions heard with the merits of the cause and all preliminary or collateral matters, the counsel for the party having the affirmative of the issue shall open and close. Unless extended upon application, arguments in causes appearing on the regular calendar shall be limited to one-half hour on a side: Provided, That in causes where two or more appellants or two or more respondents appear separately in this court and file separate briefs, each may be heard as the court may permit, but in no case will more than two hours be allowed for arguments. Arguments upon motions shall be limited to one-quarter of an hour on a side. Applications for an extension of time for argument shall be made to the chief justice in writing not less than ten days prior to the date of the hearing.

The time allowed for argument in cases wherein the death penalty has been imposed is not limited. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Rule I–50 Petitions for rehearing. Any party to an appealed case may, after an opinion has been filed, present to the court, in the manner and time as hereinafter provided, a petition for rehearing.

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.

When a rehearing is granted, the clerk shall notify counsel for the respective parties thereof.

When an answer to a petition for rehearing is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the original petition, with a request that he file an answer thereto within fifteen days and serve a copy thereof on opposing counsel.

Three copies each of the petition for rehearing and of the answer thereto, if called for, shall be filed with the clerk.

Petitions for rehearing and answers thereto may be printed, mimeographed, or typewritten. If a petition for rehearing be granted, the court may require additional copies of the petition, answer and briefs to be supplied in the manner indicated by the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Nov. 17, 1952, effective Jan. 2, 1953.]

Rule I–51 Motion to dismiss. Any respondent may move the supreme court to dismiss an appeal either on the ground that the court has no jurisdiction of an appeal from the judgment or order from which the appeal was taken or that the notice of appeal was not served or filed within the time limited by rule, or is insufficient, or that the appeal bond was not filed within the time limited by rule, or is not in form or substance such as to render the appeal effectual, or that the appellant's brief has not been served or filed, or that the record on appeal has not been sent up, or that the appeal has not been diligently prosecuted or on any ground going to the merits of the further prosecution of the appeal or on any two or more of the grounds hereinabove mentioned; and there may be combined with a motion to dismiss, a motion to affirm the judgment or order appealed from, or a motion for damages on the ground that the appeal was taken merely for delay, or was manifestly unauthorized by rule, or both such motions. A general appearance in the supreme court shall not be a waiver of the right to make any motion herein authorized. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–52 Hearing and disposition of motion to dismiss. If the supreme court on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same, to be well taken and true in effect, except lack of jurisdiction, the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the ground of any such motion (except a failure to take the appeal within the time limited by these rules) the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service or filing of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the supreme court, perfect the appeal. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–53 Motions——How made and heard. (a) Motion Days. The first and third Fridays of each month the court sits for hearing of cases on the regular appeal calendar during a session are designated as motion days.

(b) Alternative Presentation. Motions to strike any portion of the transcript or the statement of facts, or to dismiss or affirm upon the record, and all technical motions tending to prevent the hearing of the cause upon its merits, may be made in writing and noticed for some motion day, or the same may be made and plainly stated in the brief of the moving party and heard at the time the cause is assigned upon the calendar.

(c) Notice Motions. All other motions in appealed causes must be made in writing and noticed for some motion day. The motions referred to in this and the first clause of the preceding paragraph will be known as "noticed motions."

(d) Filings and Calendars. At least ten days before the day fixed for the hearing of such a motion, the motion and notice, with proof of service, and briefs in support thereof, must be filed with the clerk. The clerk will prepare a calendar of noticed motions for each motion day.

(e) Briefs. Briefs in support of any motion are required in all cases. One copy of the brief of the moving party shall be served upon counsel for the opposing party, and the original and five copies thereof in a departmental hearing, and the original and nine copies thereof in a hearing en banc, shall be filed with the clerk at least ten days before the time the motion is to be heard. The opposing party, if he appears, shall serve a copy of his brief on the moving party, and file with the clerk a like number of copies at least on or before the Wednesday preceding the day of hearing. Briefs may be printed or typewritten and shall comply with Rule on Appeal 42, insofar as applicable. If typewritten, the copies must be clearly legible. Failure to comply with the provisions of this rule relating to briefs may result in striking the motion, hearing it without oral argument by the opposing party, if he has failed to comply herewith, or continuing it until a later motion day. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subds. (a), (d) and (e) amended, adopted Nov. 2, 1960, effective Jan. 2, 1961; rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961.]

Rule I–54 Notices of motions. All notices of motions not given in the briefs must be in writing; and the necessary time of notice shall be not less than ten days, unless a different time is fixed by special order of this court. But where the service of a notice is made by mail between different places, the time of notice above mentioned shall be thirteen days. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–55 Costs on appeal and cost bills. (a) Costs.

(1) Allowance. In cases disposed of by an opinion of the supreme court, costs on appeal will be taxed by the clerk in accordance with this rule. In cases disposed of by order, the court has discretion to award costs.

(2) Items. The costs which may be recovered are: The fee of the clerk of the supreme court; the fee of the clerk of the superior court for preparing, certifying, and transmitting to the supreme court the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; statutory attorney's fees; the actual amount incurred in the printing of forty briefs; the actual amount incurred, by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedeas bond.

(3) Disallowance of Printing. When, in the opinion of the supreme court, a brief is improper in substance or when a statement of facts is improper in substance or unnecessarily long, with regard to the issues raised on the appeal, the court may, in its discretion, order the disallowance as costs of any part or the whole of the disbursements for printing or preparing the same. Reference is also made to Rule I–41 on disallowance of costs on briefs filed late.

(b) Party Entitled.

(1) Prevailing Party——Discretion. When the judgment of the superior court is affirmed or reversed, the prevailing party shall recover his costs. When the judgment of the superior court is reversed and remanded for a new trial, the awarding of costs shall abide the final determination of the cause. When the judgment is affirmed in part, reversed in part, modified, or remanded for further proceedings, the supreme court shall, in its discretion, award all or partial costs to either party or may order that the awarding of costs shall abide the final result of the further proceedings.

(2) Nominal Party. When a party on an appeal is a nominal party only, costs shall not be recovered against such party in any event.

(c) Cost Bill.

(1) Filing and Exceptions after Opinion. The prevailing party shall, within ten days after the filing of the opinion in a cause, file with the clerk and serve upon the adverse party a cost bill. If any adverse party excepts to any item therein, he shall, within ten days after service of the cost bill upon him, file with the clerk and serve upon the prevailing party his exceptions to such cost bill together with affidavits in support of his exceptions. When the decision of this court becomes final, as provided in Rule 15 of Supreme Court Administrative Rules, the clerk shall tax the costs of which the prevailing party is entitled and, in the event that exceptions have been filed, shall grant or deny said exceptions and shall notify the parties of his rulings thereon.

(2) Filing and Exceptions after Judgment. When the costs on appeal are to abide the final result of an action, the ultimate prevailing party shall, within ten days after the judgment becomes final, file with the clerk a certified copy of said judgment and his cost bill of the prior appeal and shall serve a copy of said cost bill upon the adverse party. If any adverse party excepts to any item of said cost bill, said exceptions shall be handled in the same manner as provided in subsection (c) (1) of this rule. When the time for taking an appeal from the judgment entered upon a remand of the cause has expired and no notice of appeal has been given, the prevailing party shall, within ten days, file with the clerk a certificate of the clerk of the superior court certifying that no notice of appeal has been given. Whereupon the clerk shall include the costs of the prior appeal, as finally taxed, in a supplemental judgment and remit the same to the clerk of the superior court.

(3) Supplemental. In the event that additional premium on an appeal and/or supersedeas bond shall accrue prior to the final taxing of costs, the prevailing party may, within ten days after such accrual, file with the clerk and serve upon the adverse party a supplemental cost bill limited to this item only; said supplemental cost bill to be handled in the same manner as provided in subsection (c) (1) of this rule.

(d) Filing and Hearing Exceptions. If any party excepts to the costs as taxed by the clerk, he shall, within ten days of said taxing, file with the clerk and serve upon the adverse party his exceptions and said exceptions shall be heard by this court in the same manner as that provided by Rules I–53 and I–54 for the hearing of motions.

(e) Waiver of Objections. When a cost bill has been served and filed in time and no exceptions have been filed, objection thereto will be deemed to have been waived.

(f) Waiver of Costs. When a cost bill has not been filed within the time allowed by this rule, any claim to costs will be deemed to have been waived. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended; adopted Nov. 17, 1952, effective Jan. 2, 1953; adopted Dec. 14, 1953, effective Mar. 1, 1954; adopted May 8, 1956, effective June 15, 1956; adopted Nov. 12, 1959, effective May 1, 1960; adopted Nov. 2, 1960, effective Jan. 2, 1961, rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961; subdivision (g) implementing 1965 C 133 § 2 (RCW 10.01.112), added effective July 1, 1965; subdivision (g) deleted May 4, 1966, effective June 1, 1966.]

Costs, review, etc.: RCW 4.84.180, 4.84.190, 4.88.260.

Counsel——Right to——Fees: RCW 10.01.110.

Indigent defendants——State to pay costs and fees incident to supreme court review: RCW 10.01.112.

Schedule of attorneys' fees: RCW 4.84.080.

Transcript of testimony——Fee——Forma pauperis: RCW 2.32.240.

Rule I–56 Habeas corpus. (a) Jurisdiction. The supreme court shall have original jurisdiction in habeas corpus proceedings.

(b) Parties.

(1) Petitioner. A petition for writ of habeas corpus shall be brought in the name of the person in custody or by his guardian or parent as petitioners.

(2) Respondent. The person or agency exercising physical custody, restraints or conditions upon the petitioner's liberty shall be named respondent. The proper respondent of a person in the custody of an institution under the control of the State Department of Institutions is the director of that department.

(3) Transfer of Custody. If petitioner after serving and filing his petition is transferred from the custody of one agency to another, petitioner will forthwith advise the court and respondent's counsel. The court on its own motion will substitute the proper respondent, and the clerk of the court shall so notify substituted respondent or counsel for respondent.

(c) Petition. Under the titles indicated the petition shall set forth:

(1) Place of Custody. The place where petitioner is held in custody if confined.

(2) Basis of Custody. If held in custody pursuant to a judgment or sentence or other decree, the basis of the

custody, including date, county and cause number, if available.

(3) Statement of Facts. A statement of the facts upon which the allegation of illegal custody is based (the grounds for allegations that the imprisonment or custody is illegal).

(4) Legal Principles. The reason why the custody is unlawful or violates a constitutional right. Legal argument, citations, and authorities are not required, but, if submitted, shall be set forth in a brief separate from the petition, which shall be served and filed with the petition.

(5) Previous Petitions. Identify other applications or petitions filed with regard to the same allegedly unlawful custody by setting forth the court in which filed, date and disposition made by such court.

(6) Prayer. The relief being sought.

(7) Oath.

(i) If a notary is available. The petition shall be subscribed by the petitioner and verified as follows:

"_____ being first duly sworn, on oath, deposes and says that he is the petitioner in the above–entitled proceeding, that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public in and for the State of Washington, residing at _____."

(ii) If a notary is not available. The petition shall be verified by the petitioner as follows:

"Under penalties of perjury, I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

_____ _____"
(date)

(d) Proceeding in Forma Pauperis.

(1) Motion. A petitioner, unable to pay the filing fee, may move to proceed in forma pauperis. The motion shall contain a statement of the petitioner's total assets.

(2) Clerk. When the petitioner is in the custody of an agency of the State Department of Social and Health Services, the clerk shall obtain a statement of petitioner's known assets from the superintendent of the institution exercising custody over the petitioner.

(3) Determination. If the chief justice finds the petitioner is unable to pay the filing fee, the petitioner will be authorized by notation order to proceed in forma pauperis. If the application to proceed in forma pauperis is denied, the petitioner shall be notified of the reason.

(4) Provision of Counsel and/or Transcript. Upon a finding that the petitioner is unable by reason of poverty to procure counsel or to pay for a transcript, and that the petition raises significant issues which by their nature and character indicate for proper review and determination the necessity of professional legal assistance or the availability of a transcript, the Supreme Court may enter an order:

(i) Appointing counsel or directing a superior court to appoint counsel to represent the petitioner in the Supreme Court or on an order of reference,

(ii) Directing a superior court to have a prior superior court proceeding or a reference proceeding transcribed,

(iii) Authorize payment of the costs of the above from public funds.

The procedure for obtaining reimbursement for such costs from public funds is governed by ROA I–47 (except paragraph (b) thereof)

(e) Filing Petition. A petition for writ of habeas corpus will not be filed by the clerk of the supreme court until the filing fee has been paid or the petitioner has been authorized to proceed in forma pauperis.

(f) Return and Answer. The respondent shall within twenty days after the petition is served and filed, unless the time be extended by the chief justice for good cause shown, file a return and answer setting forth:

(1) The authority or cause of the restraint of the party in his custody and if the authority be in writing, a certified copy thereof.

(2) Whether in the opinion of respondent or counsel for respondent a disposition of the petition requires a determination of fact.

(g) Briefs.

(1) Petitioner's Opening Brief. If petitioner files a brief with his petition, it shall contain the following designated sections:

(i) Facts. A succinct statement of the alleged facts upon which the argument that the custody is illegal is based.

(ii) Argument. Legal citations and authorities supporting the position of the petitioner.

(iii) Prayer. The relief being sought.

(2) Answering Brief. Respondent's answering brief shall be served and filed within twenty days after respondent's answer and return have been served and filed, unless the time is extended by the chief justice for good cause shown.

(3) Reply Brief. Petitioner's reply brief, if any, shall be served and filed at least three court days preceding the hearing.

(4) Form and Number of Briefs.

(i) Form. Briefs will be on letter size paper and printed or typed unless such facilities are not available. Only one side of the paper shall be used. Typewritten text shall not be smaller than pica or 10 point type, double spaced with lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Headings shall be in capital letters, underlined. Briefs shall be stapled along the left margin of the page.

(ii) Copies. An original and 5 copies of briefs will be filed with the clerk. Copies shall be produced, if means are available, by some method more legible and permanent than carbon. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(h) Transfer for determination. Petitions for writs of habeas corpus originally filed in the supreme court may be transferred to the court of appeals for determination.

(i) Hearing.

(1) Setting. The clerk shall promptly set the cause on the motion calendar and notify the parties of the date.

(2) Oral Argument. The cause shall be submitted without oral argument unless otherwise directed by the court.

(j) Motions.

(1) Form. Motions shall be verified in the same manner required for a petition. Proof of service setting forth the persons on whom the motion is served shall be subjoined to the motion. A copy of the motion must be served on the opposing party or his counsel.

(2) Disposition. Petitions or motions which do not relate to the merits of the petition for the writ and motions to dismiss the cause on grounds of frivolity or repetitiousness may be determined by the chief justice.

(k) Referral for Hearing. Petitions which require for disposition the resolution of an issue of fact which cannot be determined from the record will be referred to the superior court entering the judgment or order upon which petitioner's retention is based. The reference court shall hold an evidentiary hearing to resolve the disputed questions of fact. Such hearing shall be held before a judge who was not involved in the challenged proceedings.

(1) Order of Referral. The order of referral shall contain provision for:

(i) Appointment of counsel at public expense if petitioner is found to be indigent.

(ii) Right to summon witnesses.

(2) Note for Hearing. When the respondent is represented by the attorney general or a prosecuting attorney, such attorney shall be responsible for promptly noting the hearing and serving notice on other parties. In all other cases petitioner or his counsel shall have such responsibility.

(3) Procedure. Upon the conclusion of the hearing, the trial judge shall cause findings of fact to be made and a certified copy thereof to be filed with the supreme court, and all supreme court files forwarded in connection with the reference hearing to be returned to the supreme court.

(l) Disposition on Merits. If, after a hearing by the court, it appears from the face of the record or from admitted facts that the petitioner is entitled to relief of some nature, the chief justice shall assign the cause for an opinion. In all other cases, except referrals, the petition may be denied by order.

(m) If Relief Granted. If any relief be granted, upon motion of the respondent, the relief shall be stayed during the pendency of a petition for review. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 13, 1970, effective Jan. 2, 1971; amended, adopted Mar. 27, 1972, effective Mar. 27, 1972. Prior: adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Comment by the Court. Complete revision of former ROA 56.

Defendants' fee, forma pauperis: RCW 2.32.080.

Proceedings in forma pauperis: RCW 7.36.250.

Superior court clerk's fee: RCW 36.18.020.

Rule I–57 Procedure for petitions for extraordinary writs, certiorari, mandamus and prohibition. (a) Scope of Rule. Petitions for all writs authorized by the state constitution or necessary and proper for the complete exercise of the supreme court's appellate and advisory jurisdiction, including orders of the court of appeals which terminate an action, shall be entitled and processed and determined under the provisions of this rule except: (1) petitions for writs of habeas corpus which shall be governed by ROA I–56 and (2) writs directed to state officers, which shall be governed by ROA I–58.

(b) Reserved.

(c) Stay of Proceedings.

(1) The chief justice may stay proceedings and condition the stay on petitioner posting a bond deemed sufficient to protect respondent from all damages that may be suffered by reason of the stay of proceedings.

(2) Jurisdiction. Jurisdiction of the supreme court shall attach when:

(i) the chief justice stays proceedings or grants the writ; and

(ii) petitioner has filed a bond for costs as provided by (g)(2) of this rule, and a bond, if required by (c)(1).

(d) Contents and Format of Petition, Response, and Briefs.

(1) Contents of Petition. The petition for a writ shall be verified by the petitioner or his counsel and shall contain a brief statement of the essential facts constituting the ground for review and issuance of the writ by the supreme court. The petition shall be supported by a memorandum of authorities, and, if necessary, further supporting documents or affidavits.

(2) Response to Petition. A respondent may serve upon the petitioner or his counsel and file with the supreme court a response to the petition. The response may contain additional facts verified by respondent or his counsel, a memorandum of authorities or other supporting documents or affidavits.

(3) Format and Size. The caption of a petition for a writ shall appear as it does in the court from which the case arose, except that the aggrieved party shall be designated as the petitioner and all other parties as respondents. If the petition is for a writ of prohibition or mandamus directed to the superior court or division of the court of appeals, the appropriate court shall be named as a respondent. The petition and response shall be typewritten, printed, mimeographed, or produced by multilith or offset processes on letter–size paper (8 1/2 x 11 inches) and stapled on the left–hand side. Briefs may be typewritten and shall comply in style and content with Rule I–42; the number thereof shall be governed by (g)(3) of this rule.

(e) Time of Filing and Service.

(1) Filing. A petition for a writ must be filed in the office of the clerk of the supreme court within fifteen (15) days after the determination in question has been made by the court from which the case arose, except as otherwise provided by RCW 8.04.070 for the review of a certificate of public use and necessity. Unless petitioner proceeds forthwith to present the petition to the chief justice ex parte or notes it for presentment within

a reasonable time after filing, the court may dismiss the petition for want of prosecution.

(2) Service. When a petition for a writ is presented ex parte to the chief justice, and an order to show cause is issued pursuant thereto, a copy of the petition and a copy of the order to show cause shall be served forthwith by the petitioner upon all respondents or their counsel.

A copy of the petition for a writ and notice of presentment thereof to the chief justice upon a day certain may be served by petitioner upon all respondents or their counsel prior to filing the petition.

All services shall be made in the manner prescribed in Rule I–3. Proof of service shall be filed with the clerk of the supreme court.

(f) Preliminary Hearing on Petition.

(1) If the petition is presented ex parte, the chief justice may

(i) determine that the writ does not lie and deny the petition; or

(ii) he may issue an order to show cause why the writ should not issue. If an order to show cause is issued, the chief justice shall fix a time (1) for hearing thereon either before him or before the court and (2) for filing briefs in support of, and in opposition to, the issuance of the writ.

(iii) Transfer the writ to the court of appeals for determination unless the petition is to obtain a review of an order of a panel of the court of appeals denying a petition for an extraordinary writ.

(2) Unless a shorter time, or another day and time, is fixed by the chief justice, the preliminary hearing before him on a petition for a writ shall be noted by petitioner for hearing on a THURSDAY at 1:30 p.m. not less than five nor more than fifteen days after service of a copy of the petition and notice of hearing upon respondent or his counsel. Immediately upon notice of hearing having been given, petitioner shall file with the clerk of the supreme court the petition, notice of hearing, proof of service thereof, memorandum of authorities, and supporting documents.

(3) If the petition is presented to the chief justice after notice given as in these rules provided, the chief justice may

(i) determine that the writ does not lie and deny the petition; or

(ii) cause the hearing on the petition to be continued and heard by the court; or

(iii) issue the writ;

(iv) provided, however, if the petition is for a writ of prohibition or mandamus the chief justice may only determine that the writ does not lie or cause the hearing on the petition to be continued and heard by the court.

(v) transfer the writ to the court of appeals for determination unless the petition is to obtain a review of an order of a panel of the court of appeals denying a petition for an extraordinary writ.

(4) If the chief justice continues the hearing on the petition to be heard by the court, or directs that the writ issue, he may

(i) stay proceedings in the cause as in this rule provided; and

(ii) determine whether or not the matter is emergent. If emergent, the petition or writ shall be set for argument before the court on a motion day. If not emergent, the cause shall be set on the court's calendar by the clerk of the supreme court.

(5) Time for Hearing and for Briefs. The order of the chief justice (i) directing the issuance of a show cause order, (ii) continuing the petition to be heard by the court, or (iii) directing that the writ issue, shall fix the date and time for hearing thereon and the time for service and filing of briefs of all parties.

(g) Procedure After Preliminary Hearing.

(1) Filing Copies. If the chief justice issues an order to show cause, continues the hearing on the petition, or issues the writ, petitioner shall file with the clerk nine additional copies of the petition.

(2) Bond. When the petitioner files the appropriate order issued by the chief justice with the clerk of the supreme court he shall also file a bond in the amount of three hundred dollars, conditioned that the petitioner will pay all costs that be assessed against him in the proceedings, or on the dismissal thereof, not exceeding three hundred dollars, or, in lieu thereof the petitioner shall deposit with the clerk, cash in the sum of three hundred dollars for such purpose; provided, however, that no bond or filing fee is required if the petition is filed by an indigent criminal defendant seeking review of the superior court's denial, in whole or in part, of a statement of facts at county expense.

(3) Submission of Briefs. Briefs in support of, and in opposition to, any petition, are required in all cases. One copy of the brief of petitioner shall be served upon each respondent or his counsel. The original and nine copies shall be filed. Any respondent who appears shall serve a copy of his brief on petitioner or his counsel, and file with the clerk the appropriate number of copies.

(4) Filing Record and Proceedings. Within the time allowed for the service and filing of his opening brief, the petitioner shall file with the clerk of the supreme court such portion of the record and proceedings in the superior court as is needed for the purpose of reviewing the application or the determination. The record shall be certified or authenticated as in causes on appeal.

(5) Additional Record. Any respondent, within the time allowed for service and filing his brief, may file certified or authenticated portions of the record and proceedings additional to those filed by the petitioner.

(6) Response and Cross–Review. If the chief justice directs the clerk of the supreme court to issue the writ, respondents may continue to urge at the hearing thereon that the writ was improvidently issued and should be quashed; and may, without the necessity of a cross–petition, present and urge in the supreme court any claimed errors by the court from which the case arose which, if repeated upon a new trial, would constitute error prejudicial to respondents.

(h) Denial of Petition or Quashing Writ. The court may deny a petition for a writ, or quash a writ already issued, by journal entry.

(i) Attorney's Fees Awarded. In addition to statutory attorney's fees and court costs, reasonable attorney's

fees may be assessed against petitioner if it is determined that a petition for a writ is not made in good faith.

(j) Notice of Appeal. If a timely petition for a writ of certiorari is denied, the petition shall be considered to be a notice of appeal timely and properly filed. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 10, 1969, effective Nov. 21, 1969; amended, adopted Feb. 24, 1972, effective July 1, 1972. Prior: Adopted Jan. 31, 1963, effective Mar. 18, 1963.]

Comment of the court. Jurisdiction limited to cases in which the supreme court would have original statutory appellate jurisdiction.

Rule I–58 Original writs directed to state officers. (a) Commencement of Action. Original proceedings in the supreme court for petitions for writs of mandamus, prohibition and quo warranto directed to state officer shall be initiated in the same manner as for the commencement of an ordinary civil action.

(b) Referral for Hearing. Petitions for writs directed to state officers will be referred to the superior court for Thurston County for determination of the facts unless an agreed and adequate statement of facts accompanies the petition.

(c) Cost of Filing. At the time of filing the petition for any writ, the petitioner, if a private party, shall deposit with the clerk of the supreme court, the sum of twenty–six dollars. If the petition is granted, and the petitioner finally prevails on the merits, thereof, or if the respondent fails to resist the application, the sum of twenty–six dollars shall be returned to the petitioner; otherwise, it shall be paid to the respondent.

(d) Issuance of Writ. An alternative writ, order to show cause, or writ directed to the respondents shall be issued by the clerk and under the seal of the court. A copy of the order, and opinion of the court, when one is written or required, duly certified by the clerk of the court, shall be attached thereto, and shall be served as prescribed in Rule I–3.

(e) Cost of Preparing the Record. The writ shall be conditioned upon the payment by the petitioner of all costs of preparing the record for hearing in this court.

(f) Filing of Briefs. Whenever an alternative writ or an order to show cause is issued under this rule involving the constitutionality of a statute, an executive order or an administrative regulation, the chief justice may designate the party who shall file the opening brief, which shall set forth with particularity in what manner the statute, executive order, or administrative regulation is unconstitutional; and he shall fix the time within which each party shall file his brief.

(g) Denial of Petitions. The denial of petitions for writs of mandamus and prohibition may be made by journal entry. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Jan. 30, 1963, effective Mar. 18, 1963.]

Rule I–59 Transcript of judgment, effect of. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–60 Effect of judgment——Execution under. If this court affirms or modifies any judgment or order appealed from, it may remand the cause to the superior court with directions to carry the same into effect, or it may itself issue the necessary process for that purpose to the sheriff of the proper county, as it may deem advisable. If the cause is remanded to the superior court to have such judgment or order carried into effect, the decision of the supreme court, and its order entered thereon, upon being certified to the superior court and entered on its records, shall have the same force and effect therein as if made and entered by the superior court. Executions issued from the supreme court shall be similar to those from the superior court, and of like force and effect, and returnable in the same time. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–61 Effect of reversal——Writ of restitution. If by a decision of the supreme court the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of the judgment or order appealed from, either the supreme court or the superior court may direct an execution or writ of restitution to issue for the purpose of restoring to the appellant his property, or the value thereof. But property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–62 Damages may be awarded, when. Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been stayed by a supersedeas bond, as in these rules provided, the court may award to the respondent damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, the court may award such damages as will effectually tend to prevent the taking of appeals for delay only. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–63 Appeals to be heard on merits. The supreme court will hear and determine all causes removed thereto in the manner hereinbefore provided, upon the merits thereof, disregarding technicalities, and will upon the hearing consider as made all amendments which could have been made. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–64 Reserved.

Rule I–65 Reserved.

Rule I–66 Disposition of material exhibits. (a) Transfer of Custody. Physical exhibits which, because of their bulk or weight, cannot be attached to the statement of facts, and which are only material to an issue of fact not before the supreme court on review shall be retained in the custody of the trial court subject to being obtained on request by the supreme court while the supreme court has jurisdiction of the cause.

(b) Disposition. When a cause is remanded for further proceedings, the exhibits in the custody of the supreme court shall be returned to the court having jurisdiction. When a cause is not remanded for further proceedings, counsel shall be notified, except in criminal cases, that the exhibits which cannot be retained in the supreme court file will be destroyed or disposed of six months after the date of the remittitur unless:

(1) A stipulation is filed by counsel or the parties of record providing for disposition and costs of transfer of such exhibits. The clerk shall dispose of the exhibits in accordance with the stipulation.

(2) A party or counsel of record notifies the court of a desire for such an exhibit. The exhibit shall be returned to the clerk of the court having jurisdiction of cause for such disposition as that court shall determine proper.

(c) Destruction and Disposal. Six months after notification, except in criminal cases, the clerk shall destroy physical exhibits which cannot be retained in the supreme court file and which have not been requested by counsel or parties of record unless:

(1) The exhibits are of historical value, in which case they will be transferred to the custody of the Washington State Museum.

(2) The exhibits are of material value, in which case they will be transferred to the state's central purchasing office for sale.

In criminal cases, exhibits may be destroyed on proof of death of the defendant. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Feb. 16, 1962, effective Feb. 23, 1962.]

Comment by the court. Complete revision of former ROA 66, providing new procedures.

Rule I–67 Certificate procedure. (a) Definition. "Certificate procedure" is the means, authorized by Laws of 1965, ch. 99 (RCW 2.60), by which a federal court, in disposing of a cause pending before it, submits a question of Washington Law to the Supreme Court for answer. This rule provides procedures for implementing the statutory authorization.

(b) Caption. The caption of the case shall be as set forth below:

CERTIFICATION FROM FEDERAL COURT
IN
(Title of Federal Court Case)

(c) Jurisdiction. The supreme court may entertain a petition to determine a question of law certified to it under the federal court local law certificate procedure act (Laws of 1965, ch. 99, p. 1302, RCW 2.60), provided that the question of state law is one which has not been clearly determined and does not involve a question of the United States Constitution.

(d) Filing. No filing fees shall be required and the cause shall be filed, indexed and numbered in the same manner as an appeal to this court.

(e) Record. The record shall be certified by the federal court as required by statute.

(f) Briefs.

(1) Procedure. The federal court shall designate who shall file the first brief. It shall be filed and served upon his adversary within 30 days after the filing of the record in the supreme court. The opposing party in the federal court shall file and serve upon his adversary his brief within twenty days after receipt of the opening brief, and a reply brief shall be filed within ten days. Time for filing the record, supplemental record or briefs may be extended for cause.

(2) Production. Briefs may be produced in accordance with ROA I–42(b).

(g) Costs. Procedures promulgated by ROA I–55 shall be applicable except both parties shall file a cost bill, and the clerk will not tax costs but shall indicate a division of the total costs between the parties involved.

(h) Finality of Decision. The opinion of the supreme court shall become final in the same manner it becomes final in an appealed case. An opinion that has become final will be certified by the clerk of the supreme court to the federal court originating the question. The certification shall state that the opinion is an answer to the question of Washington law submitted. The certificate shall be as follows:

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

CERTIFICATION
From Federal Court
in
---------- CERTIFICATION

---------- No. _____
---------- (Federal)
---------- Court No. _____

The State of Washington to:

This is to certify that the attached opinion of the Supreme Court of the State of Washington has filed in the above-entitled case on _____, 19__.

Costs of each party on certification are:

Plaintiff _____

Defendant _____

TOTAL Divided Equally is _____ to each.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court of Olympia, this _____ day of _____, A.D. 19__.

_____

Clerk of the Supreme Court
of the State of Washington.

[Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Dec. 19, 1968, effective Jan. 3, 1969.]

PART II
RULES FOR THE REVIEW BY PETITION OR APPEAL OF ORDERS OR JUDGMENTS OF THE COURT OF APPEALS

Comment by the court. New procedures for obtaining review of decisions of the court of appeals.

Rule II–1 Review by petition. When the supreme court grants a petition for review of an opinion of the court of appeals, the cause will be set for hearing. No additional briefs shall be filed unless requested by the supreme court. [Adopted July 2, 1969, effective July 18, 1969.]

Rule II–2 Review by appeal. (a) When Allowed. When the court of appeals reverses a judgment or order of the superior court by less than a unanimous decision, the aggrieved party may appeal or cross appeal to the supreme court.

(b) Procedure. The original of the notice of appeal or cross–appeal shall be filed in the supreme court and a copy thereof in the court of appeals within ten days after the denial of a petition for rehearing. Upon the filing of the copy of the notice, the clerk of the court of appeals shall forward to the supreme court the entire record in the cause. No briefs other than those filed in the court of appeals shall be filed unless requested by the supreme court. [Adopted July 2, 1969, effective July 18, 1969.]

Rule II–3 Part I Rules Applicable to Part II. The following rules set forth in Part I are applicable to review by the supreme court under Part II: ROA I–6, ROA I–31, ROA I–49, ROA I–50, ROA I–53, and ROA I–55. [Adopted July 2, 1969, effective July 18, 1969.]

Rule II–4 Petition for extraordinary writs to review determination of court of appeals. Scope of Rule. Petitions for all writs authorized by the state constitution or necessary and proper to the complete exercise of the supreme court's revisory jurisdiction of the determinations of the court of appeals shall be entitled, processed, and determined under the provisions of ROA I–57. [Adopted July 2, 1969, effective July 18, 1969.]

Part III
RULES FOR COURT OF APPEALS

Title of Rules	Abbreviation
Court of Appeals Administrative Rules	CAR
Court of Appeals Rules on Appeal	CAROA

COURT OF APPEALS ADMINISTRATIVE RULES (CAR)

RULE 1 Seal.
RULE 2 Style of Process.
RULE 3 Judgments.
RULE 4 Sessions.
RULE 5 Adjournments.
RULE 6 Authority.
RULE 7 Apportionment of Business.
RULE 8 Chief Judge.
RULE 9 Acting Chief Judge.
RULE 10 Right of Senior Judge to Act.
RULE 11 Seniority of Judges.
RULE 12 Acts in Contempt of Court.
RULE 13 Minutes——Court Business Meetings.
RULE 14 Opinions——When Filed.
RULE 15 Finality of Decision.
RULE 16 Court Personnel.
RULE 17 Reporter.
RULE 18 Law Librarian.
RULE 19 Bailiff.
RULE 20 Memorial Exercises.
RULE 21 Transfer of Judges and Causes.
RULE 22 Supreme Court Clerk.
RULE 23 Administrator for the Courts.
RULE 24 Procedure.
RULE 25 Reporting of Criminal Cases.

Court of Appeals: State Constitution Art. 4 § 30; Chapter 2.06 RCW.

Rule 1 Seal. The seal of the Court of Appeals shall be in the vignette of George Washington, with the words "SEAL OF THE COURT OF APPEALS—— STATE OF WASHINGTON" surrounding the vignette. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 2 Style of process. Processes of the Court of Appeals shall run in the name of the "State of Washington," bear attest in the name of the chief judge, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to such rules or orders as are prescribed by the court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 3 Judgments. The judgments and decrees of the court of appeals shall be final and conclusive upon all parties except when the supreme court has assumed jurisdiction of the cause. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 4 Sessions. The regular sessions of the court of appeals shall be held in accordance with SAR 4, at the headquarters, and by order of the supreme court at such other locations as authorized by statute. Pursuant to Ch. 221 of the Laws of 1969, First Extraordinary Session, the first division shall have its headquarters in Seattle; the second division shall have its headquarters in Tacoma; and the third division shall have its headquarters in Spokane. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 5 Adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court sitting at any time. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 6 Authority. The presence of three judges and a concurrence of at least a majority thereof shall be required to dispose of a case, except for dismissal on stipulation of counsel of record. The chief judge may function on all procedural matters not affecting the content of the record or argument. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 7 Apportionment of business. The chief judge shall apportion cases fairly among all judges of the division. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 8 Chief judge. Initially the judges of each division will select the chief judge. After the first election, the judge of the division having the shortest term to serve not holding his office by appointment or election to fill a vacancy shall be the chief judge and in case there shall be two judges having the same short term, the other judges of the division shall determine which of them shall be chief judge. In a division having more than one panel, the chief judge shall assign the judges to panels. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 9 Acting chief judge. Each division shall elect from time to time an acting chief judge. The acting chief judge shall perform the duties and exercise the

powers of the chief judge during the absence or inability of the chief judge to act. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 10 Right of senior judge to act. In the absence or inability of both the chief judge and the acting chief judge, the senior judge present, of the division, shall act as chief judge. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 11 Seniority of judges. Seniority among the judges of the court of appeals shall be determined by length of continuous service on the court of appeals. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 12 Acts in contempt of court. It shall be contempt of this court for anyone to divulge to others than the judges or employees of this court any information relative to a case, except that which is of public record. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 13 Minutes——Court business meetings. The court will cause to be recorded in a book kept for the purpose minutes of all business meetings. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 14 Opinions——When filed. All opinions filed with a clerk of a division shall be signed, except per curiams. All opinions in any one case shall be filed at the same time, and the time of filing shall be determined by the chief judge. Original opinions shall not be taken from the clerk's office. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 15 Finality of decision. A decision of a panel shall become the final decision of the court of appeals:

a. Upon stipulation of counsel to a date prior to thirty days after the decision is filed;

b. If counsel do not stipulate to an earlier date, thirty days after the decision is filed unless a petition for rehearing is pending. When a petition for rehearing is denied, the opinion will become final twenty days thereafter unless a petition for review or an appeal is pending. An opinion will become final upon denial by the Supreme Court of a petition for review. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. b. amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 16 Court personnel. The court of appeals shall have such personnel as are authorized by supreme court rule. The personnel will be appointed by and serve at the pleasure of the division of the court to which they report.

a. Clerk's Office. Each division shall have a clerk and such other personnel for the operation of the office as are authorized by the Supreme Court. Before undertaking his duties, the clerk shall file with the secretary of state an oath of office. For coordination control, the clerks of the court of appeals shall be under the supervision of the clerk of the supreme court.

The clerk of each division of the court of appeals shall submit to the clerk of the supreme court, on the first day of each month, a list of all cases argued and assigned for opinion, the date the assignment was made, and such other reports as may be requested by the supreme court clerk.

b. Law Clerks and Secretaries. Each judge and chief judge is entitled to one law clerk and one secretary. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 17 Reporter. The opinions of the court of appeals shall be published by the reporter of decisions of the supreme court, under the supervision of the commission on supreme court reports. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 18 Law librarian. The state law librarian shall counsel and advise in the selection of books, periodicals, and all other legal research materials for the use of the court of appeals. Acquisition of all such material shall be made through the state law library. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 19 Bailiff. The clerk of each division may serve as bailiff. The chief judge may designate a law clerk to serve as temporary bailiff. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 20 Memorial exercises. At the beginning of the May term of each year, the court will conduct suitable memorial exercises for members or former members of the court of appeals who have died during the preceding year. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 21 Transfer of judges and causes. Judges of the respective divisions may sit in other divisions and causes may be transferred between divisions, as directed by written order of the chief justice of the supreme court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 22 Supreme court clerk. The clerk of the supreme court shall be responsible for the training and coordination control of the clerks of the court of appeals. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 23 Administrator for the courts. a. Fiscal Services. The legislature having appropriated to the court administrator funds for the court of appeals, fiscal services shall be provided by the court administrator.

b. Budgetary Planning. Each division shall submit to the court administrator a proposed budget at such time and in such form as the court administrator shall request. The court administrator shall prepare a proposed budget for the court of appeals.

c. Statistics. The administrator for the courts, under the supervision of the supreme court and the chief justice, shall collect and compile statistical and other data reflecting the state of the dockets and any need for judicial assistance, and shall make reports of the business transacted by the court of appeals. The clerks of the court of appeals and all other officers and employees of that court shall comply with all requests made by the court administrator, after approval by the chief justice, for information and statistical data bearing upon the

business transacted and the judicial accomplishments of that court.

d. Bond. The administrator for the courts shall obtain public employee faithful performance bond coverage for all court employees. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 24 Procedure. a. Briefs. Three copies of briefs filed on the merits shall be forwarded upon filing by the clerk of the court of appeals to the state law library.

b. Decisions.

1. Form. All decisions of the court shall be in writing and the grounds therefor stated. In matters of form and style, the written opinion shall conform to the standards prescribed for supreme court opinions.

2. Transmittal of Information. When an opinion of the court in a cause is filed, the clerk of that division shall transmit on the same day a certified copy of the opinion to the reporter of decisions, with such information pertaining to the cause as may be required by the reporter of decisions. The clerk shall also transmit forthwith copies of any orders or other matters required by the reporter of decisions for the publication of the opinions of the court.

c. Record. If a petition for a review is granted, or notice of appeal as authorized by statute is filed, the clerk of the court of appeals shall transfer the entire record and file of the case to the clerk of the supreme court.

d. Costs on Appeal.

1. Determination by Court of Appeals. When a decision of the court of appeals becomes final and the issue of costs determined, the clerk of the division in which the opinion is filed shall tax costs in accordance with ROA 55 in the remittitur. If the cause is remitted prior to the taxing of costs, costs will be taxed by the clerk in a supplemental judgment.

2. Determination by Supreme Court. If the supreme court assumes jurisdiction of the cause, costs on appeal in the court of appeals will be determined by the clerk of the supreme court in accordance with ROA 1–55.

e. Indigent Cost Bills. The legislature having appropriated funds to the supreme court for indigent appeals, bills filed in accordance with ROA *47 will be forwarded by the clerk of the division to the clerk of the supreme court, supported as follows:

1. Statement. A statement that a certified copy of the trial court authorizing the expenditure of public funds for the purpose for which the costs are claimed is on file.

2. Counsel Fees. When bills for counsel fees are forwarded, there will be attached thereto: (i) an evaluation by the panel hearing the cause as to whether the case required average, less than average, or above average services of counsel; (ii) a statement as to whether there is on file a certified copy of an order of the superior court appointing the claimant counsel on appeal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 25 Reporting of criminal cases. On any criminal appeal taken to the Court of Appeals from a determination made by a court of lesser jurisdiction, the court clerk shall, within five court days of the filing of a final decision on the merits in the matter, forward to the Washington State Patrol Section on Identification on a form approved by the Administrator for the Courts its disposition of the particular case. In the event that collateral proceedings are brought in the Court of Appeals and the result of those collateral proceedings changes, or otherwise makes inaccurate, the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974, effective March 1, 1974.]

COURT OF APPEALS RULES ON APPEAL (CAROA)

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Rule 1 Method herein provided exclusive. The mode provided by these rules for appealing cases to the court of appeals, and for securing a review of the same therein, shall be exclusive. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 2 Definitions. In these rules, unless the context or subject matter otherwise requires:

(a) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) The words "superior court" mean the court from which an appeal is taken pursuant to these rules.

(c) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(d) The words "shall" and "must" are mandatory, and the word "may" is permissive.

(e) The terms "party," "appellant," "respondent," "petitioner" or other designation of a party include such party's attorney of record.

(f) "Judgment" means any judgment, order or decree from which an appeal lies.

(g) The term "remittitur" means a copy of the judgment of the court of appeals which is authenticated to the court from whence the appeal is taken, or over which or whom its controlling jurisdiction is exercised. In case the judgment or order appealed from is reversed or modified, a certified copy of the opinion of the court of appeals shall be attached to the remittitur.

(h) The terms "written," "writing," "typewriting," and "typewritten" include other methods of duplication equivalent in legibility to typewriting.

(i) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.

(j) "Clerk" denotes the clerk of the supreme court or clerk of the division of the court of appeals having jurisdiction of the cause. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 3 Service of papers. (1) Service of papers must, in all cases, be made upon the attorney of record of a party, if he has one, unless the place of business or residence of such attorney is unknown, when it may be made upon the party.

(2) Service upon an attorney shall be made by delivering to him personally, or at his office by delivery to his clerk or to the person having charge thereof; or, if his office be not open, or there be no one in charge thereof at his residence, by delivery to some person of suitable age and discretion residing therein; or, if neither of the foregoing methods can be followed, by deposit in the post office to his address with postage prepaid. In capital causes, a motion to dismiss an appeal shall be served upon the defendant personally, as well as upon the attorney of record.

(3) Service upon a party shall be made by delivery to him personally, or at his residence, to some person of suitable age and discretion residing therein, between the hours of nine o'clock in the forenoon and nine o'clock in the evening.

(4) Where the residence of a party and that of his attorney of record, if he have one, are not known, and proof of such fact be shown by affidavit, the service may be made upon the clerk of the superior court in which the cause was tried, for the party or attorney.

(5) Service may be made by mail when the party making the service and the person on whom such service is to be made reside in different places; postage must in such cases be prepaid. Time shall begin to run from the date of deposit in the post office. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 4 Order of filing and serving immaterial. Whenever any rule or statute heretofore or hereafter enacted requires a motion for a new trial, statement of

facts, notice of appeal or other documents concerning appeals or constituting a part of the record of appeals to the supreme court or court of appeals to be filed and served or served and filed, the serving and filing shall be equally valid and effective whether the document shall be filed or served first and no appeal shall be dismissed because of the order of the filing and serving. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 5 Personal appearance not necessary. Personal appearance of any party in the court of appeals shall not be necessary. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 6 Submission on failure to appear. Where a party does not appear personally or by attorney when the cause is called for hearing, the cause, as to such party, shall be deemed submitted. This rule shall not preclude oral argument by the opposite party. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 7 Violation of rules. The court may impose terms and penalties for the violation of or failure to observe rules other than those relating to jurisdiction. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 8 Appeals——When dismissed. The court of appeals will dismiss any civil or criminal appeal in which the jurisdictional requirement is not complied with. The court may at any time upon the giving of thirty days' notice dismiss any appeal for want of prosecution. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 9 Computation of time. The time within which acts are to be done, as provided in these rules, shall be computed by excluding the first and including the last day. If the last day is a Saturday or Sunday or a holiday the act must be completed on the next business day. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 10 Docket fees.

(a) Requirement. The clerk shall not file any paper on the part of a party to a proceeding until the statutory docket fee, chargeable against such party, has been paid or the party has been authorized to proceed without the payment of fee.

(1) *Waiver in Civil Cases.*

(i) Habeas Corpus. In habeas corpus proceedings filed originally in the Court of Appeals the Chief Judge may waive the requirement of payment of a filing fee pursuant to CAROA 56. In an appeal from a superior court order denying a petition for writ of habeas corpus, the superior court may waive the requirement of the payment of a docket fee pursuant to RCW 7.36.250.

(ii) Certiorari. A determination pursuant to CAROA 46 (c) (2) (i) that an appellant is authorized to appeal without the payment of a docket fee is authority for the appellant to petition for review of an order which allegedly denies him the means of perfecting his appeal without payment of a docket fee.

(iii) Indigent Cases. Upon a petition to proceed without the payment of a docket fee supported by an affidavit showing to the satisfaction of the Chief Judge that petitioner does not have the means to pay the docket fee and that the appeal is in good faith and not frivolous, the Chief Judge may waive the requirement of a docket fee.

(2) *Waiver in Criminal Cases.* Waiver of the requirement of docket fees in criminal cases is governed by CAROA 46. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Dec. 30, 1969, effective Jan. 16, 1970.]

Rule 11 Assignment of causes. (1) For the purpose of hearings, causes will be set by the clerk at the direction of the chief judge.

(2) *At least* two weeks before the beginning of each term of court, the clerk shall set for hearing such causes on the docket ready for hearing as the chief judge may direct. Any vacancies in the calendar will be filled with criminal cases ready for hearing. A cause on the docket of the court shall be deemed ready for hearing when it appears that the transcript is on file; and

(a) That the appellant's brief and respondent's brief are on file; or

(b) That the appellant's brief is on file, and has been served upon the respondent for a period of thirty days or more; or

(c) That the appellant's brief is on file, and all parties to the appeal have stipulated that the cause may be set for hearing at such term. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 12 Calendar. As soon as the causes shall have been set for a regular term of the court, the clerk shall prepare a calendar, and shall notify each attorney or firm of attorneys having any cause thereon. Causes becoming ready for hearing after the making up of the calendar may be set at the foot of the calendar, or at such other time as the court may fix; and counsel shall be notified thereof in such manner as the court may order. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 13 Taking papers from clerk's office. No paper filed with the clerk of the court shall be taken from the court room or clerk's office except by permission of the court or one of the judges, and when so taken a receipt in writing therefor must be left with the clerk. Before the cause is finally determined in the court, permission to take papers will not be granted except to a party or his attorney who shall have entered an appearance in the court in the cause in which such papers are filed. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 14 Appeal——When allowed. An aggrieved party may appeal a cause over which the court of appeals has jurisdiction from any and every of following determinations, and no others, made by the superior court, or the judge thereof, in any action or proceeding:

(1) From the final judgment entered in any action or proceeding. An appeal from any such final judgment shall also bring up for review any order made in the

same action or proceeding either before or after the judgment. The record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such order sufficiently for the purposes of a review thereof;

(2) From any order refusing to vacate an order of arrest in a civil action;

(3) From an order granting or denying a motion for a temporary injunction, heard upon notice to the adverse party, and from any order vacating or refusing to vacate a temporary injunction: Provided, that no appeal shall be allowed from any order denying a motion for a temporary injunction, or vacating a temporary injunction unless the judge of the superior court shall have found upon the hearing, that the party against whom the injunction was sought was insolvent;

(4) From any order discharging or refusing to discharge an attachment;

(5) From any order appointing or removing, or refusing to appoint or remove, a receiver;

(6) From any order affecting a substantial right in a civil action or proceeding, which either, (1) in effect determines the action or proceeding and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial; or (4) sets aside or refuses to affirm an award of arbitrators, or refers the causes back to them.

(7) From any final order made after judgment, which affects a substantial right; and an appeal from any such order shall also bring up for review any previous order in the same action or proceeding which involves the merits and necessarily affects the order appealed from, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such previous order sufficiently for the purposes of a review thereof.

(8) In criminal cases the state may appeal, upon giving the same notice as is required of other parties, when the error complained of is based on the following: (1) The setting aside of an indictment or information; (2) The sustaining of a demurrer to an indictment or information; (3) An order arresting judgment on any grounds; (4) An order granting to anyone, convicted by a jury, a new trial on any grounds; (5) Any order which in effect abates or determines the action, or discontinues the same, otherwise than by a verdict or judgment of not guilty. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 15 Jurisdiction. The court of appeals shall acquire jurisdiction of a cause by the filing of a timely notice of appeal to that court or by issuing a writ in the case or proceeding or by transfer of the case by order of the supreme court. Upon acquiring jurisdiction of a cause, the court of appeals shall have control of the superior court and of all inferior officers in all matters pertaining thereto and may enforce such control by a mandate or otherwise and, if necessary, by fine and imprisonment, which imprisonment may be continued until obedience shall be rendered to the mandate of the court of appeals. The superior court shall retain jurisdiction for the purpose of all proceedings by these rules provided to be had in such court, for the purpose of settlement and certification of the statement of facts, and for all other purposes as might be directed by order of the court of appeals. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 16 Powers of court of appeals. Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the court of appeals shall affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and will direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and, if the appeal is from a part of a judgment or order, will affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing, and no cause shall be deemed decided until the decision in writing is filed with the clerk. In giving its decision, if a new trial is granted, the court may pass upon and determine all the questions of law involved in the cause presented upon such appeal and necessary to the final determination of the cause. Without the necessity of taking a cross-appeal, the respondent may present and urge any claimed errors by the trial court in instructions given or refused and other rulings which, if repeated upon a new trial, would constitute error prejudicial to the respondent. An appeal from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross-appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the court of appeals shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 17 What may be reviewed. Upon an appeal from a judgment, the court of appeals will review any intermediate order or determination of the superior court which involves the merits and materially affects the judgment, appearing upon the record sent from the superior court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 18 Designation of parties. The party appealing shall be known as the appellant, and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served; but the title of the cause shall in other respects remain unchanged. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 19 Voluntary withdrawal of appeal. After a notice of appeal has been filed but before oral arguments on the merits, the superior court from which the appeal was taken shall have jurisdiction to dismiss the appeal, upon the filing of a stipulation by all the parties to the cause asking that the appeal be dismissed. When any such order dismissing an appeal is entered by the superior court, the clerk thereof shall forthwith file in the court of appeals a certified copy of such order and upon the filing thereof, the order shall be effective, the appeal

shall be considered as never having been taken, the sureties discharged from all liability on the appeal bond if one has been filed, and the court of appeals shall no longer have jurisdiction. Dismissals requested after oral argument on the merits shall be granted only by the court of appeals in its discretion. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Dec. 17, 1970, effective Apr. 16, 1971.]

Rule 20 Second appeal. No withdrawal of an appeal, and no dismissal which does not go to the substance of or the right to the appeal, shall preclude any party from taking another appeal in the same cause, within the time limited by these rules. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 21 Death of party not to affect appeal. The death of a party in a civil action after the rendition of a final judgment in the superior court, shall not affect any appeal taken, or the right to take an appeal; but the proper representatives in personalty or realty of the deceased party, according to the nature of the case, may voluntarily appear and be admitted parties to the cause, or may be made parties at the instance of another party, as may be proper, as in the case of death of a party pending in action in the superior court, and thereupon the appeal may proceed or be taken as in other cases; and the time necessary to enable such representatives to be admitted or brought in as parties shall not be computed as part of the time in these rules limited for taking an appeal, or for taking any step in the progress thereof. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 22 Bond for costs. (1) Bond for costs on appeal. A bond for costs on appeal shall be filed with the clerk of the superior court when the notice of appeal is given or within ten days thereafter, which bond shall be executed in behalf of the appellant by one or more sufficient sureties and shall be in a penalty of not less than three hundred dollars, conditioned to save the respondent harmless from costs and damages occasioned by the appeal; or money in an amount not less than three hundred dollars may be deposited with the clerk in lieu thereof. At the time the bond for costs on appeal is filed or a deposit in lieu thereof is made, a copy of the bond for costs on appeal or written notice of the deposit shall be served on the adverse party. No bond or deposit shall be required:

(a) When the appeal is taken by the state, or by a county, city, town, or school district or by a defendant in a criminal action;

(b) When the appeal is taken from an order of the superior court denying an application for any writ applied for by or on behalf of any person confined and restrained of his liberty by any judgment or order of any court of the state of Washington, or by order of any state, county, or city authority within this state, or so restrained of his liberty by any state, county, or city official;

(c) When the appeal is from an order of the superior court denying the application of any person confined as aforesaid to vacate the judgment by virtue of which he is so confined, regardless of whether the application be by way of motion or petition.

(2) Superior court discretion in fixing amount of bond. The superior court may, upon application of the respondent and for good cause shown, increase the bond on appeal over the amount of three hundred dollars. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 23 Supersedeas bond. (1) Supersedeas bond. Whenever an appellant entitled thereto desires a stay of proceedings on appeal, he may present to the superior court for its approval a supersedeas bond executed by one or more sufficient sureties, which bond may, if desired, contain the terms and conditions contained in the bond for costs on appeal referred to in Rule 22. The supersedeas bond, whether or not combined with the bond for costs on appeal, shall be conditioned for the satisfaction of the judgment in full, together with interest thereon, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment as the court of appeals may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, together with interest thereon, unless the court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy, as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff, or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property and the costs of the action, together with interest thereon.

If the supersedeas bond is intended to stay proceedings on only a part of the order, judgment, or decree appealed from, it shall be varied as circumstances may require to accomplish the purpose desired.

(2) Effect of supersedeas. When a supersedeas bond conditioned as above required has been filed, it shall operate, so long as it remains effectual, to stay proceedings upon the order, judgment or decree appealed from; but in case of an appeal from an order other than an order granting a new trial, no appeal or appeal bond shall operate to stay proceedings in the cause except proceedings upon the order appealed from; and no appeal or stay shall vacate or affect any part of a judgment or order not appealed from and where an appeal is taken from an order vacating a temporary injunction, the appellant cannot proceed further in the cause in the superior court during the pendency of the appeal except so far as may be rendered necessary by proceedings of an adverse party.

(3) Superior court discretion in fixing bond. In approving a supersedeas bond, the superior court shall exercise care to require adequate though not excessive security in every instance. Money in the amount of the penalty which would be designated in a bond may be

deposited with the clerk of the superior court in lieu of bond. Money so deposited shall be subject to the conditions set out in these rules and subject particularly to the conditions of Rule 25.

After a supersedeas bond has been approved and filed, the superior court may, upon application of the respondent or on its own motion and for good cause shown, increase the amount of the bond, require additional security, or require a new bond. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 24 Temporary injunction to remain in force, when. In all cases where a final judgment shall be rendered by any superior court of this state in a cause wherein a temporary injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment, such injunction shall remain in force during the pendency of such appeal, if, within five days after service on him of notice of the entry of the final judgment, such appellant shall file with the clerk of the superior court a bond, with one or more sufficient sureties, in a penalty to be fixed by the court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason of the injunction remaining in force. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 25 Obligees in bonds. Instead of the respondent or other party, the state of Washington for the benefit of whom it may concern, may be named as obligee in any bond for costs on appeal or supersedeas referred to in Rules 22 and 23 or required in any proceeding. Anyone who would have any right upon or concerning said bond had he been named as obligee therein, shall have the same right as if so named. Anyone having any interest in any such bond may sue thereon separately or jointly with anyone else also interested. It shall not be necessary to sue in the name of, or to join, the state of Washington in any suit upon such bond. The procedure provided by this rule is not exclusive but is optional and in addition to that otherwise provided. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 26 Justification of sureties. An appeal bond, whether conditioned to effect a stay of proceedings or not, signed as surety by any person, persons or corporation other than a surety company authorized to transact such business in this state as provided by law, shall be of no force unless accompanied by the affidavit of the surety or sureties therein attached thereto, in which each surety shall state that he is a resident of this state and is worth a certain sum mentioned in such affidavit, over and above all debts and liabilities, in property within this state, exclusive of property exempt from execution, and which sums so sworn to by the surety or sureties, shall be at least equal to the penalty named in the bond if there be but one surety, or shall amount in all to at least twice such penalty if there be more than one surety. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 27 Objection to surety——Certificate——New bond. Any respondent may object to the sufficiency of the surety or sureties in an appeal bond, other than a surety company authorized to transact business in this state as provided by law, within ten days after the service on him of the notice of appeal, or within five days after the service on him of the bond or written notice of the filing thereof, by serving on the appellant a notice stating that he is so objecting, and specifying a time, not less than three nor more than ten days distant, at which the surety or sureties are required to attend before the superior court in which the judgment or order appealed from was rendered or made, or before a judge thereof, and to justify their sufficiency as sureties. At the time and place named in such notice, or to which the proceeding may be thence adjourned by the court or judge, the surety or sureties must attend before the court or judge, and may be then and there examined in detail, under oath, as to their property and other qualifications as sureties, by any respondent or by the judge, or by both. If the judge upon such examination is satisfied that the surety or sureties are qualified as such, to the extent to which they are required by Rule 26 to make affidavit, then he shall make a certificate to that effect indorsed upon or attached to the bond, which shall thereupon stand as a sufficient appeal bond to the effect expressed in the condition thereof; but if he is not so satisfied, or if the sureties fail to attend and justify, then the judge shall in like manner certify to that effect, and thereupon the bond shall become void: Provided, that in such case the appellant may, within five days after the making of such certificate, file a new appeal bond in conformity with the requirements of Rules 22 and 23, and subject to the requirement of justification of the sureties provided in Rule 26; but in case such new appeal bond be found insufficient, no new bond can thereafter be filed in lieu thereof. In case the original or new appeal bond be not conditioned to effect a stay of proceedings, however, an additional appeal bond may be filed at any time thereafter when the appellant desires to effect a stay as provided in Rule 23, during the pendency of the appeal. The examination of the sureties taken upon their justification shall be reduced to writing and subscribed by the sureties, if either party so requires, and attached to the certificate made thereon. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 28 Defects in appeal bond——New bond. No appeal shall be dismissed because of any defect in the appeal bond, nor because an appeal bond which is given both as a cost bond and as a bond on supersedeas shall be insufficient by reason of the amount, but the appellant shall in all cases be allowed to give a new bond within such time and upon such terms as the court may order. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 29 Application for new bond. If any respondent shall have cause to believe, after any appeal bond shall have been filed and the sureties therein have justified or the time for requiring their justification has expired, that the sureties have since become disqualified as such, so that the bond is no longer an adequate security, he may apply by motion to the court of appeals to require a new or additional bond. Upon the hearing of such motion, the court may require the trial court to examine into the merits of the motion and the adequacy of the bond and certify the facts and his conclusions to this court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 30 Execution countermanded, when. When an appeal bond is conditioned so as to effect a stay or proceedings if execution has issued the clerk shall on demand of the appellant, issue to the sheriff a certificate that proceedings have been stayed, which shall countermand the execution; and thereupon the sheriff shall release any property levied on and not already sold, and return the execution into court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 31 Judgment against appellant and sureties. (a) If the judgment of the trial court is superseded and the judgment is affirmed on appeal, the trial court shall, when the cause is remitted, enter the judgment also against the supersedeas bond, bondsman or sureties for the amount of the judgment and for damages and costs awarded on appeal according to the conditions of the bond.

(b) If costs are taxed against an appellant, the trial court shall, when the cause is remitted, enter judgment for costs on appeal against the appellant and against the cost bond, bondsman or sureties according to the condition of the bond. [Adopted July 2, 1969, effective July 11, 1969.]

Comment by the court: Complete revision of former ROA 31, providing new procedures.

Rule 32 Jurisdictional requirement in civil causes. The court of appeals acquires jurisdiction of a civil cause by the timely filing of a proper notice of appeal.

Failure of the appellant to take any further steps to secure the review of the order, judgment, or decree appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in these rules or, when no remedy is specified, for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 33 Notice of appeal and cross–appeal in civil cases——Ordering statement of facts and transcript. (1) In civil actions appealable to the court of appeals, in order for the court of appeals to obtain jurisdiction of the cause, a written notice of appeal, together with a copy of the same, must be filed with, and filing fees paid to, the clerk of the superior court within thirty days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the court of appeals, and transmit therewith the filing fee as above provided. Failure of the superior court clerk to file the copy with, and forward the filing fee to, the clerk of the court of appeals, will not affect the validity of the appeal.

(2) Any coparty who did not join in the notice of appeal but who desires to join as an appellant shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice that he joins in the appeal. The requirements as to the giving of a bond for costs on appeal shall be as applicable to such coparty as to the original appellant. Any such party who does not so join shall not derive any benefit from the appeal, unless from the necessity of the case. All parties who so join in an appeal after the notice is given or served shall be liable for the expense thereof, and for costs and damages, to the same extent and upon the same conditions as if they had originally joined in the notice.

(3) Also to obtain jurisdiction, each respondent who desires to prosecute a cross–appeal from all or any part of the order, judgment, or decree appealed from shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice of cross–appeal, together with a copy of the same. The clerk of the superior court shall forthwith file the copy of the notice of cross–appeal with the clerk of the court of appeals. The cross–appeal shall bring up for review only matters affecting appellant and such cross–appellant. The requirements as to the giving of a bond for costs on appeal shall be as applicable to cross–appellant as to the original appellant.

(4) No reference to the right of a coparty to join in an appeal, or to the right of a respondent to cross–appeal, shall abridge or restrict the right of any party to take a general appeal as to any matters or parties involved in the litigation, provided notice of such appeal shall be given in the manner and within the time required by this rule.

(5) Unless the chief judge shall previously order otherwise, the appellant must, within forty–five days after filing notice of appeal, make arrangements with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and also make arrangements with the clerk of the superior court for the transcript which is to be filed with the court of appeals pursuant to CAROA 44. Evidence that these arrangements have been made shall be in the form of a statement signed by the attorney for appellant or by the court reporter if there be no counsel of record. The above statement shall be filed with the clerk of the court of appeals within fifty–five days after the filing of the notice of appeal. Failure to comply with provisions of this paragraph may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk.

(6) A notice of appeal shall be in substantially the following form:

(Caption)

NOTICE IS HEREBY GIVEN TO (Other parties of record), represented by (names and addresses of counsel) that (name of appellant) appeals to Division _____ of the Court of Appeals from the (order, judgment, or decree) entered by the Superior Court in the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

Date _____

_____
(Address and telephone number of counsel for appellant, or of appellant if pro se)

(7) A statement that the statement of facts and transcript have been ordered and arrangement for payment made shall be in substantially the following form:

Appellant hereby states that the court reporter, (name and address), has been ordered to transcribe the statement of facts necessary for the appeal, and that arrangements accepted by the court reporter have been made for the payment of the cost. He further states that arrangements have been made with the clerk of the superior court for what he wishes to be included in the transcript.

Date _____

_____
(Address and telephone number of counsel for appellant, or of court reporter if appellant is pro se)

(8) A party filing a notice of appeal, cross–appeal, or a coparty joining in an appeal shall notify all other parties in the case. The notification shall be given by mailing a copy of the notice of appeal, cross–appeal, or joinder in appeal, to the party's attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal, cross–appeal or joinder in appeal is filed and shall be sufficient notwithstanding the death of the party, or of his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 34 Statement of facts——Time for ordering, serving, and filing——Certification. (1) Within forty–five days after filing notice of appeal, unless the chief judge shall have previously ordered otherwise, for good cause shown, the appellant shall order the statement of facts and make arrangements with the court reporter for the payment of the cost thereof.

(2) When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the clerk of the court of appeals. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the chief judge in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety days, plus any additional time allowed by the chief judge, after the notice of appeal was filed with the clerk of the superior court, the clerk of the court of appeals shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) The certifying of a statement of facts and the filing and service of the proposed statement, the notice of application for the settlement thereof, and all steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause.

(4) (Appeal on short record.) On any appeal or other proceeding for review, in any criminal cause, or in any civil cause whether cognizable at law or in equity, so much of the evidence as bears upon the question or questions sought to be reviewed may be brought before this court by a statement of facts without bringing up the evidence bearing on rulings on which no error is assigned. If the appellant does not include in his statement of facts the complete record and all the proceedings and evidence in the cause, he shall serve and file with such proposed statement of facts a concise statement of the points on which he intends to rely on the appeal.

(5) (Appeal on agreed statement of facts.) When the question or questions presented by an appeal in any cause can be determined without an examination of all the pleadings, evidence, and proceedings in the superior court, the parties may prepare and sign a statement of the case showing how the question or questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the question or questions by this court. The statement shall include a copy of the judgment from which the appeal is taken, a copy of the notice of appeal and of the appeal bond, together with their respective filing dates, and a concise statement of the points to be relied on by the appellant, and shall be filed with the clerk of the superior court within the time provided for the filing of a statement of facts. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the question or questions raised by the appeal shall be approved in writing by the trial judge and,

when so approved, shall constitute the record on appeal, and be transmitted to this court in the same manner as a statement of facts.

(6) Every statement of facts shall comply in form with the rule with reference to transcripts. The index thereto shall specify the page on which the testimony of each witness commences, the page on which exhibits

are offered or introduced, the page on which depositions or affidavits are offered or introduced, the page on which motions made during the course of the trial are recorded, and the page of the ruling of the court thereon. At the bottom of each page there shall appear the name of the witness or witnesses testifying, and whether the examination be direct, cross, redirect, or recross.

(7) All exhibits shall be lettered or numbered in consecutive order, and, where practicable, shall be attached to the statement of facts. Each exhibit shall be identified by endorsing on the face thereof, in a conspicuous place, its letter or number, an abbreviated title of the cause, and the superior court number of the cause. Where, from the nature of the exhibit, it is not practicable to make such an endorsement, the exhibit may be identified by a tag, securely fastened thereto, on which is written or printed its letter or number, the title of the cause, and its superior court number.

(8) In all cases where the judge of the superior court has filed a written memorandum giving his reasons for his decision, the same shall be included as part of the statement of facts.

(9) In all cases whenever any error is predicated upon a ruling relative to an instruction given or proposed, it will be necessary to include in the statement of facts all of the instructions given by the court and those proposed instructions concerning which error is assigned. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 35 Statement of facts, what constitutes. Any party may after the entry of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and any objections or exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already part of the record, made a part of the record in the cause by the certifying of a statement of facts, as in these rules provided. The certifying of a statement of facts shall not prevent the subsequent certifying of other statements of facts, comprising other matters in the cause at the instance of the same or another party; but only one statement of facts can be settled or certified after the rendition of the final judgment in the cause. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 36 Statement of facts——Amendments——Notice to settle. A party desiring to have a statement of facts certified must prepare the same as proposed by him, file it in the cause and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any other party may file and serve on the proposing party any amendments which he may propose to the statement: Provided, That the superior court may extend the time not to exceed an additional twenty days for filing and serving proposed amendments to the proposed statement of facts, if good cause be shown and the application for extension of time be made within the ten day period, and after notice to opposing counsel. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the statement. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. If no amendment shall be served within the time aforesaid, the proposed statement shall be deemed agreed to and may be certified by the judge at the instance of either party, at any time, without notice to any other party on proof being filed of its service, and that no amendments have been proposed; and if amendments be proposed and accepted, the statement as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 37 Certificate, what to contain——How signed. The judge shall certify that the matters and proceedings embodied in the statement, are matters and proceedings occurring in the cause and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein, or such thereof as the parties have agreed, to be all that are material therein. The certificate shall be signed by the judge, but need not be sealed; and thereupon all matters and proceedings embodied in the statement of facts shall become and thenceforth remain a part of the record in the cause, for all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuse to settle or certify the statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the court of appeals, either pending an appeal or prior thereto. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 38 Statement of facts——How certified upon change or death of judge. If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge or shall die, or shall be absent from the state or shall, by reason of disability, be unable to perform the duties of his office, which death, absence or disability may be shown by affidavit of any attorney in the cause served upon the attorney for the adverse party and filed in the cause, within the time within which a statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of Rule 37, and before having certified such statement, such statement may be settled by stipulation of the parties with the same effect as if

duly settled and certified by such judge while still in office. But if the parties cannot agree, the successor in office of the judge before whom the cause was pending or tried, or in case there be no successor, any judge of, or assigned to, the county where the cause was pending or tried, if such death, absence or disability shall appear to his satisfaction, shall settle and certify such statement in the manner in Rule 37 provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by the judge before whom the cause was pending or tried, or by the reporter, if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, of any of them. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 39 How certified when cases consolidated. When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all of the original causes, to embody in a statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the statement shall be certified as in these rules prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 40 Statement of facts. (a) Notice of filing. When the proposed statement of facts is received by the clerk of the superior court, the clerk shall promptly notify the court to which the appeal is taken.

(b) Use by Counsel. The copy of a proposed statement of facts which is served as in these rules prescribed, shall be returned to the party serving the same upon the statement being certified, for his use in preparing his brief on appeal; and when he serves his brief he shall at that time return such copy to the party on whom it was originally served, and his brief shall not be deemed served until such copy is so returned by him. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Feb. 24, 1972, deleting subdivision (c), effective July 1, 1972.]

Rule 41 Serving and filing of briefs on appeal. (1) Within forty–five days after the proposed statement of facts shall be filed, as provided in Rule 34, or in those cases in which a statement of facts is not necessary in order to review a cause, within thirty days after the giving of service of notice of appeal, the appellant shall serve on the respondent three copies of a printed brief on the appeal upon his part, and shall file with the clerk of the court of appeals twenty–five copies thereof, together with proof or written admission of service, as aforesaid. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the court of appeals, with like proof of service, a like number of copies of a printed brief on the appeal upon his part, which shall likewise conform to the rules of the court of appeals. Not less than twelve days prior to the hearing, the appellant may also serve and file with the clerk of the court of appeals a like number of copies of a printed brief, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this rule prescribed, may be extended by order of the chief judge of the court of appeals for good cause shown, or by stipulation of the parties concerned. Either party may, after the filing of his briefs, and not less than one day prior to the hearing of the appeal, submit to the court of appeals and to the adverse party a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief.

(2) The serving and filing of briefs in criminal causes shall be in accordance with Rule 46.

(3) If the appellant fails to file a brief, an affirmance will be directed. If the respondent files no brief, the cause will be deemed submitted upon its merits as to him. A respondent who has not filed a brief shall not be permitted to argue the cause orally without permission of the court given before the cause is called for argument.

(4) The chief judge having jurisdiction of a cause may grant to any attorney authorized to practice in this state authority to file a brief amicus curiae. Ordinarily such authority will not be granted unless the brief of amicus curiae will be served in time to permit the party opposing the position of amicus curiae to respond in his answering or reply brief. Such briefs shall conform to the requirements of CAROA 42 and shall be served on all parties of record. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 42 Production, style and content of briefs for cases set for hearing on the appeal docket. (a) Production. Briefs for cases set for hearing on the regular appeal docket shall be printed by either the letter–press or photo–offset method. If the photo–offset method is employed, the copy may be either linotyped or typed.

(1) Paper Stock. If both sides of pages are to be used, the text shall be on 60–pound substance paper; if only one side is to be used, the text shall be on 20–pound or heavier substance paper. The paper shall be white opaque unglazed paper. The cover shall be book or cover stock of a weight heavier than the text and sufficient to prevent the brief from sagging when stood on end. The color of the cover shall be light so that the print will clearly show and shall be: Gray for appellant's or petitioner's opening brief; green for respondent's answering brief; blue for appellant's or petitioner's reply brief; and yellow for other types of briefs. When completed, the pages of the brief shall measure 11 inches from top to bottom and 8 1/2 inches from side to side (letter size).

(2) Ink. Black ink shall be used for both cover and text.

(3) Format. Pages shall be numbered as follows: The index, table of cases, and table of authorities with small

Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/4 inches. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition.

(i) Linotyped copy. Type shall not be smaller than 12 point, double leaded, 30 picas wide. Quotations shall be in 12 point type, single leaded and indented two picas. Footnotes shall be in type not smaller than 9 point and unleaded. Headings shall be in bold face type. Left and right margins shall be justified.

(ii) Typed copy. Typewritten text shall not be smaller than pica type equivalent to 11 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced. Headings shall be in capital letters, underlined. Left-hand margins shall be justified.

(5) Binding. Briefs shall be bound along the folded edge or left side. Three saddle staples, machine sewing, or any permanent flush binding may be used. Ring plastic fasteners are not acceptable.

(b) Typed Briefs. Briefs for cases set for hearing on the regular appeal docket may be typed and filed on behalf of any party authorized to proceed in forma pauperis or by the state or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

(1) Paper Stock. The text of the brief shall be on 20-pound substance opaque white unglazed paper. The cover shall be of heavier book or cover stock and of a light color which will clearly show the typing.

(2) Ink. Black typewriter ribbons shall be used for both cover and text.

(3) Format. Pages shall be numbered as follows: The index, table of cases, and table of authorities with small Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text, or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/2 inches. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition. Typewritten text shall not be smaller than pica type equivalent to 10 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Footnotes shall be single spaced. Headings shall be in capital letters, underlined. Lefthand margins shall be justified.

(5) Binding. Typed briefs shall be stapled with 3 staples along the left side.

(6) Method of Production. One side of the paper shall be used. Copies shall be produced by some method more legible and permanent than carbon except carbon copies may be filed by an indigent appealing a criminal conviction or a denial of a petition for writ of habeas corpus pro se, or by an indigent appellant filing a supplemental brief. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(c) Cover and Title Sheets. The cover and title sheets shall be as follows and appropriately spaced to fill the sheet of paper within the margin requirements except the cause number shall be printed as close as possible to the top, right-hand corner of the page:

No. _____
(Court of Appeals No.)

In the Court of Appeals of the State of Washington
Division No. _____
(Superior court title except parties shall be designated "Appellant" or "Respondent" or, if not parties on appeal, "Plaintiff" or "Defendant.")

APPEAL FROM THE SUPERIOR COURT
FOR _____ COUNTY
THE HONORABLE _____ JUDGE,

BRIEF OF _____

Firm Name,
Counsel Responsible,
Address and Phone Number
of counsel filing brief.

(d) Citations. Citations shall be in conformity with the form used in current volumes of Washington Reports. Decisions of the Supreme Court and of the Court of Appeals shall be cited to the official report thereof.

(e) Reference to the Record. "St." shall be used for "Statement of facts," "Tr." for "Transcript," and "Ex." for "Exhibits." A reference to the record shall clearly identify the portion of the record by one of the above abbreviations and in the case of the statement of facts or transcript, the page number. A reference to an exhibit shall include the identifying letter or number assigned. A reference to opposing counsel's brief shall set forth the page number.

(f) Length of Brief. Except when authorized by the chief judge, briefs in excess of the number of pages indicated below, including the appendix, will not be accepted by the clerk for filing:

Opening and answering briefs	
Printed	50
Multilithed or typed	62
Reply briefs	
Printed	8
Multilithed or typed	10

Costs shall not be recovered for pages in excess of those set forth above even if authority for the filing of a brief with more pages has been granted.

(g) Contents. In addition to the title and/or cover pages, briefs for the regular appeal calendar shall consist of the following subdivisions, titled with distinctive type and in the order indicated:

(1) Appellant's or Petitioner's Opening Brief.

(i) Tables of authority. Authority cited shall be subdivided under: Table of cases, constitutional provisions, statutes, texts, and other authority. Cases shall be listed alphabetically with dates and citations. The dates and editions shall be indicated for texts. The page reference where cited in the brief shall be indicated opposite each authority.

(ii) Statement of the case. Under this heading the following shall be included: A brief statement of the nature of the case; a short resume of the pleadings and proceedings; the nature of the judgment or appropriate ruling or order from which the appeal is taken; a clear and concise statement of the facts appropriate to an understanding of the nature of the controversy, with page references to the record.

(iii) Assignments of error. Each error relied upon shall be clearly pointed out and discussed under appropriately designed headings. Where there are several errors relied on which present the same general questions, they may be discussed together. Whenever there is involved in any appeal a ruling or decision on the inclusion, omission, sufficiency or insufficiency of an instruction or instructions, as the case may be, the instruction or instructions shall be set out in the brief in full and reference made thereto by number in the "assignments of error." Whenever error is assigned to any finding or findings of fact, so much of the finding or findings made or refused as is claimed to be erroneous, shall be set out verbatim in the brief and reference made thereto by number of the "assignments of error." No assignment of error is required when a petitioner is seeking a writ involving the original jurisdiction of this court.

(iv) Argument of counsel.

(2) Respondent's Brief. The brief of respondent, in answer to a brief provided for in paragraph (1) above, shall consist of the following:

(i) Tables of authority. (See paragraph (g)(1)(i) above.)

(ii) Statement of case. If the respondent does not accept appellant's or petitioner's statement of the case, he shall point out under the title "Counter–statement of the Case," such insufficiencies or inaccuracies as he believes exist. He may also set forth relevant facts he believes material to the cause, with supporting references to the pages of the record, but without unnecessary repetition of matters in appellant's or petitioner's statement.

(iii) Argument of counsel. Argument shall be arranged and captioned under the following captions in the order listed:

Argument in support of judgment;

Argument in answer to appellant.

(h) Additional Authorities. Additional authorities submitted in accordance with Rule 41 shall be produced in accordance with paragraphs (a) or (b) above except the cover page shall be white. Twelve copies shall be filed with the court and not less than one copy served on the adverse party. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted May 1, 1970, effective July 1, 1970; subd. (b) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; subd. (c) adopted, amended May 8, 1972, effective July 1, 1972.]

Rule 43 Errors considered. No alleged error of the superior court will be considered, unless the same be definitely pointed out in the "assignments of error" in appellant's brief. In appeals from all actions at law or in equity tried to the court without a jury, the findings of fact made by the court will be accepted as the established facts in the case unless error is assigned thereto. No error assigned to any finding or findings of fact made or refused will be considered unless so much of the finding or findings as is claimed to be erroneous shall be set out verbatim in the brief. No error assigned to the inclusion, omission, sufficiency, or insufficiency of an instruction or instructions, given or not given, will be considered unless such instruction or instructions, as the case may be, shall be set out in the brief in full: Provided, That the objection that the superior court had no jurisdiction of the cause or that the complaint does not state sufficient facts to constitute a cause of action, or that the court of appeals has no jurisdiction of the appeal, may be taken at any time. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 44 Transcript on appeal. (1) Within fifty–five days after an appeal shall have been taken by notice, as provided in Rule 33, the clerk of the superior court shall prepare, certify, and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal. This rule shall not apply to appeals on agreed statements of facts as provided in Rule 34 (4). Within sixty days after the appeal shall have been taken by notice, as aforesaid, the clerk of the superior court shall, at the expense of appellant, send the transcript to the court of appeals. The papers and copies so sent up, together with any thereafter delivered, as hereinafter provided, shall constitute the record on appeal. Any statement of facts on file when the record is so sent up shall be sent as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such statement. In the event any statement of facts shall be filed or certified, or any other addition to the records or files shall be made, after the record on appeal shall have been set up, a supplementary record on appeal, embracing so much thereof as the appellant deems material or a copy thereof, may be prepared, certified, and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify, and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the court of

appeals prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the superior court or a judge thereof may order the clerk of the superior court to transmit the same to the clerk of the court of appeals and the same shall be transmitted accordingly, and shall be under the control of the court of appeals.

(2) Transcripts may be printed or typewritten, or may be prepared by photostatic copies of the original records in the office of the clerk of the superior court. If typewritten, the paper shall be of good quality of the size of legal cap, and only a black record ribbon shall be used. If printed, there shall be a compliance with the rule with reference to printed briefs as to size, spacing, and print. The transcript shall be free from interlineations and erasures, and shall be paged and prefixed with an alphabetical index of its contents, specifying the page of each separate paper, order, or proceeding.

(3) Transcripts must be certified by the clerk of the superior court in substantially the following form:

STATE OF WASHINGTON, COUNTY OF _____, ss.

I, _____, Clerk of the _____ Superior Court, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in the above entitled cause as I have been directed by _____ to transmit to the court of appeals.

In testimony whereof, I have hereunto set my hand and the seal of the Superior Court this _____ day of _____, 19__.

(SEAL) _____ Clerk

By _____ Deputy

(4) At the time the transcript is completed and certified, the appellant shall mail to each of the prevailing parties in the trial court, or his counsel, a copy of the clerk's index to the transcript. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. (1) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 45 Omissions from the record. If any paper, exhibit, or other part of the record directed to be sent up, has been omitted, such omission may be supplied by any party, without leave, at any time before the cause is submitted to the court; notice of which shall be given all other parties. After a cause has been submitted such omission may be supplied only by leave of the court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 46 Appeals in criminal cases. (a) Superior Court Procedure at Time of Sentencing. The superior court shall, at the time of sentencing, unless the judgment and sentence are based on a plea of guilty, advise the defendant

(1) of his right to appeal,

(2) that unless a written notice of appeal is filed in accordance with subparagraph (b)(1) of this rule, the right of appeal is irrevocably waived,

(3) that the superior court clerk will, if requested by defendant appearing without counsel, file a notice of appeal in his behalf, and

(4) of his right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal.

These proceedings shall be made a part of the record.

(b) Notice of Appeal.

(1) Filing. In order for the Court of Appeals to obtain jurisdiction of an appeal in a criminal cause the original and a copy of a written notice of appeal must be filed with and the filing fee paid to the clerk of the superior court unless the appellant is authorized to proceed in forma pauperis, within thirty (30) days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty (30) days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the division of the Court of Appeals to which the notice of appeal is directed and transmit therewith the filing fee, if any. Failure of the superior court clerk to file the copy with, and forward the filing fee, if any, to the clerk of the Court of Appeals, will not affect the validity of the appeal.

(2) Contents. A notice of appeal shall be in substantially the following form:

(Caption——same as in Superior Court)

NOTICE IS HEREBY GIVEN TO: (Other parties of record) represented by (names and addresses of counsel) that (name of appellant) appeals to Division _____ of the Court of Appeals from the (order, judgment, or decree) entered by the Superior Court of the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

The defendant is presently in confinement at _____. (or) The defendant has been released on bail and his address is _____.

DATED this _____ day of _____, _____.

(Signature)

_____

Address and telephone number of counsel for appellant or appellant if pro se, or clerk if notice prepared in accordance with (a)(3) above.

(3) Service. A party filing a notice of appeal shall notify all other parties in the case by mailing a copy of the notice of appeal to the party's attorney of record, or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal is filed and shall be sufficient notwithstanding the oath of the party, or

his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged.

(c) Notice of Co–Party of Cross–Appeal. A co–party who did not join in the notice of appeal but who desires to join the appellant or a respondent who desires to prosecute a cross–appeal shall give notice in accordance with CAROA 33.

(d) Responsibility after Notice of Appeal.

(1) Superior Court Clerk. Immediately after the giving of a notice of appeal, the clerk of the superior court, at the expense of the public prosecution, shall prepare and transmit to the clerk of the Court of Appeals a certified copy of the judgment or order appealed from, together with a certified copy of the written notice of appeal. The clerk of the superior court shall notify the clerk of the Court of Appeals as soon as the proposed statement of facts is filed. Either appellant or respondent may have transmitted to the Court of Appeals such additional portions of the record and files in the cause as they may believe have a bearing upon the issues involved.

(2) Superior Court.

(i) Determination of Resources and Costs. If the defendant files a timely notice of appeal or is a respondent and petitions the superior court for the expenditure of public funds for his costs on appeal, the superior court shall make findings as to the defendant's ability to pay and enter an order authorizing the expenditure of public funds for those costs allowable under CAROA 47 which the defendant cannot pay. If the defendant is found unable to pay the filing fee, the order shall also include authority to proceed in forma pauperis. Public funds for the payment of the statement of facts shall be limited to portions of the record necessary for review of assignments of error. Assignments of error so patently frivolous that reasonable minds could not differ as to their frivolity shall not be considered. If the defendant desires, but is unable to pay counsel, the superior court shall appoint counsel, preferably trial counsel. If, in the discretion of the trial court, other than trial counsel should be appointed, trial counsel shall be retained as co–counsel. No counsel shall withdraw without written authority of the trial court.

(ii) Denial of Costs. If a petition for the expenditure of public funds is denied in whole or in part, the defendant shall be advised of his right to have the order of denial reviewed by petitioning for a writ of certiorari and shall be advised of the limitations of time for filing such a petition.

(iii) Jurisdiction for Perfecting Appeal. The superior court shall retain jurisdiction for the purposes of fixing of bail, certification of the statement of facts, and appointment or withdrawal of counsel except a motion to withdraw as counsel for appellant on the ground that counsel can find no grounds on which he can in good faith base an appeal.

(3) Reports by Counsel. Counsel for defendant on appeal shall keep the Court of Appeals currently advised of his appearance or withdrawal and the address of the appellant. Court appointed counsel shall serve the defendant with a copy of the brief prepared in his behalf and file proof of service with the appellant court.

(4) Supplemental Appellant's Brief. The chief judge may authorize the defendant to file a brief supplementing the brief of his counsel if good cause is shown and the motion for authority to file the brief is received within fifteen (15) days after the brief of his counsel is filed.

(e) Procedure to Perfect Appeal.

(1) Statement of Action. Within fifty–five (55) days after the filing of the notice of appeal, unless the chief judge shall previously order otherwise, the appellant or his counsel must file a statement that:

(i) Arrangements have been made with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and with the clerk of the superior court for the transcript which is to be filed pursuant to CAROA 44, or

(ii) A motion has been made in the superior court for a determination pursuant to (d)(2)(i) above.

Failure to comply with provisions of this subsection may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk of the Court of Appeals.

(2) Statement of Facts.

(i) When Transcribed. When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the clerk of the Court of Appeals. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the chief judge in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety (90) days, plus any additional time allowed by the chief judge, after the notice of appeal was filed with the clerk of the superior court, the clerk of the Court of Appeals shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of delay.

(ii) Time Requirements. The statement of facts must be filed within ninety (90) days after the entry of the judgment or order from which the appeal is taken unless the time is extended for good cause by the chief judge. If the statement of facts is not timely filed, the clerk of the Court of Appeals shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard, unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) Appellant's Opening Brief. Within thirty (30) days after the date the proposed statement of facts is filed, the appellant shall serve on the respondent two copies, and file with the clerk of the Court of Appeals 16 copies, of his opening brief on appeal.

(4) Supplemental Brief. If an indigent defendant is authorized by the chief judge to supplement the brief of his appointed counsel, his appointed counsel shall have the copy of the statement of facts served on the defendant within ten (10) days after service of the appellant's opening brief. Proof of service will be promptly filed with the Court of Appeals. The defendant will provide appointed counsel a copy of his supplemental brief for reproduction within sixty (60) days after the statement of facts was served upon him. The copy of the statement of facts will be returned to his appointed counsel with the supplemental brief. If the copy of the statement of facts is not returned the supplemental brief will not be reproduced and the appeal will proceed as if a supplemental brief has not been authorized.

(5) Respondent's Answering Brief. Respondent shall, within thirty (30) days after service by appellant of his opening brief or, if a supplemental brief is authorized, within thirty (30) days after service by appellant of his supplemental brief, serve on the appellant not less than two copies, and file with the clerk of the Court of Appeals 16 copies of his answering brief.

(6) Appellant's Reply Brief. Not less than five (5) court days prior to the hearing, appellant may also serve on the respondent two copies, and file with the clerk of the Court of Appeals 16 copies of a reply brief.

(7) Transcript and Statement of Facts. Not later than one (1) week after service of respondent's brief, appellant will cause the transcript and statement of facts to be filed with the clerk of the Court of Appeals.

(8) Extensions of Time. Time limitations as set forth in this paragraph may be extended by order of the chief judge, for good cause shown by affidavit, provided the motion for extension is made before the time has expired. Stipulation of counsel does not constitute good cause.

(f) Reproduction of Briefs in Indigent Cases. When public funds have been authorized for the costs of briefs filed on behalf of a defendant, the briefs shall be reproduced by the Court of Appeals. Within the time allowed, an original copy of such briefs ready and suitable for photocopying shall be filed with the clerk of the cognizant division. The clerk shall reproduce the briefs and make the following distribution:

To Whom Sent	Number of Copies
Defendant	1
Counsel for Defendant	2
Opposing Counsel	2
State Law Library	5
Court of Appeals	As required
Supreme Court	7 if petition for review is filed and 5 additional if petition for review is granted

(g) Dismissal for Want of Prosecution. When time requirements set forth in section (e) are not met by the appellant, the clerk of the Court of Appeals shall note the cause on the next motion docket for dismissal for want of prosecution and give notice of the hearing date of the motion.

(h) Applicability of Civil Rules. The practice and procedure, except as in these rules otherwise provided, shall be, as nearly as possible, the same as in civil cases. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Mar. 7, 1973, effective July 1, 1973.]

Comment by the Court: (d)(2)(ii) prevents withdrawal of counsel without authority of trial court.

Rule 47 Reimbursement of costs——Indigent criminal appeals. (a) Authorized Claims.

(1) Superior Court Clerk. The superior court clerk may submit a bill for the statutory allowance for preparation of a transcript and for the actual amounts incurred for transmittal of the record, briefs and exhibits to the court of appeals.

(2) Court Reporter. The reporter may submit a bill at the rate of $1.50 per page for the original and one copy of that portion of the statement of facts ordered by the superior court. The statement of facts shall be on 8 1/2" by 13" paper; margins shall be lined 1 3/8" from the left and 5/8" from the right side of the page; indentations from the left lined margin shall be not more than: one space for "Q" and "A", three spaces for the body of the testimony, eight spaces for commencement of a paragraph, and ten spaces for quoted authority; space between lined margins shall be used in so far as practicable; typing shall be double spaced thirty lines to a page except comments by the reporter shall be single spaced. Type shall be ten-point pica type or its equivalent. Additional copies when ordered shall be produced by the most economical method.

(3) Counsel. Counsel for defendant may submit a bill for:

(i) the actual expenses not including ordinary overhead incurred by counsel for perfecting the appeal including travel accomplished or to be accomplished not to exceed amounts allowable to state employees for travel by private vehicle, and

(ii) professional services.

(b) Conditions Precedent to Recovery.

(1) Order of Indigency. No costs shall be recovered unless there is on file in the court of appeals a certified copy of an order of the superior court authorizing the expenditure of public funds for the purpose for which costs are claimed.

(2) Appointment of Counsel. No fees or costs of counsel shall be recoverable unless there is on file in the court of appeals a certified copy of an order of the superior court appointing the counsel who is claiming recovery of fees or costs incident to review.

(c) Form.

(1) Copies. Each cost bill shall be filed with the clerk of the court of appeals in an original and three duplicate copies.

(2) Social Security Number. Each claimant, except the superior court clerk, shall set forth his social security number under his signature.

(3) Court Reporter and Clerk. A cost bill submitted by the court reporter or clerk shall be identified by the court of appeal case caption and entitled "Criminal Appeal Invoice Voucher." It shall itemize the number

of pages, number of lines per page, and billing rate per page. It shall be signed by the claimant. It shall be certified in the following form:

(i) Clerk's Cost Bill. The clerk shall certify his cost bill as follows: "I hereby certify that the items and totals listed herein are correct charges for the preparation or actual costs of transmittal of portions of the record and files ordered by counsel or the trial court in the above-entitled appeal."

(ii) Reporter's Cost Bill. The superior court clerk shall certify the reporter's cost bill as follows: "I hereby certify that the amount claimed in this bill is for that portion of the statement of facts ordered by the trial court and the typing of the statement of facts and computing of the bill are in accordance with CAROA 47 (a) (2)."

(4) Counsel. A cost bill submitted by counsel for the defendant shall be in the following form:

(i) identified by the court of appeals case caption,

(ii) entitled "Cost Bill of Counsel for Defendant,"

(iii) itemized as to actual hours expended by counsel in preparation of the appeal and amount of compensation claimed therefor, expenses paid by counsel incident to appeal, actual travel expenses of counsel incurred or to be incurred for argument in the court of appeals, and

(iv) subscribed with the affidavit of counsel that the items and totals listed therein are correct charges for actual labor or costs necessarily incident to the proper consideration of the appeal by the court of appeals.

(d) Time of Filing Cost Bills.

(1) By Court Reporter and Clerk. The reporter and clerk may file a cost bill as soon as the services for which the claim is submitted have been performed, but not later than ten days after the filing of the opinion.

(2) By Counsel. Counsel for defendant shall file his cost bill not later than ten days after the opinion in the case becomes final as provided by CAR 15. Only one cost bill shall be filed by counsel.

(e) Disallowance of Costs.

(1) Waiver of Costs. When a cost bill has not been filed within the time allowed, such claim will be deemed to have been waived.

(2) Improper Brief. When, in the opinion of the court of appeals, a brief by counsel is improper in substance, or unnecessarily long, the court may, in its discretion, disallow all or a portion of the costs thereof claimed by counsel.

(3) Unnecessary Delay. When, in the opinion of the court of appeals, the court reporter or counsel has been dilatory, the court may, in its discretion, disallow all or a portion of the cost bill.

(f) Allowance of Costs, Pursuant to CAR 24, when cost bills are in the proper form for payment, the clerk of the court of appeals shall forward the bills to the clerk of the supreme court.

(1) Court Reporter and Superior Court Clerk. Within ten days after a cost bill of the court reporter or superior court clerk has been forwarded to the supreme court, the clerk of the supreme court shall either approve it for payment or notify the claimant of his objections to its allowance by a clerk's ruling. Unless the claimant notes exceptions to the clerk's ruling within ten days, for hearing on a regular motion day, the amount will be deemed approved in accordance with the clerk's ruling.

(2) Counsel. The supreme court clerk shall present counsel's cost bill to the supreme court. The supreme court, in its discretion, will make such allowance as it determines is fair and equitable, consistent with funds available and projected budgetary requirements. Allowances shall be made by order of the chief justice. If all or a portion of the counsel's claim be disallowed by the order, notice of such disallowance shall be transmitted to the claimant by the supreme court clerk. Unless exceptions to the order are noted by the claimant within ten days after the date of the letter of notification for hearing on a regular motion day, exceptions will be deemed to have been waived. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Aug. 5, 1970, effective July 1, 1969; amended Aug. 24, 1972, effective Sept. 1, 1972; amended, adopted Nov. 1, 1973, effective Jan. 1, 1974.]

Rule 48 Proceedings in case of reversal in criminal cases. When in a criminal action the judgment against the defendant is reversed and it appears that no offense whatever has been committed, the court of appeals will direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense although defectively charged in the indictment or information, the court of appeals, if the defendant is in prison, will direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 49 Arguments. No more than two counsel on a side will be heard upon the argument, unless the court shall direct otherwise: Provided, That each party who has appeared separately and by different counsel in the superior court shall, if he so desire, be heard through his own counsel. The counsel for the appellant shall be entitled to open and close the argument upon the merits in all cases. In argument of motions, except motions heard with the merits of the cause and all preliminary or collateral matters, the counsel for the party having the affirmative of the issue shall open and close. Unless extended upon application, arguments in causes appearing on the regular calendar shall be limited to one-half hour on a side: Provided, That in causes where two or more appellants or two or more respondents appear separately in this court and file separate briefs, each may be heard as the court may permit, but in no case will more than two hours be allowed for arguments. Arguments upon motions shall be limited to one-quarter of an hour on a side. Applications for an extension of time for argument shall be made to the chief judge in writing not less than ten days prior to the date of the hearing. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 50 Post opinion procedures. (a) Petitions for Rehearing or Modification Addressed to Court of Appeals.

(1) Time. Any party to a case in which an opinion is filed may, before the opinion becomes final (See CAR 15), file in the court of appeals a petition for rehearing or modification.

(2) Form. Petitions may be printed or typewritten and copies produced by some legible, permanent process in accordance with the requirements of CAROA 42. An original and three copies shall be filed with the court.

(3) Content. The manner in which it is considered the opinion should be changed shall be succinctly stated followed by supporting argument.

(b) Petition for Review Addressed to the Supreme Court.

(1) Time. Any party to a case in which an opinion has been filed by the court of appeals, may within twenty days after the denial of a petition for rehearing or modification, file in the supreme court a petition for review. A copy of the petition must be filed with the court of appeals and a copy served on the opposing party within the twenty day period. Proof of service of the copy on the opposing party shall be filed in the supreme court with the petition. A petition not filed and served as herein provided will not be considered.

(2) Form. Petitions may be printed or typewritten and copies produced by some legible permanent process in accordance with the requirements of CAROA 42. An original and twelve copies shall be filed with the supreme court. The petition, exclusive of the opinion of the court of appeals, shall not exceed twenty pages.

(3) Content. A petition for review shall contain the following parts:

(i) Jurisdictional Statement. The date of the opinion and order denying the petition for rehearing or modification, and a statement of the reasons why the supreme court should assume jurisdiction. Specify:

Any decision of the supreme court of Washington with which it is asserted the decision of the court of appeals is in conflict, and a showing of such conflict; or

Any decision of a division of the court of appeals asserted to be in conflict with the decision of another division, and demonstrating such conflict; or

Any significant question of law under the constitution of Washington or of the United States is involved; or

Any issue of substantial public interest that should be determined by the supreme court.

(ii) Facts. The facts material to the question presented.

(iii) Question. The issues of law involved. Only issues set forth in the petition will be considered.

(iv) Opinion. A copy of the opinion of the court of appeals shall be attached.

(c) Additional Filings.

(1) Petitions. No more than one petition for rehearing or modification and no more than one petition for review shall be filed by the same party.

(2) Answers and Replies.

(i) Petition for Rehearing. Neither an answer nor a reply to an answer to a petition for rehearing shall be served or filed unless called for by the court. The court may call for an answer, a reply to an answer, briefs, or additional copies of the petition or answer.

(ii) Petition for Review. The party opposing a petition for review may file an answer to the petition and serve a copy thereof upon the petitioner within fifteen days after the petition is served on the party opposing the petition. Proof of service of the copy of the answer on the petitioner shall be filed with the supreme court with the answer. If the party opposing the petition does not file an answer, the court may nevertheless require an answer, a reply to an answer, briefs, or additional copies of the petition or answer.

(d) Answer.

(1) When Filed. If an answer to any petition is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the petition. The answer shall be filed within fifteen days thereafter. A copy shall be served on counsel for the petitioner.

(2) Form. An answer shall be filed in the same form and in the same number as is required for the petition to which it is addressed.

(e) Appeal. When the court reverses a judgment or order of the superior court by less than a unanimous decision, the aggrieved party may appeal or cross appeal to the supreme court by filing a notice of appeal within ten days after the denial by the court of appeals for a petition for rehearing.

The original of the notice of appeal or cross appeal shall be filed in the supreme court and a copy thereof in the court of appeals. No briefs other than those filed in the court of appeals shall be filed unless requested by the supreme court. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended Sept. 27, 1971, effective Nov. 9, 1971; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; amended, adopted May 8, 1972, effective July 1, 1972.]

Comment by the Court: Complete revision of former ROA 50 providing new procedures.

Rule 51 Motion to dismiss. Any respondent may move the court of appeals to dismiss an appeal either on the ground that the court has no jurisdiction of an appeal from the judgment or order from which the appeal was taken or that the notice of appeal was not served or filed within the time limited by rule, or is insufficient, or that the appeal bond was not filed within the time limited by rule, or is not in form or substance such as to render the appeal effectual, or that the appellant's brief has not been served or filed, or that the record on appeal has not been sent up, or that the appeal has not been diligently prosecuted or on any ground going to the merits of the further prosecution of the appeal or on any two or more of the grounds hereinabove mentioned; and there may be combined with a motion to dismiss, a motion to affirm the judgment or order appealed from or a motion for damages on the

ground that the appeal was taken merely for delay, or was manifestly unauthorized by rule, or both such motions. A general appearance in the court of appeals shall not be a waiver of the right to make any motion herein authorized. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 52 Hearing and disposition of motion to dismiss. If the court of appeals on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same, to be well taken and true in effect, except lack of jurisdiction, the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the grounds of any such motion (except a failure to make the appeal within the time limited by these rules) the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service or filing of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the court of appeals, perfect the appeal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 53 Motions——How made and heard. (a) Motion Days. Unless otherwise directed by the chief judge, divisions II and III of the court shall sit for the hearing of motions on the Fridays of the first two weeks of each session and thereafter the first two Fridays of each month in which the court sits for the regular hearing of cases.

In division I, the court shall sit for the hearing of motions on each Friday of any week during which the court sits for the regular hearing of cases. The chief judge shall designate the respective panel to function on each motion day. [Adopted July 2, 1969, effective July 11, 1969.]

(b) Alternative Presentation. Motions to strike any portion of the transcript or the statement of facts, or to dismiss or affirm upon the record, and all technical motions tending to prevent the hearing of the cause upon its merits, may be made in writing and noticed for some motion day, or the same may be made and plainly stated in the brief of the moving party and heard at the time the cause is assigned upon the calendar.

(c) Notice Motions. All other motions in appealed causes must be made in writing and noticed for some motion day. The motions referred to in this and the first clause of the preceding paragraph will be known as "noticed motions."

(d) Filings and Calendars. At least ten days before the day fixed for the hearing of such a motion, the motion and notice, with proof of service, and briefs in support thereof, must be filed with the clerk. The clerk will prepare a calendar of noticed motions for each motion day.

(e) Briefs. Briefs in support of any motion are required in all cases. One copy of the brief of the moving party shall be served upon counsel for the opposing party, and the original and five copies thereof in a departmental hearing, and the original and nine copies thereof in a hearing en banc, shall be filed with the clerk at least ten days before the time the motion is to be heard. The opposing party, if he appears, shall serve a copy of his brief on the moving party, and file with the clerk a like number of copies at least on or before the Wednesday preceding the day of hearing. Briefs may be printed or typewritten and shall comply with Rule on Appeal 42, insofar as applicable. If typewritten, the copies must be clearly legible. Failure to comply with the provisions of this rule relating to briefs may result in striking the motion, hearing it without oral argument by the opposing party, if he has failed to comply herewith, or continuing it until a later motion day. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 54 Notices of motions. All notices of motions not given in the briefs must be in writing; and the necessary time of notice shall be not less than ten days, unless a different time is fixed by special order of this court. But where the service of a notice is made by mail between different places, the time of notice above mentioned shall be thirteen days. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 55 Court of appeals costs. (a) Costs.

(1) Allowance. In cases disposed of by an opinion of the court of appeals, costs on appeal will be taxed by the clerk in accordance with this rule. In cases disposed of by order, the court has discretion to award costs.

(2) Items. The costs which may be recovered are: The fee of the clerk of the court of appeals; The fee of the clerk of the superior court for preparing, certifying, and transmitting to the court of appeals the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; statutory attorney's fees; the actual amount incurred in the printing of the required number of briefs; the actual amount incurred, by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedeas bond.

(3) Disallowance of Printing. When, in the opinion of the court of appeals, a brief is improper in substance or when a statement of facts is improper in substance or unnecessarily long, with regard to the issues raised on the appeal, the court may, in its discretion, order the disallowance as costs of any part or the whole of the disbursements for printing or preparing the same. Reference is also made to Rule 41 on disallowance of costs on briefs filed late.

(b) Party Entitled.

(1) Prevailing Party——Discretion. When the judgment of the superior court is affirmed or reversed, the prevailing party shall recover his costs. When the judgment of the superior court is reversed and remanded for

a new trial, the awarding of costs shall abide the final determination of the cause. When the judgment is affirmed in part, reversed in part, modified, or remanded for further proceedings, the court of appeals shall, in its discretion, award all or partial costs to either party or may order that the awarding of costs shall abide the final result of the further proceedings.

(2) Nominal Party. When a party on an appeal is a nominal party only, costs shall not be recovered against such party in any event.

(c) Cost Bill.

(1) Filing and Exceptions after Opinion. The prevailing party shall, within ten days after the filing of the opinion in a cause, file with the clerk and serve upon the adverse party a cost bill, unless costs are to abide final determination of the cause. If any adverse party excepts to any item therein, he shall, within ten days after service of the cost bill upon him, file with the clerk and serve upon the prevailing party his exceptions to such cost bill together with affidavits in support of his exceptions. Within ten days after exceptions are filed, the clerk shall grant or deny the exceptions by a clerks ruling. When the decision of the appellate court becomes final, the clerk shall tax in the remittitur the costs to which the prevailing party is entitled unless exceptions to a clerk's ruling are pending. If exceptions are pending, costs will be taxed by supplemental judgment signed by the clerk when the exceptions have been determined by the court of appeals.

(2) Filing and Exceptions after Judgment. When the costs on appeal are to abide the final result of an action, the ultimate prevailing party shall, within ten days after the judgment becomes final, file with the clerk a certified copy of said judgment and his cost bill of the prior appeal and shall serve a copy of said cost bill upon the adverse party. If any adverse party excepts to any item of said cost bill, said exceptions shall be handled in the same manner as provided in subsection (c) (1) of this rule. When the time for taking an appeal from the judgment entered upon a remand of the cause has expired and no notice of appeal has been given, the prevailing party shall, within ten days, file with the clerk a certificate of the clerk of the superior court certifying that no notice of appeal has been given. Whereupon the clerk shall include the costs of the prior appeal, as finally taxed, in a supplemental judgment and remit the same to the clerk of the superior court.

(3) Supplemental. In the event that additional premium on an appeal and/or supersedeas bond shall accrue prior to the final taxing of costs, the prevailing party may, within ten days after such accrual, file with the clerk and serve upon the adverse party a supplemental cost bill limited to this item only; said supplemental cost bill to be handled in the same manner as provided in subsection (c) (1) of this rule.

(d) Filing and Hearing Exceptions. If any party excepts to the costs as taxed by the clerk, he shall, within ten days of said taxing, file with the clerk and serve upon the adverse party his exceptions and said exceptions shall be heard by this court in the same manner as that provided by Rules 53 and 54 for the hearing of motions.

(e) Waiver of Objections. When a cost bill has been served and filed in time and no exceptions have been filed, objection thereto will be deemed to have been waived.

(f) Waiver of Costs. When a cost bill has not been filed within the time allowed by this rule, any claim to costs will be deemed to have been waived. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 56 Habeas Corpus. (a) Jurisdiction and Filing. The court of appeals shall have original jurisdiction in habeas corpus proceedings. A petition for writ of habeas corpus shall be filed in the division geographically including the superior court entering the judgment and sentence on the basis of which petitioner is held in custody or, if petitioner is not being held in custody on the basis of a judgment and sentence, in the division in which the petitioner is located.

(b) Parties.

(1) Petitioner. The petition shall be brought in the name of the person in custody or by his guardian or parent as petitioner.

(2) Respondent. The person or agency exercising physical custody, restraints or conditions upon the petitioner's liberty shall be named respondent. The proper respondent of a person in the custody of an institution under the control of the State Department of Institutions is the director of that department.

(3) Transfer of Custody. If petitioner after serving and filing his petition is transferred from the custody of one agency to another, petitioner will forthwith advise the court and respondent's counsel. The court on its own motion will substitute the proper respondent, and the clerk of the court shall so notify substituted respondent or counsel for respondent.

(c) Petition. Under the titles indicated the petition shall set forth:

(1) Place of Custody. The place where petitioner is held in custody if confined.

(2) Basis of Custody. If held in custody pursuant to a judgment or sentence or other decree, the basis of the custody, including date, county and cause number, if available.

(3) Statement of the Facts. A statement of the facts upon which the allegation of illegal custody is based (the grounds for allegations that the imprisonment or custody is illegal).

(4) Legal Principles. The reason why the custody is unlawful or violates a constitutional right. Legal argument, citations, and authorities are not required, but, if submitted, shall be set forth in a brief separate from the petition, which shall be served and filed with the petition.

(5) Previous Petitions. Identify other applications or petitions filed with regard to the same allegedly unlawful custody by setting forth the court in which filed, date and disposition made by such court.

(6) Prayer. The relief being sought.

(7) Oath.

(i) If a notary is available. The petition shall be subscribed by the petitioner and verified as follows:

"_____ being first duly sworn, on oath, deposes and says that he is the petitioner in the above-entitled proceeding, that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Notary Public in and for the State of Washington, residing at _____."

(ii) If a notary is not available. The petition shall be verified by the petitioner as follows:

"Under penalties of perjury, I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

_____ _____."
Date

(d) Proceeding in Forma Pauperis.

(1) Motion. A petitioner, unable to pay the filing fee, may move to proceed in forma pauperis. The motion shall contain a statement of the petitioner's total assets.

(2) Clerk. When the petitioner is in the custody of an agency of the State Department of Social and Health Services, the clerk shall obtain a statement of petitioner's known assets from the superintendent of the institution exercising custody over the petitioner.

(3) Determination. If the chief judge finds the petitioner is unable to pay the filing fee, the petitioner will be authorized by notation order to proceed in forma pauperis. If the application to proceed in forma pauperis is denied, the petitioner shall be notified of the reason.

(4) Provision of Counsel and/or Transcript. Upon a finding that the petitioner is unable by reason of poverty to procure counsel or to pay for a transcript, and that the petition raises significant issues which by their nature and character indicate for proper review and determination the necessity of professional legal assistance or the availability of a transcript, the Court of Appeals may enter an order.

(i) Appointing counsel or directing a superior court to appoint counsel to represent the petitioner in the Court of Appeals or on an order of reference.

(ii) Directing a superior court to have a prior superior court proceeding or a reference hearing transcribed.

(iii) Authorizing payment of the costs of the above from public funds.

The procedure for obtaining reimbursement for such cost bills from public funds is governed by CAROA 47 (except paragraph (b) thereof). The bills shall be forwarded to the Supreme Court together with a certified copy of the order of the Court of Appeals and, in the case of a cost bill of counsel, an evaluation in accordance with CAR 24(e)2(i).

(e) Filing Petition. A petition for writ of habeas corpus will not be filed by the clerk of the court of appeals until the filing fee has been paid or the petitioner has been authorized to proceed in forma pauperis.

(f) Return and Answer. The respondent shall within twenty days after the petition is served and filed, unless the time be extended by the chief judge for good cause shown, file a return and answer setting forth:

(1) The authority or cause of the restraint of the party in his custody and if the authority be in writing, a certified copy thereof.

(2) Whether in the opinion of respondent or counsel for respondent a disposition of the petition requires a determination of fact.

(g) Briefs.

(1) Petitioner's Opening Brief. If petitioner files a brief with his petition, it shall contain the following designated sections:

(i) Facts. A succinct statement of the alleged facts upon which the argument that the custody is illegal is based.

(ii) Argument. Legal citations and authorities supporting the position of the petitioner.

(iii) Prayer. The relief being sought.

(2) Answering Brief. Respondent's answering brief shall be served and filed within twenty days after respondent's answer and return have been served and filed, unless the time is extended by the chief judge for good cause shown.

(3) Reply Brief. Petitioner's reply brief, if any, shall be served and filed at least three court days preceding the hearing.

(4) Form and Number of Briefs.

(i) Form. Briefs will be on letter size paper and printed or typed unless such facilities are not available. Only one side of the paper shall be used. Typewritten text shall not be smaller than pica or 10 point type, double spaced with lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Heading shall be in capital letters, underlined. Briefs shall be stapled along the left margin of the page.

(ii) Copies. An original and 5 copies of briefs will be filed with the clerk. Copies shall be produced, if means are available, by some method more legible and permanent than carbon. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(h) Reserved.

(i) Hearing.

(1) Setting. The clerk shall promptly set the cause on the motion calendar and notify the parties of the date.

(2) Oral Argument. The cause shall be submitted without oral argument unless otherwise directed by the court.

(j) Motions.

(1) Form. Motions shall be verified in the same manner required for a petition. Proof of service setting forth the persons on whom the motion is served shall be subjoined to the motion. A copy of the motion must be served on the opposing party or his counsel.

(2) Disposition. Petitions or motions which do not relate to the merits of the petition for the writ and motions to dismiss the cause on grounds of frivolity or repetitiousness may be determined by the chief judge.

(k) Referral for Hearing. Petitions which require for disposition the resolution of an issue of fact which cannot be determined from the record will be referred to

the superior court entering the judgment or order upon which petitioner's retention is based. The reference court shall hold an evidentiary hearing to resolve the disputed questions of fact. Such hearing shall be held before a judge who was not involved in the challenged proceedings.

(1) Order of Referral. The order of referral shall contain provision for:

(i) Appointment of counsel at public expense if petitioner is found to be indigent.

(ii) Right to summon witnesses.

(2) Note for Hearing. When the respondent is represented by the attorney general or a prosecuting attorney, such attorney shall be responsible for promptly noting the hearing and serving notice on other parties. In all other cases, petitioner or his counsel shall have such responsibility.

(3) Procedure. Upon the conclusion of the hearing, the trial judge shall cause findings of fact to be made and a certified copy thereof to be filed with the court of appeals, and all court of appeals files forwarded in connection with the reference hearing to be returned to the court of appeals.

(l) Disposition on Merits. If, after a hearing by the court, it appears from the face of the record or from admitted facts that the petitioner is entitled to relief of some nature, the chief judge shall assign the cause for an opinion. In all other cases, except referrals, the petition may be denied by order.

(m) Review.

(1) If Petition Denied. The petitioner shall have thirty days after the entry of an order denying his petition in which to file in accordance with CAROA 50 a petition for review.

(2) If Relief Granted. If any relief be granted, upon motion of the respondent, the relief shall be stayed during the pendency of a petition for review. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 10, 1969, effective Nov. 21, 1969; amended, adopted Nov. 13, 1970, effective Jan. 2, 1971; amended, adopted Mar. 27, 1972, effective Mar. 27, 1972.]

Comment by the Court: Compete revision of former ROA 56.

Rule 57 Procedure for petitions for extraordinary writs. (a) Scope of Rule. Petitions for all writs authorized by the state constitution and necessary and proper to the complete exercise of the court of appeals appellate and revisory jurisdiction, as prescribed by statute, shall be entitled, processed, and determined under the provisions of this rule EXCEPT petitions for writs of habeas corpus which shall be governed by CAROA 56.

(b) Additional Review by Writ. In addition to the writs that may be issued pursuant to (a) of this rule, an aggrieved party may petition the court of appeals for review of any final termination made by a superior court in any action or proceeding in which one or more of the following are present:

(1) Custody. Where the determination concerns the custody of a minor.

(2) Adoption. Where the determination concerns the adoption of a minor.

(3) Juvenile Court Proceedings. Where the determination is made by a juvenile court.

(4) Certificate of Public Use and Necessity. Where the superior court has granted or denied a petition for public use and necessity in an action of eminent domain.

(5) Free Statement of Facts. Where the superior court has denied, in whole or in part, a petition of an indigent criminal defendant for a statement of facts at county expense.

(6) Inadequate Remedy by Appeal. Where the remedy by appeal is inadequate.

(c) Stay of Proceedings and Jurisdiction.

(1) Proceedings in the superior court or the enforcement of any determination shall not be stayed by the application for a writ except as herein provided.

(i) Bond for Damages. If the chief judge stays proceedings in the superior court, he may require the petitioner to file a bond in an amount deemed sufficient to protect respondents from all damages that may be suffered by reason of the stay of proceedings: and

(ii) Cost Bond. The stay shall not be entered by the clerk until petitioner files a bond for costs as provided by (g) (2) of this rule.

(2) Jurisdiction. Jurisdiction of the court of appeals over the cause shall attach when

(i) the chief judge has stayed the proceedings in the superior court or issues an order granting the writ; and

(ii) petitioner has filed a bond for costs as provided by (g) (2) of this rule, and a bond, if required by (c)(2)(ii) of this rule;

(iii) provided that the superior court shall retain jurisdiction for the purpose of all proceedings to be held in such court for the purpose of settlement and certification of a statement of facts, and for all other purposes, as might be directed by order of the court of appeals.

(d) Contents and Format of Petition, Response, and Briefs.

(1) Contents of Petition. The petition for a writ shall be verified by petitioner or his counsel and shall contain a brief statement of the essential facts constituting the ground for review and issuance of the writ by the court of appeals. The petition shall be supported by a memorandum of authorities, and, if necessary, further supporting documents or affidavits.

(2) Response to Petition. A respondent may serve upon the petitioner or his counsel and file with the court of appeals a response to the petition. The response may contain additional facts verified by respondent or his counsel, a memorandum of authorities, or other supporting documents or affidavits.

(3) Format and Size. The caption of a petition for a writ shall appear as it does in the superior court proceeding, except that the aggrieved party shall be designated as the petitioner and all other parties as respondents. If the petition is for a writ of prohibition or mandamus directed to the superior court, the trial judge shall be named as a respondent. The petition and response shall be typewritten, printed, mimeographed, or produced by multilith or offset processes on letter-size paper (8 1/2 x 11 inches) and stapled on the left-

hand side. Briefs may be typewritten and shall comply in style and content with Rule 42; number thereof shall be governed by (g) (3) of this rule.

(e) Time of Filing and Service.

(1) Filing. A petition for a writ must be filed in the office of the clerk of the court of appeals within fifteen days after the determination in question has been made by the superior court, except as otherwise provided by RCW 8.04.070 for the review of a certificate of public use and necessity. Unless petitioner proceeds forthwith to present the petition to the chief judge ex parte or notes it for presentment within a reasonable time after filing, the court may dismiss the petition for want of prosecution.

(2) Service. When a petition for a writ is presented ex parte to the chief judge and an order to show cause is issued pursuant thereto, a copy of the petition and a copy of the order to show cause shall be served forthwith by the petitioner upon all respondents or their counsel.

A copy of the petition for a writ and notice or presentment thereof to the chief judge upon a day certain may be served by petitioner upon all respondents or their counsel prior to filing the petition.

All services shall be made in the manner prescribed in Rule 3. Proof of service shall be filed with the clerk.

(f) Preliminary Hearing on Petition.

(1) If the petition is presented ex parte, the chief judge may

(i) determine that the writ does not lie and deny the petition; or

(ii) he may issue an order to show cause why the writ should not issue. If an order to show cause is issued, the chief judge shall fix a time (1) for hearing thereon either before him or before the court and (2) for filing briefs in support of, and in opposition to, the issuance of the writ.

(2) Unless a shorter time, or another day and time, is fixed by the chief judge, the preliminary hearing before him on a petition for a writ shall be noted by petitioner for hearing on a THURSDAY at 1:30 p.m. not less than five nor more than fifteen days after service of a copy of the petition and notice of hearing upon respondent or his counsel. Immediately upon notice of hearing having been given, petitioner shall file with the clerk of the court of appeals the petition, notice of hearing, proof of service thereof, memorandum of authorities, and supporting documents.

(3) If the petition is presented to the chief judge after notice given as in these rules provided, the chief judge may

(i) determine that the writ does not lie and deny the petition; or

(ii) cause the hearing on the petition to be continued and

(iii) issue the writ;

(iv) provided, however, if the petition is for a writ of prohibition or mandamus the chief judge may only determine that the writ does not lie or cause the hearing on the petition to be continued and heard by the court.

(4) If the chief judge continues the hearing on the petition to be heard by the court, or directs that the writ issue, he may

(i) stay proceedings in the cause as in this rule provided; and

(ii) determine whether or not the matter is emergent. If emergent, the petition or writ shall be set for argument before the court on a motion day. If not emergent, the cause shall be set on the court's calendar by the clerk of the court of appeals.

(5) Time for Hearing and for Briefs. The order of the chief judge (i) directing the issuance of a show cause order, (ii) continuing the petition to be heard by the court, or (iii) directing that the writ issue, shall fix the date and time for hearing thereon and the time for service and filing of briefs of all parties.

(g) Procedure after Preliminary Hearing.

(1) Filing Copies. If the chief judge issues an order to show cause, continues the hearing on the petition, or issues the writ, petitioner shall file with the clerk three additional copies of the petition.

(2) Bond. When petitioner files the appropriate order issued by the chief judge with the clerk, he shall also file a bond in the amount of three hundred dollars, conditioned that the petitioner will pay all costs that may be assessed against him in the proceedings, or on the dismissal thereof, not exceeding three hundred dollars, or in lieu thereof, the petitioner shall deposit with the clerk, cash in the sum of three hundred dollars for such purpose: Provided, however, that no bond or filing fee is required if the petition is filed by an indigent criminal or juvenile delinquent seeking review of the superior court's denial, in whole or in part, of a statement of facts at county expense.

(3) Submission of Briefs. Briefs in support of, and in opposition to, any petition, are required in all cases. One copy of the brief of petitioner shall be served upon each respondent or his counsel. The original and three copies shall be filed. Any respondent who appears shall serve a copy of his brief on petitioner or his counsel, and file with the clerk the appropriate number of copies.

(4) Filing Record and Proceedings. Within the time allowed for the service and filing of his opening brief, the petitioner shall file with the clerk such portion of the record and proceedings in the superior court as is needed for the purpose of reviewing the application or the determination. The record shall be certified or authenticated as in causes on appeal.

(5) Additional Record. Any respondent, within the time allowed for service and filing his brief, may file certified or authenticated portions of the record and proceedings additional to those filed by the petitioner.

(6) Response and Cross-Review. If the chief judge directs the clerk to issue the writ, respondents may continue to urge at the hearing thereon that the writ was improvidently issued and should be quashed; and may, without the necessity of a cross-petition, present and urge any claimed errors by the superior court which, if repeated upon a new trial, would constitute error prejudicial to respondents.

(h) Denial of Petition or Quashing Writ. The court may deny a petition for a writ, or quash a writ already issued, by journal entry.

(i) Attorney's Fees Awarded. In addition to statutory attorney's fees and court costs, reasonable attorney's fees may be assessed against petitioner if it is determined that a petition for a writ is not made in good faith.

(j) Notice of Appeal. If a timely petition for a writ of certiorari is denied, the petition shall be considered to be a notice of appeal timely and properly filed. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Comment by the Court: New provision authorizing a timely petition for a writ of certiorari which is denied to be considered as a notice of appeal timely and properly filed.

Rule 58 Reserved.

Rule 59 Transcript of judgment, effect of. A transcript of any order or judgment, or both, of the court of appeals, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 60 Effect of judgment——Execution under. If the court affirms or modifies any judgment or order appealed from, it may remand the cause to the superior court with directions to carry the same into effect, or it may itself issue the necessary process for that purpose to the sheriff of the proper county, as it may deem advisable. If the cause is remanded to the superior court to have such judgment or order carried into effect, the decision of the court of appeals, and its order entered thereon, upon being certified to the superior court and entered on its records, shall have the same force and effect therein as if made and entered by the superior court. Executions issued from the court of appeals shall be similar to those from the superior court, and of like force and effect, and returnable in the same time. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 61 Effect of reversal——Writ of restitution. If by a decision of the court of appeals the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of the judgment or order appealed from, either the court of appeals or the superior court may direct an execution or writ of restitution to issue for the purpose of restoring to the appellant his property, or the value thereof. But property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 62 Damages may be awarded, when. Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been stayed by a supersedeas bond, as in these rules provided, the court may award to the respondent damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, the court may award such damages as will effectually tend to prevent the taking of appeals for delay only. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 63 Appeals to be heard on merits. The court of appeals will hear and determine all causes removed thereto in the manner hereinbefore provided, upon the merits thereof, disregarding technicalities, and will upon the hearing consider as made all amendments which could have been made. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 64 Reserved.

Rule 65 Reserved.

Rule 66 Disposition of material exhibits. (a) Transfer of Custody. Physical exhibits which, because of their bulk or weight, cannot be attached to the statement of facts, and which are only material to an issue of fact not before the court of appeals on review shall be retained in the custody of the trial court subject to being obtained on request by the court of appeals while the court of appeals has jurisdiction of the cause.

(b) Disposition. If a cause is remanded for further proceedings, the exhibits in the custody of the court of appeals shall be returned to the court having jurisdiction. When a cause is not remanded for further proceedings, counsel shall be notified, except in criminal cases, that the exhibits which cannot be retained in the court of appeals file will be destroyed or disposed of six months after the date of the remittitur unless:

(1) A stipulation is filed by counsel or the parties of record providing for disposition and costs of transfer of such exhibits. The clerk shall dispose of the exhibits in accordance with the stipulation.

(2) A party or counsel of record notifies the court of a desire for such an exhibit. The exhibit shall be returned to the clerk of the court having jurisdiction of cause for such disposition as that court shall determine proper.

(c) Destruction and Disposal. Six months after notification, except in criminal cases, the clerk shall destroy physical exhibits which cannot be retained in the court of appeals file and which have not been requested by counsel or parties of record unless:

(1) The exhibits are of historical value, in which case they will be transferred to the custody of the Washington State Museum.

(2) The exhibits are of material value, in which case they will be transferred to the state's central purchasing office for sale.

In criminal cases, exhibits may be destroyed on proof of death of the defendant. [Adopted July 2, 1969, effective July 11, 1969.]

Comment by the Court: Complete revision of former ROA 66 providing new procedures.

Part IV
RULES FOR SUPERIOR COURT

Title of Rules	Abbreviation	Formerly
Superior Court Administrative Rules	(AR)	———
Superior Court Civil Rules	(CR)	(RPPP–Part)
Superior Court Special Proceedings Rules	(SPR)	(RPPP–Part)
Superior Court Criminal Rules	(CrR)	(RPPP–Part)
Superior Court Mental Proceedings Rules	(MPR)	———
Juvenile Court Rules	(JuCR)	———
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SUPERIOR COURT ADMINISTRATIVE RULES (AR)

(Formerly: Administrative Rules for Superior Court)

Table of Rules

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- (a) Report of Disposition
- (b) Report of Appeal.

Rule 1 Reporting of criminal cases

(a) Report of Disposition. Within five court days after disposition by the superior court of a criminal charge, whether the disposition be a plea of guilty or by deferral or suspension of imposition of sentence, or a finding of guilty, or not guilty after trial, or by dismissal of the charge, the court clerk shall report such disposition to the Washington State Patrol Section on Identification on a disposition form approved by the Administrator for the Courts. When a sentence has been deferred or suspended, the report to the Section shall indicate the length of time over which such suspension or deferral is to be effective. At the conclusion of the time period for deferral or suspension of sentence, the court clerk shall forward an amended disposition form to the Section showing the actual disposition of the case.

(b) Report of Appeal. If an appeal is taken from the disposition made by the superior court, the court clerk shall, within five court days of the taking of the appeal, notify the Section on an amended disposition form. In the event that the result of any proceeding changes or otherwise makes inaccurate the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974; effective March 1, 1974.]

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I. INTRODUCTORY (RULES 1–2A)

Rule 1 Scope of rules These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is similar to FRCP 1.

Rule 2 One form of action There shall be one form of action to be known as "civil action." [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to FRCP 2. It supersedes RCW 4.04.020.

Rule 2A Stipulations No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court before a court reporter, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. Rule 2A is identical to and supersedes RPPP 89.04W.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS (RULES 3–6)

Rule 3 Commencement of action

(a) Methods. A civil action is commenced by service of a summons as provided in Rule 4 or by filing a complaint. If no service of summons is had upon a defendant before the complaint is filed, one or more defendants shall be served personally, or service by publication shall be commenced within 90 days after complaint is filed. Upon written demand by any other party, the plaintiff instituting the action forthwith, shall pay the filing fee and file the summons and complaint. If the summons was served without the complaint being attached, the plaintiff shall file the complaint within 5 days after the first service of the summons upon a defendant. An action shall not be deemed commenced for the purpose of tolling any statute of limitations unless pursuant to the provisions of RCW 4.16.170.

Comment by the Court. Subdivision (a) follows and supersedes RCW 4.28.010 except for the addition of the last three sentences. For sanctions see Rule 5(d); for venue provisions see Rule 82.

(b) Tolling Statute. [Reserved——See RCW 4.16.170.]

(c) Obtaining Jurisdiction. [Reserved——See RCW 4.28.020.]

Comment by the Court. The last sentence of RCW 4.28.020 is superseded by Rule 4(d)(4).

(d) Lis Pendens. [Reserved——See RCW 4.28.320 and 4.28.160.] [Adopted May 5, 1967, effective July 1, 1967; amended, adopted Feb. 24, 1972, effective July 1, 1972.]

Rule 4 Process

(–) What Is Process. A summons is deemed to be process under these rules. These Rules do not exclude the use of other forms of process authorized by law.

(a) Summons; Issuance. The summons must be subscribed by the plaintiff or his attorney, and directed to the defendant requiring him to appear and defend, and serve a copy of his appearance or defense on the person whose name is subscribed to the summons at a place within the state therein specified in which there is a post office, within 20 days after the service of the summons, exclusive of the day of service. No summons is necessary for a counterclaim or cross-claim for any person who previously has been made a party. Counterclaims and cross-claims against an existing party may be served as provided in Rule 5.

Comment by the Court. Subdivision (a) follows and supersedes RCW 4.28.030.

(b) Summons.

(1) *Contents.* The summons for personal service shall contain:

(A) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant.

(B) A direction to the defendants summoning them to appear within 20 days after service of the summons, exclusive of the day of service, and defend the action.

(C) A notice that, in case of failure so to do, judgment will be rendered against them according to the demand of the complaint. It shall be subscribed by the plaintiff, or his attorney, with the addition of his post office address, at which the papers in the action may be served on him by mail.

(2) *Form.* The summons for personal service in the State shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

Richard Roe, Plaintiff,
vs. No. _____
James Moe, Defendant SUMMONS

The State of Washington, _____, to the said _____, Defendant:

You are hereby summoned to appear within 20 days after service of this summons, exclusive of the day of service, and defend the above entitled action by serving a copy of your written appearance or defense upon the undersigned. If you fail to appear and defend, judgment will be rendered against you, according to the demand of the complaint, which has been or will be filed with the clerk of the court, or a copy of which is herewith served upon you.

John Doe, Plaintiff's Attorney
P.O. Address
[Telephone No.]

Comment by the Court. Paragraph (1) follows and supersedes RCW 4.28.040. Paragraph (2) follows and supersedes RCW 4.28-.050 with minor clarifying changes.

(c) By Whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in Rule 45. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967; amended, adopted Sept. 27, 1971, effective Nov. 9, 1971; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Comment by the Court. Subdivision (c) follows and supersedes RCW 4.28.070.

(d) Service.

(1) *Of Summons and/or Complaint.* The summons and complaint shall be served together unless the complaint has been or is filed within 5 days after service of summons. When a summons is served without a complaint, the summons must notify the defendant that a complaint has been or will be filed prior to service of the summons or will be filed within 5 days after the service. If the defendant appears within 10 days after the service of the summons, the plaintiff must serve a copy of the complaint on the defendant or his attorney within 10 days after the notice of such appearance, and the defendant shall have at least 10 days thereafter to answer the same; and no judgment shall be entered against him for want of an answer in such case until the expiration of the time.

(2) *Personal in State.* Personal service of summons and other process shall be as provided in RCW 4.28-.080, 4.28.081, 4.28.090, 23A.08.110, 23A.32.100, 46.64-.040, 48.05.200 and 48.05.210, and other statutes which provide for personal service.

(3) *By Publication.* Service of summons and other process by publication shall be as provided in RCW 4.28.100, 4.28.110, 13.04.080, and 26.32.080, and other statutes which provide for service by publication.

(4) *Appearance.* A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of process, or insufficiency of service of process pursuant to Rule 12(b).

Comment by the Court. Paragraph (1) supersedes RCW 4.28.060. The rule should be read in connection with Rule 3. Paragraph (4) supersedes the last sentence of RCW 4.28.020.

(e) Other Service.

(1) *Generally.* Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

(2) *Personal Service Out of State——Generally.* [Reserved——See RCW 4.28.180.]

(3) *Personal Service Out of State——Acts Submitting Person to Jurisdiction of Courts.* [Reserved——See RCW 4.28.185.]

(4) *Non-Resident Motorist.* [Reserved——See RCW 46.64.040.]

Comment by the Court. Paragraph (1) follows FRCP 4(e) as amended with appropriate changes.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits provided in Rule 45 and RCW 5.56.010.

Comment by the Court. Subdivision (f) follows FRCP 4(f) with appropriate changes. This subdivision is similar to the first sentence of RCW 2.08.210.

(g) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or his deputy, the return of the sheriff or his deputy indorsed upon or attached to the summons;

(2) If served by any other person, his affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the printer, publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) The written acceptance or admission of the defendant, his agent or attorney;

(5) In case of personal service out of state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record.

In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

Comment by the Court. Subdivision (g) follows RCW 4.28.310 which is superseded. The last sentence of FRCP 4(g) is added.

(h) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Comment by the Court. Subdivision (h) is identical to FRCP 4(h).

(i) Alternative Provisions for Service in a Foreign Country.

(1) *Manner.* When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and mailed to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a

party and is not less than 21 years of age or who is designated by order of the court or by the foreign court.

(2) *Return.* Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Comment by the Court. Subdivision (i) follows FRCP 4(i).

Rule 5 Service and filing of pleadings and other papers

(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Comment by the Court. Subdivision (a) follows FRCP 5(a), and supersedes the third sentence of RPPP 8.04W(1).

(b) Service; How Made.

(1) *On Attorney or Party.* Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(2) *Service by Mail.*

(A) How Made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

(B) Proof of Service by Mail. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

CERTIFICATE

I certify that I mailed a copy of the foregoing ---------- to [*John Smith*], [*plaintiff's*] attorney, at [*office address or residence*], and to [*Joseph Doe*], an additional [*defendant's*] attorney [*or attorneys*] at [*office address or residence*], postage prepaid, on [*date*].

[*John Brown*], Attorney for
[*Defendant*] William Noe

(3) *Service on Non-Residents.* Where a plaintiff or defendant who has appeared resides outside the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk of court for him. Where a party, whether resident or non-resident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. If the attorney does not have an office within the state or has removed his residence from the state, the service may be upon him personally either within or without the state, or by mail to him at either his place of residence or his office, if either is known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. If the residence of neither the party nor his attorney, nor the office address of the attorney is known, the service may be upon the clerk of court for the attorney.

Comment by the Court. Paragraphs (1) and (2) supersede RCW 4.28.240, 4.28.250, 4.28.260 and 4.28.280. Paragraph (3) is similar to and supersedes RCW 4.28.270.

(c) Service; Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Comment by the Court. Subdivision (c) is identical to FRCP 5(c).

(d) Filing.

(1) *Time.* All pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter. Complaints shall be filed as provided in Rule 3(a) or Rule 4(d)(1).

(2) *Default.* If a party fails to pay the filing fee or to file the complaint after demand, pursuant to Rule 3(a), or fails to file any other pleading or paper under this

rule, the court upon 5 days' notice of motion for sanctions may dismiss the action or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including a reasonable attorneys' fee unless good cause is shown for, or justice requires, the granting of an extension of time.

(3) *Limitation.* No sanction shall be imposed if prior to the hearing the filing fee is paid and the pleading or other paper is filed and the moving attorney is notified of the payment and filing before he leaves his office for the hearing.

(4) *Non–Payment.* No further action shall be taken in the pending action and no subsequent pleading or other paper shall be filed until the judgment is paid. No subsequent action shall be commenced upon the same subject matter until the judgment has been paid.

Comment by the Court. Subdivision (d) supersedes RPPP 8.04W(2) and RCW 4.32.260.

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Comment by the Court. Subdivision (e) is identical to FRCP 5(e) as amended.

(f) Other Methods of Service. Service of all papers other than the summons and other process may also be made as authorized by statutes other than RCW 4.28-.230, 4.28.240, 4.28.250, 4.28.260, 4.28.270, and 4.28.280, which are superseded by these rules.

(g) Certified Mail. Whenever the use of "registered" mail is authorized by statutes relating to judicial proceedings or by rule of court, "certified" mail, with return receipt requested, may be used.

Comment by the Court. Subdivision (g) is similar to and supersedes RPPP 5.04W.

(h) Service of Papers by Telegraph. Any writ or order in any civil suit or proceeding, and all the papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or certified copy may be used by the operator for that purpose. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972.]

Comment by the Court. Subdivision (h) follows and supersedes RCW 4.28.300. For Statutes relating to Telegraphic Communications, see RCW 5.52.

Rule 6 Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any superior court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, over the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), 59(d) and 60(b).

Comment by the Court. Subdivision (b) follows FRCP 6(b). RCW 4.32.250 is a related statutory provision. See also RCW 4.32.240.

(c) Proceeding Not to Fail for Want of Judge or Session of Court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges or by the failure of a session of the court.

Comment by the Court. Subdivision (c) is identical to and supersedes RCW 2.28.130.

(d) For Motions——Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

Comment by the Court. Subdivision (d) is identical to FRCP 6(d) which supersedes subdivision (1) of RPPP 8.08W. See also Rule 43(e)(2).

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) is identical with FRCP 6(e).

III. PLEADINGS AND MOTIONS (RULES 7–16)

Rule 7 Pleadings allowed; form of motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross–claim, if the answer contains a cross–claim; a third–party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third–party answer, if a third–party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third–party answer.

Comment by the Court. Subdivision (a) is identical with FRCP 7(a).

(b) Motions and Other Papers.

(1) *How Made.* An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) *Form.* The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) *Identification of Evidence.* When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

Comment by the Court. Paragraphs (1) and (2) are identical to FRCP 7(b) except for insertions of subheadings. Paragraph (3) follows and supersedes RPPP 8.08W(1). See Rule 43(e) for evidence to be used on motions.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Security for Costs. [Reserved——See RCW 4.84-.210 et seq.] [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Rule 7 alone, or Rule 7 combined with various other rules, supersedes RCW 4.32.020, 4.32.030, 4.32.010 (by Rules 7 through 15), 4.32.050 (by Rules 7 and 12), 4.32.060 (by Rules 7 and 12), 4.32.180 (by Rules 7 and 12), 4.32.190 (by Rules 7 and 12), 4.32.200 (by Rules 7 and 12), 4.32.210 (by Rules 7 and 8), 4.32.220 (by Rules 7 and 12), 4.40.020 (by Rules 7, 12, and 56), 4.40.030 (by Rules 7, 8, 12 and 56) and 4.56.180 (by Rules 7 and 12). In addition, Rule 7 modifies or supersedes the following statutes insofar as they relate to demurrers: RCW 2.08.190, 2.08.200, 4.16.010, 4.28.210, 4.36.010, 4.56.020.

Rule 8 General rules of pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross–claim, or third–party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

The adoption of this rule shall not be considered an adoption or approval of the forms of pleading in the Appendix of Forms approved in Rule 84, Federal Rules of Civil Procedure. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 8.]

Comment by the Court. Rule 8 combined with other rules supersedes RCW 4.36.050, 4.32.050 (by Rules 8 and 10), 4.32.080 (by Rules 8, 12 and 13), 4.32.090 (by Rules 8, 10, 12 and 13), 4.36.040

(by Rules 8 and 12), and 4.36.160 (by Rules 8 and 12). In addition, the following statutes are modified or superseded in part by Rule 8: RCW 4.16.010 (and by Rules 7, 12, and 56), 4.36.120, 4.36.220 (and by Rule 12). See also comment at the end of Rule 7 for statutes superseded by Rule 8 and other rules.

Rule 9 Pleading special matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority or a party to sue or be sued in a representative capacity, he shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Condition Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

Comment by the Court. Subdivision (c) supersedes RCW 4.36.080 insofar as the statute governs pleading but not to the extent that the statute specifies which party shall have the burden of proof.

(d) Official Document or Act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

Comment by the Court. Subdivision (e) supersedes RCW 4.36.070 insofar as the statute governs pleading but not to the extent that it specifies which party shall have the burden of proof.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Pleading Existence of City or Town. In pleading the existence of any city or town in this state, it shall be sufficient to state in such pleading that the same is an existing city or town, incorporated or organized under the laws of Washington.

Comment by the Court. Subdivision (h) is identical to and supersedes RCW 4.36.100.

(i) Pleading Ordinance. In pleading any ordinance of a city or town in this state it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial notice of the existence of such ordinance and the tenor and effect thereof.

Comment by the Court. Subdivision (i) follows and supersedes RCW 4.36.110.

(j) Pleading Private Statutes. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

Comment by the Court. Subdivision (j) is identical to and supersedes RCW 4.36.090.

(k) Foreign Law. [Reserved——See RCW 5.24.010 through 5.24.070.]

(l) Burden of Proof. Nothing in this rule shall be construed to shift or alter the burden of proof. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 9.]

Rule 10 Form of pleadings and other papers

(a) Caption. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and an identification as to the nature of the pleading or other paper.

(1) *Names of Parties.* In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(2) *Unknown Names.* When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

(3) *Unknown Heirs.* When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of the "unknown heirs" of the deceased. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, unknown parties shall be designated as "also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein."

Comment by the Court. Subdivision (a) is similar to former FRCP 10(a) and former RPPP 10(a) except for insertion of headings. See, also, RCW 4.28.140. RCW 4.28.130 is superseded.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Paper Size. All pleadings, motions, and other papers shall be plainly written or printed, and the use of letter–size paper (8 1/2 x 11 inches) is optional.

Comment by the Court. Use of letter size paper for jury instructions is mandatory. See CR Rule 51(c).

(e) Format Recommendations. It is recommended that all pleadings and other papers include or provide for the following:

(1) *Service and Filing.* Space should be left at the top of the first page to provide on the right half space for the clerk's filing stamp, and space at the left half for acknowledging the receipt of copies.

(2) *Title.* All pleadings under the space under the docket number should contain a title indicating their purpose and party presenting them. For example:

Use	Do Not Use
Complaint for Divorce	Complaint
Defendant's Motion for Support, Etc.	Motion
Order for Support	Order
Plaintiff's Trial Brief	Trial Brief

(3) *Bottom Notation.* At the left side of the bottom of each page of all pleadings and other papers an abbreviated name of the pleading or other paper should be repeated, followed by the page number. At the right side of the bottom of the first page of each pleading or other paper the name, mailing address and telephone number of the attorney or firm preparing the paper should be printed or typed.

(4) *Typed Names.* The name of all persons signing a pleading or other paper should be typed under his signature.

(5) *Headings and Subheadings.* Headings and subheadings should be used for all paragraphs which shall be numbered with Roman and/or Arabic numerals.

(6) *Numbered Paper.* Use numbered paper. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Prior: 10(a) through 10(c), RPPP Rule 10; 10(e), RPPP Rule 8.04(1) 1st and 2nd sentences.]

Comment by the Court. Rule 10 supersedes RCW 4.36.230. See, also, comment at the end of Rule 8 for additional statutes superseded by Rule 10 and other rules.

Rule 11 Signing of pleadings Every pleading of a party represented by an attorney shall be dated and signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and date his pleading and state his address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate action as for contempt. Similar action may be taken if scandalous or indecent matter is inserted. [Adopted May 5, 1967, effective July 1, 1967; amended, adopted, Dec. 7, 1973, effective January 1, 1974. Prior: RPPP Rule 11.]

Comment by the Court. The rule supersedes RCW 4.36.010, 4.36-.020 and 4.36.030.

Rule 12 Defenses and objections

(a) When Presented. A defendant shall serve his answer within the following periods:

(1) within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to Rule 4;

(2) within 20 days, exclusive of the day of service, after the service of the summons without the complaint upon him pursuant to Rule 4(d), if he fails to appear within 10 days after such service of summons;

(3) within 10 days after the service of the complaint upon him or his attorney where the defendant has appeared after service of summons and the complaint has been served in accordance with Rule 4(d);

(4) within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with Rule 4(d)(3);

(5) within 60 days after the service of the summons upon him if the summons is served upon him personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040;

(6) within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross–claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court;

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

Comment by the Court. Subdivision (a) follows RPPP 12(a) except that references to statutes have been deleted and cross references to comparable new rules have been inserted.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

Comment by the Court. Subdivision (d) follows FRCP 12(d).

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such order time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Comment by the Court. Subdivision (e) supersedes RCW 4.36.060.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. [Adopted May 5, 1967, effective July 1, 1967; subd. (a)(5) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: RPPP Rule 12.]

Rule 13 Counterclaim and cross-claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims, or to claim credits against the state or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(g) Cross–Claim Against Co–Party. A pleading may state as a cross–claim any claim by one party against a co–party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross–claim may include a claim that the party against whom it is asserted is or may be liable to the cross–claimant for all or part of a claim asserted in the action against the cross–claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross–claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgment. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross–claim may be rendered in accordance with the terms of Rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

(j) Setoff Against Assignee. The defendant in a civil action upon a contract express or implied, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

Comment by the Court. Subdivision (j) is a revision of RCW 4.32.110. RCW 4.32.110 is superseded.

(k) Other Setoff Rules. [Reserved——See RCW 4.32.120 through 4.32.150 and RCW 4.56.050 through 4.56.075.] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 13.]

Comment by the Court. In addition to RCW 4.32.110 mentioned above, Rule 13 supersedes RCW 4.32.100. For statutes superseded by Rule 13 and other rules, see comment at the end of Rule 8. Rule 13 modifies or supersedes the following statutes in part: RCW 4.56.060, 4.56.070 and 4.56.075.

Rule 14 Third–party practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third–party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third–party plaintiff need not obtain leave to make the service if he files the third–party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third–party complaint, hereinafter called the third–party defendant, shall make his defenses to the third–party plaintiff's claim as provided in Rule 12 and his counterclaims against the third–party plaintiff and cross–claims against other third–party defendants as provided in Rule 13. The third–party defendant may assert against the plaintiff any defenses which the third–party plaintiff has to the plaintiff's claim. The third–party defendant may also assert claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third–party plaintiff. The plaintiff may assert any claim against the third–party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third–party plaintiff, and the third–party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross–claims as provided in Rule 13. Any party may move to strike the third–party claim, or for its severance or separate trial. A third–party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third–party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Tort Cases. This rule shall not be applied in tort cases, to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 14.]

Rule 15 Amended and supplemental pleadings

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) Interlineations. No amendments shall be made to any pleading by erasing or adding words to the original on file, without first obtaining leave of court. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) follows and supersedes RPPP 15.04W. Rule 15 supersedes RCW 4.32.160, 4.32.240 (and by Rules 6 and 60), 4.36.190, and 4.36.250.

Rule 16 Pre-trial procedure and formulating issues

(a) Hearing Matters Considered. By order, or on the motion of any party, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the action.

(b) Pre-Trial Order. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) is identical to the last paragraph of FRCP 16 except for the addition of the subheading.

IV. PARTIES
(RULES 17-25)

Rule 17 Parties plaintiff and defendant; capacity

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

Comment by the Court. Subdivision (-) is identical to and supersedes RCW 4.04.030.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had

been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. [Reserved]
Comment by the Court. For pleading capacity see Rule 9(a).

(c) Infants, or Incompetent Persons.
(1) *Scope.* Generally this rule does not affect statutes and rules concerning the capacity of infants and incompetents to sue or be sued.
(2) *Guardian Ad Litem for Infant.* [Reserved——See RCW 4.08.050.]
(3) *Guardian Ad Litem for Incompetents.* [Reserved——See RCW 4.08.060.]

(d) Actions on Assigned Choses in Action. [Reserved——See RCW 4.08.080.]

(e) Public Corporations.
(1) *Actions By.* [Reserved——See RCW 4.08.110.]
(2) *Actions Against.* [Reserved——See RCW 4.08.120.]

(f) Tort Actions Against State. [Reserved——See RCW 4.92.] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 17.]

Rule 18 Joinder of claims and remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross–claim, or third–party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as he has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 18.]
Comment by the Court. Rule 18 supersedes RCW 4.36.150.

Rule 19 Joinder of persons needed for just adjudication

(a) Persons to Be Joined If Feasible. A person who is subject to service of process and whose joinder will not deprive the court or jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person joinable under (1) or (2) of subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons joinable under (1) or (2) of subdivision (a) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

(e) Husband and Wife Must Join——Exceptions. When a married woman is a party, her husband must be joined with her, except:
(1) When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.
(2) When the action is between herself and her husband, she may sue or be sued alone.
(3) When she is living separate and apart from her husband, she may sue or be sued alone. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 19.]
Comment by the Court. Subdivision (e) is identical to and supersedes RCW 4.08.030. Together with Rule 20 and Rule 21, Rule 19 supersedes RCW 4.08.130.

Rule 20 Permissive joinder of parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief,

and against one or more defendants according to their respective liabilities.

Comment by the Court. Subdivision (a) follows FRCP 20(a) and supersedes RCW 4.08.090.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Comment by the Court. Subdivision (b) is identical to FRCP 20(b).

(c) When Husband and Wife May Join. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglects to defend, she may defend for his right also. She may defend in all cases in which she is interested, whether she is sued with her husband or not.

Comment of the Court. Subdivision (c) follows and supersedes RCW 4.08.040.

(d) Service on Joint Defendants——Procedure After Service. When the action is against two or more defendants and the summons is served on one or more but not on all of them, the plaintiff may proceed as follows:

(1) If the action is against the defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served.

(2) If the action is against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

(3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone.

Comment by the Court. Subdivision (d) is identical to and supersedes RCW 4.28.190.

(e) Procedure to Bind Joint Debtor. [Reserved——See RCW 4.68.] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 20.]

Comment by the Court. Together with Rules 19 and 21, Rule 20 supersedes RCW 4.08.130.

Rule 21 Misjoinder and non-joinder of parties Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 21.]

Comment by the Court. Rule 21 is identical to FRCP 21.

Rule 22 Interpleader

(a) Rule. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross–claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted under other rules and statutes.

(b) Statutes. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by RCW 4.08.150 to 4.08.180, inclusive. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Rule 22 follows and supersedes RPPP 22.

Rule 23 Class actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible stands of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning

the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under paragraph (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under paragraph (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate, (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 23.]

Rule 23.1 Derivative actions by shareholders In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (a) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (b) that the action is not a collusive one to confer jurisdiction on a court of this state which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 23(b) part.]

Rule 23.2 Actions relating to unincorporated associations An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 23(b) part.]

Rule 24 Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition

of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action:

(1) when a statute confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 24.]

Comment by the Court. Subdivision (c) is amended to restore and reflect adoption of FRCP 5. Rule 24 supersedes RCW 4.08.190 and 4.08.020.

Rule 25 Substitution of parties

(a) Death.

(1) *Procedure.* If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided by Rule 5 for service of notices, and upon persons not parties in the manner provided by statute or by rule for the service of a summons. If substitution is not made within the time authorized by law, the action may be dismissed as to the deceased party.

(2) *Partial Abatement.* In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Offices; Death or Separation from Office. [Reserved] [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 25.]

V. DEPOSITIONS AND DISCOVERY (RULES 26–37)

Rule 26 General provisions governing discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, 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 his case and that he 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 court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivison (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivisions (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order if the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

[Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 26.]

Rule 27 Perpetuation of testimony

(a) Perpetuation Before Action.

(1) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any superior court may file a verified petition in the superior court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

(A) that the petitioner expects to be a party to an action cognizable in a superior court but is presently unable to bring it or cause it to be brought,

(B) the subject matter of the expected action and his interest therein,

(C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it,

(D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and

(E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided by law for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served personally in the manner provided by law, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the court shall make such order as deemed appropriate for the protection of the minor or incompetent as provided in RCW 4.08.050 and 4.08.060.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a superior court of this state.

(b) Perpetuation Pending Appeal. If an appeal has been taken from a judgment of a superior court or before the taking of an appeal if the time therefor has not expired, the superior court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the superior court. In such case the party who desires to perpetuate the testimony may make a motion in the superior court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the superior court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the superior court.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 27.]

Rule 28 Persons before whom depositions may be taken

(–) Within the State. Depositions within the state may be taken before the following officers:

(1) *Court Commissioners.* [Reserved——See RCW 2.24.040 (9) and (10).]

(2) *Superior Courts.* [Reserved——See RCW 2.28.010(7).]

(3) *Judicial Officers.* [Reserved——See RCW 2.28.060.]

(4) *Judges of Supreme and Superior Courts.* [Reserved——See RCW 2.28.080(3).]

(5) *Inferior Judicial Officers.* [Reserved——See RCW 2.28.090.]

(6) *Notaries Public.* [Reserved——See RCW 42.28.040(3).]

(7) *Special Commissions.* [Reserved——See RCW 11.20.030.]

(a) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place

where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 28.]

Rule 29 Stipulations regarding discovery procedure Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 29.]

Rule 30 Depositions upon oral examination

(a) When Depositions May be Taken. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days (exclusive of the day of service, Saturdays, Sundays and court holidays) to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. In which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters known on

which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to the matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or the deponent.

(3) The officer filing the deposition shall give prompt notice of its filing to all parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 30.]

Rule 31 Depositions upon written questions

(a) Serving Questions; Notice. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 15 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Filing. When the deposition is filed, the officer filing it shall promptly give notice thereof to all parties. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 31.]

Rule 32 Use of depositions in court proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides out of the county and more than 20 miles from the place of trial, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any State has been dismissed and another action involving the same issues and subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) Effect of Errors and Irregularities in Depositions.

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as

soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 32.]

Rule 33 Interrogatories to parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party.

Interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to have his answer typed in. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 20 days after the service of the interrogatories, except that a defendant may serve answers or objections within 40 days after service of the summons and complaint upon that defendant. The parties may stipulate or the party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 33.]

Rule 34 Production of documents and things and entry upon land for inspection and other purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and

category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 20 days after the service of the request, except that a defendant may serve a response within 40 days after service of the summons and complaint upon that defendant. The parties may stipulate or the court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 34.]

Rule 35 Physical and mental examination of persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his finding, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 35.]

Rule 36 Requests for admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 20 days after service of the request, or within such shorter or longer time as the court may allow the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 40 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the

court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 36.]

Rule 37 Failure to make discovery: Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the court in the county where the deposition was taken, or in the county where the action is pending, for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending, or on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) *Sanctions by Court in District Where Deposition is Taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe the fact was not true or the document was not genuine, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c). [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972. Prior: RPPP Rule 37.]

VI. TRIALS
(RULES 38–53)

Rule 38 Jury trial of right

(-) Defined. A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact.

Comment by the Court. This subdivision is identical to and supersedes RCW 4.44.010.

(a) Right of Jury Trial Preserved. The right of trial by jury as declared in Article 1 § 21 of the Constitution or as given by a statute shall be preserved to the parties inviolate.

Comment by the Court. Subdivision (a) follows FRCP 38(a) except that reference is changed to the state constitution and reference to United States statutes is deleted.

(b) Demand for Jury. At or prior to the time the case is called to be set for trial, any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing, by filing the demand with the clerk, and by paying the jury fee required by law. If before the case is called to be set for trial no party serves or files a demand that the case be tried by a jury of twelve, it shall be tried by a jury of six members with the concurrence of five being required to reach a verdict.

Comment by the Court. Subdivision (b) supersedes RCW 4.44.100.

(c) Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

Comment by the Court. Subdivision (c) is identical to FRCP 38(c).

(d) Waiver of Jury. The failure of a party to serve a demand as required by this rule, to file it as required by this rule, and to pay the jury fee required by law in accordance with this rule, constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Comment by the Court. Subdivision (d) is similar to FRCP 38(d). This subdivision supersedes the second sentence of RCW 4.44.100.

(e) Return of Jury Fee——When Forfeited. Whenever a case has been set for trial with a jury and the jury fee deposit has been made and such case is settled out of court prior to the time that it is called to be heard upon trial, such jury deposit shall not be returned to the party depositing the same unless the court is notified of the settlement of the case not less than 3 court days before the trial date. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967; amended, adopted Sept. 27, 1971, effective Nov. 9, 1971; subd. (b) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; subd. (e) amended, adopted July 20, 1973, effective July 20, 1973.]

Comment by the Court. Subdivision (e) follows and supersedes RPPP 38.04W and supersedes the proviso to RCW 4.44.100.

Rule 39 Trial by jury or by the court

(-) Issues——How Tried. [Reserved——See RCW 4.40.010 through 4.40.070.]

(a) By Jury.

(1) *Rule.* When trial by jury has been demanded as provided in Rule 38, the action shall be designated

upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (A) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (B) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of the state.

(2) *Questions of Fact for Jury.* [Reserved——See RCW 4.44.090.]

Comment by the Court. Paragraph (1) is identical to FRCP 39(a) except for change of reference from United States to the state.

(b) By the Court.

(1) *Rule.* Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury or any or all issues.

(2) *Questions of Law to Be Decided by Court.* [Reserved——See RCW 4.44.080.]

Comment by the Court. Paragraph (1) is identical to FRCP 39(b).

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court, upon motion or of its own initiative, may try an issue with an advisory jury or it may, with the consent of both parties, order a trial with a jury whose verdict has the same effect as if the trial by jury had been a matter of right. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (c) follows FRCP 39(c) except that references to actions against the United States are deleted.

Rule 40 Assignment of cases

(a) Notice of Trial——Note of Issue.

(1) *Of Fact.* At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least 3 days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least 5 days before the day of setting such causes for trial, file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

(2) *Of Law.* In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least 5 days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

(3) *Adjournments.* When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court.

(4) *Filing Note by Opposite Party.* The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part.

(5) *Issue May Be Brought to Trial by Either Party.* Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

Comment by the Court. Paragraphs (1) through (4) follow RCW 4.44.020. Paragraph (5) is identical to and supersedes RCW 4.44.030.

(b) Methods. Each superior court may provide by local rule for placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient.

Comment by the Court. Subdivision (b) follows FRCP 40, but omits the last sentence which gives preference to certain actions under United States statutes.

(c) Preferences. In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and cases where the defendant or a witness is in confinement shall have preference over other cases.

Comment by the Court. Subdivision (c) follows subdivision (2) of RPPP 40.04W.

(d) Trials. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a continuance. The court may in a proper case, and upon terms, reset the same.

Comment by the Court. Subdivision (d) follows and supersedes subdivision (1) of RPPP 40.04W.

(e) Continuances. A motion to continue a trial on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

Comment by the Court. Subdivision (e) follows and supersedes RCW 4.44.040.

(f) Change of Judge. [Reserved——See RCW 4.12.040 and 4.12.050.] [Adopted May 5, 1967, effective July 1, 1967.]

Rule 41 Dismissal of actions

(a) Voluntary Dismissal.

(1) *Mandatory.* Subject to the provisions of Rule 23(e) and 23.1, any action shall be dismissed by the court:

(A) By Stipulation. When all parties who have appeared so stipulate in writing; or

(B) By Plaintiff Before Resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of his opening case.

(2) *Permissive.* After plaintiff rests after his opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.

(3) *Counterclaim.* If a counterclaim has been pleaded by a defendant prior to the service upon him of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(4) *Effect.* Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

Comment by the Court. Subparagraph (1)(A) follows FRCP 41(a)(1)(ii). Subparagraph (1)(B) and paragraph (2) follow and supersede RPPP 41.08W. Paragraphs (3) and (4) follow similar provisions in FRCP 41(a).

(b) Involuntary Dismissal; Effect. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him.

(1) *Want of Prosecution on Motion of Party.* Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross–claimant, or third–party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

(2) *Dismissal on Clerk's Motion.*

(A) Notice. In all civil cases wherein there has been no action of record during the 12 months just past, the clerk of the superior court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution unless within 30 days following said mailing, action of record is made or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If such application is not made or good cause is not shown, the court shall dismiss each such case without prejudice. The cost of filing such order of dismissal with the clerk shall not be assessed against either party.

(B) Mailing Notice. The notice shall be mailed in every eligible case not later than 30 days before June 15th and December 15th of each year, and all such cases shall be presented to the court by the clerk for action thereon on or before June 30th and December 31st of each year. These deadlines shall not be interpreted as a prohibition against mailing of notice and dismissal thereon as cases may become eligible for dismissal under this rule.

(C) Applicable Date. This dismissal procedure is mandatory as to all cases filed after January 1, 1959, and permissive as to all cases filed before that date. This rule is not a limitation upon any other power that the court may have to dismiss any action upon motion or otherwise.

(3) *Defendant's Motion After Plaintiff Rests.* After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Comment by the Court. Paragraph (2) is similar to RPPP 41.04W, which is superseded. Paragraph (3) is similar to FRCP 41(b).

(c) Dismissal of Counterclaim, Cross–Claim, or Third–Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross–claim, or third–party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

Comment by the Court. Subdivision (c) is identical to FRCP 41(c).

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of taxable costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Comment by the Court. Subdivision (d) is similar to FRCP 41(d).

(e) Notice of Settlements. If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing *pro se* to notify the court *promptly* of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk. [Adopted May 5, 1967, effective July 1, 1967; amended, subdivision (e) added June 28, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) is added to enable the courts to make fuller use of all court facilities.

Rule 42 Consolidation; separate trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Comment by the Court. Subdivision (a) is identical to FRCP 42(a).

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross–claim, counterclaim, or third–party claim, or of any separate issue or of any number of claims, cross–claims, counterclaims, third–party claims, or issues, always preserving inviolate the right of trial by jury. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) follows FRCP 42(b) and supersedes RPPP 42(a).

Rule 43 Evidence

(a) Testimony.

(1) *Generally.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute.

(2) *Multiple Examinations.* When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross–examination.

Comment by the Court. Paragraph (2) follows and supersedes RPPP 43.08W.

(b) Scope of Examination and Cross–Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party.

Comment by the Court. Subdivision (b) is identical to FRCP 43(b) except that the last two clauses have been deleted.

(c) Record of Excluded Evidence [Offer of Proof]. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court, in the absence of the jury, may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

Comment by the Court. Subdivision (c) is identical to FRCP 43(c), except that the words "in the absence of the jury" have been added in the third sentence.

(d) Oaths of Witnesses.

(1) *Administration.* The oaths of all witnesses in the superior court

(A) shall be administered by the judge;

(B) shall be administered to each witness individually; and

(C) the witness shall stand while the oath is administered.

(2) *Applicability.* This rule shall not apply to civil ex parte proceedings or default divorce cases and in such cases the manner of swearing witnesses shall be as each superior court may prescribe.

(3) *Affirmation in Lieu of Oath.* Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

Comment by the Court. Paragraphs (1) and (2) follow and supersede RPPP 77.04W. Paragraph (3) is identical to FRCP 43(d).

(e) Evidence on Motions.

(1) *Generally.* When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(2) *For Injunctions, etc.* On application for injunction or motion to dissolve an injunction or discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall designate the kind of evidence to be introduced on the hearing. If the application is to be heard on affidavits, copies thereof must be served by the moving party upon the adverse party at least 3 days before the hearing. Oral testimony shall not be taken on such hearing unless permission of the court is first obtained and notice of such permission served upon the adverse party at least 3 days before the hearing. This rule shall not be construed as pertaining to applications for restraining orders or for appointment of temporary receivers.

Comment by the Court. Paragraph (1) is identical to FRCP 43(e). See also Rules 6(d) and 12(d). Paragraph (2) follows and supersedes RPPP 66.08W.

(f) Adverse Party as Witness.

(1) *Party or Managing Agent as Adverse Witness.* A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in Rule 30(a) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays,

and court holidays). For good cause shown in the manner prescribed in Rule 30(b), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc.* A party who has filed interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. The testimony of an adverse party or managing agent at the trial or on deposition or interrogatories shall not bind his adversary but may be rebutted.

(3) *Refusal to Attend and Testify; Penalties.* If a party or a managing agent refuses to attend and testify before the officer designated to take his deposition or at the trial after notice served as prescribed in Rule 30(a), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(A) to compel any person to answer any question where such answer might tend to incriminate him;

(B) nor to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(C) to limit the applicability of any other sanctions or penalties provided in Rule 37 or otherwise for failure to attend and give testimony.

Comment by the Court. Subdivision (f) follows and supersedes RPPP 43.04W.

(g) Attorney as Witness. If any attorney offers himself as a witness on behalf of his client and gives evidence on the merits, he shall not argue the case to the jury, unless by permission of the court.

Comment by the Court. Subdivision (g) follows and supersedes RPPP 43.12W.

(h) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

Comment by the Court. Subdivision (h) follows FRCP 80(c).

(i) Testimony at Former Trial. If the judge finds a witness at a former trial or proceeding to be unavailable as a witness within the conditions set forth in Rule 26(d)(3) governing the use of depositions, the testimony of such witness on the former occasion shall be admitted for use as testimony in a trial or proceeding involving substantially the same matter when (1) the testimony is offered against a party who offered it in his own behalf on the former occasion, or against the successor in interest of such party, or (2) the testimony is offered against a party against whom, or against whose predecessor in interest, it was offered on the former occasion.

Comment by the Court. Subdivision (i) is identical to and supersedes RPPP 43.16W.

(j) Statement of Facts in Retrial of Non–Jury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and duly certified as the statement of facts upon appeal, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said statement of facts as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by him in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross–examination shall have the privilege of subpoenaing any witness whose testimony is contained in such statement of facts for further cross–examination. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (j) follows and supersedes RPPP 80.04W.

Rule 44 Proof of official record

(a) Authentication.

(1) *Domestic.* An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office or official custody of the seal of the political subdivision and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office or the seal of the political subdivision.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, either admit an attested copy without final certification or permit the foreign official record to be evidenced by

an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in paragraph (a)(1) of this rule in the case of a domestic record, or complying with the requirements of paragraph (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Prior: RPPP Rule 44.]

Rule 44.1 Determination of foreign law [Reserved——See RCW 5.24.010 thru 5.24.070.]

Rule 45 Subpoena

(a) For Attendance of Witnesses. The subpoena shall be issued as follows:

(1) *Form.* To require attendance before a court of record or at the trial of an issue therein, such subpoena may be issued in the name of the state of Washington and be under the seal of the court before which the attendance is required or in which the issue is pending: *Provided*, That such subpoena may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney.

(2) *Issuance for Trial.* To require attendance before a court of record or at the trial of an issue of fact, the subpoena may be issued by the clerk in response to a praecipe or by an attorney of record.

(3) *Issuance for Deposition.* To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by an attorney of record or by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

Comment by the Court. This subdivision supersedes RCW 5.56-.020 (1) and (2).

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

Comment by the Court. Subdivision (b) is identical to FRCP 45(b), and supersedes RCW 5.56.030.

(c) Service. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

Comment by the Court. Subdivision (c) is identical to RCW 5.56-.040, which is superseded.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) *Authorization.* Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the attorney of record or the officer taking the deposition of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) *Place of Examination.* A resident of the state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to attend only in the county wherein he is served with a subpoena, or within 40 miles from the place of service or at such other convenient place as is fixed by an order of the court.

(3) *Foreign Depositions for Local Actions.* When the place of examination is in another state, territory, or country, the party desiring to take the deposition may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory or country to require the deponent to attend the examination.

(4) *Local Depositions for Foreign Actions.* When any officer or person is authorized to take depositions in this state by the law of another state, territory or country, with or without a commission, a subpoena to require attendance before such officer or person may be issued by any judge or justice of the peace of this state for attendance at any places within his jurisdiction.

Comment by the Court. Subdivision (d) supersedes RCW 5.56.020(3).

(e) Subpoena for Hearing or Trial. [Reserved——See RCW 5.56.010.]

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972.]

Comment by the Court. Subdivision (f) is identical to FRCP 45(f) and complements RCW 5.56.061, et seq. See also RCW 2.28.020 and 2.28.070.

Rule 46 Exceptions unnecessary Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. The rule is identical to FRCP 46 and supersedes RPPP 46.04W.

Rule 47 Jurors

(a) Examination of Jurors. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

Comment by the Court. Subdivision (a) is intended to preserve the present Washington practice.

(b) Alternate Jurors. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(c) Procedure When Juror Becomes Ill. [Reserved——See RCW 4.44.290.]

(d) Impanelling Jury. [Reserved——See RCW 4.44.120.]

(e) Challenge.

(1) *Kind and Number.* [Reserved——See RCW 4.44.130.]

(2) *Peremptory Challenges Defined.* [Reserved——See RCW 4.44.140.]

(3) *Challenges for Cause.* [Reserved——See RCW 4.44.150.]

(4) *General Causes of Challenge.* [Reserved——See RCW 4.44.160.]

(5) *Particular Causes of Challenge.* [Reserved——See RCW 4.44.170.]

(6) *Implied Bias Defined.* [Reserved——See RCW 4.44.180.]

(7) *Challenge for Actual Bias.* [Reserved——See RCW 4.44.190.]

(8) *Exemption not Cause of Challenge.* [Reserved——See RCW 4.44.200.]

(9) *Peremptory Challenges.* [Reserved——See RCW 4.44.210.]

(10) *Order of Taking Challenges.* [Reserved——See RCW 4.44.220.]

(11) *Objections to Challenges.* [Reserved——See RCW 4.44.230.]

(12) *Trial of Challenge.* [Reserved——See RCW 4.44.240.]

(13) *Challenge, Objection and Denial May Be Oral.* [Reserved——See RCW 4.44.250.]

(f) Oath of Jurors. [Reserved——See RCW 4.44.260.]

(g) View of Premises by Jury. [Reserved——See RCW 4.44.270.]

(h) Admonitions to Jurors. [Reserved——See RCW 4.44.280.]

(i) Care of Jury While Deliberating. [Reserved——See RCW 4.44.300.]

(j) Note-taking by Jurors. With the permission of the trial judge, jurors may take written notes regarding the evidence presented to them and keep these notes with them when they retire for their deliberation. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered. [Adopted May 5, 1967, effective July 1, 1967; subd. (j) adopted April 9, 1974, effective July 1, 1974.]

Rule 48 Juries of less than twelve The parties may stipulate that the jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to FRCP 48. See Washington Constitution Article I § 21.

Rule 49 Verdicts

(–) General Verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

Comment by the Court. Subdivision (–) is identical to and supersedes the second sentence of RCW 4.44.410.

(a) Special Verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his rights to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

Comment by the Court. Subdivision (a) is identical to FRCP 49(a) and supersedes the third sentence of RCW 4.44.410.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers or harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Comment by the Court. Subdivision (b) is identical to FRCP 49(b).

(c) Discharge of Jury.

(1) *Without Verdict.* [Reserved——See RCW 4.44.330.]

(2) *Effect of Discharge.* [Reserved——See RCW 4.44.340.]

(d) Court Recess During Deliberation. [Reserved——See RCW 4.44.350.]

(e) Proceedings When Jury Have Agreed. [Reserved——See RCW 4.44.360.]

(f) Manner of Giving Verdict. [Reserved——See RCW 4.44.370.]

(g) Ten Jurors in Civil Cases. [Reserved——See RCW 4.44.380.]

(h) Jury May Be Polled. [Reserved——See RCW 4.44.390.]

(i) Correction of Informal Verdict. [Reserved——See RCW 4.44.400.]

(j) Jury to Assess Amount of Recovery. [Reserved——See RCW 4.44.450.]

(k) Receiving Verdict and Discharging Jury. [Reserved——See RCW 4.44.460.] [Adopted May 5, 1967, effective July 1, 1967. Prior: Rule 49(a) and (b), RPPP.]

Rule 50 Motion for a directed verdict and for judgment notwithstanding the verdict

(a) Motion for Directed Verdict; When Made; Effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific ground therefor.

Comment by the Court. Subdivision (a) is similar to FRCP 50(a) and supersedes RPPP 50. Subdivision (a) does not supersede RCW 4.56.150.

(b) Motion for Judgment Notwithstanding the Verdict. Not later than 5 days after the entry of verdict or after the jury is discharged if no verdict is returned, whether or not he has moved for a directed verdict and whether or not a verdict was returned, a party may move for judgment notwithstanding the verdict. A motion in the alternative for a new trial may be joined with this motion.

(c) Alternative Motions for Judgment Notwithstanding Verdict or for a New Trial——Effect of Appeal. Whenever a motion for a judgment notwithstanding the verdict and, in the alternative, for a new trial shall be filed and submitted in any superior court in any civil cause tried before a jury, and such superior court shall enter an order granting such motion for judgment notwithstanding the verdict, such court shall at the same time, in the alternative, pass upon and decide in the same order such motion for a new trial; such ruling upon said motion for a new trial not to become effective unless and until the order granting the motion for judgment notwithstanding the verdict shall thereafter be reversed, vacated, or set aside in the manner provided by law. An appeal to the Supreme Court from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the Supreme Court shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial. [Adopted May 5, 1967,

amended June 28, 1967, effective July 1, 1967. Prior: 50(a), RPPP Rule 50; 50(c) and (d), RPPP Rule 59.08W.]

Rule 51 Instructions to jury and deliberation

(a) Proposed. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted when the case is called for trial. Proposed instructions upon questions of law developed by the evidence, which could not reasonably be anticipated, may be submitted at any time before the court has instructed the jury.

Comment by the Court. Subdivision (a) follows paragraph (1) and supersedes paragraphs (1) and (2) of RPPP 51.04W.

(b) Submission. Submission of proposed instructions shall be by delivering the original and 3 or more copies as required by the trial judge, by filing 1 copy with the clerk, identified as the party's proposed instructions, and by serving 1 copy upon each opposing counsel.

Comment by the Court. Subdivision (b) follows and supersedes paragraph (1) of RPPP 51.04W.

(c) Form. Each proposed instruction shall be typewritten or printed on a separate sheet of lettersize (8 1/2 x 11 inches) paper. Except for 1 copy of each, the instructions delivered to the trial court shall not be numbered or identified as to the proposed party. One copy delivered to the trial court, and the copy filed with the clerk, and copies served on each opposing counsel shall be numbered and identified as to proposing party, and may contain supporting annotations.

Comment by the Court. Except for requiring instructions to be on lettersize paper, subdivision (c) follows and supersedes paragraph (3) of RPPP 51.04W.

(d) Published Instructions.

(1) *Request.* Any instruction appearing in the Washington Pattern Instructions (WPI) may be requested by counsel who must submit the proper number of copies of the requested instruction, identified by number as in (c) of this rule, in the form he wishes it read to the jury. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the written requested instruction shall use the choice of wording which is being requested.

(2) *Record on Appeal.* Where the refusal to give a requested instruction is ground for appeal, the appealing party shall place a copy of the requested instruction in the statement of facts.

(3) *Local Option.* Any superior court may adopt a local rule to substitute for CR 51(d)(1) and to allow instructions appearing in the Washington Pattern Instructions (WPI) to be requested by reference to the published number. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the local rule must require that the written request which designates the number of the instruction shall also designate the choice of wording which is being requested.

(e) Disregarding Requests. The trial court may disregard any proposed instruction not submitted in accordance with this rule.

Comment by the Court. Subdivision (e) follows and supersedes paragraph (4) of RPPP 51.04W.

(f) Objections to Instruction. Before instructing the jury, the court shall supply counsel with copies of its proposed instructions which shall be numbered. Counsel shall then be afforded an opportunity in the absence of the jury to make objections to the giving of any instruction and to the refusal to give a requested instruction. The objector shall state distinctly the matter to which he objects and the grounds of his objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.

Comment by the Court. Subdivision (f) follows and supersedes RPPP 51.08W and 51.16W.

(g) Instructing the Jury and Argument. After counsel have completed their objections and the court has made any modifications deemed appropriate, the court shall then provide each counsel with a copy of the instructions in their final form. The court shall then read the instructions to the jury. The plaintiff or party having the burden of proof may then address the jury upon the evidence, and the law as contained in the court's instructions; after which the adverse party may address the jury; followed by the rebuttal of the party first addressing the jury.

Comment by the Court. Subdivision (g) follows and supersedes RPPP 51.08W.

(h) Deliberation. After argument, the jury shall retire to consider their verdict. In addition to the written instructions given, the jury shall take with them all exhibits received in evidence, except depositions. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room.

Comment by the Court. Subdivision (h) follows and supersedes RPPP 51.12W and 51.08W.

(i) Further Instructions. After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. Any additional instruction upon any point of law shall be given in writing.

Comment by the Court. Subdivision (i) follows and supersedes RCW 4.44.320.

(j) Comments Upon Evidence. Judges shall not instruct with respect to matters of fact, nor comment thereon. [Adopted March 31, 1967, effective April 7, 1967. Readopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Subsection (d) amended, adopted October 27, 1967, effective November 3, 1967. Subsection (d)(3) adopted March 12, 1968, effective March 29, 1968.]

Comment by the Court. Subdivision (j) follows Article 4 § 16 of the Washington Constitution.

New Civil Rule 51——Supersedes: RPPP 51.04W, 51.12W and 51.16W; and RCW 4.44.320.

Rule 52 Decisions, findings and conclusions

(a) Requirements.

(1) *Generally.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Judgment shall be entered pursuant to Rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law.

(2) *Specifically Required.* Without in any way limiting the requirements of paragraph (1), findings and conclusions are required:

(A) Temporary Injunctions. In granting or refusing temporary injunctions.

(B) Domestic Relations. In connection with all final decisions in adoption, custody, and divorce proceedings, whether heard ex parte or not.

(C) Other. In connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court.

(3) *Proposed.* Requests for proposed findings of fact are not necessary for review.

(4) *Form.* If a written opinion or memorandum of decision is filed, it will be sufficient if formal findings of fact and conclusions of law are included.

(5) *When Unnecessary.* Findings of fact and conclusions of law are not necessary:

(A) Stipulation. Where all parties stipulate in writing that there will be no appeal.

(B) Decision on Motions. On decisions of motions under Rules 12 or 56 or any other motion, except as provided in Rules 41(b)(3) and 55(b)(2).

(C) Temporary Restraining Orders. On the issuance of temporary restraining orders issued ex parte.

Comment by the Court. Subdivision (a) follows FRCP 52(a) as amended.

(b) Amendment of Findings. Upon motion of a party made not later than 5 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Presentation. Unless an emergency is shown to exist, the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions.

(d) Judgment Without Findings, etc. A judgment entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal. After vacation, the judgment shall not be re-entered until findings are entered pursuant to this rule.

(e) Time Limit for Decision. [Reserved——See RCW 2.08.240.] [Adopted May 5, 1967, effective July 1, 1967. Prior: 52(a)(1), RPPP Rule 52.04W; 52(c) and (d), RPPP Rule 52.08W.]

Rule 53 Masters [Reserved]

Rule 53.1 Referees

(a) Referees——Definitions and Powers. [Reserved——See RCW 2.24.060.]

(b) Reference by Consent——Right to Jury Trial. [Reserved——See RCW 4.48.010.]

(c) Reference Without Consent. [Reserved——See RCW 4.48.020.]

(d) To Whom Reference May Be Ordered. [Reserved——See RCW 4.48.030.]

(e) Qualifications of Referees. [Reserved——See RCW 4.48.040.]

(f) Challenges to Referees. [Reserved——See RCW 4.48.050.]

(g) Trial Procedure——Powers of Referee. [Reserved——See RCW 4.48.060.]

(h) Referee's Report——Contents——Evidence, Filing of, Frivolous. [Reserved——See RCW 4.48.070.]

(i) Proceedings on Filing of Report. [Reserved——See RCW 4.48.080.]

(j) Judgment on Referee's Report. [Reserved——See RCW 4.48.090.]

(k) Fees of Referees. [Reserved——See RCW 4.48.100.]

Rule 53.2 Court commissioners

(a) Appointment of Court Commissioners——Qualifications——Term of Office. [Reserved——See RCW 2.24.010.]

(b) Oath. [Reserved——See RCW 2.24.020.]

(c) Salary. [Reserved——See RCW 2.24.030.]

(d) Powers of Commissioners——Fees. [Reserved——See RCW 2.24.040 as amended 1963.]

(e) Revision by Court. [Reserved——See RCW 2.24.050.]

VII. JUDGMENT (RULES 54-63)

Rule 54 Judgments and costs

(a) Definitions.

(1) *Judgment.* A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in Rule 58.

(2) *Order.* Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.

Comment by the Court. Paragraph (1) combines RCW 4.56.010 and FRCP 54(a) and supersedes RCW 4.56.010.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Comment by the Court. Except for the addition of the words "in the judgment," subdivision (b) is identical to FRCP 54(b) and supersedes RPPP 42(c), and also supersedes RCW 4.56.030 and 4.56.040. For judgments on setoffs, see RCW 4.32.120 through 4.32.150 and RCW 4.56.050 through 4.56.075. It should be noted that RCW 4.56.050 applies to RCW 4.32.130; RCW 4.56.060 and 4.56.070 apply to RCW 4.32.110 (in part superseded), 4.32.120, 4.32.130 and 4.32.140; and RCW 4.56.075 applies to RCW 4.32-.130 and 4.32.140.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

Comment by the Court. Subdivision (c) is identical to FRCP 54(c).

(d) Costs. Costs shall be fixed and allowed as provided in RCW ch. 4.84 or by any other applicable statute.

(e) Preparation of Order or Judgment. The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and his attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in paragraph (f)(2).

(f) Presentation.

(1) *Time.* Judgments may be presented at the same time as the findings of fact and conclusions of law under Rule 52.

(2) *Notice of Presentation.* No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:

(A) Emergency. An emergency is shown to exist.

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.

(C) After Verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court. [Adopted May 5, 1967, effective July 1, 1967. Prior: 54(e), RPPP Rule 54.04W and Rule 77.08W (1st sentence).]

Rule 55 Default and judgment

(a) Entry of Default.

(1) *Motion.* When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.

(2) *Pleading After Default.* Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously had appeared or not. If the party had appeared before the motion is filed, he may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party had not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this Rule 55.

(3) *Notice.* Any party who has appeared in the action for any purpose, shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed, is not entitled to a notice of the motion, except as provided in Rule 55(f)(2)(A).

Comment by the Court. Paragraph (1) follows FRCP 55(a). Paragraph (2) supersedes RPPP 55.04W. Paragraph (3) supersedes RCW 4.28.220.

(b) Entry of Default Judgment. As limited in Rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by paragraph (b)(4):

(1) *When Amount Certain.* When the claim against a party, whose default has been entered under subdivision (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if he is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this paragraph even though reasonable attorney fees are requested and allowed.

(2) *When Amount Uncertain.* If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the

amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this paragraph.

(3) *When Service by Publication.* In an action where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of service by publication, apply for judgment; and the court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to.

(4) *Costs and Proof of Service.* Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.

Comment by the Court. Paragraph (1) follows FRCP 55(b)(1) and supersedes RCW 4.56.160(1). Paragraph (2) follows the third sentence of FRCP 55(b)(2) and supersedes RCW 4.56.160(2). Paragraph (3) follows and supersedes RCW 4.56.160(3).

(c) Setting Aside Default. For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

Comment by the Court. Subdivision (c) follows FRCP 55(c) and supersedes RCW 4.56.170.

(d) Plaintiffs, Counterclaimants, Cross–Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third–party plaintiff, or a party who has pleaded a cross–claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

Comment by the Court. Subdivision (d) is identical to FRCP 55(d).

(e) Judgment Against State. [Reserved.]

(f) How Made After Elapse of Year.

(1) *Notice.* When more than one year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry. Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

(2) *Service.* Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows:

(A) by service upon the attorney of record;

(B) if there is no attorney of record, then by service upon the defendant by certified mail with return receipt of said service to be attached to the affidavit in support of the application; or

(C) by a personal service upon the defendant in the same manner provided for service of process.

(D) If service of notice cannot be made under subparagraphs (A) and (C), the notice may be given by publication in a newspaper of general circulation in the county in which the action is pending for one publication, and by mailing a copy to the last known address of each defendant. Both the publication and mailing shall be done 10 days prior to the hearing. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (f) follows and supersedes RPPP 55.08W.

Rule 56 Summary judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross–claim, or to obtain a declaratory judgment may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross–claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party, prior to the day of hearing, may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached

thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorneys' fees, and any offending party or attorney may be adjudged guilty of contempt. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Rule 56 is identical to RPPP 56, which is superseded.

Rule 57 Declaratory judgments The procedure for obtaining a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, RCW 7.24, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to FRCP 57 except that reference is made to the Washington Uniform Declaratory Judgment Act. See also RCW 34.04.070.

Rule 58 Entry of judgment

(a) When. Unless the court otherwise directs and subject to the provisions of Rule 54(b), all judgments shall be entered immediately after they are signed by the judge.

(b) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier permits the judgment to be filed with him as authorized by Rule 5(e).

(c) Notice of Entry. [Reserved——See Rule 54(f).]

(d) [Reserved]

Comment by the Court. Subdivisions (a) and (b) together with Rule 59(b) supersede RCW 4.64.010.

(e) Judgment by Confession. [Reserved——See RCW 4.60.]

(f) Assignment of Judgment. [Reserved——See RCW 4.56.090.]

(g) Interest on Judgments. [Reserved——See RCW 4.56.110.]

(h) Satisfaction of Judgments. [Reserved——See RCW 4.56.100.]

(i) Lien of Judgment. [Reserved——See RCW 4.56.190.]

(j) Commencement of Lien on Real Estate. [Reserved——See RCW 4.56.200.]

(k) Cessation of Lien——Extension Prohibited. [Reserved——See RCW 4.56.210.]

(l) Revival of Judgments. [Reserved——See RCW 4.56.225.] [Adopted May 5, 1967, effective July 1, 1967.]

Rule 59 New trial and amendment of judgments

(a) Grounds for Reconsideration or New Trial. The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application;

(9) That substantial justice has not been done.

Comment by the Court. Subdivision (a) follows the first paragraph of RPPP 59.04W.

(b) Time for Motion. A motion for reconsideration and/or for a new trial may be served and filed after the verdict is received in a case tried by a jury or after the oral or written decision in a case tried to the court. No motion for reconsideration or for a new trial may be served more than 5 days after the entry of the verdict or oral or written decision.

Comment by the Court. Subdivision (b) supersedes RCW 4.64.010.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 5 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

Comment by the Court. Subdivision (c) follows FRCP 59(c).

(d) On Initiative of Court. Not later than 5 days after entry of judgment, the court of its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds thereof.

Comment by the Court. Subdivision (d) follows FRCP 59(d).

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is served and filed, the judge by whom it is to be heard may on his own motion or on application determine:

(1) *Time of Hearing.* Whether the motion shall be heard before the entry of judgment;

(2) *Consolidation of Hearings.* Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and

(3) *Nature of Hearing.* Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

Comment by the Court. Subdivision (e) supersedes RPPP 8.08W(3).

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record which cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

Comment by the Court. Subdivision (f) supersedes the next to the last paragraph of RPPP 59.04W.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusion of law or make new findings and conclusions, and direct the entry of a new judgment.

Comment by the Court. Subdivision (g) is identical to the last sentence of FRCP 59(a).

(h) Motion to Alter or Amend Judgment. A motion to alter or amend the judgment shall be served not later than 5 days after entry of the judgment.

Comment by the Court. Subdivision (h) follows FRCP 59(e).

(i) Alternative Motions, etc. Alternative motions for judgment notwithstanding the verdict and for a new trial may be made in accordance with Rule 50(c) and (d).

(j) Limit on Motions. If a motion for reconsideration, or for a new trial, or for judgment notwithstanding the verdict, is made and heard before the entry of the judgment, no further motion may be made for a new trial nor pursuant to subdivisions (g), (h), and (i) of this rule, nor under Rule 52(b), without leave of court first obtained for good cause shown. [Adopted May 5, 1967, effective July 1, 1967. Prior: 59(a), 59(b) and 59(f), RPPP Rule 59.04W; 59(e), RPPP Rule 8.08W(3); 59(i), RPPP Rule 59.08W Part.]

Rule 60 Relief from judgment or order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is filed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court having jurisdiction of the cause.

Comment by the Court. Subdivision (a) follows FRCP 60(a) and supersedes RPPP 60.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after

the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this subdivision (b) does not affect the finality of the judgment or suspend its operation.

Comment by the Court. Subdivision (b) follows FRCP 60(b), except that paragraph (2) and paragraphs (7) through (10), and part of paragraph (1), have been added from RCW 4.72.010. The last sentence of FRCP 60(b) has been separated into subdivisions (c) and (d), respectively. Subdivision (b) supersedes RCW 4.32.240, 4.72.010, 4.72.020, 4.72.030, and 4.72.040, to the extent that those sections cover relief from judgments.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished——Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Comment by the Court. Subdivision (d) follows the last sentence of FRCP 60(b).

(e) Procedure on Vacation of Judgment.

(1) *Motion.* Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) *Notice.* Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) *Service.* The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) *Statutes.* Except as modified by this rule, RCW 4.72.010–.090 shall remain in full force and effect. [Adopted May 5, 1967, effective July 1, 1967; amended Sept. 26, 1972, effective Sept. 26, 1972.]

Comment by the Court. Subdivision (e) follows and supersedes RPPP 60.04W and RCW 4.72.040. Reference to "petition" in RCW 4.72.050 is superseded. RCW 4.32.240 is superseded.

Rule 61 Harmless Error [Reserved.]

Rule 62 Stay of proceedings to enforce a judgment

(a) Automatic Stays. No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 5 days after its entry. Unless otherwise ordered, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

Comment by the Court. Subdivision (a) follows FRCP 62(a).

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Comment by the Court. Subdivision (b) follows FRCP 62(b).

(c) Injunction Pending Appeal. Except as provided in Rule on Appeal 24, when an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Comment by the Court. Subdivision (c) follows the first sentence of FRCP 62(c).

(d) Stay Upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule.

Comment by the Court. Subdivision (d) follows FRCP 62(d). See Rule on Appeal 23.

(e) Stay in Favor of State. When an appeal is taken by the state or an officer or agency thereof or by direction of any department of the state and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

Comment by the Court. Subdivision (e) follows FRCP 62(e).

(f) Other Stays. This rule does not limit the right of a party to stay otherwise provided by statute or rule.

Comment by the Court. Subdivision (f) follows FRCP 62(f). See also RCW 6.08.

(g) Power of Supreme Court Not Limited. The provisions in this rule do not limit any power of the supreme court or of a judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Comment by the Court. Subdivision (g) follows FRCP 62(g).

(h) Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (h) follows FRCP 62(h) and supersedes RPPP 42(c).

Rule 63 Judges

(a) Powers. See Rule 77.

(b) Disability of a Judge. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) is identical to FRCP 63.

VIII. PROVISIONAL AND FINAL REMEDIES (RULES 64–71)

Rule 64 Seizure of person or property At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 64.

Rule 65 Injunctions

(a) Preliminary Injunction.

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.

(2) *Consolidation of Hearing With Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This paragraph shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. Except where the court in issuing orders pursuant to Laws of 1973, 1st Ex. Sess., Ch. 157 directs otherwise, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the State of Washington, municipal corporations or political subdivisions of the State of Washington.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

Comment by the Court. Subdivisions (a), (b), and (c) follow FRCP 65(a), (b), and (c).

(d) Form and Scope. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall

describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Statutes. These rules are intended to supplement and not to modify any statute prescribing the basis for obtaining injunctive relief. These rules shall prevail over statutes if there are procedural conflicts. [Adopted May 5, 1967, effective July 1, 1967; Subd. (c) amended, adopted April 9, 1974, effective July 1, 1974.]

Rule 65.1 Security: Proceedings against sureties Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 65.1.

Rule 66 Receivership proceedings

(a) Generally. Receivership proceedings shall be in accordance with the practice heretofore followed in the superior court or as provided by local rules. In all other respects, the action in which the receiver is sought or which is brought by or against a receiver is governed by these rules.

Comment by the Court. Subdivision (a) follows the second and third sentences of FRCP 66.

(b) Dismissal. An action wherein a receiver has been appointed shall not be dismissed except by order of the court.

Comment by the Court. Subdivision (b) follows the first sentence of FRCP 66.

(c) Notice to Creditors. A general receiver appointed to liquidate and wind up affairs shall, under the direction of the court, give notice to the creditors of the corporation, of the copartnership, or of the individual, by publication in a newspaper of general circulation in the county in which the action is pending, once each week for 3 weeks, requiring such creditors to file their claims, duly verified, with the receiver, his attorney, or the clerk of the court, within 30 days from the date of first publication of such notice. If necessary to afford proper notice to such creditors, the court may by order enlarge the time for such publication or direct publication of such notice in other counties. In addition to such publication, the receiver shall give actual notice by mail at their last known addresses to all persons and parties to him known to be or to claim to be creditors.

Comment by the Court. Subdivision (c) is identical to RPPP 66.04W(1) which is superseded.

(d) Request for Special Notices. At any time after a receiver is appointed, any person interested in said receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that he desires special notice of any and all of the following named matters, steps or proceedings in the administration of said receivership, to–wit:

(1) Filing of petitions for sales, leases, or mortgages of any property in the receivership.

(2) Filing of accounts.

(3) Filing of petitions for removal or discharge of receiver.

(4) Such other matters as are officially requested and approved by the court.

Such request shall state the post–office address of such person, or his attorney.

Comment by the Court. Subdivision (d) follows the first paragraph of RPPP 66.04W(2) which is superseded.

(e) Notices and Hearings. Notice of any of the proceedings set out in subdivision (d) of the rule (except petitions for the sale of perishable property, or other personal property, the keeping of which will involve expense or loss) shall be addressed to such person, or his attorney, at his stated post office address, and deposited in the United States Post Office, with the postage thereon prepaid, at least 5 days before the hearing on any of the matters above described; or personal service of such notice may be made on such person or his attorney not less than 5 days before such hearing; and proof of mailing or personal service must be filed with the clerk before the hearing. If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order of judgment, and such judgment shall be final and conclusive. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (e) follows the second paragraph of RPPP 66.04W(2) which is superseded.

Rule 67 Deposit in court In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of RCW 4.44.480 through 4.44.500 or any like statute or rule. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 67.

Rule 68 Offer of judgment At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter

judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 68.

Rule 69 Execution

(a) Procedure. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state as authorized in RCW 6.04, 6.08, 6.12, 6.16, 6.20, 6.24, 6.32, 6.36, and any other applicable statutes.

(b) Supplemental Proceedings. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by RCW 6.32. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule follows FRCP 69(a).

Rule 70 Judgment for specific acts; vesting title If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 70.]

Comment by the Court. This rule follows FRCP 70. See also RCW 6.28.

Rule 71 [Reserved]

IX. APPEALS (RULES 72–76) [RESERVED]

X. SUPERIOR COURTS AND CLERKS (RULES 77–80)

Rule 77 Superior courts and judicial officers

(a) Original Jurisdiction. [Reserved——See RCW 2.08.010.]

(b) Powers of Superior Courts.

(1) *Powers of Court in Conduct of Judicial Proceedings.* [Reserved——See RCW 2.28.010.]

(2) *Punishment for Contempt.* [Reserved——See RCW 2.28.020.]

(3) *Implied Powers.* [Reserved——See RCW 2.28.150.]

(c) Powers of Judicial Officers.

(1) *Judges Distinguished from Court.* [Reserved——See RCW 2.28.050.]

(2) *Judicial Officers Defined——When Disqualified.* [Reserved——See RCW 2.28.030.] See also Rule 40(e) for change of Judge.

(3) *Powers of Judicial Officers.* [Reserved——See RCW 2.28.060.]

(4) *Judicial Officer May Punish for Contempt.* [Reserved——See RCW 2.28.070.]

(5) *Powers of Judges of Supreme and Superior Courts.* [Reserved——See RCW 2.28.080.]

(6) *Powers of Inferior Judicial Officers.* [Reserved——See RCW 2.28.090.]

(7) *Powers of Judge in Counties of His District.* [Reserved——See RCW 2.08.190.]

(8) *Visiting Judges.*

(A) Assignments.

(i) Visiting Judges at Direction of Governor. [Reserved——See RCW 2.08.140.]

(ii) Visiting Judges at Request of judge or judges. [Reserved——See RCW 2.08.140 and 2.08.150.]

(iii) Court Administrator——Make Recommendations. [Reserved——See RCW 2.56.030.]

(iv) Duty of Judges to Comply with Chief Justice's Direction. [Reserved——See RCW 2.56.040.]

(B) Powers. Whenever a visiting judge has heard or tried any case or matter and has departed from the county, he may require the argument on any post-trial motion to be submitted to him on briefs at such place within the state as he may designate and he may sign findings of fact, conclusions of law, judgments and post-trial orders anywhere within the state. See also RCW 2.08.140 and 2.08.150.

(9) *Judges Pro Tempore.* [Reserved——See RCW 2.08.180.]

(10) *Change of Judge.* [Reserved——See RCW 4.12-.040 and 4.12.050.]

(11) *Court May Fix Amount of Bond in Civil Actions.* [Reserved——See RCW 4.44.470.]

(d) Superior Courts Always Open. The superior courts are courts of record, and shall be always open, except on non-judicial days.

(e) No Court on Legal Holidays——Exceptions. [Reserved——See RCW 2.28.100.]

(f) Sessions. The superior courts shall hold regular and special sessions at the county seats of the several counties at such times as the judges may determine.

(g) Adjournments.
(1) *Power.* [Reserved——See RCW 2.28.120.]
(2) *Automatic.* [Reserved——See RCW 2.28.110.]
(3) *Effect.* [Reserved——See RCW 2.08.040.]

(h) Summer Recess. No cases shall be tried between the first day of July and the first day of September of each year except by order of the court or by consent of all parties and of the court.

(i) Sessions Where More Than One Judge Sits——Effect of Decrees, Orders, etc. [Reserved——See RCW 2.08.160.]

(j) Trials and Hearings; Orders in Chambers. Except as otherwise authorized by these rules or by statute, all trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county; but no hearing, other than one ex parte, shall be conducted outside the county in which the cause or proceedings is pending without the consent of all parties affected thereby.

(k) Motion Day——Local Rules. Unless local conditions make it impracticable, the superior court in each county shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

(l) Submission on Briefs. To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(m) Stipulations. See Rule 16(c).

(n) Seal of Court. [Reserved——See RCW 2.08.050.] [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Prior: 77(h) and 77(k), RPPP 77.24W and 78.04W.]

Rule 78 Clerks

(a) Powers and Duties of Clerks. [Reserved——See RCW 2.32.050.]

(b) Office Hours. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays.

Comment by the Court. Subdivision (b) follows the first sentence of FRCP 77(c). See also RCW 1.16.050.

(c) Orders by Clerk. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

Comment by the Court. Subdivision (c) follows the second sentence of FRCP 77(c).

(d) Receipt and Publication of Depositions. Upon the receipt of a deposition in any case, the clerk shall forthwith endorse the date of the reception upon the wrapper thereof, and shall enter the same upon the appearance docket. Such deposition shall remain unopened until the court shall order the same to be published, which will be at the request of either party. When publication is ordered, the clerk shall endorse upon the same: "This deposition filed [giving the date on the wrapper] and published this _____ day _____, 19__." The wrapper shall be preserved by the clerk without unnecessary mutilation.

Comment by the Court. Subdivision (d) is identical to and supersedes RPPP 77.16W(1).

(e) Entry of Judgments and Costs. The clerk shall enter judgment or decree pursuant to the provisions of Rule 58 and the same shall then be entered for the sum found due or the relief awarded, with costs and disbursements, if any, to be taxed. Entry of judgment shall not be delayed for the taxing of costs. If no cost bill is filed by the party to whom costs are awarded within 10 days after the entry of the judgment or decree, the clerk shall proceed to tax the following costs and disbursements, namely:

(1) The statutory attorneys' fee,
(2) The clerk's fee,
(3) The sheriff's fee, and
(4) Other disbursements, the amount whereof plainly appears on the papers in the case, and shall enter the sum thereof in the judgment entry and execution docket. If a cost bill is filed, he shall enter as the amount to be recovered the amount claimed in such cost bill, and no motion to retax costs shall be considered unless the same be filed within 6 days after the filing of the cost bill.

Comment by the Court. Subdivision (e) follows and supersedes RPPP 77.16W(2).

(f) Bonds. The clerk shall at once upon the filing of a bond (except bond for costs) enter the same at large upon the journal. The clerk shall endorse upon every affidavit or undertaking filed to procure a writ of attachment, the day, hour, and minute of filing thereof. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (f) is identical to and supersedes RPPP 77.16W(3).

Rule 79 Books and records kept by the clerk.

(a) Civil Docket. [Reserved.]

(b) Civil Judgments and Orders.
(1) *Generally.* [Reserved.]

(2) *Entry of Judgment in Journal.* [Reserved——See RCW 4.64.030.]

(3) *Judgment Roll.* [Reserved——See RCW 4.64.040.]

(4) *Identification of Judgment Roll.* [Reserved——See RCW 4.64.050.]

(5) *Execution Docket.* [Reserved——See RCW 4.64.060.

(6) *Entry of Verdict in Execution Docket.* [Reserved——See RCW 4.64.020.

(7) *Entries in Execution Docket.* [Reserved——See RCW 4.64.080.]

(8) *Transcript of Justice Docket.* [Reserved——See RCW 4.64.110.]

(9) *Entry of Abstract or Transcript of Judgment.* [Reserved——See RCW 4.64.120.]

(10) *Abstract of Judgment.* [Reserved——See RCW 4.64.090.]

(11) *Abstract of Verdict——Cessation of Lien.* [Reserved——See RCW 4.64.100.]

(c) Indices; Calendars. [Reserved.]

(d) Other Books and Records of Clerk. [Reserved.]

(e) Destruction of Records. [Reserved——See RCW 36.23.070.]

(f) List of Pending Decisions. The Clerk of each county shall maintain a permanent, public record showing each case submitted to a judge and not yet decided. Said list shall clearly show what, if any, further action is to be taken by any party or counsel and when said action should be taken. Said list shall be called to the attention of every judge in said county on the first Monday of each calendar month. Any case which shall have been submitted to any visiting judge and not yet decided shall be called to the attention of such visiting judge by mail on said dates. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967; subsection (f) adopted Nov. 25, 1968, effective Nov. 25, 1968.]

Rule 80 Court reporters

(a) [Reserved.]

(b) Electronic Recording. In any civil or criminal proceedings, electronic or mechanical recording devices may be used to record oral testimony and other oral proceedings in lieu of or supplementary to causing shorthand notes thereof to be taken. In ex parte matters the use of such a device shall rest within the sole discretion of the court. In controverted matters, the use of recording devices shall be at the discretion of the court, unless a party of record or his counsel makes timely objection prior to the commencement of the proceedings. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

XI. GENERAL PROVISIONS (RULES 81–86)

Rule 81 Applicability in general

(a) To What Proceedings Applicable. Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings. Where statutes relating to special proceedings provide for procedure under former statutes applicable generally to civil actions, the procedure shall be governed by these rules.

(b) Conflicting Statutes and Rules. Subject to the provisions of subdivision (a) of this rule, these rules supersede all procedural statutes and other rules that may be in conflict. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (b) follows RPPP 86.

Rule 82 Venue

(a) Non–Resident. An action against a non–resident of this state may be brought:

(1) In any county in which service of process may be had, or

(2) In a county in which the acts, or any of them, were done which gave rise to service under RCW 4.28-.180 and 4.28.185, or

(3) In the county in which the plaintiffs, or any of them, reside.

Comment by the Court. Subdivision (a) is identical to and supersedes RPPP 82.04W(b).

(b) Request——Waiver. If an action is brought in the wrong county, the action may nevertheless be tried therein unless the defendant, pursuant to the provisions of Rule 12, request that the trial be held in the proper county and files an affidavit of merits. [Adopted May 5, 1967, effective July 1, 1967.]

Rule 83 Local rules of superior court

(a) Adoption. Each superior court by action of a majority of the judges may from time to time make and amend local rules governing its practice not inconsistent with these rules.

Comment by the Court. Subdivision (a) follows the first sentence of FRCP 83 and supersedes RPPP 83.04W.

(b) Format. All local rules shall conform in numbering system and in format to these rules to facilitate their use.

(c) Copies. Copies of all local rules and amendments immediately after adoption shall be supplied to the court administrator in such quantities as he shall require. [Adopted May 5, 1967, effective July 1, 1967.]

Rule 84 Forms [Reserved.]

Rule 85 Title of rules These rules shall be known and cited as the Civil Rules for Superior Court. CR is the official abbreviation. [Adopted May 5, 1967, effective July 1, 1967.]

Rule 86 Effective dates

Generally——Pending Actions. These rules and amendments promulgated pursuant to authority granted to the Supreme Court shall govern all proceedings in actions after they take effect, and also all further proceedings in actions pending on their effective dates, except to the extent that in the opinion of the superior

court, expressed by its order, the application of rules in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the procedure existing at the time the action was brought applies. [Adopted May 5, 1967, effective July 1, 1967. CF prior RPPP Rule 86.]

SPECIAL PROCEEDINGS RULES FOR SUPERIOR COURT (SPR)

(Formerly: Special Proceedings Rules for Superior Court)

RULE 90.04W Attachments——Duties of the Sheriff

RULE 91.04W Garnishments——Service, Objections, etc.
- (a) Methods of Service
- (b) Irregularities
- (c) Objections
- (d) Judgment Against Garnishee
- (e) Proof of Service
- (f) Applicability

RULE 93.04W Disposition of Reports——Adoptions

RULE 94.04W Divorce Actions
- (a) Defaults——Proof of Service
- (b) Subpoenas by Prosecutor
- (c) Fees
- (d) Entry of Decree
- (e) Approval of Orders etc. by Attorney of Record

RULE 94.05 Continuation of Action——RCW Chapter 26.08
- (a) Domestic Relations
- (b) Termination of Temporary Orders
- (c) Supersession

RULE 98.04W Estates——Probate——Notices to Heirs, Etc. (Abrogated)

RULE 98.05W Probate Proceedings——Inventory (Abrogated)

RULE 98.08W Estates——Settlement of Claims by Executors, Administrators and Receivers

RULE 98.10W Estates——Receivership——Reports

RULE 98.12W Estates Generally——Fees

RULE 98.16W Estates——Guardianship——Settlement of Claims of Minors
- (a) Representation
- (b) Hearing
- (c) Deposit in Court and Disbursements
- (d) Control of Remaining Funds
  - (1) Under $5,000
  - (2) Over $5,000
- (e) Deposit of Minor's Funds

RULE 98.20W Estates——Guardianships——Authorization of Expenditures

EXPLANATION BY THE COURT

Format. When adopting the format of the rule numbering and subdivision organization of the Federal Rules it was necessary to remove all miscellaneous rules applicable to special proceedings. This had been partially accomplished because many of these miscellaneous rules had been assigned rule numbers between 87 and 99. These rule numbers continue to be reserved for this purpose and all the miscellaneous rules relating to special proceedings, except Criminal, are now renumbered in this series. Other than the addition of subheadings, no major revisions have been undertaken in the Special Proceedings Rules.

Statutes. No attempt has been made to cross-reference applicable statutes.

Abbreviation. These "Special Proceedings Rules for Superior Court" may be cited as "SPRs".

Rule 90.04W Attachments——Duties of the sheriff Immediately upon the receipt of a writ of attachment, the sheriff shall endorse thereon, in ink, the day, hour, and minute when the same first came into his hands. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to and supersedes RPPP 77.20W.

Rule 91.04W Garnishments——Service, objections, etc.

(a) Methods of Service. In any case where a writ of garnishment has issued, the party at whose instance the writ was issued shall, on or before the day of the service of the writ on the garnishee, mail, or cause to be mailed, by certified mail, a copy of the writ to the defendant or judgment debtor in said cause at his last known post office address; or, in the alternative, a copy of the writ shall be served upon the defendant or judgment debtor in the same manner as is required for personal service of summons upon a party to an action on or before the day of the service of said writ on the garnishee defendant or within 2 days thereafter.

(b) Irregularities. This requirement shall not be deemed jurisdictional, but if the copy is not mailed or served as herein provided, or any irregularity shall appear with respect to the mailing or service, the court may, in its discretion on motion of the defendant or judgment debtor promptly made and supported by affidavit showing that he has suffered substantial injury from the failure to mail said copy, set aside the said garnishment.

(c) Objections. The judgment debtor shall make any objections to the entry of judgment based upon the answer of a garnishee prior to the expiration of the time within which the garnishment should have been answered.

(d) Judgment Against Garnishee. No judgment based on the answer of the garnishee, or upon failure to answer shall be entered prior to the expiration of the time within which the garnishee is required to answer.

(e) Proof of Service. The date of service of the writ of garnishment on the defendant and on the garnishee

shall be determined by proof of service or by such other evidence deemed by the court to be satisfactory.

(f) Applicability. This rule shall apply to garnishments in both the superior courts and justice courts in the State of Washington and shall supplement RCW 7.32-.120 and 12.32.060. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. Amendments to RPPP 96.04W are made to conform to 1967 Amendments to Garnishment Statutes.

Rule 93.04W Disposition of reports——Adoptions Any report filed by the next friend of the child in any adoption proceeding insofar as it affects or concerns the adopters shall be open to inspection by the adopter and his attorney. Such report at the close of the entire proceeding shall be sealed and filed by the clerk in the record of the adoption proceeding, or in the discretion of the court shall be destroyed and, in any event, it shall not be disclosed to any person without a special order therefor in writing by the judge, and shall thereafter be sealed as before. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to RPPP 92.04W.

Rule 94.04W Divorce actions. [Adopted May 5, 1967, effective July 1, 1967.] By an order dated November 6, 1974, the Supreme Court rescinded SPR 94.04W, effective January 1, 1975, it appearing that the purpose of the rule has been superseded by RCW Chapter 26.09.

Rule 94.05 Continuation of actions——RCW Chapter 26.08

[Adopted June 28, 1973, effective July 16, 1973. Rescinded April 9, 1974, effective April 9, 1974.]

Rule 98.04W Estates——Probate——Notices to heirs, etc. [Adopted May 5, 1967, amended June 28, 1967, effective July 1, 1967. Abrogated June 5, 1969, effective June 13, 1969.]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON
IN THE MATTER OF THE ABROGATION
OF SPECIAL PROCEEDINGS RULE FOR
SUPERIOR COURT (SPR) 98.04W

No. 25700-A——120
ORDER

WHEREAS Chapter 70 of the 1969 Session Laws supersedes the provisions of Special Proceedings Rule for Superior Court (SPR) 98.04W; it is hereby

ORDERED that Special Proceedings Rule for Superior Court (SPR) 98.04W is hereby abrogated effective on publication of the notice of abrogation in Washington Decisions.

Dated at Olympia, Washington this 5th day of June, 1969.

Rule 98.06W Probate proceedings——Inventory [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP Rule 93.06W. Abrogated June 28, 1967, effective July 1, 1967.]

Rule 98.08W Estates——Settlement of claims by executors, administrators and receivers In all actions or proceedings in which executors, administrators, receivers, or other persons having charge or settlement of any estate, apply to the court for an order allowing a claim to be compromised and settled for less than its face value, the court shall appoint a day not less than 5 days after such application for hearing the same, unless for good cause shown less time should intervene, and direct the giving of such notice as may be deemed proper. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to the first paragraph of RPPP 98.08W.

Rule 98.10W Estates——Receivership——Reports All reports of receivers which involve an accounting shall be filed at least 10 days before the hearing. On filing and presentation of such report the court will appoint a time for hearing the same and will direct such notice to be given as will most likely advise all interested parties of such hearing. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to the second paragraph of RPPP 98.08W.

Rule 98.12W Estates generally——Fees Before compensation shall be allowed to any executor, administrator, guardian, or attorney in connection with any probate matter or proceeding, or to any receiver or his attorney, and before any agreement therefor shall be approved, the amount of compensation claimed shall be definitely and clearly set forth in the application therefor, and all parties interested in the matter shall be given notice of the amount claimed in such manner as shall be fixed by statute, or, in the absence of statute, as shall be directed by the court; unless such application

be filed with or made a part of a report or final account of such executor, administrator, guardian, or receiver. [Adopted May 5, 1967, effective July 1, 1967. Prior: RPPP 98.12W.]

Comment by the Court. No change is made in this rule.

Rule 98.16W Estates——Guardianship——Settlement of claims of minors

(a) Representation. In every case where there is a settlement involving a beneficial interest or claim of a person under the age of eighteen, hereinafter referred to as a minor, the court must appoint an independent guardian ad litem to investigate the adequacy of the offered settlement and file a written report. Said guardian ad litem shall be an attorney-at-law and shall serve in said capacity with the authority to withdraw funds on order of the court after ex parte hearing on petition setting forth the grounds therefor, on behalf of the minor by order until the minor attains the age of eighteen or until relieved by the court. The court may dispense with the appointment of the guardian ad litem if a general guardian has been previously appointed or if the court affirmatively finds that the minor is represented by independent counsel.

(b) Hearing. At the time the petition for approval of the settlement is heard, the allowance and taxation of all fees, costs, and other charges incident to the settlement of the minor's claim shall be considered and disposed of by the court.

(c) Deposit in Court and Disbursements. The total judgment shall be paid into the registry of the court. All sums deductible therefrom including costs, attorneys' fees, hospital and medical expenses, and any other expense, shall be paid upon approval of the court.

(d) Control of Remaining Funds.

(1) *Under $5,000.* If the money or the value of other property remaining is $5,000 or less and there is no general guardian of the ward, the court shall require that (A) the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the ward subject to withdrawal only upon the order of the court as a part of the original proceeding, or (B) a general guardian be appointed and the money or other property be paid or delivered to such guardian.

(2) *Over $5,000.* If the money or the value of other property remaining exceeds $5,000, and there is no general guardian of the ward, the court in the order or judgment shall require that a general guardian be appointed.

(e) Deposit of Minor's Funds. Checks for funds that go to the minor may be made out by the clerk jointly to the depository bank, trust company, or insured financial institution and the independent attorney for the minor, guardian ad litem or general guardian and deposit shall be made in a blocked account for the minor with provision that withdrawals cannot be made without court order. A deposit receipt to that effect must be forthwith filed with the court by the attorney or guardian. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972, amended April 14, 1974, effective July 1, 1974.]

Rule 98.20W Estates——Guardianships——Authorization of expenditures Judges of the superior court in charge of probate, in directing and authorizing a guardian of the estate of the ward to make expenditures from the estate in monthly or other periodic installments, shall limit the term of such order to a period not greater than 12 month. [Adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. This rule is identical to RPPP 98.20W.

SUPERIOR COURT CRIMINAL RULES (CRR)

(Formerly: Criminal Rules for Superior Court)

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CHAPTER I——SCOPE, PURPOSE AND CONSTRUCTION

Rule 1.1 Scope. These rules govern the procedure in the courts of general jurisdiction of the State of Washington in all criminal proceedings and supersede all procedural statutes and rules that may be in conflict and shall be interpreted and supplemented in light of the common law and the decisional law of this State. These rules shall not be construed to affect or derogate from the constitutional rights of any defendant. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 1.2 Purpose and construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expenses and delay. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 1.3 Effect. Except as otherwise provided elsewhere in these rules, on their effective date:

(a) Any acts done before the effective date in any proceedings then pending or any action taken in any proceeding pending under rules of procedure in effect prior to the effective date of these rules and any constitutional right are not impaired by these rules.

(b) These rules also apply to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility or application of the procedures of these rules. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 1.4 Prosecuting attorney——Definition. Whenever used in these rules, prosecuting attorney shall include deputy prosecuting attorneys, or such other

person as may be designated by statute. [Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 2——PROCEDURES PRIOR TO ARREST AND OTHER SPECIAL PROCEEDINGS

Rule 2.1 The indictment and the information.

(a) Use of Indictment or Information. The initial pleading by the state shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(b) Nature and Contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(c) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(d) Amendment of Information. The court may permit any information to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(e) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires. [Adopted Apr. 19, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.37.020, 10.37.025, 10.37.026, 10-.37.035, 10.37.180; RCW 10.40.080; RCW 10.46.170.

Rule 2.2 Warrant upon indictment or information.

(a) When Warrant to Issue. When an indictment is found or an information is filed, the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith, or direct the clerk to issue a summons commanding the defendant to appear at a specified time and place.

(b) Issuance of Summons in Lieu of Warrant.

(1) *When summons must issue.* If the indictment or information charges only the commission of a misdemeanor or a gross misdemeanor, the court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent serious bodily harm to the accused or another, in which case it may issue a warrant.

(2) *Failure to appear on summons.* If a person fails to appear in response to a summons, or if service is not effected within a reasonable time, a warrant for arrest may issue.

(c) Requisites of a Warrant.

(1) *Warrant.* The warrant shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of his office, and shall state the date when issued and the county where issued. It shall specify the name of the defendant, or if his name is unknown, any name or description by which he can be identified with reasonable certainty. The Warrant shall specify the offense charged against the defendant and shall command that the defendant be arrested and brought forthwith before the court issuing the warrant. If the offense is bailable, the judge issuing the warrant shall set forth thereon conditions for release pursuant to Rule 3.2.

(d) Execution; Service.

(1) *Execution of warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Service of summons.* The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at his address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge by whom issued and shall be cancelled by him. The person to whom a summons has been delivered for service shall, on or before the return date, file a return thereof with the judge before whom summons is returnable. For reasonable cause, the judge may order that the warrant be returned to him.

(f) Defective Warrant or Summons.

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) *Issuance of new warrant or summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which he is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that he is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new indictment or information to be filed and shall thereupon issue a new warrant or summons. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.31.010, 10.31.020.

Rule 2.3 Search and seizure.

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by the court upon request of a peace officer or a prosecuting attorney.

(b) Property Which May Be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(c) Issuance and Contents. A warrant shall issue only on an affidavit or affidavits establishing the grounds for issuing the warrant. Such affidavit or affidavits may consist of an officer's sworn telephonic statement to the judge; provided, however, such sworn telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter. If the judge finds that probable cause for the issuance of a warrant exists, he shall issue a warrant or direct an individual whom he authorizes for such purpose to affix his signature to a warrant identifying the property and naming or describing the person, place or thing to be searched. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. The judge shall record a summary of any additional evidence on which he relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property specified. It shall designate a magistrate to whom it shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that he is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.79.010, 10.79.030.

CHAPTER 3——RIGHTS OF DEFENDANTS

Rule 3.1 Right to and assignment of counsel.

(a) Types of Proceedings.

(1) The right to counsel shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to counsel shall accrue as soon as feasible after the defendant is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest.

(2) Counsel shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of original counsel pursuant to subsection (e) because geographical considerations or other factors make it necessary.

(c) Explaining the Availability of a Lawyer.

(1) When a person is taken into custody he shall immediately be advised of his right to counsel. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires counsel shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning counsel, and any other means necessary to place him in communication with a lawyer.

(d) Assignment of Counsel.

(1) Unless waived, counsel shall be provided to any person who is financially unable to obtain one without causing substantial hardship to himself or his family. Counsel shall not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

(2) The ability to pay part of the cost of counsel shall not preclude assignment. The assignment of counsel may be conditioned upon part payment pursuant to an established method of collection.

(e) Withdrawal of Attorneys. Whenever a criminal cause has been set for trial, no attorney shall be allowed

to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

(f) Services Other Than Counsel. Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them by a motion. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The courts, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.01.110; RCW 10.40.030; RCW 10.46.050.

Rule 3.2 Pretrial release.

(a) Personal Recognizance. Any defendant charged with an offense shall at his first court appearance be ordered released on his personal recognizance pending trial unless the court determines that such recognizance will not reasonably assure his appearance, when required. When such a determination is made, the court shall impose the least restrictive of the following conditions that will reasonably assure his appearance or if no single condition gives that assurance, any combination of the following conditions:

(1) place the defendant in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the defendant during the period of release;

(3) require the execution of an unsecured appearance bond in a specified amount;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(5) require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) require the defendant return to custody during specified hours; or

(7) impose any condition other than detention deemed reasonably necessary to assure appearance as required.

(b) Relevant Factors. In determining which conditions of release will reasonably assure the defendant's appearance, the court shall, on the available information, consider the relevant facts including: the length and character of the defendant's residence in the community; his employment status and history and financial condition; his family ties and relationships; his reputation, character and mental condition; his history of response to legal process; his prior criminal record; the willingness of responsible members of the community to vouch for the defendant's reliability and assist him in appearing in court; the nature of the charge; and any other factors indicating the defendant's ties to the community.

(c) Conditions of Release. Upon a showing that there exists a substantial danger that the defendant will commit a serious crime or that the defendant's physical condition is such to jeopardize his safety or that of others or that he will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court, upon the defendant's release, may impose one or more of the following conditions:

(1) prohibit him from approaching or communicating with particular persons or classes of persons;

(2) prohibit him from going to certain geographical areas or premises;

(3) prohibit him from possessing any dangerous weapons, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs;

(4) require him to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) detain him until his physical condition permits his release.

(d) Order for Release. A court authorizing the release of the defendant under this rule shall issue and appropriate order containing a statement of the conditions imposed, if any, shall inform him of the penalties applicable to violations of the conditions imposed, if any, shall inform him of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest may be issued immediately upon any such violation.

(e) Review of Conditions. Upon determining the conditions of release, the court, upon request, after twenty–four hours from the time of release, may review the conditions previously imposed.

(f) Amendment of Order. The court ordering the release of a defendant on any condition specified in this rule may at any time on change of circumstances or showing of good cause amend its order to impose additional or different conditions for release.

(g) Revocation of Release. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that a defendant has willfully violated a condition of his release, a court shall order the defendant to appear for immediate hearing or issue a warrant directing the arrest of the defendant for immediate hearing. A law enforcement officer having probable cause to believe that a defendant released pending trial for a felony is about to leave the state or that he has violated a condition of such release, imposed pursuant to section (c), under circumstances rendering the securing of a warrant impracticable, may

arrest the defendant and take him forthwith before the court.

(h) Release after Verdict. A defendant (1) who is charged with a capital offense, or (2) who has been found guilty of a felony and is either awaiting sentence or has filed an appeal, shall be released pursuant to this rule, unless the court finds that the defendant may flee the state or pose a substantial danger to another or to the community. If such a risk of flight or danger exists, the defendant may be ordered detained.

(i) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(j) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(k) Defendant Discharged on Recognizance or Bail——Absence——Forfeiture. If the defendant has been discharged on his own recognizance, on bail, or has deposited money instead thereof, and does not appear when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.16.190; RCW 10.19.010, 10.19-.020, 10.19.025, 10.19.050, 10.19.070, 10.19.080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

Rule 3.3 Speedy trial.

(a) Responsibility of Court. It shall be the responsibility of the court to insure to each person charged with crime a speedy trial in accordance with the provisions of this rule.

(b) Time Limit. A criminal charge shall be brought to trial within 90 days following the preliminary appearance.

(c) Priority Over Civil Cases. Criminal trials shall take precedence over civil. A defendant unable to obtain pretrial release shall have priority and the charge shall be brought to trial within 60 days following the preliminary appearance.

(d) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) All proceedings relating to the competency of the defendant to stand trial.

(2) Preliminary proceedings and trial on another charge.

(3) Delay granted by the court pursuant to section (e).

(4) Delay in justice court resulting from a stipulated continuance made of record.

(5) Delay resulting from the absence of the defendant.

(6) The time between the dismissal and the refiling of the same charge.

(e) Continuances. Continuances or other delays may be granted as follows:

(1) On motion of the defendant on a showing of good cause.

(2) On motion of the prosecuting attorney if:

(i) the defendant expressly consents to a continuance or delay and good cause is shown; or

(ii) The state's evidence is presently unavailable, the prosecution has exercised due diligence, and there are reasonable grounds to believe that it will be available within a reasonable time; or

(iii) required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.

(3) The court on its own motion may continue the case when required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.

(f) Dismissal With Prejudice. A criminal charge not brought to trial as required by this rule shall be dismissed with prejudice. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.40.020; RCW 10.43.010; RCW 10.46.010.

Rule 3.4 Presence of the defendant.

(a) When Necessary. The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(b) Effect of Voluntary Absence. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(c) Defendant Not Present. If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served as a warrant of arrest in other cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.01.080; RCW 10.46.120, 10.46-.130; RCW 10.64.020, 10.64.030.

Rule 3.5 Confession procedure.

(a) Requirement For and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissable. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

(b) Duty of Court to Inform Defendant. It shall be the duty of the court to inform the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial.

(c) Duty of Court to Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

(d) Rights of Defendant When Statement Is Ruled Admissible. If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cross–examine the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he shall be subject to cross–examination to the same extent as would any other witness; and, (4) if the defense raises the issue of voluntariness under subsection (1) above, the jury shall be instructed that they may give such weight and credibility to the confession in view of the surrounding circumstances, as they see fit. [Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 4—–PROCEDURES PRIOR TO TRIAL

Rule 4.1 Arraignment.

(a) Time. Promptly after the indictment or information has been filed, the defendant shall be arraigned thereon in open court.

(b) Counsel. If the defendant appears without counsel, the court shall inform him of his right to have counsel before being arraigned. The court shall inquire if he has counsel. If he is not represented and is unable to obtain counsel, counsel shall be assigned to him by the court, unless otherwise provided.

(c) Waiver of Counsel. If the defendant chooses to proceed without counsel, the court shall ascertain whether this waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the minutes. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming his right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

(d) Name. Defendant shall be asked his true name. If he alleges that his true name is one other than that by which he is charged, it must be entered in the minutes of the court, and subsequent proceedings shall be had against him by that name or other names relevant to the proceedings.

(e) Reading. The indictment or information shall be read to defendant. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.40.010, 10.40.030, 10.40.040; RCW 10.46.030 in part, 10.46.040.

Rule 4.2 Pleas.

(a) Types. A defendant may plead not guilty, not guilty by reason of insanity or guilty.

(b) Multiple Offenses. Where the indictment or information charges two or more offenses in separate counts the defendant shall plead separately to each.

(c) Pleading Insanity. When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime the defendant, his counsel or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. The plea may be interposed at any time thereafter, before the submission of the cause to the jury if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea.

(d) Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(e) Agreements. If a plea of guilty is based upon an agreement between the defendant and the prosecuting attorney, such agreement must be made a part of the record at the time the plea is entered. No agreement shall be made which specifies what action the judge shall take on or pursuant to the plea or which attempts to control the exercise of his discretion, and the court shall so advise the defendant.

(f) Withdrawal of Plea. The court shall allow a defendant to withdraw his plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice.

(g) Written Statement. A written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty:

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

STATE OF WASHINGTON, Plaintiff, vs. _____, Defendant.	NO. _____ STATEMENT OF DEFENDANT ON PLEA OF GUILTY

1. My true name is _____.
2. My age is _____.
3. My lawyer is _____.
4. The court has told me that I am charged with the crime of _____, the maximum sentence for which is _____.
5. The court has told me that:
(a) I have the right to have counsel (a lawyer), and that if I cannot afford to pay for counsel, one will be provided at no expense to me.
(b) I have the right to a trial by jury.
(c) I have the right to hear and question witnesses who testify against me.
(d) I have the right to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
(e) The charge must be proven beyond a reasonable doubt.
6. I plead _____ to the crime of _____ as charged in the information, a copy of which I have received.
7. I make this plea freely and voluntarily.
8. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
9. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
10. I have been told the Prosecuting Attorney will take the following action and make the following recommendation to the court:

_____

11. I have been told and fully understand that the court does not have to follow the Prosecuting Attorney's recommendation as to sentence. The court is completely free to give me any sentence it sees fit no matter what the Prosecuting Attorney recommends.
12. The court has told me that if I am sentenced to prison the Judge must sentence me to the maximum term required by the law, which in this case is _____. The minimum term of sentence is set by the Board of Prison Terms and Paroles. The Judge and Prosecuting Attorney may recommend a minimum sentence to the Board but the Board does not have to follow their recommendation. I have been further advised that the crime with which I am charged carries a mandatory minimum of _____ years. (If not applicable, this sentence shall be stricken and initialed by the defendant and the judge.)
13. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime in the information. This is my statement: _____

_____

14. I have read or have had read to me all of the numbered sections above (1 through 14) and have received a copy of "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

The above statement was read by or read to the defendant and signed by the defendant in the presence of his attorney, _____, Prosecuting Attorney _____, and the undersigned Judge in open court.

DATED THIS _____ day of _____, 19__.

_____
Judge

[Adopted Apr. 18, 1973, effective July 1, 1973.]
Comment: Supersedes RCW 10.40.150, 10.40.160, 10.40.175.

Rule 4.3 Joinder of offenses and defendants.

(a) Joinder of Offenses.
Two or more offenses may be joined in one charge, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:
(1) are of the same or similar character, even if not part of a single scheme or plan; or
(2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan;
(3) improper joinder of offenses or defendants shall not preclude subsequent prosecution on the same charge for the charge or defendant improperly joined.

(b) Joinder of Defendants.
Two or more defendants may be joined in the same charge:
(1) when each of the defendants is charged with accountability for each offense included;
(2) when each of the defendants is charge with conspiracy and one or more of the defendants is also charge with one or more offenses alleged to be in furtherance of the conspiracy; or
(3) when, even if conspiracy is not charged and all of the defendants are not charged in each count, it is alleged that the several offenses charged:
(i) were part of a common scheme or plan; or
(ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to Join Related Offenses.
(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.
(2) When a defendant has been charged with two or more related offenses, his timely motion to join them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of joinder as to related offenses with which the defendant knew he was charged.

(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for joinder of these offenses was previously denied or the right of joinder was waived as provided in section (b). The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges.

(d) Authority of Court to Act on Own Motion.

The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charge. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 4.4 Severance of offenses and defendants.

(a) Timeliness of Motion; Waiver.

(1) A defendant's motion for severance of offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

(b) Severance of Offenses.

(1) The court, on application of the prosecuting attorney, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

(c) Severance of Defendants.

(1) A defendant's motion for severance on the ground that an out–of–court statement of a co–defendant referring to him is inadmissible against him shall be granted unless:

(i) The prosecuting attorney elects not to offer the statement in the case in chief.

(ii) Deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

(2) The court, on application of the prosecuting attorney, or on application of the defendant other than under subsection (i), should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

(3) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting attorney to disclose any statement made by the defendants which he intends to introduce in evidence at the trial.

(d) Failure to Prove Ground for Joinder of Defendants.

If, pursuant to section (a), a defendant moves to be severed at the conclusion of the prosecution's case or of all the evidence, and there is not sufficient evidence to support the grounds upon which the moving defendant was joined or previously denied severance, the court shall grant a severance if, in view of this lack of evidence, failure to sever prejudices the moving defendant.

(e) Authority of Court to Act on Own Motion. The court may order a severance of offenses or defendants before trial if a severance could be obtained on motion of a defendant or the prosecution. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.100.

Rule 4.5 Omnibus hearing.

(a) When Required. When a plea of not guilty is entered, the court may set a time for an omnibus hearing.

(b) Time. the time set for the omnibus hearing shall allow sufficient time for counsel to (i) initiate and complete discovery; (ii) conduct further investigation of the case, as needed; and (iii) continue plea discussions.

(c) Checklist. At the omnibus hearing, the trial court on its own initiative, utilizing a checklist substantially in the form of the omnibus application by plaintiff and defendant (see section (h)) shall:

(i) ensure that standards regarding provision of counsel have been complied with;

(ii) ascertain whether the parties have completed discovery and, if not, make orders appropriate to expedite completion;

(iii) make rulings on any motions, other requests then pending, and ascertain whether any additional motions, or requests will be made at the hearing or continued portions thereof;

(iv) ascertain whether there are any procedural or constitutional issues which should be considered;

(v) upon agreement of counsel, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference; and

(vi) permit defendant to change his plea.

(d) Motions. All motions and other requests prior to trial should ordinarily be reserved for and presented orally at the omnibus hearing unless the court otherwise directs. Failure to raise or give notice at the hearing of any error or issue of which the party concerned has

knowledge may constitute waiver of such error or issue. Checklist forms substantially like the memorandum required by section (h) shall be made available by the court and utilized at the hearing to ensure that all requests, errors and issues are then considered.

(e) Continuance. Any and all issues should be raised either by counsel or by the court without prior notice, and if appropriate, informally disposed of. If additional discovery, investigation or preparation, or evidentiary hearing, or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued from time to time until all matters raised are properly disposed of.

(f) Record. A verbatim record, (electronic, mechanical or otherwise), shall be made of all proceedings at the hearing.

(g) Stipulations. Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice.

(h) Memorandum. At the conclusion of the hearing, a summary memorandum shall be made indicating disclosure made, rulings and orders of the court, stipulations, and any other matters determined or pending. Such summary memorandum shall be in substantially the following form:

Copy Received Date Filed by Clerk

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

STATE OF WASHINGTON, Plaintiff,	NO. _____
vs.	OMNIBUS APPLICATION BY PLAINTIFF AND DEFENDANT
_____, Defendant.	

Date _____
Notice to _____
Purpose: To prepare for trial or plea and to determine the extent of discovery to be granted to each party.

I.
MOTION BY DEFENDANT

Comes now the defendant and makes the applications or motions checked off below:

1. To dismiss for failure of the indictment (or information) to state an offense. Granted _____ Denied _____.
2. To sever defendant's case and for separate trial.
3. To sever counts and for a separate trial.
4. To make more definite and certain.
5. For discovery of all oral, written or recorded statements made by defendant to investigating officers or to third parties and in the possession of the plaintiff.
6. For discovery of the names and addresses of plaintiff's witnesses and their statements.
7. To inspect physical or documentary evidence in plaintiff's possession.
8. To suppress physical evidence in plaintiff's possession because of (1) illegal search, (2) illegal arrest. Hearing set for _____.
9. For a hearing under Rule 3.5.
10. To suppress evidence of the identification of the defendant.
11. To take the deposition of witnesses.
12. To secure the appearance of a witness at trial or hearing.
13. To inquire into the conditions of pretrial release. Affirmed _____ Modified to _____.

To Require the Prosecution

14. To state——
   (a) If there was an informer involved;
   (b) Whether he will be called as a witness at the trial; and
   (c) To state the name and address of the informer or claim the privilege.
15. To disclose evidence in plaintiff's possession, favorable to defendant on the issue of guilt.
16. To disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge or intent.
17. To advise whether any expert witness will be called, and if so, supply——
   (a) Name of witness, qualifications and subject of testimony;
   (b) Report.
18. To supply any reports or tests of physical or mental examinations in the control of the prosecution.
19. To supply any reports of scientific tests, experiments, or comparisons and other reports to experts in the control of the prosecution, pertaining to this case.
20. To permit inspection and copying of any books, papers, documents, photographs or tangible objects which the prosecution——
   (a) Obtained from or belonging to the defendant, or
   (b) Which will be used at the hearing or trial.
21. To supply any information known concerning a prior conviction of persons whom the prosecution intends to call as witnesses at the hearing or trial.
22. To inform the defendant of any information he has indicating entrapment of the defendant.

Dated: _____ _____
Attorney for Defendant

II.
MOTION BY PLAINTIFF

The plaintiff makes the application or motions checked:

1. Defendant to state the general nature of his defense.
2. Defendant to state whether or not he will rely on an alibi and, if so, to furnish a list of his alibi witnesses and their addresses. Granted _____ Denied _____.
3. Defendant to state whether or not he will rely on a defense of insanity at the time of the offense.
   (a) If so, defendant to supply the name(s) of his witness(es) on the issue, both lay and professional.

(b) If so, defendant to permit the prosecution to inspect and copy all medical reports under his control or the control of his attorney.

(c) Defendant will also state whether or not he will submit to a psychiatric examination by a doctor selected by the prosecution.

4. Defendant to furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.

5. Defendant to appear in a lineup.

6. Defendant to speak for voice identification by witnesses.

7. Defendant to be fingerprinted.

8. Defendant to pose for photographs (not involving a reenactment of the crime).

9. Defendant to try on articles of clothing.

10. Defendant to permit taking of specimens of material under fingernails.

11. Defendant to permit taking of samples of blood, hair and other materials of his body which involve no unreasonable intrusion thereof.

12. Defendant to provide samples of his handwriting.

13. Defendant to submit to a physical external inspection of his body.

14. Defendant to state whether there is any claim of incompetency to stand trial.

15. For discovery of the names and addresses of defendant's witnesses and their statements.

16. To inspect physical or documentary evidence in defendant's possession.

17. To take the deposition(s) of witness(es).

18. To secure the appearance of a witness at trial or hearing.

19. Defendant to state whether his prior convictions will be stipulated or need be proved.

20. Defendant to state whether he will stipulate to the continuous chain of custody of evidence from acquisition to trial.

Dated: _____

_____
Prosecuting Attorney

It is so ordered this _____ day of _____.

_____
Judge

[Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.030 in part.

Rule 4.6 Depositions.

(a) When Taken. Upon a showing that a prospective witness may be unable to attend or prevented from attending a trial or hearing or if a witness refuses to discuss the case with either counsel and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a party and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time and may change the place of taking.

(c) How Taken. A deposition shall be taken in the manner provided in civil actions. No deposition shall be used in evidence against any defendant who has not had notice of and an opportunity to participate in or be present at the taking thereof.

(d) Use. At the trial or upon any hearing, a part or all of a deposition so far as otherwise admissible under the rules of evidence may be used if it appears: that the witness is dead; or that the witness is unavailable, unless it appears that his unavailability was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(e) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 4.7 Discovery.

(a) Prosecutor's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within his possession or control no later than the omnibus hearing:

(i) The names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) Any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii) When authorized by the court, those portions of grand jury minutes containing testimony of the defendant, relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant testimony that has not been transcribed.

(iv) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(v) Any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the defendant; and

(vi) Any record or prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(2) The prosecuting attorney shall disclose to the defendant:

(i) Any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(ii) Any expert witnesses whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecuting attorney;

(iii) Any information which the prosecuting attorney has indicating entrapment of the defendant.

(3) Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within his knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting attorney's obligation under this section is limited to material and information within the knowledge, possession or control of members of his staff.

(b) Defendant's Obligations.

(1) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the defendant shall disclose to the prosecuting attorney the following material and information within his control no later than the omnibus hearing:

(i) The names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witness.

(2) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting attorney or the defendant, may require or allow the defendant to:

(i) Appear in a lineup;

(ii) Speak for identification by a witness to an offense;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of the crime charged;

(v) Try on articles of clothing;

(vi) Permit the taking of samples of or from his blood, hair, and other materials of his body including materials under his fingernails which involve no unreasonable intrusion thereof;

(vii) Provide specimens of his handwriting;

(viii) Submit to a reasonable physical, medical, or psychiatric inspection or examination;

(ix) State whether there is any claim of incompetency to stand trial;

(x) Allow inspection of physical or documentary evidence in defendents' possession;

(xi) To state whether his prior convictions will be stipulated or need to be proved;

(xii) To state whether or not he will rely on an alibi and, if so, furnish a list of alibi witnesses and their addresses;

(xiii) To state whether or not he will rely on a defense of insanity at the time of the offense;

(xiv) To state the general nature of his defense.

(3) Provisions may be made for appearance for the foregoing purposes in an order for pretrial release.

(c) Additional Disclosures Upon Request and Specification. Except as is otherwise provided as to matters not subject to disclosure the prosecuting attorney shall, upon request of the defendant, disclose any relevant material and information regarding:

(1) specified searches and seizures;

(2) the acquisition of specified statements from the defendant; and

(3) the relationship, if any, of specified persons to the prosecuting authority.

(d) Material Held by Others. Upon defendant's request and designation of material or information in the knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting attorney, the prosecuting attorney shall attempt to cause such material or information to be made available to the defendant. If the prosecuting attorney's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

(e) Discretionary Disclosures.

(1) Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to the defendant of the relevant material and information not covered by sections (a), (c) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

(f) Matters Not Subject to Disclosure.

(1) *Work product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under (a)(1)(iv).

(2) *Informants.* Disclosure of an informant's identity shall not be required where his identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) Medical and Scientific Reports. Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or

of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

(h) Regulation of Discovery.

(1) *Investigations not to be impeded.* Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Continuing duty to disclose.* If, after compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he shall promptly notify the other party or his counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of materials.* Any materials furnished to an attorney pursuant to these standards shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide.

(4) *Protective orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit his counsel to make beneficial use thereof.

(5) *Excision.* When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In camera proceedings.* Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions.*

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.37.030, 10.37.033; RCW 10.46-.030 in part.

Rule 4.8 Subpoenas. Subpoenas shall be issued in the same manner as in civil actions. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.030 in part; RCW 10.46.050.

Rule 4.9 Pretrial conference. At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. The defendant and his attorney shall be present at any such conference, unless the defendant makes an intelligent written waiver of his right to be present. A memorandum of the matters agreed upon shall be signed by counsel, the defendant personally, and the court, and shall be filed. No admission made by the defendant or his attorney at the conference shall be used against the defendant unless it is included in such signed memorandum. Any admissions contained in the memorandum shall be binding only for the purpose of the case in which the conference is held. No conference shall be held if the defendant is not represented by counsel. Any conference held shall be reported. If possible, the judge who conducts the conference should try the case. [Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 5——VENUE

Rule 5.1 Commencement of actions.

(a) Where Commenced. All actions shall be commenced:

(1) In the county where the offense was committed.

(2) In any county wherein an element of the offense was committed or occurred.

(b) Two or More Counties. When there is reasonable doubt whether an offense has been committed in one of two or more counties, the action may be commenced in any such county.

(c) Right to Change. When a case is filed pursuant to (b) of this rule, the defendant shall have the right to change venue to any other county in which the offense may have been committed. Any objection to venue must be made as soon after the initial pleading is filed as the defendant has knowledge upon which to make it. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.25.010, 10.25.020, 10.25.030, 10-.25.040, 10.25.050, 10.25.060, 10.25.110.

Rule 5.2 Change of venue.

(a) When Ordered——Improper County. The court shall order a change of venue upon motion and showing that the action has not been prosecuted in the proper county.

(b) When Ordered——On Motion of Party. The court may order a change of venue to any county in the state:

(1) Upon written agreement of the prosecuting attorney and the defendant.

(2) Upon motion of the defendant, supported by affidavit that he believes he cannot receive a fair trial in the county where the action is pending.

(c) Discharge of Jury. When the court orders a change of venue it shall discharge the jury, if any, without prejudice to the prosecution, and direct that all the papers and proceedings be certified to the superior court of the proper county and direct the defendant and the witnesses to appear at such court. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.25.080, 10.25.090, 10.25.100; RCW 10.46.180.

CHAPTER 6——PROCEDURES AT TRIAL

Comment: RCW 10.46.070 is superseded in part by all of Rule 6.

Rule 6.1 Trial by jury or by the court.

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.

(b) Jury of Less Than Twelve.

(1) If prior to trial on a noncapital case, all defendants so elect, the case shall be tried by a jury of six, or by the court.

(2) If a juror is unable to continue and if no alternate jurors have been selected or if none is available, all defendants may elect to continue with the remaining jurors; otherwise a mistrial may be granted on motion of any defendant.

(c) Trial Without Jury. In a case tried without a jury the court, shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon five days notice of presentation to the parties. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment; Supersedes RCW 10.49.020.

Rule 6.2 Jurors' orientation. All jurors will be given a general orientation when they report for duty.

(a) Juror Handbook. A copy of the Uniform Washington Juror's Handbook as prepared by the Washington Supreme Court Committee on Jury Instructions shall be provided to all petit jurors by the court in which they are to serve.

(b) Juror Information Sheet. Prior to the commencement of a petit juror's term of service, a juror information sheet shall be furnished to him by the court in which he is to serve. The format of the information sheet shall be consistent with recommendations of the Administrator for the Courts. [Adopted Apr. 18, 1973, effective July 1, 1973; amended, adopted April 9, 1974, effective July 1, 1974.]

Rule 6.3 Selecting the Jury. When the action is called for trial, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall draw the required number of names for purposes of voir dire examination. Any necessary additions to the panel shall be drawn from the clerk's list of qualified jurors. The clerk shall thereupon prepare separate ballots and deposit them in the trial jury box. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.4 Challenges.

(a) Challenges to the Entire Panel. Challenges to the entire panel shall only be sustained for a material departure from the procedures prescribed by law for their selection.

(b) Voir Dire. A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and counsel may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

(c) Challenges for Cause.

(1) If the judge after examination of any juror is of the opinion that grounds for challenge are present, he shall excuse that juror from the trial of the case. If the judge does not excuse the juror, any party may challenge the juror for cause.

(2) RCW 4.44.150 through 4.44.200 shall govern challenges for cause.

(d) Exceptions to Challenge.

(1) *Determination.* The challenge may be excepted to by the adverse party for insufficiency and, if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party and, if so, the court shall try the issue and determine the law and the facts.

(2) *Trial of challenge.* Upon trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or if found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if not so determined or found otherwise, it shall be disallowed.

(e) Peremptory Challenges.

(1) *Peremptory challenges defined.* A peremptory challenge is an objection to a juror for which there is no reason given, but upon which the court shall exclude him. In prosecutions for capital offenses the defense and the state may challenge peremptorily twelve jurors each; in prosecution for offenses punishable by imprisonment in a penitentiary six jurors each; in all other prosecutions, three jurors each. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the number of challenges provided above, with discretion in the trial

judge to afford the prosecution such additional challenges as circumstances warrant.

(2) *Peremptory challenges——how taken.* After prospective jurors have been passed for cause, peremptory challenges shall be exercised alternately first by the prosecution then by each defendant until the peremptory challenges are exhausted or the jury accepted. Acceptance of the jury as presently constituted shall not waive any remaining peremptory challenges to jurors subsequently called. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.030, 10.49.040, 10.49.050, 10.49.060.

Rule 6.5 Alternate jurors. When the jury is selected the court may direct the selection of one or more additional jurors, in its discretion, to be known as alternate jurors. Each party shall be entitled to one peremptory challenge for each alternate juror to be selected. When several defendants are on trial together, each defendant shall be to one challenge in addition to the challenge provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant. If at any time before submission of the case to the jury a juror is found unable to perform his duties the court shall order him discharged, and the clerk shall draw the name of an alternate who shall take his place on the jury. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.070.

Rule 6.6 Jurors' oath. The jury shall be sworn or affirmed well and truly to try the issue between the state and the defendant, according to the evidence and instructions by the court. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.100.

Rule 6.7 Custody of jury. The jury shall be allowed to separate unless the court finds that such would jeopardize a fair trial. Any motions or proceedings concerning the separation of the jury shall be made out of the presence of the jury. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.110.

Rule 6.8 Note-taking by jurors. With permission of the trial judge, jurors may take notes regarding the evidence presented to them and keep these notes with them when they retire for their deliberation. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and be destroyed immediately after the verdict is rendered. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.9 View of premises by jury. The court may allow the jury to view the place in which any material fact occurred. In such event it shall order the jury to be conducted in a body, in the custody of a proper officer of the court to the place which shall be shown to them by the judge. The defendant shall be present at the view. During the view, no person other than the judge or person authorized by him shall speak to the jury on any subject relating to the trial. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.10 Discharge of the jury. The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching agreement. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.11 Judge——Disability.

(a) Disability of Judge During Jury Trial. If, before the judge submits the case to the jury, he is unable to continue with the trial, any other judge assigned to or regularly sitting in the court, upon familiarizing himself with the record of the trial, may proceed with the trial. Upon defendant's objection to the replacement, a mistrial shall be granted. If, after the judge submits the case to the jury, he is unable to continue, the case shall proceed before another judge.

(b) Disability of Judge During Nonjury Trial. If a judge before whom trial without jury has commenced is unable to proceed with the trial, a mistrial shall be granted. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.12 Witnesses.

(a) Who May Testify. Any person may be a witness in any action or proceeding under these rules except as hereinafter provided.

(b) When Excused. A witness subpoenaed to attend in a criminal case is dismissed and excused from further attendance as soon as he has given his testimony-in-chief and has been cross-examined thereon, unless either party makes requests in open court that the witness remain in attendance; and witness fees will not be allowed any witness after the day on which his testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact in his journal.

(c) Persons Incompetent to Testify. The following persons are incompetent to testify: (1) Those who are of unsound mind, or intoxicated at the time of their production for examination; and (2) Children who do not have the capacity of receiving just impressions of the facts about which they are examined or who do not have the capacity of relating them truly. This shall not affect any recognized privileges.

(d) Not Excluded on Grounds of Interest. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the result of the action, as a party thereto or otherwise, but such interest may be shown to affect his credibility. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: (See RCW 10.01.130).

Rule 6.13 Material witnesses. On motion of the prosecuting attorney or the defendant a witness may be compelled to attend a hearing to determine whether his testimony is material. Upon request, the court shall appoint counsel for a witness who is financially unable to

obtain one. Upon a determination that his testimony is material, and that it appears probable that a witness will not voluntarily appear at the trial, the court shall order the taking of his deposition. Pending the taking of the deposition the provisions of Rule 3.2 shall apply. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.16.140, probably supersedes RCW 10.16.145, 10.16.150; modifies if not supersedes RCW 10-.16.160; supersedes in part RCW 10.52.040.

Rule 6.14 Immunity. In any case the court on motion of the prosecuting attorney, may order that a witness shall not be excused from giving testimony or producing any papers, documents or things, on the ground that his testimony may tend to incriminate or subject him to penalty or forfeiture; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this rule. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or the giving of false evidence. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 6.15 Instructions and argument.

(a) Proposed Instructions. Proposed jury instructions shall be served and filed when a case is called for trial be serving one copy upon counsel for each party, by filing one copy with the clerk, and by delivering the original and one additional copy for each party to the trial judge. Additional instructions, which could not be reasonably anticipated, shall be served and filed at any time before the court has instructed the jury.

Not less than ten days before the date of trial, the court may order counsel to serve and file proposed instructions not less than three days before the trial date.

Each proposed instruction shall be on a separate sheet of paper. The original shall not be numbered nor include citations of authority.

Any superior court may adopt special rules permitting certain instructions to be requested by number from any published book of instructions.

(b) Statute Abrogated. That portion of RCW 10.52-.040, reading as follows, is hereby abrogated:

"And provided further, that it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf."

(c) Objection to Instructions. Before instructing the jury, the court shall supply counsel with copies of the proposed numbered instructions, verdict and special finding forms. The court shall afford to counsel an opportunity in the absence of the jury to object to the giving of any instructions and the refusal to give a requested instruction or submission of a verdict or special finding form. The party objecting shall state the reasons for his objection, specifying the number, paragraph, and particular part of the instruction to be given or refused. The court shall provide counsel for each party with a copy of the instructions in their final form.

(d) Instructing the Jury and Argument of Counsel. The court shall read the instruction to the jury. The prosecution may then address the jury after which the defense may address the jury followed by the prosecution's rebuttal.

(e) Deliberation. After argument, the jury shall retire to consider the verdict. The jury shall take with them the instructions given, all exhibits received in evidence and a verdict form or forms.

(f) Additional or Subsequent Instructions.

(1) After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. Any additional instruction upon any point of law shall be given in writing.

(2) After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

(g) Several Offenses. The verdict forms for an offense charged or necessarily included in the offense charged or an attempt to commit either the offense charged or any offense necessarily included therein may be submitted to the jury. [Adopted Apr. 18, 1973, effective July 1, 1973; amended, adopted Aug. 22, 1973, effective Jan. 2, 1974.]

Rule 6.16 Verdicts and findings.

(a) Verdicts.

(1) *Several defendants.* If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if a jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(2) *Return of verdict.* When all members of the jury agree upon a verdict, the foreman shall complete and sign the verdict form and return it to the judge in open court.

(3) *Poll of jurors.* When a verdict or special finding is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If at the conclusion of the poll, all of the jurors do not concur, the jury may be directed to return for further deliberations or may be discharged by the court.

(b) Special Findings. The court may submit to the jury forms for such special findings which may be required or authorized by law. The court shall give such instruction as may be necessary to enable the jury both to make these special findings or verdicts and to render a general verdict. When a special finding is inconsistent with another special finding or with the general verdict, the court may order the jury to retire for further consideration.

(c) Forms.

(1) *Verdict.* The verdict of the jury may be in substantially the following form:

We, the jury, find the defendant guilty [or not guilty] of the crime of _____ as charged in count number (_____).

_____
Signature of Foreman

(2) *Special findings.* Special findings may be substantially in the following form:

Was the defendant (name) armed with a deadly weapon at the time of the commission of the crime charged? [in count number _____.] Yes ( ) No ( ).

[Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.61.030, 10.61.035 in part, 10.61-.040, 10.61.050.

CHAPTER 7——PROCEDURES FOLLOWING CONVICTION

Rule 7.1 Sentencing.

(a) Sentencing.

(1) *Imposition of sentence.* Sentence shall be imposed or an order deferring sentence shall be entered without unreasonable delay. Pending such action the court may release or commit the defendant, pursuant to Rule 3.2. Before disposition the court shall afford counsel an opportunity to speak and shall ask the defendant if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

(b) Procedure at Time of Sentencing. The court shall, at the time of sentencing, unless the judgment and sentence are based on a plea of guilty, advise the defendant:

(1) of his right to appeal;

(2) that unless a notice of appeal is filed within 30 days after the entry of the judgment or order appealed from, the right of appeal is irrevocably waived;

(3) that the court clerk will, if requested by defendant appearing without counsel, file a notice of appeal in his behalf; and

(4) of his right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal. These proceedings shall be made a part of the record.

(c) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended or deferred; but to correct manifest injustice the court, after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.64.010, 10.64.040.

Rule 7.2 Presentence investigation.

(a) When Made. The court shall order the Department of Social and Health Services, Division of Institutions, to make a presentence investigation and report to the court before the imposition of sentence or the granting of probation, except that the court may dispense with a presentence report if:

(1) the maximum penalty is one year or less;

(2) the defendant has two or more prior felony convictions;

(3) the defendant refuses to be interviewed by the probation department or requests that disposition be made without a presentence report;

(4) it is impractical to verify the background of the defendant;

(5) the court finds in writing, with reasons stated, that the report would be of no practical use.

(b) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(c) Disclosure.

(1) Before imposing sentence the court shall permit the defendant to read the report of the presentence investigation unless in the opinion of the court the report contains information which if disclosed would be harmful to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity for comment or rebuttal.

(2) If the court is of the view that there is information in the presentence report, disclosure of which would be harmful to the defendant or to other persons, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity for comment or rebuttal. The statement may be made to the parties in camera.

(3) Any material disclosed to the defendant or his counsel shall also be disclosed to the prosecuting attorney. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.010.

Rule 7.3 Judgment. A judgment of conviction shall set forth whether defendant was represented by counsel or validly waived counsel, the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 7.4 Arrest of Judgment.

(a) Arrest of Judgments. Judgment may be arrested on the motion of the defendant for the following causes: (1) lack of jurisdiction of the person or offense; (2) the indictment or information does not charge a crime; or (3) insufficiency of the proof of a material element of the crime.

(b) Time for Motion. A motion for arrest of judgment must be served and filed within five days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time.

(c) New Charges After Arrest of Judgments. When judgment is arrested and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be recommitted or released to answer a new indictment or information. If judgment was arrested because there was no proof of the material element of the crime the defendant shall be dismissed.

(d) Rulings on Alternative Motions in Arrest of Judgment or for a New Trial.

(1) *Rulings on alternative motions in arrest of judgment or for a new trial in superior court.* Whenever a motion in arrest of a judgment and, in the alternative, for a new trial is filed and submitted in any superior court in any criminal cause tried before a jury, and the superior court enters an order granting the motion in arrest of judgment, the court shall, at the same time, in the alternative, pass upon and decide in the same order the motion for a new trial. The ruling upon the motion for a new trial shall not become effective unless and until the order granting the motion in arrest of judgment is reversed, vacated, or set aside in the manner provided by law.

(2) *Rulings on alternative motions in arrest of judgment or for a new trial in supreme court or court of appeals.* An appeal from an order granting a motion in arrest of judgment shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial. The appellate court shall, if it reverses the order granting the motion in arrest of judgment, review and determine the validity of the ruling on the motion for a new trial. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 7.5 Probation.

(a) Probation. After conviction of an offense the defendant may be placed on probation as provided by law.

(b) Revocation of Probation. The court shall not revoke probation except after a hearing in which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant is entitled to be represented by counsel and may be released pursuant to Rule 3.2 pending such hearing. Counsel shall be appointed for a defendant financially unable to obtain counsel. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 7.6 New trial.

(a) Grounds for New Trial. The court on motion of defendant may grant a new trial for any one of the following causes when it affirmatively appears that a substantial right of the defendant was materially affected:

(1) Receipt by the jury of any evidence, paper, document or book not allowed by the court;

(2) Misconduct of the prosecution or jury;

(3) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial;

(4) Accident or surprise;

(5) Irregularity in the proceedings of the court, jury or prosecution, or any order of court, or abuse of discretion, by which the defendant was prevented from having a fair trial;

(6) Error of law occurring at the trial and excepted to at the time by the defendant;

(7) That the verdict or decision is contrary to law and the evidence;

(8) That substantial justice has not been done. When the motion is based on matters outside the record, the facts shall be shown by affidavit.

(b) Time for Motion. A motion for new trial must be served and filed within five days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time.

(c) Time for Affidavits. When a motion for a new trial is based upon affidavits they shall be served with the motion. The prosecution has five days after such service within which to serve opposing affidavits. The court may extend the period for submitting affidavits to a time certain for good cause shown or upon stipulation.

(d) Statement of Reasons. In all cases where the court grants a motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record which cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(e) Disposition of Motion. The motion shall be disposed of before judgment and sentence or order deferring sentence. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Probably supersedes the entirety of Ch. 10.67 RCW.

Rule 7.7 Post–conviction relief.

(a) Petition. A petition for post–conviction relief may be filed by a person under any disability resulting from a sentence or order of a court who claims a right to relief upon the ground that such disability was imposed in violation of the Constitution or Laws of the United States or of the State of Washington or is otherwise subject to collateral attack. Such petition shall be directed to the chief judge of the court of appeals in the district in which the court that imposed the sentence or order is located and shall be filed on a standard form approved by the supreme court and appearing as section (j) of this rule.

(b) Prompt Hearing. If the petition appears to have any basis in fact or law, or is not on its face frivolous, the chief judge shall cause the petition to be transmitted

to the superior court in which the petitioner was originally tried for a prompt hearing on the merits of the petitioner's claim.

(c) Hearing Judge. The hearing on the petition in the superior court may be before any judge except the judge who imposed the sentence or other order, unless the petitioner assents to a hearing before such judge.

(d) Purpose of Hearing. The purpose of the hearing will be to determine whether the petitioner is entitled to release or other appropriate relief. The rules of evidence applicable at trial shall be followed at this hearing.

(e) Right to Counsel. The petitioner may be represented by counsel at such hearing, and where the court finds that the petitioner is indigent, counsel shall be provided at the state's expense.

(f) Presence of Petitioner. A court may hear the petition without requiring the presence of the petitioner at the hearing. Upon timely motion and a showing of good cause, the court may order the petitioner's presence at the hearing.

(g) Relief Upon Proper Finding. If at the hearing on the petition the court finds:

(1) that the conviction was obtained or sentence or order imposed in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(2) that the court entering the sentence or order was without jurisdiction over the person of the petitioner or the subject matter; or

(3) that material facts exist not theretofore presented and heard, which require vacation of the conviction, sentence or other order in the interest of justice; or

(4) that there has been a significant change in law, whether substantive or procedural, material to the conviction, sentence or other order and sufficient reasons exist to require retroactive application of the changed legal standard, it shall order the appropriate relief.

(h) Appeal. Either party may appeal the ruling of the superior court. The appeal shall be governed by the rules of appeal in criminal matters. Counsel appointed by the superior court to represent an indigent shall continue to represent him on the appeal unless, for good cause shown, he is relieved by the court.

(i) Successive Motions. A second or successive motion for similar relief on behalf of the same petitioner shall not be entertained without good cause shown.

(j) APPLICATION FOR POST-CONVICTION RELIEF PURSUANT TO RULE 7.7

I, _____,
Name (First) (Middle) (Last)
apply for relief from any sentence:

PART A

The sentence from which I seek relief was as follows:

1. (a) The court in which I was sentenced is: _____
   (b) Case number, if known: _____
2. Date of sentence: _____
3. Terms of sentence: _____
4. Name of sentencing judge: _____
5. I _____ now in custody serving this sentence.
   (am, am not)

Where? _____

6. I was convicted of the crime(s) of: _____
7. I was sentenced:
   (a) after plea of guilty _____
   (b) after trial _____
8. My lawyer was _____
   (Name)
   _____
   (Address)
9. I _____ appeal. To what court or courts?
   (did, did not)
   _____
   (Name of court(s))
10. I _____ sought further relief from my
    (have, have not)

conviction in other courts. If so, what court? _____
Relief Rule in the past. What result? _____

11. My lawyer on appeal was _____
    (Name) (if none, write "none")
    _____
    (Address)
12. An opinion ___ written by the appellate court(s).

Citation(s) _____

PART B

(If you have more than one ground for relief, attach a separate sheet for each ground. Answer the four questions below as to each additional ground, labeled SECOND GROUND, THIRD GROUND, etc.)

I believe that I have _____(number)_____ grounds for relief from the conviction and sentence described in Part A. This is the first ground.

1. I was deprived of the following rights or privileges in my case:
2. I was deprived of those rights or privileges by _____ who made the following errors:
3. The following cases (include citations if possible) are very close factually to mine and are an example of the errors I believe occurred in my case:
4. I can prove the facts state in Question No. 2 above in the following manner:

PART C

The statements I have made are true to the best of my knowledge and belief. I believe I am entitled to relief. I hereby apply to have counsel appointed to represent me. I do not possess any money or property except the following: (If none, state "none")

_____ _____
Date Signature

[Adopted Apr. 18, 1973, effective July 1, 1973.]

CHAPTER 8——MISCELLANEOUS

Rule 8.1 Time. Time shall be computed and enlarged in accordance with Civil Rule 6. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.2 Motions. Civil Rule 7(b) shall govern motions in criminal cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.3 Dismissal.

(a) On Motion of Prosecution. The court may, in its discretion, upon written motion of the prosecuting attorney setting forth the reason therefore, dismiss an indictment, information or complaint.

(b) On Motion of Court. The court on its own motion in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution and shall set forth its reasons in a written order. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.46.090.

Rule 8.4 Service and Filing of Papers. Civil Rule 5 shall govern service and filing of written motions (except those heard ex parte) in criminal causes. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.5 Calendars. In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and criminal cases where the defendant or a witness is in confinement shall have preference over other criminal cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.6 Exceptions Unnecessary. Civil Rule 46 shall govern exceptions to rulings and orders in criminal cases. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.7 Objections. Objections in criminal causes shall be taken as in civil causes. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Rule 8.8 Discharge. Upon acquittal, or whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall be released from custody or conditions of release on such charge and any bail shall be exonerated. [Adopted Apr. 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.64.090.

EVIDENCE RULES (ER)

(None, but see CR's 43 and 44)

SUPERIOR COURT MENTAL PROCEEDINGS RULES (MPR)

Introduction

The following rules have been designed and promulgated to give full force and effect to Laws of 1973, 1st Ex. Sess., ch. 142. Any future amendments which may be enacted will be dealt with in rules as the need may arise.

Section 62 of the act directs the Supreme Court to adopt rules with respect to court procedures and proceedings. Adoption of these rules is not to be construed as approval of what could be a breach of the separation of powers of government. While the legislature may recommend rule making as to particular matters, it may not mandate rule making which is an inherent power of the judicial branch.

Although the courts generally do not pass upon the wisdom or the workability of statutes, they are concerned with their constitutionality. The adoption of these rules, which are merely designed to give effect to the statute as it is written, does not in any manner indicate an opinion of the court that the statute is or is not constitutional in any respect. In promulgating them, the court does not in any manner obviate further consideration of any portion of the statute or these rules in a proper case.

Because of the complicated nature of the statute necessitating these rules and the need that they be effective January 1, 1974, the court has promulgated them without submitting them for comment, and now invites comment from the bench and bar. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

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GENERAL

Rule 1.1 Notice——General Whenever any notice or document pursuant to the provisions of RCW 71.05 is required to be served on a person who is detained or committed, such notice or document shall be provided in addition to any other person provided by statute, to the person's attorney, guardian, if any, and, if the person is under eighteen years of age, to any person, entity, or institution having actual custody.

(a) **Notice to Prosecutor.** In any judicial proceeding, under RCW 71.05, for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney shall be served by the party initiating the proceedings with written notice of the proceedings and copies of the initiating papers.

(b) **Notice of Release.** Whenever a person committed or detained under RCW 71.05, is released or conditionally released, the court ordering such commitment shall be notified immediately in writing of the release by the superintendent or professional person in charge of the facility from which the person is released. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.2 Continuance or postponement In any judicial proceeding held pursuant to RCW 71.05 for involuntary commitment or detention, or for challenging such commitment or detention, the court may continue or postpone such proceeding for a reasonable time on the following grounds:

(a) On motion of the respondent on a showing of good cause;

(b) On motion of the prosecuting attorney if:

(1) the respondent expressly consents to a continuance or delay and good cause is shown; or

(2) required in the due administration of justice and the respondent will not be substantially prejudiced in the presentation of his case;

(c) The court on its own motion may continue the case when required in the due administration of justice and when the respondent will not be substantially prejudiced in the presentation of his case.

An order granting continuance shall state whether detention will be extended and the grounds therefor. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.3 Confidentiality of proceedings Proceedings had pursuant to RCW 71.05 shall not be open to the public, unless the person who is the subject of the proceedings or his attorney files with the court a written request that the proceedings be public. The court in its discretion may permit a limited number of persons to observe the proceedings as a part of a training program of a facility devoted to the healing arts or of an accredited educational institution within the state. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.4 Alternative less restrictive treatment (a) As an alternative to detention, where the court makes a finding or a special verdict is returned that the respondent should receive less restrictive alternative treatment, the court may order such less restrictive alternative treatment for no longer than the period for which the respondent could have been committed at the hearing.

(b) If the court orders less restrictive alternative treatment, the order shall specify the terms and conditions of the alternative treatment and a copy shall be delivered to the respondent. [Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

PROCEEDINGS FOR INITIAL DETENTION

Rule 2.1 Summons The summons issued pursuant to RCW 71.05.150 shall include the following:

(a) The date and time for appearance, not less than twenty–four hours from the time at which the summons is served, at an evaluation and treatment facility.

(b) The address of the evaluation and treatment facility.

(c) The business address and business telephone number of the designated mental health professional.

(d) A statement that the person summoned may be detained at the evaluation and treatment facility for up to seventy–two hours.

(e) A statement that if the person summoned fails to appear at the evaluation and treatment facility on or before the date and time indicated, he may be taken into custody.

(f) A statement that an attorney will be appointed for the person summoned unless the person has retained his own attorney.

(g) The name, business address and business telephone number of the designated attorney.

(h) The summons shall be in substantially the following form:

The State of Washington to (*name person to be detained*):

It is alleged that because of mental disorder you present a likelihood of serious harm to yourself or other persons, or are gravely disabled.

You are hereby summoned to appear in person at (*address of evaluation and treatment facility*) in (*city*), Washington on or before (*hour*) on (*month, day, year*) for evaluation and possible treatment. You may be detained without court order for evaluation and possible treatment for not more than seventy–two hours. If you fail to appear in person on or before the time and date stated above, you may be taken into custody.

You have the right to have an attorney. (*name, address, telephone number*) will be appointed as your attorney unless you make arrangements to be represented by another attorney.

(signed) _____
Mental Health Professional
_____ County, Washington
Address: _____
Telephone: _____

[Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 2.2 Authorization and notice of detention At the time when any person is taken into custody or as soon as possible thereafter pursuant to RCW 71.05.150(1)(d) or RCW 71.05.150(2) regardless of whether a summons has been issued pursuant to Rule 2.1 written authorization to do so shall be served upon such person. A copy of the authorization and a notice of detention shall be filed with the court. The authorization and notice of detention shall include:

(a) The name of the person to be taken into custody.

(b) A statement that the person authorized to take custody is authorized pursuant to RCW 71.05.150(1)(d) or RCW 71.05.150(2).

(c) A statement that the person is to be taken into custody for the purpose of delivering such person to an evaluation and treatment facility for a period up to seventy–two hours.

(d) A statement specifying the name and location of the evaluation and treatment facility where such person will be detained.

(e) The authorization and notice of detention shall be in substantially the following form:

To: Any Peace Officer or Mental Health Professional

(*name of person*) ☐ has failed to appear in response to summons issued by me pursuant to RCW 71.05.150 a copy of which is attached, or ☐ as a result of mental disorder presents an imminent likelihood of serious harm to himself or others. You are notified to take or to cause such person to be taken forthwith into custody and placed in (*name and location of evaluation and treatment facility*) for evaluation and treatment for not more than seventy–two hours, or such further time as a court may order.

Dated: _____

(signed) _____
Mental Health Professional,
_____ County, Washington

(*Respondent*) has been detained (*name and location of evaluation and treatment facility.*)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 2.2A Notice of emergency detention The notice of emergency detention required to be filed with the court and served upon the designated attorney of the detained person pursuant to RCW 71.05.160 shall include a statement specifying the name and location of the evaluation and treatment facility where the person taken into custody has been detained.

The notice of emergency detention shall be in substantially the following form:

(*Repsondent*) has been detained in (*name of evaluation and treatment facility*).

Dated: _____

Time: _____
(signed) _____
Mental Health Professional
(*name*) County, Washington

[Adopted June 21, 1974, effective July 1, 1974.]

Rule 2.3 Right to copy court files Prior to and at the hearing provided for in RCW 71.05.200, 71.05.240, 71-.05.250 the attorney for any detained person who will be a respondent at such hearing shall be permitted to view and copy all documents relating to the detained person, which have been filed with the court. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 2.4 Probable cause hearing

(a) Notice. If notice to the court and the prosecuting attorney of the probable cause hearing as required by RCW 71.05.150(1)(c), includes the date and time of the initial detention of any person involuntarily detained, no additional notice to the court shall be required pursuant to RCW 71.05.170.

(b) Procedure.

(1) The probable cause hearing provided in RCW 71.05.200(1) shall be held in accordance with the provisions of RCW 71.05.200(1), 71.05.240 and 71.05.250.

(2) The probable cause hearing shall proceed as in other civil actions, except that the court, in its discretion, may dispense with opening statements and final arguments.

(3) The court shall be advised of any medications administered to the respondent within the prior twenty-four hour period, and if it appears that the person detained has refused medication twenty-four hours before the hearing, but was nevertheless forced to receive medication during that period, the court may continue the hearing for twenty-four hours, and may order that no medication shall be administered to the person detained during such period.

(4) At the conclusion of the hearing, the court shall make written findings of fact and conclusions of law, and enter an order for release or for detention for an additional fourteen days in an evaluation and treatment facility, or such lesser treatment as shall to the court appear proper. A copy of the order shall be served upon the evaluation and treatment facility and on the mental health professional who signed the petition. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 2.5 Juvenile court proceedings (a) Minors over thirteen years of age involuntarily committed pursuant to RCW 72.23.070(3)(c) shall be released from such involuntary detention at the expiration of one year unless a new petition is filed pursuant to RCW 72.23.070(3)(b).

(b) The term "clearly" as used in RCW 72.23.070 shall describe the standard, "clear, cogent, and convincing."

(c) An order shall be "necessary" or in the "best interests" of a minor, as those terms are used in RCW 72.23.070, when the minor is gravely disabled or presents a likelihood of serious harm to others or himself.

(d) In the event the professional person in charge of the facility or his designee seeks to prevent the release of a voluntarily committed minor seeking release pursuant to RCW 72.23.070, the petition or written objections required to be filed by him with the juvenile court shall be the same as a petition for initial involuntary detention of minors. (Rule 6.1A) [Adopted June 21, 1974, effective July 1, 1974.]

PROCEEDINGS FOR NINETY OR ONE HUNDRED EIGHTY DAY COMMITMENT

Rule 3.1 First court appearance For purposes of proceedings for ninety day commitment, the phrase "first court appearance" provided in RCW 71.05.310 shall refer to the appearance provided for in RCW 71.05.300 of that act. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 3.2 Preliminary appearance Prior to the hearing provided for in RCW 71.05.320(2), the committed person shall be brought before the court for an appearance which shall be the same as that provided in RCW 71.05.300 of that act. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 3.3 Jury demand

(a) When Available. A jury is available only in a hearing for ninety or one hundred eighty day commitment proceedings pursuant to RCW 71.05.300 and RCW 71.05.320.

(b) Procedure for Demand. Within two judicial days after the person detained is advised in open court of his right to a jury trial as provided in RCW 71.05.300 the person detained may demand a trial by jury in the hearing on the petition for ninety day or one hundred eighty day detention by serving upon the prosecuting attorney a demand therefor in writing, by filing the demand therefor with the clerk. No jury fee shall be required. If no party, within the time above specified, serves and files a demand for jury trial, the matter shall be heard without a jury. If no party, within the time above specified, serves or files a demand that the matter be tried by a jury of twelve, it shall be tried by a jury of six members, with concurrence of five being required to reach a verdict. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 3.4 Hearing

(a) Procedure. The hearing shall be proceeded with as in any other civil action.

(b) Findings and Conclusions. Unless the matter is tried to a jury, the court shall make and enter findings of fact and conclusions of law.

(c) Verdict. If the matter is tried to a jury, the court shall instruct the jury to bring in a special verdict, which shall be in terms of the issues specified in RCW 71.05.320. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

PROCEEDINGS FOR CONDITIONAL RELEASE AND REVOCATION OR MODIFICATION

Rule 4.1 Notice of conditions Any person conditionally released pursuant to RCW 71.05.340 shall be notified in writing of the terms and conditions of the release and shall be notified in writing of any modifications of such terms and conditions. Such notification shall also be given in writing to the court which ordered the person's commitment. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 4.2 Authorization for apprehension and detention At the time of taking any person into custody for failure to adhere to the terms and conditions of release under RCW 71.05.340, an order of apprehension and detention shall be served upon the person. The order of apprehension and detention shall include:

(a) The name of the person taken into custody;

(b) That it is issued pursuant to revocation of conditional release;

(c) The date on which the order of commitment was entered and the number of days for which the person was ordered committed;

(d) The authorization shall be in substantially the following form:

To: Any Peace Officer or Mental Health Professional

You are authorized to take or cause to be taken (*name of person*) who was conditionally released from an order of commitment for (*number*) days by (*name of court*) which order was entered on (*date*), and the authority for which conditional release has been revoked, into custody and place such person in (*name and location of evaluation and treatment facility*) for detention, pursuant to RCW 71.05.340.

Date: _____

(signed) _____

☐ Secretary, Department of Social and Health Services, State of Washington, or His Designee, ☐ Mental Health Professional for (*name*) County.

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 4.3 Petition and order of apprehension and detention——Service Unless otherwise ordered by the court, the petition and order of apprehension and detention required in RCW 71.05.340, shall be served on the person to be apprehended and detained, at the time of apprehension, and on his guardian, if any, and his attorney, if any, as soon as possible.

Where no order of apprehension and detention has been issued, a petition shall be filed with the court within seventy–two hours and the person, his attorney, if any, and his guardian, if any, shall be served with a copy of the petition within twenty–four hours after the petition is filed with the court. At the time the petition is served on the person, notice shall be filed with the court and served on the person that a hearing will be held within fifteen days. [Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 4.4 Petition for initial detention The granting of a conditional release pursuant to RCW 71.05.340, shall not preclude a mental health professional from commencing new proceedings pursuant to RCW 71.05-.150. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 4.5 Hearing

(a) Burden of Proof. Before entering an order returning any person for involuntary treatment on an inpatient basis as a result of failure to adhere to the terms and conditions of conditional release pursuant to RCW 71.05.340, the court shall find at the hearing that there is clear, cogent, and convincing evidence that such person did not adhere to the terms and conditions of release, and that such person is likely to injure himself or other persons if not returned for involuntary treatment on an inpatient basis.

(b) Waiver. Waiver of the hearing provided for in RCW 71.05.340 shall be in writing signed by all persons required to waive under that section. A copy of the waiver shall be filed with the court in which the notice of apprehension and detention was filed. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

VENUE

Rule 5.1 General Proceedings pursuant to RCW 71-.05, shall be brought in the superior court of the county in which the person is being detained. The court, for good cause, may transfer a proceeding to the county of respondent's residence, or to the county in which the alleged conduct evidencing need for treatment occurred. [Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 5.2 Conditional release hearing The notice of apprehension and detention and the petition for hearing required in RCW 71.05.340, shall be filed in the county ordering the commitment from which the person was conditionally released. Upon motion for good cause, the court may order the proceeding transferred to the court in the county in which the person was receiving outpatient care or the county of the person's residence. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 5.3 Release of records A proceeding for the release of records or files pursuant to RCW 71.05.390, shall be in the court maintaining such records or files. [Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 5.4 [Reserved] [Adopted Dec. 17, 1973, effective Jan. 1, 1974; rescinded effective July 1, 1974.]

PETITIONS

Rule 6.1 Petition for initial detention The petition for initial detention shall contain the following:

(a) Identification of the petitioner as a peace officer or designated mental health professional.

(b) A statement describing the circumstances under which the condition of the respondent was brought to the petitioner's attention.

(c) A statement that as a result of the petitioner's personal observation or investigation, the petitioner believes that the actions of the respondent constitute a likelihood of harm to himself or others, or that he is gravely disabled.

(d) A statement of the specific facts known to the petitioner upon which he bases his belief that respondent should be detained for the purposes and under the authority of RCW 71.05.

(e) A request that the respondent be detained at an evaluation and treatment facility for no more than a 72–hour treatment and evaluation period.

(f) The date and the signature of the petitioner.

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

In re the Detention of Petitioner:	No.
and	PETITION FOR INITIAL DETENTION
Respondent:	RCW _____

Pursuant to RCW 71.05 petitioner ☐ a peace officer or ☐ mental health professional designated by the county alleges under penalty of perjury that:

Respondent, _____, was brought to my attention under the following circumstances:

_____
_____
_____
_____

As a result of my personal observation or investigation I believe that the actions of the respondent constitute a likelihood of serious harm to himself or others or that he is gravely disabled.

The specific facts known to me as a result of personal observation or investigation, upon which I base the belief that the respondent should be detained for the purposes and under the authority of RCW 71.05 are:

_____
_____
_____
_____

Therefore the petitioner requests that the respondent be detained at an evaluation and treatment facility for no more than a 72 hour evaluation and treatment period.

Dated this _____ day of _____, 19__.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington Residing at

_____
My commission expires on

_____

[Adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 6.1A Petition for initial involuntary detention of minors The petition for initial detention of a minor shall contain the following:

(a) The name and address of the petitioner(s) and that the petitioner(s) is (are) the parent, parents, conservator or guardian of the respondent, or that the petitioner is the juvenile court.

(b) The name, address, age, and sex of the respondent.

(c) A statement that the respondent is or is not in detention at the time the petition is filed, and, if so, the name and location of the place of detention.

(d) A statement that the respondent, as a result of mental disorder, presents a likelihood of serious harm to himself or others, or is gravely disabled.

(e) The facts upon which the allegations of the petition are based.

(f) A statement of the alternative courses of treatment which have been considered and that no alternative less restrictive than detention is in the best interest of the respondent.

(g) The name and location of the facility in which respondent will be detained and a statement that such facility is certified by the department of social and health services to provide evaluation and treatment to persons under eighteen years of age suffering from mental disorders.

(h) A demand that a hearing be held to determine whether respondent shall be committed or whether in alternative less restrictive treatment exists.

(i) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

In re the Detention of	No.
	PETITION FOR INITIAL INVOLUNTARY DETENTION OF A MINOR
Respondent.	RCW 72.23.070

(*Petitioner(s)*) is (*are*) ☐ parent ☐ parents, ☐ conservator, ☐ guardian of (respondent), or ☐ juvenile court for _____ County. Petitioner(s)'s address is _____
_____.

(*Respondent*), residing at (*address*) in (*city or town*) Washington is a ☐ male ☐ female, _____ years of age.

At the time of filing this petition, respondent ☐ is ☐ is not in detention pursuant to RCW 72.23.070. (If respondent is in detention.) The name and location of the facility in which respondent is in detention are _____
_____

Respondent, as a result of mental disorder, ☐ presents a likelihood of serious harm to himself, ☐ presents a likelihood of serious harm to others, ☐ is gravely disabled.

The facts upon which the allegations of this petition are based are: _____
_____
_____
_____

The following alternative courses of treatment have been considered: _____
_____
_____
_____

No alternative less restrictive than detention is in the best interests of the respondent.

The facility in which respondent will be detained is (*name and location*), certified by the Washington State Department of Social and Health Services to provide

evaluation and treatment to persons under eighteen years of age suffering from mental disorders.

The petitioner(s) request(s) that a hearing be held in the above named court to determine whether respondent shall be involuntarily committed pursuant to RCW 72.23 or whether there shall be an alternative less restrictive treatment.

_____
Petitioner

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington Residing at

_____
My commission expires on

_____

[Adopted June 21, 1974, effective July 1, 1974.]

Rule 6.2 Petition for fourteen day involuntary treatment The petition for fourteen-day involuntary treatment shall contain the following:

(a) The name and address of the petitioner(s).

(b) The name of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others or himself, or to be gravely disabled, and, if known to the petitioner, the address, age, sex, marital status and occupation of the person. Such person shall be denominated the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) The name of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others or himself, or to be gravely disabled, and the address of each such person if known to the petitioner.

(e) A statement that the professional staff of the evaluation and treatment facility has examined and analyzed respondent's condition and finds that as a result of mental disorder respondent presents a likelihood of serious harm to himself or others or is gravely disabled.

(f) A statement that the respondent has been advised of the need for, but has not accepted, voluntary treatment.

(g) A statement that the facility providing intensive treatment is certified to provide such treatment by the Department of Social and Health Services of the State of Washington.

(h) A statement that there is no less restrictive alternative to detention in the best interests of respondent or others, or that a less restrictive alternative is sought and a specification of what that alternative is.

(i) A demand that a probable cause hearing be held within seventy-two hours of detention, unless the person is sooner released, on the issue of whether the respondent shall be detained for an additional fourteen days' involuntary treatment or whether such person shall be treated under less restrictive alternatives.

(j) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

In re the Detention of:	No.
	PETITION FOR FOURTEEN DAY INVOLUNTARY TREATMENT
Respondents:	RCW _____

(*Petitioner(s)*), ☐ mental health professional for _____ county, ☐ member(s) of professional staff of _____ agency or facility, alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged _____.

(*Respondent's*) occupation is _____.

The professional staff of the evaluation agency or facility has examined respondent's condition and finds that as a result of mental disorder (*respondent*) presents:

☐ a likelihood of serious harm to others,

☐ a likelihood of serious harm to himself,

☐ is gravely disabled.

The facts upon which the allegations of this petition are based are as follows: _____

_____

_____.

(use back of page if necessary)

The person(s) legally responsible for the care, support, and maintenance of (*respondent*), and their relationship to him are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents) _____

_____

_____.

(use back of page if necessary)

The respondent has been advised of the need for, but has not accepted voluntary treatment.

The facility providing intensive treatment is certified to provide such treatment by the Department of Social and Health Services.

The petitioner(s) request(s) that a hearing be held before (*time and date*) unless the respondent is sooner released, to determine whether (*respondent*) ☐ shall be detained for fourteen days' involuntary treatment because there is no less restrictive alternative to detention in the best interests of respondent or others, or ☐ shall be required to comply with the following less restrictive alternative _____.

_____
Petitioner ☐ physician ☐ MHP

_____
Petitioner ☐ physician ☐ MHP

_____

_____
Address

Sworn and subscribed on _____.

_____
Notary Public for the State of Washington Residing at

_____
My commission expires on

_____
Petition (Fourteen Day Detention)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 6.3 Petition for ninety day involuntary treatment The petition for ninety day involuntary treatment shall contain the following:

(a) The name and address of the petitioner.

(b) The name and address of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to himself or others because such person (1) has threatened, attempted, or inflicted physical harm upon the person of another or himself after having been taken into custody for evaluation and treatment, or (2) was taken into custody as a result of conduct in which he attempted or inflicted physical harm upon the person of another or himself, or (3) is gravely disabled, or (4) is in custody because he has committed acts constituting a felony, and presents substantial likelihood of repeating similar acts. Such person shall be denominated the respondent.

(c) A statement that petitioner is the professional person in charge or his professional designee, or the county mental health professional of (*name*) county, of a treatment facility in which the respondent is detained pursuant to court order for fourteen day involuntary treatment.

(d) The name of the court ordering fourteen day involuntary treatment and the date on which such order was entered.

(e) A summary of the facts supporting the allegations of the petition.

(f) A demand that a hearing be held within five judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within ten judicial days of the filing of the petition for ninety day treatment on the issue of whether the person alleged, as a result of mental disorder, to present a likelihood of serious harm, to himself or others, shall be detained for involuntary treatment for a period not to exceed ninety days.

(g) A statement that the petition is supported by accompanying affidavits and the names of the persons signing such affidavits.

(h) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

In re the Detention of:	No.
	PETITION FOR NINETY DAY INVOLUNTARY TREATMENT
Respondent.	RCW _____

(*Petitioner*), ☐ the professional person in charge, or ☐ his professional designee, or ☐ the county mental health professional for (*name*) county, of (*name of facility*) in which (*respondent*) is detained for (*number*) days pursuant to an order of (*name or court*) entered on (*date*) alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged _____.

As a result of mental disorder (*respondent*) presents a likelihood of serious harm to himself or others because he ☐ has threatened, attempted, or inflicted physical harm upon the person of another or himself during the period in which he was detained pursuant to court order for fourteen day involuntary treatment, or ☐ was taken into custody as a result of conduct in which he threatened, attempted or inflicted physicial harm upon the person of another or himself, or ☐ is gravely disabled, or ☐ is in custody because he has committed acts constituting a felony, and as a result of mental disorder, presents a substantial likelihood of repeating similar acts.

The facts upon which the allegations of this petition are based are summarized as follows: _____

_____

The allegations are supported by the accompanying affidavits signed by _____

_____

_____

The petitioner requests that a hearing be held to determine whether (*respondent*) shall be detained for involuntary treatment for a period not to exceed ninety days.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington Residing at

_____
My commission expires on

_____
Petition (Ninety Day Dentention)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 6.4 Petition for one hundred eighty day involuntary treatment The petition for one hundred eighty day involuntary treatment shall contain the following:

(a) The name and address of the person filing the petition and the statement that petitioner is the superintendent or professional person in charge of the facility in which the person who is alleged, as a result of mental disorder, to present a likelihood of serious to others, is detained.

(b) The name and address of the person alleged, as a result of mental disorder to present a likelihood of serious harm to others because such person, (1) during his period of involuntary treatment, has threatened, attempted or actually inflicted physical harm on another, or (2) continues to be gravely disabled, or (3) is in custody because he has committed acts constituting a felony, and presents a substantial likelihood of repeating similar acts. Such person shall denominated the respondent.

(c) The name of the court ordering involuntary treatment for which the respondent is presently detained, and the date on which such order was entered.

(d) A summary of the facts supporting the allegations of the petition.

(e) A demand that a hearing be held within five judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within ten judicial days of the filing of the petition for one hundred eighty day treatment on the issue of whether the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others, shall be detained for involuntary treatment for a period not to exceed one hundred eighty days.

(f) A statement that a form of treatment less restrictive than involuntary detention is not in the best interest of the respondent or others.

(g) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR ---------- COUNTY

In re the Detention of:	No.
	PETITION FOR ONE HUNDRED EIGHTY DAY INVOLUNTARY TREATMENT
Respondent.	RCW ----------

(*Petitioner*), the superintendent or professional person in charge of (*name of facility*) in which (*respondent*) is detained for (*number*) days pursuant to an order of (*name of court*) entered on (*date*) alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged ----------.

(*Respondent*) ☐ has threatened, attempted or actually inflicted harm on another person during the period in which he has been involuntarily detained pursuant to court order and as a result of mental disorder presents a likelihood of serious harm to others, or ☐ continues to be gravely disabled or ☐ is in custody because he has committed acts constituting a felony and as a result of mental disorder presents a substantial likelihood of repeating similar acts.

The facts upon which the allegations of this petition are based are as follows:

A form of treatment less restrictive than involuntary detention is not in the best interest of the respondent or others.

The petitioner requests that a hearing be held to determine whether (*respondent*) shall be detained for involuntary treatment for a period not to exceed one hundred eighty days.

Petitioner

Sworn and Subscribed on ----------

Notary Public for the State of Washington Residing at

My commission expires on

Petition (One Hundred Eighty Day Detention)

[Adopted Dec. 17, 1973, effective Jan. 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

Rule 6.5 Petition for revocation of conditional release The petition for revocation of conditional release shall contain the following:

(a) The name and address of the petitioner and the statement that petitioner is the Secretary of the Department of Social and Health Services, State of Washington, or is the county mental health professional for (*name*) county.

(b) The name and address of the person alleged to have failed to adhere to the terms and conditions of release and to be likely to injure himself or other persons if not returned for involuntary treatment on an inpatient basis. Such person shall be the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) A statement that respondent was released under terms and conditions, a copy of which terms and conditions is attached to the petition, from detention pursuant to court order for involuntary treatment and the date the order was entered, number of days for which effective, and the court entering such order.

(e) The date, time and place of detention of the respondent if he is detained pursuant to an order of the secretary, or whether such an order has been or will be issued.

(f) A demand that a hearing be held within five days of the date on which respondent was detained pursuant to an order of the secretary, or not less than fifteen days from the date of service of the petition on the respondent, on the issues of whether the respondent failed to adhere to the terms and conditions of release, or whether the conditions of the release should be modified, or the person should be returned to the facility.

(g) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR _____ COUNTY

In re the Detention of:	No.
	PETITION FOR REVOCATION OF CONDITIONAL RELEASE
Respondent.	RCW _____

(*Petitioner*), ☐ Secretary of the Department of Social and Health Services, State of Washington, or ☐ county mental health professional for (*name*) county alleges that:

(*Respondent*), residing at (*address*) in (*city or town*) is a ☐ single, ☐ married, ☐ widowed, ☐ divorced, ☐ male, ☐ female, aged _____.

Pursuant to an order of (*name*) court entered on (*date*), respondent was detained for involuntary treatment for a period not to exceed (*number*) days in (*name of facility*).

(*Respondent*) was conditionally released from inpatient care at (*name of facility*) prior to expiration of the court ordered period of detention, under terms and conditions for such release copies of which, including modifications, are attached and were filed in (*name*) court on (*date(s)*).

During the period of conditional release respondent was receiving outpatient care from (*name of facility*) located in (*city or town*), (*name*) county.

Pursuant to RCW _____, petitioner ☐ has ☐ has not issued an order for the apprehension and detention of respondent and respondent ☐ is not detained ☐ is detained in (*name of facility*) located in (*city, town*), (*name*) county.

(*Respondent*) has failed to adhere to the terms and conditions of his release from involuntary detention and ☐ the conditions of release should be modified or ☐ the person should be returned to the facility.

The facts upon which the allegations of this petition are based are as follows: _____

_____

_____

The petitioner requests that a hearing be held to determine whether repondent has failed to adhere to the terms and conditions of release, and whether the respondent shall be returned for involuntary treatment on an inpatient basis or whether the terms and conditions of release shall be modified.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State
of Washington Residing at

_____
My commission expires on

_____

Petition (Revocation of Conditional Release)

[Adopted Dec. 17, 1973, effective Jan 1, 1974; amended, adopted June 21, 1974, effective July 1, 1974.]

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I. SCOPE OF RULES

Rule 1.1 Scope of rules. These rules shall govern the procedure of all matters within the jurisdiction of the Juvenile Court, including actions taken by probation officers, and shall supplement the applicable statutes. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 1.2 Jurisdiction of juvenile court. The jurisdiction of the Juvenile Court is defined by RCW 13.04.010. "Juvenile Court" is defined by RCW 13.04.030. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 1.3 Definition of probation officer. "Probation Officer" means any probation counselor appointed or designated pursuant to RCW 13.04.040. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

II. INTAKE

Rule 2.1 Petitions.

(a) Petition Alleging Delinquency.

(1) *Who May File.* Any person may file with the Clerk of the Superior Court, pursuant to RCW 13.04.060, a verified petition to invoke the jurisdiction of the Juvenile Court.

(2) *Contents.* The petition shall conform to RCW 13.04.060. It shall be entitled "In Re the Welfare of ----------." The petition shall contain:

(i) *Identification of Child.* Name, age, sex and residence of the child, so far as known to the petitioner. If not known, the petition shall so state.

(ii) *Identification of Parent or Custodian.* Name, marital status and residence of the parent or parents, custodian or other person responsible for the care of the child, or person with whom the child is residing, so far as known to the petitioner. If not known, the petition shall so state.

(iii) *Statement of Facts.* A statement of facts which gives the court jurisdiction over the child and over the subject matter of the proceedings, stated in plain language and with reasonable definiteness and particularity.

(iv) *Request for Inquiry.* A request that the court inquire into the welfare of the child and make such order as the court shall find to be in the best interests of the child.

(b) Citation Petition. The petition provided for in RCW 13.04.060 may be in the form of the citation and notice to appear provided for in JCrR 2.01 and the complaint and citation provided for in JTR T2.01

(c) Amendment. A petition may be amended at any time. The court shall grant additional time if necessary to insure a full and fair hearing on any new allegations in an amended petition.

(d) Answer. Any party may, but need not, file a written answer to a petition unless ordered to do so by the court or by local rule. [Adopted Dec. 31, 1968, effective Jan. 10, 1969. Prior: JuCR Rule 1, superseded by JuCR Rule 2.1(b).]

Rule 2.2 Referral of complaints. Any petition or any complaint to the Juvenile Court shall first be referred to the probation officer who is responsible for intake procedure, if the county has a paid probation officer. Pursuant to RCW 13.04.060, that officer shall advise any person making a complaint to the Juvenile Court whether or not a petition is reasonably justifiable. If the person making the complaint does not file a petition, the intake officer shall decide whether to file a petition or to follow other procedures pursuant to these rules. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 2.3 Intake interview.

(a) Child not in Detention. Upon receipt of a complaint, or upon the filing of a petition relating to a child

who is not in detention, the probation officer who is responsible for intake procedure may request by telephone or letter that the child, parent or interested parties appear for an intake interview.

(b) Child in Detention. If a child is in detention, the probation officer shall interview the child and shall invite the parent or custodian to appear for an intake interview.

(c) To be Voluntary. Any intake interview shall be voluntary. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 2.4 Intake procedure.

(a) When No Petition is Filed. Upon receipt of a complaint where no petition has been filed, the probation officer shall inform the child and parent or custodian of the nature of the complaint and explain the court procedures.

(b) Delivery of Petition. Upon the filing of a petition, the probation officer shall promptly deliver a copy of the petition to the child and parent or custodian.

(c) Notice of Rights. Upon the filing of a petition, or upon the admission of any child to detention, the probation officer shall deliver to the child and parent or custodian a written statement which gives notice of the following rights:

(1) the right to remain silent as set forth in Rule 7.1;

(2) the right to be represented by an attorney of their own choosing in all proceedings and to have an attorney appointed in certain cases as set forth in Rule 7.2; and

(3) the right to have a fact finding hearing on any petition, if they dispute the allegations made in the petition. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 2.5 Informal adjustment. Instead of filing a petition, the probation officer or the judge may make an informal adjustment or disposition of any complaint or referral, pursuant to RCW 13.04.056. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

III. DETENTION PRIOR TO DISPOSITION

Rule 3.1 Arrest of child. Any child who is taken into custody and who is not released to his parent, guardian, custodian or a responsible relative, pursuant to RCW 13.04.120, shall be taken directly before the Juvenile Court or placed in the detention facility under the jurisdiction of that court, or into the custody of a probation officer. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.2 Admission to detention. The probation officer who is responsible for intake procedure shall have the authority to admit any child to detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.3 Notice to parent or custodian. Unless the arresting officer has already done so, the probation officer shall immediately use all reasonable means to notify the parent or custodian that the child has been placed in detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.4 Time limitations on detention. As provided in RCW 13.04.053, no child shall be held in detention or shelter longer than 72 hours, excluding Sundays and holidays, unless a petition has been filed. No child may be held longer than 72 hours after the filing of a petition unless a court order has been entered for such continued detention or shelter. No child shall be detained for longer than 30 days unless the detention is authorized by a court order setting forth the findings upon which continued detention is based. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.5 Notice of preliminary detention hearing. The child and parent or custodian shall be informed that they have a right to a preliminary detention hearing. The court shall hold a preliminary detention hearing if one is requested. The child and parent or custodian shall be given notice of the time, place and purpose of the hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.6 Preliminary detention hearing. If the written notice of rights and copy of the petition have not already been given to the child and parent or custodian pursuant to Rule 2.4, the judge shall do so at the preliminary detention hearing. At any preliminary detention hearing the child and parent or custodian shall have an opportunity to present evidence and be heard on the issue of temporary detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.7 Waiver of preliminary detention hearing. If neither the child nor parent or custodian requests a preliminary detention hearing, the order for continued temporary detention or shelter may be signed without a hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.8 Release from detention. The court or the probation officer may release a child from detention at any time. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 3.9 Release on citation. See JuCR 2.1(b). [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

IV. FACT FINDING HEARING

Rule 4.1 Scheduling of fact finding hearing. If the child or parent or custodian disputes the allegations made in the petition, the court shall schedule a fact finding hearing with reasonable speed, giving preference to cases where the child is held in detention. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.2 Notice and summons.

(a) Manner of Service. Notice and summons shall issue and be served pursuant to RCW 13.04.070, or published pursuant to RCW 13.04.080.

(b) On Whom Served. Notice and summons shall be served upon the child in addition to the persons designated by statute.

(c) Time of Service. Notice and summons shall be served at least three days before the hearing.

(d) Contents. In addition to the statutory summons, the notice shall include:

(1) notice of the time and place of the hearing;

(2) a specific reference to the petition on file and to the copy thereof delivered pursuant to Rule 2.4;

(3) a statement that the purpose of the hearing is to consider the petition and hear evidence thereon;

(4) notice of the right to remain silent as set forth in Rule 7.1, and of the right to be represented by an attorney of their own choosing in all proceedings and to have an attorney appointed in certain cases, as set forth in Rule 7.2. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.3 Issue at fact finding hearing. The fact finding hearing shall be a trial on the allegations of fact made in the petition. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.4 Fact finding hearing.

(a) Evidence. The rules of evidence shall be followed in the conduct of the hearing. No social file or social study shall be considered by the court in connection with the fact finding hearing.

(b) Degree of Proof. In a fact finding hearing on a petition alleging delinquency, the facts alleged must be proved beyond a reasonable doubt. In a fact finding hearing on a petition alleging dependency, the facts alleged must be proved by a preponderance of the evidence.

(c) Findings of Fact. If the court dismisses the petition, no findings of fact are necessary. If the court decides to retain and exercise jurisdiction, it shall make written findings of fact.

(d) Disposition. In the discretion of the court, the matter of disposition may be considered at the hearing after the court has announced its findings of fact.

(e) Continuance. If the case is continued for a disposition hearing, the court shall decide whether or not the child should be held in detention pending final disposition. Notice of the time and place of the continued hearing may be given in open court.

(f) Duty of Prosecuting Attorney. It shall be the duty of the prosecuting attorney or his deputy to present the evidence supporting any petition where the facts are contested, whenever requested to do so by the court. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 4.5 Facts not disputed. If neither the child nor the parent or custodian disputes the allegations made in the petition, the rules for contested fact finding hearings shall not apply, and the court may schedule a formal hearing on the agreed facts to be combined with the disposition hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

V. DISPOSITION HEARING

Rule 5.1 Notice and summons for disposition hearing. Notice and summons for a disposition hearing shall issue and be served pursuant to Rule 4.2 only if no notice and summons on the petition has previously been served. All parties shall be notified orally or by mail of the time and place of any continued hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 5.2 Social study.

(a) Social Study for Disposition Hearing. To aid the court in its decision on disposition, a social study, consisting of an investigation and evaluation of the child, shall be made by the probation department, unless waived by the court in a particular case. The probation department shall make a written report which shall state the results of the study and shall include all social records that are to be made available to the court.

(b) Right of Access to Social File. An attorney for any interested party shall have a right to inspect the social file and the social study a reasonable time prior to the disposition hearing, unless the court in a particular case decides that release of certain information would be detrimental to the best interests of the child. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 5.3 Disposition hearing.

(a) Judge's Statement. The judge shall inform the parties of the purpose of the hearing. He shall inform the parties of the new status of the child either as a result of the fact finding hearing or as a result of their agreement with the facts alleged in the petition.

(b) Social Study. The court shall consider the social file and social study in addition to evidence produced at the hearing.

(c) Findings and Conclusions. The court shall make written findings of fact and conclusions of law in connection with an order of disposition, if they have not already been made at a fact finding hearing.

(d) Deferred Findings. With the agreement of the child and parent or custodian, the court may enter an order which defers the entry of any findings of fact whenever such deferral is in the best interests of the child. Along with such an agreed order deferring the findings of fact, the court may enter an order of disposition which is agreed to by the child and parent or custodian, or the court may defer the entry of any order of disposition, subject to conditions set by the court. If the conditions are met, the court, in its discretion may

later dismiss the petition. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 5.4 Direct to court hearing.

(a) Scheduling of Direct to Court Hearing. If the probation officer or the judge decides that an intake interview, preliminary investigation or social study would not be justified, the petition may be scheduled directly to court for a combined fact finding and disposition hearing.

(b) Notice and Summons for Direct to Court Hearing. Notice and summons for such a hearing shall be given pursuant to Rule 4.2.

(c) Referral to Probation Department. If it appears to the court at the direct to court hearing that disposition of the matter at that hearing would not be in the best interests of the child, the court may refer the matter back to the probation department for further action and hearing pursuant to these rules. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

VI. DECLINE OF JURISDICTION——ALLOWING CRIMINAL PROSECUTION

Rule 6.1 Scheduling of hearing on decline of jurisdiction. When a delinquency petition has been filed alleging violation of the law and it appears to the probation officer or the judge that retaining jurisdiction over the child in the Juvenile Court may be contrary to the best interests of the child or the public, the court shall schedule a hearing to determine whether or not to decline jurisdiction. In any case where declining jurisdiction would allow criminal prosecution for a felony, the decline hearing shall be scheduled within seven days after the filing of the petition, unless further continued by the court for good cause. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.2 Notice of hearing on decline of jurisdiction. The child and parent or custodian shall be given a copy of the petition and notice of the time, place and purpose of the hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.3 Investigation for decline hearing. When the court has scheduled a hearing in a case where a decline of jurisdiction would allow criminal prosecution for a felony, the probation department shall make an investigation and evaluation of the matter and make a report to the court. The decline investigation report shall include all social records that are to be made available to the court at the decline hearing. Any party or his attorney shall have a right to inspect a copy of the report of the decline investigation a reasonable time prior to the hearing. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.4 Hearing on decline of jurisdiction. At any hearing where a decline of jurisdiction would allow criminal prosecution for a felony, the court shall consider the decline investigation report in addition to evidence produced at the hearing and shall make written findings of fact and conclusions of law in support of its decision. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 6.5 Decline of jurisdiction in traffic cases. The court shall have discretion to decline jurisdiction, without a hearing, in connection with an alleged violation of the traffic laws. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

VII. SELF-INCRIMINATION AND RIGHT TO COUNSEL

Rule 7.1 Right to remain silent. A child who is the subject of court proceedings has a right to remain silent and may refuse to answer any questions. No other party or witness shall be compelled to testify, if the testimony might tend to incriminate him in any criminal proceeding, or to establish jurisdiction over him in any Juvenile Court proceeding. Whatever any person says after being warned of his rights may be used against him. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 7.2 Right to counsel.

(a) Retained Counsel. Any party has a right to be represented by an attorney of his own choosing in all proceedings.

(b) Court Appointed——Indigents. Any child whose parent, guardian or custodian is indigent has a right to have an attorney appointed by the court to represent him in any proceeding where the child may be subject to a decline of Juvenile Court jurisdiction which would allow criminal prosecution for a felony, or where the matter is serious enough that the court might consider removing the child from the custody of his parents or custodian, or committing the child to the Department of Institutions.

(c) Court Appointed——Other. The court shall appoint an attorney for any child where the court feels that the welfare of the child requires an attorney for any reason. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 7.3 Waiver of rights. Any right which a child has under these rules may be waived by an express waiver intelligently made by the child and his parent or custodian after they have been fully informed of the right being waived. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

Rule 7.4 Child under 12. Whenever these rules refer to waiver, consent or agreement by a child or refer to any notice, summons or petition being given to or served upon a child, the word child shall be construed to refer to a child who is at least 12 years of age. If a child is under 12 years of age, his parent or parents, or

the adult having his actual custody, shall receive the notice, summons or petition or give any waiver, consent or agreement contemplated by these rules unless the interests of the child and the parent or custodian are in conflict. In that event, or if no parent or custodian is available for a child under 12 years of age, the court shall appoint a guardian ad litem or attorney, or both, to protect the interests of the child and stand in the place of a parent or custodian. [Adopted Dec. 31, 1968, effective Jan. 10, 1969.]

LOCAL RULES OF SUPERIOR COURT (LR)
(Not published herein)

APPENDIX TO PART IV: COURT ORDERS AND TABLES

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5. Table of Distribution of Rules of Pleading, Practice and Procedure in Effect Prior to January 1, 1960, into the Rules of Pleading, Practice and Procedure which were superseded on July 1, 1967.

1. ORDER ADOPTING RULES——MAY 5, 1967.

(Effective July 1, 1967)
SUPREME COURT OF WASHINGTON

	Paper No. 25700–A ORDER ADOPTING (1) Classification System for Court Rules (2) Amendments to Rules on Appeal (3) Civil Rules for Superior Court (4) Special Proceedings Rules for Superior Court (5) Criminal Rules for Superior Court
IN THE MATTER OF THE ADOPTION of RULES OF COURT	

WHEREAS, the legislature enacted Laws of 1925, chapter 118, relating generally to rules of procedure; and

WHEREAS, authority to promulgate and adopt uniform rules of procedure for the courts in the state of Washington is vested in the Supreme Court of Washington under the decision in *State ex rel. Foster–Wyman Lbr. Co. v. Superior Court*, 148 Wash. 1, 267 Pac. 770 (1928); and

WHEREAS, the Supreme Court of Washington requested technical assistance, advice, and counsel from the Judicial Council, that a comprehensive study be made, and that proposed civil rules for Superior Court be drafted and submitted by the Judicial Council for consideration by the Supreme Court; and

WHEREAS, the Judicial Council established an advisory committee to do research and drafting, and to submit initial drafts of proposed civil rules for Superior Court.

WHEREAS, The advisory committee, after years of study, submitted to the Judicial Council an enlarged proposal made necessary by the revision of the civil rules consisting of:

(1) Classification System for Court Rules
(2) Amendments to Rules on Appeal
(3) Civil Rules for Superior Court
(4) Special Proceedings Rules for Superior Court (as renumbered)
(5) Criminal Rules for Superior Court (as renumbered)

WHEREAS, the Judicial Council caused copies of the proposed changes in rules to be distributed to interested individuals throughout the state, inviting and requesting comments and suggestions; and, after due consideration and careful revision by individual members of the Judicial Council, and by the council as a whole, the proposed changes in rules, as finally revised and unanimously approved by the Judicial Council, were submitted to the Supreme Court; and

WHEREAS, all written comment and criticism filed with the Judicial Council was evaluated and given due consideration by the Judicial Council; and

WHEREAS, these proposed civil rules for Superior Court together with the other necessary proposed changes in rules were considered by individual members of the Supreme Court and by the Supreme Court as a whole; NOW THEREFORE,

IT IS ORDERED THAT:

1. *Classification System for Court Rules.*

The following classification system for court rules is adopted and the titles to existing Court Rules are amended to conform:

(See Part I, General Rules, Rule 1)

[The above classification was amended by order of the court dated June 28, 1967. Such classification as amended is now General Rules, Rule 1.]

2. *Proposed Amendments to Rules on Appeal.*

The Judicial Council has proposed amendments to the Rules on Appeal, all appearing appropriate to coordinate the Rules on Appeal with changes made by the New Civil Rules For Superior Court. Action by the Supreme Court on these proposals is temporarily deferred for further study.

3. *Rules of Pleading, Practice and Procedure.*

The Rules of Pleading, Practice and Procedure are superseded by the following rules entitled as follows:

Civil Rules for Superior Court
Special Proceedings Rules for Superior Court
Criminal Rules for Superior Court

which are hereby adopted. The text for the newly adopted rules are annexed and by this reference are made a part of this order. There follows a table of cross references from the "RPPPs" to the new Rules.

CROSS REFERENCES FROM FORMER RPPPS TO NEW ROAS, CRS and SPRS

RPPP Nos.	*New Rules*
Rule 5.04W	CR 5(g)
Rule 7	CR 7
Rule 8	CR 8
Rule 8.04(1), 1st and 2nd sentence	CR 10(e)
Rule 8.04(1), 3rd sentence	CR 5(a)
Rule 8.04(1), 4th sentence	Not Readopted
Rule 8.04W(2)	CR 5(d)
Rule 8.08W(1)	CR 6(d)& 7(b)(3)
Rule 8.08W(2)	Not Readopted
Rule 8.08W(3)	CR 59(e)
Rule 9	CR 9
Rule 10	CR 10
Rule 11	CR 10
Rule 12	CR 12
Rule 13	CR 13
Rule 14	CR 14
Rule 15	CR 15

Appendix to Part IV

RPPP Nos.	*New Rules*
Rule 15.04W	CR 15(e)
Rule 16	CR 16
Rule 17	CR 17
Rule 18	CR 18
Rule 19	CR 19
Rule 20	CR 20
Rule 21	CR 21
Rule 22	CR 22
Rule 23	CR 23
Rule 23(b)	CR 23.1
Rule 23(b)	CR 23.2
Rule 24	CR 24
Rule 25	CR 25
Rule 26	CR 26
Rule 27	CR 27
Rule 28	CR 28
Rule 29	CR 29
Rule 30	CR 30
Rule 31	CR 31
Rule 32	CR 32
Rule 33	CR 33
Rule 34	CR 34
Rule 35	CR 35
Rule 36	CR 36
Rule 37	CR 37
Rule 38.04W	CR 38(e)
Rule 40.04W(1)	CR 40(d)
Rule 40.04W(2)	CR 40(c)
Rule 41.04W(a)	CR 41(b)(1)
Rule 41.04W(b)	CR 41(b)(2)
Rule 41.08W	CR 41(a)
Rule 42(a)	CR 42(b)
Rule 42(b)	CR 54(b)
Rule 42(c)	CR 62(h)
Rule 43.04W	CR 43(f)
Rule 43.08W	CR 43(a)(2)
Rule 43.12W	CR 43(g)
Rule 43.16W	CR 43(i)
Rule 44	CR 44
Rule 46.04W	CR 46
Rule 49	CR 49(a)&(b)
Rule 50	CR 50(a)
Rule 51.04W	CR 51(a) thru (e)
Rule 51.08W	CR 51(f) thru (h)
Rule 51.12W	CR 51(h)
Rule 51.16W	CR 51(f)
Rule 52.04W	CR 52(a)(1)
Rule 52.08W, 1st paragraph	CR 52(c)
Rule 52.08W, 2nd paragraph	CR 52(d)
Rule 54.04W	CR 54(e)
Rule 55.04W	CR 55(a)&(b)
Rule 55.08W	CR 55(f)
Rule 56	CR 56
Rule 59.04W	CR 59(a)&(b)
Rule 59.08W	CR 59(i), 50(c) and (d), ROA 16
Rule 60	CR 60(a)
Rule 60.04W	CR 60(e)
Rule 63.04W	Not Readopted
Rule 66.04W	CR 66(c) thru (e)
Rule 66.08W	CR 43(e)(2)
Rule 68	CR 68
Rule 70	CR 70
Rule 77.04W	CR 43(d)
Rule 77.08W, 1st sentence	CR 54(e)
Rule 77.08W, 2nd sentence	SPR 94.04W(e)
Rule 77.12W	Not Readopted
Rule 77.16W(1) thru (3)	CR 78(d) thru (f)
Rule 77.16W(4)	ROA 40(b)
Rule 77.20W	SPR 90.04W
Rule 77.24W	CR 77(h)
Rule 78.04W	CR 77(k)
Rule 80.04W	CR 43(j)
Rule 82.04W	CR 82
Rule 83.04W	CR 83(a)
Rule 86	CR 86(a)
Rule 89.04W	CR 2A
Rule 91.04W	SPR 94.04W
Rule 92.04W	SPR 93.04W
Rule 93.04W	SPR 98.16W
Rule 93.06W [98.06W]	(Abrogated)
Rule 96.04W	SPR 91.04W
Rule 96.08W	CrR 100.04W
Rule 98.04W	SPR 98.04W
Rule 98.08W, 1st paragraph	SPR 98.08W
Rule 98.08W, 2nd paragraph	SPR 98.10W
Rule 98.12W	SPR 98.12W
Rule 98.16W	SPR 98.20W
Rule 101.04W	CrR 101.04W
Rule 101.08W	CrR 101.08W
Rule 101.12W	CrR 101.12W
Rule 101.16W	CrR 101.16W
Rule 101.20W	CrR 101.20W
Rule 101.24W	CrR 101.24W

Reviser's note: For table of distribution of rules in effect prior to January 1, 1960, see the Appendix to Part IV, No. 4 infra.

4. *Public Inspection.*

This order and copies of the aforesaid rules be made available for public inspection as in the case of other orders and public records of the Supreme Court; and

5. *Publication and Requests for Comments, etc.*

The aforesaid Court Rules shall be published expeditiously in the Washington Decisions, together with notice that, for the purpose of due consideration and evaluation by the Supreme Court, comment, criticism, or objection to the aforesaid rules may be filed in writing not later than June 1, 1967, in the office of the Clerk of the Supreme court; and

6. *Effective Date.*

The rules referred to and incorporated herein by this order, be adopted subject only to further consideration and such revision as may be made by order of this Court, and become effective on July 1, 1967.

DATED this 5th day of May, 1967.

ROBERT C. FINLEY,
Chief Justice

Approved:

MATTHEW W. HILL
CHARLES T. DONWORTH
FRANK P. WEAVER
HUGH J. ROSELLINI
ROBERT T. HUNTER
ORRIS L. HAMILTON
FRANK HALE

FOREWORD

(to rules adopted May 5, 1967)

In January of 1961 Judge Donworth suggested to the Washington Judicial Council that certain civil rules for superior court be clarified. This resulted in a committee report in October of that year, recommending the adoption of five federal rules. Further suggestions for the adoption of certain federal rules were received about that time from Washington state attorneys and judges. By June of 1962 more than a dozen federal rules had been studied and their adoptions proposed. It was then decided to do an intensive study of the federal rules and to incorporate numerous suggestions that had been received from members of the Council, from judges and from attorneys. By this time it had become apparent to the Council's committee that in many areas Washington practice was preferable to federal practice.

By January 1964 the Sixth Draft had been prepared by the committee and considered by the Council at numerous meetings. This Draft was published as a service to the Bench and Bar by the West Publishing Company and widely distributed throughout that state to judges and local bar associations for their study, suggestions, and

criticisms. The superior court judges of the state, at their annual Judicial Conference, discussed the proposed rules at length and submitted suggestions to the Judicial Council. Letters were received from bar associations and from individual attorneys suggesting various changes. These suggestions were considered at several meetings of the Judicial Council during 1965 and resulted in the Seventh Draft, which was submitted to the Supreme Court for its consideration.

The rules are designed to accomplish the following objectives:

(1) To provide a single trial manual with ready references to the procedural rules and statutes relating to the trial of cases in the Superior Court of Washington;

(2) To conform to the federal practice in all situations where there are no compelling reasons for perpetuating Washington practice, especially in the many situations where the Washington statutes, rules, and case law are confusing, obscure, or nonexistent;

(3) To preserve the Washington practice in all situations where the Washington practice is believed to be superior or where the matter is not adequately covered by federal rules;

(4) To eliminate many procedural traps now existing in Washington practice;

(5) To conform the Civil Rules for the Superior Court to the Civil Rules for the Justice Courts which also follow the format of the federal rules;

(6) To make available a ready reference to all authorities discussing the comparable federal rules.

The Court expresses its appreciation to the members of the committee of the Judicial Council who drafted the proposed rules. This committee, consisting of Judge Frank D. James, Senator Fred H. Dore, and Dan Reaugh, chairman, with the assistance of Professor Robert Meisenholder of the University of Washington School of Law as reporter, devoted many hours and much labor to this complex and extensive compilation. We are likewise grateful to the many lawyers and judges whose helpful suggestions have added materially in the formulation of the rules as now presented.

A final note is that most of the 1966 Amendments to the Federal Rules of Civil Procedure have been incorporated into the comparable Civil Rule.

ROBERT C. FINLEY, *Chief Justice*

2. EXPLANATION BY THE COURT

Format. So that the many text books on the Federal Rules will be readily usable in researching these Civil Rules for Superior Court, every effort has been made to maintain the format of the Rule Number and subdivision organization of the Federal Rules. Therefore, even though the text of a given subdivision of a Federal Rule is not adopted, the comparable text of the Washington Rule is included where appropriate under the comparable Federal subdivision. Where the Federal Rules contain no comparable subdivision for a Washington Rule, and when the subject of the Washington subdivision logically should be placed before a subdivision "(a)" of the applicable Federal Rule, the hyphen symbol "(–)" is used to identify the inserted subparagraph. For examples see Rules 4(–) and 17(–). In other words, the hyphen (–) subdivision always precedes an (a) subdivision. When a Washington subdivision logically follows the last subdivision of a Federal Rule, the Washington subdivision is added after the last Federal subdivision. For examples see subdivisions (e) of Rule 15, and (i), (j), (k) and (l) of Rule 9. If there is no comparable Washington subdivision for a Federal subdivision, the Federal subdivision is included and designated as "[Reserved]".

Statutes. Where a Washington procedural statute, not superseded by a rule, logically comes within the scope of the Format of the subject matter of the Federal Rules, a cross-reference is added after the most appropriate "[Reserved]" subdivision. For examples see subdivision (b), (c), and (d) of Rule 3 and (d), (e) and (f) of Rule 17. The inclusion of a cross-reference to a statute does not imply that there are no other pertinent statutes.

Comments by the court. Where it appears that all or part of a statute has been superseded by a Rule, a statement to that effect is included in the Comments. Statutes not superseded continue to be effective. The Comments also identify the sources of the Rules.

Abbreviations. These "Civil Rules for Superior Court" may be cited as "CRs".

3. ORDER CORRECTING AND AMENDING RULES——JUNE 28, 1967

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF RULES OF COURT	Paper No. 25700A–104 CORRECTIONS and AMENDMENTS TO ORDER ADOPTING (1) Classification System for Court Rules (2) Amendments to Rules on Appeal (3) Civil Rules for Superior Court (4) Special Proceedings Rules for Superior Court (5) Criminal Rules for Superior Court

WHEREAS, The Supreme Court of Washington on May 5, 1967, issued and published in 71 W.D. 2d No. 1A, new court rules primarily applicable to the Superior Court, to become effective on July 1, 1967, and

WHEREAS, the Supreme Court individually, and in executive session, has received and considered comments, suggestions, and objections as requested in the May 5, 1967 order, and

WHEREAS, most suggestions and objections not adopted will be referred to the Judicial Council for further study,

NOW, THEREFORE, it is ORDERED that:

1. A new General Rule 1 relating to the classification of Court Rules is adopted to read:

(Reviser's note: See Part I, GENERAL RULES, Rule 1) The titles to all Court Rules are amended to conform.

2. On page vi of the May 5, 1967, order, the table of cross-references is amended by deleting "Rule 93.06W [98.06W] . . SPR 98.06W."

3. The Rules on Appeal (ROA) are amended as follows:

(a) ROA 15, entitled *"Jurisdiction, Effect of Appeal on"*, is amended by substituting:

> "A party may appeal from any order, judgment or decree enumerated in ROA 14 by giving notice of appeal as provided in ROA 33 and ROA 46. Except when the running of time for appeal is suspended as otherwise provided in these rules,"
> for:
>
> "A party may appeal from any order, judgment, or decree enumerated in Rule 14 by giving notice of appeal as provided in Rule 33, and"

Comment. The amendment coordinates with other rules such as ROA 33(6) and 46(b)(1) the suspending or extending the running of the time for filing the notice of appeal when certain post-trial motions are pending.

(b) ROA 16, entitled *"Powers of Supreme Court"*, is amended by adding at the end a new paragraph reading:

> "An appeal to the Supreme Court from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross-appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the Supreme Court shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial."

Comment. The paragraph added is identical to the last sentence from RPPP 59.08W which is superseded.

(c) In heading and in text of ROA 27, entitled *"Exception to Surety"*, change "Exception" to "Objection" and "except" to "object" and "excepts" to "objects."

Comment. This change from exceptions to objections is consistent with the Proposed CR–46 relation to objections.

(d) Paragraph (6) of ROA 33, entitled *"Notice of Appeal and Cross–appeal in Civil Cases"* is amended to read:

"(6) *Extension of Time for Filing Notice of Appeal.* If a timely motion is made for judgment notwithstanding the verdict under CR 50(b), for the amendment of findings under CR 52(b), for vacation of judgment under CR 52(d), and/or for reconsideration, etc., under CR 59, the notice of appeal may be filed within 30 days after the entry of the order granting or denying the motion."

Comment. Paragraph (6) is amended to clarify the effect on the running of the time for appeal when the enumerated motions are pending in the superior court.

(e) ROA 35, entitled *"Statement of Facts, What Constitutes"*, is amended by adding in the first sentence "any objections or" between "and" and "exceptions in the cause".

Comment. The phrase "exceptions in the cause" is not deleted because some statutes relating to the review of administrative ruling require "statements of exceptions".

(f) ROA 40, entitled *"Return of Statement of Facts"*, is amended by:

(1) Changing title to *"Statement of Facts"*.
(2) The present text of Rule on Appeal 40 is designated as subdivision (b) with the subtitle of *"(b) Use by Counsel"*.
(3) Adding new subdivisions (a) and (c) and comment reading:

"(a) *Notice of Filing.* When the proposed statement of facts is received by the clerk of the superior court, the clerk shall promptly notify the Supreme Court of the filing.

"(c) *Forwarding to Supreme Court.* The clerk of the superior court shall not forward the statement of facts to the clerk of the Supreme Court until the time for filing the respondent's brief has elapsed, except by consent in writing of respondent's counsel."

"Comment. Subdivision (c) follows and supersedes RPPP 77.16W(4)."

4. The Civil Rules for Superior Court (CRs) are amended as follows:

Page in 71 W.D. 2d No 1A	*CR*	*Line*	*Amendment*
xxix	Table of Contents	———	Prior to "Rule 81" insert "XI GENERAL PROVISIONS (Rule 81–86) ... 119"
2	2A	4th	after "open court" strike "and" and insert: "before a court reporter, or"
5	4(d)(1)	1st	In subheading delete "with" and insert "and/or"
6	4(d)(2)	1st	Delete "23.52.051–056" and insert "23A.08.110 and 23A.32.100"
13	6(a)	———	Strike last sentence
21	10(e)(4)	1st	Change "each attorney" to "all persons".
63	38(b)	———	Strike the last sentence
69	41(e)	———	Add a new subdivision reading: "(e) *Notice of Settlements.* If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing *pro se* to notify the court *promptly* of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk." *Comment.* Subdivision (e) is added to enable the courts to make fuller use of all court facilities.
75	44(a)(1)	13th & 15th	After "office" in line 13, insert "or official custody of the seal of the political subdivision", and at the end add: "or the seal of the political subdivision."
83	50(a)	———	At end of comment delete "it supersedes RCW 4.56-.150" and insert "Subdivision (a) does not supersede RCW 4.56.150."
83	50(b)	2nd	Delete "judgment" and insert "verdict"
85	51(d)(1)	———	At end add following sentence: "If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the written request which designates the number of the instruction shall also designate the choice of wording which is being requested."
114	77(c)(8)(A)(ii)	1st	Insert "i" in "Visiting"
118	79(e)	———	Add a new subsection reading: "(e) *Destruction of Records.* [Reserved——See RCW 36.23.070.]
119	80	———	Last sentence is amended to read: "In controverted matters, the use of recording devices shall be at the direction of the court, unless a party of record or his counsel makes timely objection prior to the commencement of the proceedings."
119	81–86	———	Prior to "Rule 81" insert "XI GENERAL PROVISIONS (Rules 81–86)"

5. The Special Proceedings Rules (SPRs) for Superior Court are amended as follows:

Page in 71 W.D. 2d No 1A	*SPR*	*Line*	*Amendment*
123–129	all	———	In all comments references to "former Rule" and "Rule" should be changed to "RPPP".

Page in 71 W.D. 2d No 1A	*SPR*	*Line*	*Amendment*
123	91.04W	———	After "91.04" add "W"
123	91.04W(a)	4th	Delete "defendant"
124	91.04W(c)	3d	Delete "defendant"
124	91.04W(d)	1, 2 & 4th	Delete "defendant"
124	91.04W(e)	2d	After "garnishment" insert: "on the defendant and on the garnishee"
124	91.04W(all)	———	Amend comment at end to read: "Comment. Amendments to RPPP 96.04W are made to conform to 1967 Amendments to Garnishment Statutes."
125	93.04W	1st	Between "proceeding" and "shall" insert "insofar as it affects or concerns the adopters".
126	98.04W(a)	5th	Delete "distributee" and insert "legatee and devisee".
126	98.04W(b)	7th	Delete "of" and insert "to".
126	98.06W	all	Delete the Rule since it expires on July 1, 1967.

6. The Criminal Rules for Superior Court (CrRs) are amended as follows:

Page in 71 W.D. 2d No 1A	*CrR*	*Line*	*Amendment*
131–136	all	———	In all comments references to "former Rule" should be changed to "RPPP"
131	101.04W(a)	1 & 2d	Delete "Rem. Rev. Stat. § 2148 [P.C. 9214]" and insert "RCW 10.52.040".

7. *Effective Date.* The amendments provided by this order shall become effective on July 1, 1967.

Dated this 28th day of June, 1967

ROBERT C. FINLEY
Chief Justice

MATTHEW W. HILL
CHARLES T. DONWORTH
MARSHALL A. NEILL
FRANK HALE
HUGH J. ROSELLIN
ROBERT T. HUNTER
ORRIS L. HAMILTON
FRANK P. WEAVER

4. Table of distribution of general rules of superior courts in effect prior to January 1, 1960 into the rules of pleading, practice and procedure which were superseded on July 1, 1967.

GRSC Number	*RPPP Number*
1	8.04W
2	15.04W
3	Superseded
4	55.04W
5	91.04W
6	8.08W
7	78.04W
8	40.04W
9	43.08W
10	89.04W
11	101.12W
12	43.12W
13	51.04W
14	77.08W
15	52.08W
16	Superseded by old RPPP 45. Appears as 59.04W
17	52.04W
18	66.08W
19	98.08W
20	96.08W
21	98.12W
22	54.04W
23	77.12W
24	77.16W
25	77.20W
26	77.24W
27	101.16W
28	83.04W
29	92.04W
30	55.08W
31	63.04W
32	93.04W
33	101.20W
34	101.24W

5. Table of distribution of rules of pleading, practice and procedure in effect prior to January 1, 1960 into the rules of pleading, practice and procedure which were superseded on July 1, 1967.

Old RPPP Number	*RPPP Number*
1	82.04W
2	Superseded
3	41.04W
4	41.08W
5	96.04W
6	Superseded
7	60
8	51.08W
9	51.12W
10	51.16W
11	46.04W
12	101.04W
13	60.04W
14	59.08W
15	101.08W
16	16
17	80.04W
18	18(b)
19	
sub. 1.	56
sub. 2.	12(c)
20	50
21	68
22	22
23	70
24	98.16W
25	77.04W
26–37	26–37
38	44
39	66.04W
40	38.04W
41	98.04W
42	43.04W
43	49
44	None (Old rule abbrogated certain statutes which statutes were

Old RPPP Number	*RPPP Number*
45	subsequently repealed by Chapter 50, Laws of 1957) 59.04W

INDEX FOR RULES OF COURT PARTS I–IV

INDEX KEY

Abbreviation

APR	Admission to Practice Rules
AR	Superior Court Administrative Rules
CAR	Court of Appeals Administrative Rules
CAROA	Court of Appeals Rules on Appeal
CJC	Code of Judicial Conduct
CPR	Code of Professional Responsibility
CR	Superior Court Civil Rules
CrR	Superior Court Criminal Rules
DRA	Discipline Rules for Attorneys
JuCR	Juvenile Court Rules
MPR	Superior Court Mental Proceedings Rules
ROA	Supreme Court Rules on Appeal
SAR	Supreme Court Administrative Rules
SPR	Superior Court Special Proceedings Rules

——A——

	Rule	Number
Accident or Surprise		
New trial, grounds	CR	59(a)
Accord and Satisfaction		
Affirmative defense, pleading	CR	8(c)
Accounts		
Receivership, filing, special notice	CR	66(d)
Action		
Against nonresident	CR	82(a)
Brought in wrong county	CR	82(b)
Civil See **Civil Action**		
Consolidation	CR	42
Corporation, enforcement of right	CR	23.1
Cost, security	CR	7(d)
Court, perpetuation of testimony	CR	27(c)
Criminal See **Criminal Cases**		
Dismissal		
Involuntary	CR	41(b)
Voluntary	CR	41(a)
Divorce See **Divorce**		
Effect of tolling statute	CR	3(b)
Federal, certificate procedure	ROA	I-67
Intervention	CR	24
Lis pendens	CR	3(d)
Parties designated	CR	17(–)
Pending decisions, list of	CR	79(f)
Pending, effect of effective date of civil rules	CR	86
Placing on calendar, methods	CR	40(b)
Real party in interest	CR	17(a)
Shareholder, derivative	CR	23.1
Superior Court, form	CR	2
Unincorporated association	CR	23.2
Adjournment		
Cause to remain on docket, no new notice needed	CR	40(a)(3)
Court of appeal	CAR	5
Power, automatic, effect	CR	77(g)
Supreme court	SAR	5
Administrator		
Capacity to sue	CR	17(b)
Claims by, settlement	SPR	98.08W
Compensation	SPR	98.10W
Admission		
Document, genuineness		
Effect	CR	36(b)
Request	CR	36(a)
Hearings for discipline of attorney	DRA	3.2(j)
Admission to practice		
Applicant, classification	APR	1
Approved law school defined	APR	2A
Attorney applicant		
Application		
false statement, discipline	CPR	1DR1–101
fee	APR	3B5
filing	APR	3B4
unqualified person, furthering application prohibited	CPR	1DR1–101
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Classification	APR	1
Defined	APR	3A
Definitions	APR	3A
Examination, See Examinations		
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Oral examination	APR	3B9
Qualifications	APR	3B
Retake of examination for reinstatement	DRA	8.7(a)
Statement of practice	APR	3B6, 7
Bar examination required	APR	1
Board of governors		
See also **Board of Governors**		
Recommendation	APR	5D
Rules for admission for educational purposes	APR	8
Special investigation	APR	6
Certificate of results	APR	5A
Committee of law examiners	APR	5A, B
Educational purposes	APR	8
Examinations		
Attorney applicant	APR	4B
Certificate of results	APR	5A
Failure	APR	4C
General applicant	APR	4A
General applicant		
Application, filing, fees	APR	2C
Approved law school defined	APR	2A
Classification	APR	1
Defined	APR	2A
Definitions	APR	2A
Examination, See Examinations		
Qualifications	APR	2B
Indigent representation	APR	7B
Law clerk		
See also General applicant		

	Rule	Number
Application	APR	2D2
Change of rules, effect	APR	2D6
Course of study	APR	2D3–5
Employment	APR	2D2
Requisites	APR	2D1
Statement of employer	APR	2D2
Law school, approved, defined	APR	2A
Member of bar from other jurisdiction	APR	7
Oath of attorney		
Form	APR	5G
Taking	APR	5F
Time limit	APR	5C
Recommendation by board of governors	APR	5D
Reinstatement after disbarment	DRA	VIII
Residence requirements	APR	5B
Special investigations	APR	6
State bar membership required, exception	APR	7
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Entering	APR	5E
Revocation	APR	10
Adoption		
Findings, conclusions, required	CR	52(a)(1)
Report, disposition	SPR	93.04W
Adoption by reference		
Statements in pleadings may be	CR	10(c)
Advance Sheets		
Publication	SAR	17
Adverse Party		
Argument following instructions to jury	CR	51(g)
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Examination not precluded by interrogatory, deposition	CR	43(f)(2)
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Preliminary injunction	CR	65(a)(1)
Temporary restraining order, when not needed	CR	65(b)
Perpetuation of testimony	CR	27(a)(2)
Summary judgment	CR	56(c)
Witness, notice	CR	43(f)(1)
Affidavit		
Bad faith, payment of expenses, contempt	CR	56(g)
Criminal case, proposed testimony	CrR	101.16W(e)
Default, motion, supporting	CR	55(a)
Form, further testimony	CR	56(e)
New trial, time for serving	CR	59(c)
Service with motion	CR	6(d)
Sureties, appeal bond accompanied by, when	CAROA	26
Trial, continuance	CR	40(e)
Unavailable, procedure	CR	56(f)
Affirmance		
Directed when	ROA	I–41(4)
Affirmation		
Judgment, order	ROA	I–16
Agreement		
Between parties in civil action	CR	2A
Amendment		
Changing party whom claim is against	CR	15(c)
Counterclaims, when omitted	CR	13(f)
Erasing, adding words	CR	15(e)
Juvenile court petition	JuCR	2.1
Pleading		
Insertion of true name	CR	10(a)
Manner, response	CR	15(a)
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Part V
RULES FOR COURTS OF LIMITED JURISDICTION

Title of Rules	Abbreviations	Formerly
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(Formerly: Administrative Rules for Justice Court; General Rules for Courts of Limited Jurisidiction (J))

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RULE JAR 1

QUALIFYING EXAMINATION OF LAY CANDIDATES FOR JUSTICE OF THE PEACE.

(a) Examining Committee. The qualifying examination for lay candidates for justice of the peace under RCW 3.34.060(2)(c) shall be prepared and administered in each county in which the statute is in force by a committee composed of the Administrator for the Courts, the Executive Secretary of the Judicial Council, and the President of the Magistrates, Association, under the supervision of the Chief Justice of the Supreme Court. The Administrator for the Courts shall be the chairman of the committee.

(b) Committee Responsibilities. The committee shall:

(1) *Study syllabus.* Promulgate a syllabus for study by candidates to prepare them for the responsibilities of a justice of the peace. The syllabus shall include, but is not necessarily limited to, constitutional and statutory provisions and Supreme Court Rules relating to the conduct of justice of the peace courts, state statutes governing the operation of motor vehicles, basic rules of evidence, and rights of a criminal defendant.

(2) *Examination.* Prepare an examination to determine the level of proficiency of candidates on subjects included in the study syllabus. The examination shall require written responses to written interrogatories, and may also include an oral portion.

(3) *Administration.* Announce the time and place for the examination and provide for monitoring and security during the examination.

(4) *Grading.* Arrange for the grading of the examination papers and determine a level of adequate competence.

(5) *Certification.* Certify to the auditor of the county in which the applicant resides the names of those applicants qualified by examination for performing the duties of a justice of the peace.

(c) Unsuccessful Candidates. A candidate who fails to pass the qualifying examination may, on petition to the Committee, be given additional examinations at times and places set by the committee. [Adopted June 21, 1962, effective June 21, 1962.]

RULE JAR 2

SCOPE OF RULES.

These rules shall govern the procedure of civil, criminal, and traffic cases in all courts of limited jurisdiction inferior to the superior court. They shall be construed to secure the just, speedy, and inexpensive determination of every action. Failure to set forth herein any provisions of common law or statute, not inconsistent with these rules, shall not be construed as an implied repeal thereof. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 3

DEFINITION OF TERMS.

As used in these rules, unless the context clearly requires otherwise:

(1) "Court" means any court inferior to the superior court.

(2) "Judge" shall mean Justice of the Peace, Municipal Court Judge, Police Court Judge, and the judge of any court inferior to the superior court which may be hereafter established.

(3) "Oaths" include affirmations.

(4) "Prosecuting Attorney" or "prosecutor" includes deputy prosecuting attorneys, and city attorneys, corporation counsels, and their deputies and assistants.

(5) "Offenses against the State" shall, wherever appropriate, include offenses against a county or a city by virtue of violation of an ordinance or resolution.

(6) "City" shall be construed to include towns.

(7) "State" whenever appropriate, shall include a city or town. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 4

CANONS OF JUDICIAL ETHICS.

(1) The Canons of Judicial Ethics as adopted by the Supreme Court of Washington shall apply to the judge of each court subject to these rules, whether or not such judge has been admitted to the bar. It shall be the obligation of each such judge to conduct his court and his professional and personal relationships in accordance with the same standards as are required of judges of courts of record, except that Canon 31, prohibiting judges from practicing law, shall not apply to attorney–justices of courts of limited jurisdiction who have been specifically authorized by statute to practice law.

(2) The taking of photographs in the courtroom or radio or television broadcasting or transmitting of judicial proceedings from the courtroom during the progress of judicial proceedings shall be governed by the Canons of Judicial Ethics. [Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963.]

RULE JAR 5

PRESIDING JUDGE, MULTIPLE JUDGE JUSTICE COURT DISTRICT.

(a) Appointment. In all justice court districts having more than one judge, the judicial business of the district shall be supervised by one of those judges to be known as the "Presiding Judge," who shall be elected by the judges of such district for a term not to exceed one year subject to re–election. In the same manner, the judges shall elect another judge of said district to serve as Acting Presiding Judge during the temporary absence or disability of the Presiding Judge. Interim vacancies in the office of Presiding Judge or Acting Presiding Judge shall be filled as in the original election above described.

The Presiding Judge so elected shall send notice of the election of such Presiding Judge and Acting Presiding Judge to the Chief Justice of the Supreme Court on or before May 1, 1963, and thereafter on or before March 15th of each year. If the judges of a district shall fail or refuse to elect and certify to the Chief Justice of the Supreme Court, the Supreme Court shall by appointment designate the Presiding Judge and Acting Presiding Judge.

(b) Duties. The duties of the Presiding Judge shall include the supervision of the business of the judicial district in such manner as to assure the expeditious and efficient handling of all cases and equal distribution of the work load among the several judges; assigning the justices of the peace to departments, if the court is departmentalized; presiding at meetings of the justices of the peace of the district; supervising the preparation and filing of reports required by statute or rule of court; and such other duties as may be assigned by statute or by rule. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 6

RECORDS: SEPARATE DOCKETS——CONTENTS.

(a) Every court having criminal jurisdiction shall keep such records as are required by law.

(b) Separate dockets shall be kept for criminal, traffic, civil, and small claims actions. In such dockets shall be entered:

(1) The title of all actions.

(2) The object of the action or proceeding.

(3) All filing, return, trial, and appearance dates.

(4) An abstract of every motion, rule, order and decision of the court.

(5) Every continuance, and for whom granted.

(6) All demands for a trial by jury, and by whom.

(7) The names of the jurors who appear and are sworn; the names of witnesses sworn, and at whose request.

(8) An abstract of the verdict of the jury when received and other proceedings in connection with the jury.

(9) An abstract of the judgment of the court and the amount thereof, and all costs granted in connection therewith.

(10) The time of issuing execution, and an account of the debt and costs, and the fees due to each person separately.

(11) The fact of a notice of appeal and the date thereof.

(12) Satisfaction of the judgment, or any money paid thereon and the date thereof.

(13) Such other entries as may be material. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 7

VIOLATION OF RULES——CONTEMPT——WHEN.

Any wilful failure to apply the provision of these rules in his court, the failure to amend or vacate local court rules contradictory to those herein set forth, or the continuation of practices expressly forbidden in these rules by the judge of any court subject thereto who has received actual notice of their adoption may be considered a contempt of the Supreme Court of Washington and punishable as such. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE JAR 8

REPORTING OF CRIMINAL CASES.

(a) Report of Disposition. Within five court days after the disposition by a court of limited jurisdiction of a felony or gross misdemeanor charge or misdemeanor charges which have been reported to the Washington State Patrol Section on Identification, whether the disposition be a plea of guilty or by deferral or suspension of imposition of sentence, or a finding of guilty, or not guilty after trial, or by a dismissal of the charge, the court clerk shall report such disposition to the Section on a disposition form approved by the Administrator for the Courts. When a sentence has been deferred or suspended, the report to the Section shall indicate the length of time over which such suspension or deferral is to be effective. At the conclusion of the time period for deferral or suspension of sentence, the court clerk shall forward an amended disposition form to the Section showing the actual disposition of the case.

(b) Report of Appeal. If an appeal is taken from the disposition made by a court of limited jurisdiction, the court clerk shall, within five court days of the taking of the appeal, notify the Section on an amended disposition form. In the event that the result of any proceeding changes or otherwise makes inaccurate the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974, effective Mar. 1, 1974.]

JUSTICE COURT CIVIL RULES (JCR)

(Formerly: Civil Rules for Justice Court; Civil Rules for Courts of Limited Jurisdiction.)

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RULE 1

SCOPE OF RULES.

See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2

ONE FORM OF ACTION.

There shall be one form of action to be known as "civil action." [Adopted Feb. 13, 1963, effective July 1, 1963.]

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS (RULES 3–6)

RULE 3

COMMENCEMENT OF ACTION.

A civil action is commenced by filing with the court a complaint signed as required by Rule 11. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4

PROCESS.

(a) Notice: Issuance. Any person desiring to commence a civil action shall do so by filing a written complaint with the court, and when such complaint is so filed, upon payment of a fee, a notice shall issue.

(b) Notice: Form. (1) First. The first notice shall notify the defendant to appear in person or by attorney at the time and place stated in the notice, which shall not be less than six days or more than twenty days from the date the complaint was filed.

(2) Additional. Upon affidavit of the plaintiff or his attorney that service of the notice was not perfected, additional notices may be issued directing the defendant to appear in not less than six days nor more than twenty days, provided that the maximum period of any return date shall not be more than sixty days from the date the complaint was filed.

(c) The notice shall be signed by the judge or clerk and be substantially in the following form:

(NAME AND LOCATION OF COURT)

Plaintiff
vs. No. _____
Defendant NOTICE OF SUIT

To _____ (Defendants)

On _____, 19__, above-named plaintiff(s) filed a claim against you, a copy of which is attached.

You are notified to appear in person or by attorney on or at any time before _____ at the office of the clerk of the above entitled court at _____ (address of court) and admit or deny the above claim. If you deny any part of the claim, then the court clerk will set the case for trial at a future date.

If you fail to appear or to answer, judgment will be taken against you by default as demanded in the claim.

Issued: _____.

(Name and address of plaintiff or his attorney)

_____
(Judge or Clerk)

(d) Notice: By Whom Served. Service of notice and complaint may be made by the sheriff or some constable of the county or district in which the court is located or by any citizen of the State of Washington over the age of eighteen years and who is competent to be a witness and is not a party to the action.

(e) Notice: Personal Service. The notice shall be attached to the complaint and a copy of the notice and complaint shall be served together upon the defendant at least 5 days before the return day stated in the notice. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be

made within the territorial jurisdiction of the court as follows:

(1) If the action be against any county in this state, to the county auditor.

(2) If against any town or incorporated city in the state, to the mayor, manager or clerk thereof.

(3) If against a school district, to the clerk thereof.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance.

(7) If against a foreign or alien insurance company as provided in RCW 48.05.200 and 48.05.210.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor.

(9) If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent of the company or corporation or branch or local office or to the secretary, stenographer or office assistant of such individuals.

(10) If the suit be against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of 14 years, to such minor personally, and also to his father, mother, guardian, or if there be none within the jurisdiction then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) In all other cases, to the defendant personally, or by leaving complaint and notice at the house of his usual abode with some person of suitable age and discretion then resident therein.

(14) Whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof.

Service made in the modes provided in this rule 4(e) shall be taken and held to be personal service.

(f) Notice: Service by Publication and Personal Service Out of the Jurisdiction. (1) When the defendant cannot be found within the territorial jurisdiction of the court (of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence), and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the court stating that he believes that the defendant is not a resident of the county, or cannot be found therein, and that he has deposited a copy of the notice (substantially in the form prescribed in this rule) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the notice by the plaintiff or his attorney in any of the following cases:

(i) When the defendant is a foreign corporation, and has property within the county;

(ii) When the defendant, being a resident of the county, has departed therefrom with intent to defraud his creditors, or to avoid the service of a notice and complaint, or keeps himself concealed therein with like intent;

(iii) When the defendant is not a resident of the county, but has property therein which has been brought under the control of the court by seizure or some equivalent act;

(iv) When the subject of the action is personal property in the county, and the defendant has or claims a lien or interest, actual or contingent, therein, and the relief demanded consists wholly, or partially, in excluding the defendant from any interest or lien therein;

(v) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to personal property in the county.

(2) The publication shall be made in a newspaper authorized to publish a summons in superior court and shall not be published until after the filing of the complaint. The notice must be subscribed by the judge or clerk, it shall notify the defendant to appear in person or by attorney on a date certain, and it shall contain a brief statement of the object of the action. Said notice shall be published not less than once a week for 3 weeks prior to the time fixed for the hearing of the cause, which shall not be less than 4 weeks from the time of first publication of such notice; and publication shall be deemed complete on the seventh day following the last publication.

The notice shall be substantially in the following form:

(NAME AND LOCATION OF COURT)

Plaintiff
vs. No. _____
Defendant NOTICE OF SUIT

To _____ (Defendants)

On _____, 19__, above-named plaintiff(s) filed a claim against you.

You are notified to appear in person or by attorney on or at any time before _____ at the office of the clerk of the above entitled court at _____ (address of court) and admit or deny the above claim. If you deny any part of the claim, then the court clerk will set the case for trial at a future date.

If you fail to appear or to answer, judgment will be taken against you be default as demanded in the claim. (Insert here a brief statement of the object of the action.)

Issued: _____.
(Name and address of plaintiff or his attorney)

_____
(Judge or Clerk)

(3) Personal service on the defendant out of the territorial jurisdiction of the court shall be equivalent to service by publication, and the notice to the defendant out the the county shall contain the same as the notice by publication and shall require the defendant to appear at a time and place certain which shall not be less than 30 days from the date of service.

(4) Service made in the modes provided in this rule 4(f) shall not alone be taken and held to give the court jurisdiction over the person of the defendant. By such service the court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property which properly forms the basis of jurisdiction of the court. If the defendant appears in a suit commenced by such service the court shall have jurisdiction over his person. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the court.

(g) Territorial Limits of Effective Service. The complaint and notice may be served anywhere within the county or counties in which the district of the court is located.

(h) Return (1) The person serving the complaint and notice shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the notice.

(2) Proof of service shall be as follows:

(i) If served by the sheriff or his deputy or a constable, the return of the officer indorsed upon or attached to a copy of the notice; or

(ii) If served by any other person, his affidavit of service indorsed upon or attached to a copy of the notice; or

(iii) If served by publication, the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper showing the same, together with a printed copy of the notice as published; or

(iv) Written admission of the defendant indorsed upon a copy of the notice.

In case of service otherwise than by publication, the return, affidavit, or admission must state the time, place and manner of service.

(3) Costs shall not be awarded and a default judgment shall not be rendered unless proof of service is on file with the court.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Feb. 24, 1972, effective July 1, 1972.]

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) Service: When Required. Every order required by its terms to be served, every written pleading subsequent to the original complaint, every written motion, and every written notice, appearance, demand, offer of judgment, or other paper shall be served upon all parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of notice and complaint in Rule 4.

(b) Same: How Made. Whenever under these rules service of papers other than the complaint and notice is required or permitted the rules governing the manner of service of such papers in superior courts shall govern.*

(c) Filing. When pleadings or motions are oral the substance of them shall be entered in the records. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter and a reference shall be made to them in the record of the court.

(d) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the judge or with his authorized clerk and the filing date shall be noted thereon at the time of filing. [Adopted Feb. 13, 1963, effective July 1, 1963.]

**Note by the Court: See RCW 4.28.230–4.28.280.*

RULE 6

TIME.

(a) Computation. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded.

(b) For Motions——Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 3 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in any of these rules, opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time. [Adopted Feb. 13, 1963, effective July 1, 1963.]

III. PLEADINGS AND MOTIONS (RULES 7–16)

RULE 7

PLEADINGS ALLOWED: FORM OF MOTIONS.

(a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross–claim, if the answer contains a cross–claim; a third–party complaint, if leave is given under rule 14 to summon a person who was not an original party; and there shall be a third–party answer, if a third–party complaint is served. No other pleadings shall be allowed.

The complaints, counterclaims, cross–claims and third–party claims shall be in writing. A reply to a counterclaim and answers may be written or oral. When pleadings are oral the substance of them shall be entered in the docket.

(b) Motions and Other Papers. (1) An application to the court for an order shall be by motion. Motions may be oral or written. Motions need not be in any special form but must be such as to enable a person of common understanding to know what is intended.

(2) The rules applicable to captions, signing, and other matters of form of written pleadings apply to all written motions and other papers provided for by these rules.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 8

GENERAL RULES OF PLEADING.

(a) Claims for Relief. A complaint, counterclaim, cross–claim, or third–party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state his defenses, denials and objections to each claim asserted against him in any form which will enable a person of common understanding to know what is intended. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) Affirmative Defenses. In a written answer to a complaint, cross–claim or third–party claim and in a written reply to a counterclaim, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Statements in a pleading to which responsive pleading is required, other than those as to the amount of damage, are admitted when not denied by responsive pleading. Statements of an answer to a complaint, cross–claim, or third–party complaint, or a reply to a counterclaim shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency. (1) No technical forms of pleadings or motions are required. Pleadings and motions shall be stated so as to enable a person of common understanding to know what is intended.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 9

(RESERVED)

RULE 10

FORM OF PLEADINGS.

(a) Caption; Names of Parties. Every written pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and a designation as in rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other written pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

(b) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(c) Form. All notices, pleadings, motions, and other papers filed shall be plainly written or typed. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 11

VERIFICATION AND SIGNING OF PLEADINGS.

(1) Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified.

(2) All other pleadings of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. The signature of a party or an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 12

DEFENSES AND OBJECTIONS——WHEN AND HOW PRESENTED——BY PLEADING OR MOTION——MOTION FOR JUDGMENT ON PLEADINGS.

(a) When Presented. If the answer is oral, a defendant shall make the oral answer on or before the time he is required to appear in answer to the notice as indicated in rule 4. If the answer is written a defendant shall serve his answer on or before the time he is required to appear in answer to the notice as indicated in rule 4. A party served with a pleading stating a cross-claim against him shall answer thereto on the return date fixed in a notice which shall accompany the pleading. The plaintiff shall reply to a counterclaim not less than three days prior to trial. If the court denies a motion permitted under this rule or postpones its disposition until the trial on the merits, the court may set the case for trial at the same time and also fix a time for the responsive pleading. If the court grants a motion for more definite statement the court may set the case for trial at the same time and fix the date for making the more definite statement and for the responsive pleading to the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted by the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56 of the Civil Rules for Superior Court, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by said rule 56.*

(c) Preliminary Hearings. The defenses specifically enumerated (1)–(6) in subdivision (b) of this rule, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(d) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted (for example, the complaint) is so vague or ambiguous that a person of common understanding cannot know what is intended, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to Strike. Upon motion made by a party not less than three days prior to trial or upon the court's own initiative at any time the court may order stricken from the complaint any impertinent or scandalous matter.

(f) Consolidation of Defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motions, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (g) of this rule.

(g) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in rule 15(b) in the light of any evidence that

may have been received. [Adopted Feb. 13, 1963, effective July 1, 1963.]

*Note by the Court: Motions for change of venue are not governed by rule 12. See RCW 3.66.050, RCW 3.66.090, RCW 3.20.070, RCW 3.20.100, RCW 3.20.110.

RULE 13

COUNTERCLAIM AND CROSS-CLAIM.

(a) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party.

(b) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(c) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court be presented as a counterclaim by supplemental pleading.

(d) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(e) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(f) Additional Parties May Be Brought In. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained.

(g) Separate Trials; Separate Judgment. If the court orders separate trials as provided in rule 42(a), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of rule 42(b), even if the claims of the opposing party have been dismissed or otherwise disposed of. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 13.04

SETOFFS AGAINST ASSIGNEES.

(a) Setoff Against Assignee. The defendant in a civil action upon a contract express or implied, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

(b) Setoff Against Beneficiary of Trust Estate. If the plaintiff be a trustee to any other, or if the action be in a name of a plaintiff which has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought against those beneficially interested.

(c) Setoff Must Be Pleaded. To entitle a defendant to a setoff under this rule, he must set forth the same in his answer. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 14

THIRD-PARTY PRACTICE.

(a) When Defendant May Bring in Third Party. Before making his answer, a defendant may move ex parte or, after answering, on notice to the plaintiff, for leave as a third-party plaintiff to serve a notice and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the notice and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in rule 12. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Tort Cases. This rule shall not be applied, in tort cases, so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured

or damaged. [Adopted Feb. 13, 1963, effective July 1, 1963.]

Removal of certain actions to Superior Court. See Chapter 4.14. RCW.

RULE 15

AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments Prior to Trial. A party may amend a complaint, counterclaim, cross-claim or third-party complaint once as a matter of course at any time before a responsive pleading is made, or, if the pleading is an answer or a reply to a counterclaim he may so amend it at any time within 20 days after it is served, provided it is amended prior to trial. Otherwise, prior to trail a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service or notice of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments At or After the Trial. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading the amendment relates back to the date of the original pleading.

(d) Supplemental Pleadings. Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve or make a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

(e) Interlineations. No amendments shall be made to any pleading by erasing or adding words to the original on file, except by permission of the court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 16

GARNISHMENTS.

Garnishments are governed by RCW 12.32.010 through 12.32.040, inclusive. Provided, that judges, or their clerks, may issue writs of garnishment in accordance with the provisions therein. [Adopted July 14, 1966, effective August 1, 1966.]

IV. PARTIES (RULES 17–25)

RULE 17

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought.

(b) Infants or Incompetent Persons. (1) When an infant is a party he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint a guardian ad litem. The guardian shall be appointed:

(i) When the infant is plaintiff, upon the application of the infant, if he be of the age of 14 years, or if under the age, upon the application of a relative or friend of the infant.

(ii) When the infant is defendant, upon the application of the infant, if he be of the age of 14 years, and applies within the time he is to appear; if he be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

(2) When an insane person is a party to an action he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed:

(i) When the insane person is plaintiff, upon the application of a relative or friend of the insane person.

(ii) When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within the time he is to appear. If no such application be made within the time above limited, application may be made by any party to the action. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 18

JOINDER OF CLAIMS AND REMEDIES.

(a) Joinder of Claims. The plaintiff in his complaint or in reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder

of claims when there are multiple parties if the requirements of rules 19, 20 and 22 are satisfied. There may be a like joinder of cross–claims or third–party claims if the requirements of rules 13 and 14 respectively are satisfied.

(b) Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 19

Necessary Joinder of Parties.

(a) Necessary Joinder. Subject to the provisions of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant.

(b) Effect of Failure to Join. When persons who are not indispensable but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

(c) Same: Names of Omitted Persons and Reasons for Nonjoinder to be Pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 20

Permissive Joinder of Parties.

(a) Permissive Joinder. All person may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff for defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

RCW 4.08.040 applies to joinder of husband and wife.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put the expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 21

Misjoinder and Nonjoinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 22

Interpleader.

(a) Scope. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross–claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted under other rules and statutes.

(b) Other Remedies. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by RCW 4.08.150 to 4.08.180, inclusive. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 23

(Reserved)

RULE 24

Intervention.

(a) Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be

adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 25

SUBSTITUTION OF PARTIES.

(a) Death. (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided by statute for service of notices, and upon persons not parties in the manner provided by these rules for the service of notice and complaint. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The fact of death shall be noted in the docket and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule. [Adopted Feb. 13, 1963, effective July 1, 1963.]

V. DEPOSITIONS AND DISCOVERY (RULES 26–37)

RULE 26

DEPOSITIONS PENDING ACTION.

The taking of depositions, the requesting of admissions and all other procedures authorized by rules 26 through 37 of the Civil Rules for Superior Court applicable for use in the superior court may be available only upon prior permission of the court. The court shall have absolute discretion to decide whether to permit any such procedures. In exercising such discretion the court shall consider (1) whether all parties are represented by counsel, (2) whether undue delay in bringing the case to trial will result and (3) whether the interests of justice will be promoted. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 27–37

(RESERVED)

VI. TRIALS (RULES 38–53)

RULE 38

JURY TRIAL.

(a) Demand and Selection. After the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action. The selection and other matters concerning jury trials are governed by RCW 12.12.030–12.12.100 inclusive. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 39

TRIAL BY JURY OR BY THE COURT.

(a) By Jury. In a civil case, when a jury is demanded, it shall be allowed and tried with all reasonable speed. All issues of fact shall be tried by the jury.

(b) By the Court. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the judge, and all discussions of law addressed to him. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 40

ASSIGNMENT OF CASES FOR TRIAL——JUDGE, DISQUALIFICATION.

(a) Assignment for Trial. When the pleadings of the parties have taken place a case shall be tried, but cases may be continued by the court to a date certain. Continuances may not be granted for a longer period than sixty days each.

(b) Disqualification. In any case pending in any court of limited jurisdiction, unless otherwise provided by law, the judge thereof shall be deemed disqualified to

hear and try the case when he is in anywise interested or prejudiced. The judge, of his own initiative, may enter an order disqualifying himself; and he shall also disqualify himself under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party files an affidavit that such party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other grounds provided by law. Only one such affidavit shall be filed by the same party in the case and such affidavit shall be made as to only one of the judges of said court.

All right to an affidavit of prejudice will be considered waived where filed more than ten (10) days after the case is set for trial, unless the affidavit alleges a particular incident, conversation or utterance by the judge, which was not known to the party or his attorney within the ten (10) day period. In multiple-judge courts, or where a pro tem or visiting judge is designated as the trial judge, the 10 day period shall commence on the date that the defendant or his attorney has actual notice of assignment or reassignment to a designated trial judge. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970, effective Apr. 16, 1971.]

RULE 41

Dismissal of Actions.

(a) Without Prejudice. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When plaintiff fails to appear at the time set for trial or other hearing.

(b) Limitation. If a counterclaim has been pleaded by defendant, the action shall not be dismissed against defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(c) Counterclaims, etc. The provisions of this rule apply to the dismissal of any counterclaim, setoff, cross-claim, or third-party claim. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 42

Consolidation; Separate Trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 43

Evidence.

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by rule or statute.

(a-1) Multiple Examinations. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross-examination.

(b) Scope of Examination and Cross-Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter or his examination in chief.

(c) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) Adverse Party as Witness.

(1) *Party or managing agent as adverse witness.* A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given to opposing counsel of record. Notices for the attendance of a party or a managing agent at the trial shall be given a reasonable time before the trial of not less than 10 days (exclusive of the day of service, Saturdays, Sundays and court holidays). For good cause shown, the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of discovery, etc.* A party who has filed interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. The testimony of an adverse party or managing agent at the trial or on depositions or interrogatories shall not bind his adversary but may be rebutted.

(3) *Refusal to attend and testify: Penalties.* If a party or a managing agent refuses to attend and testify before the officer designated to take his deposition or at the trial after notice served, the complaint, answer, or reply of the party may be stricken and judgment taken

against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed: (1) to compel any person to answer any question where such answer might tend to incriminate him; or (2) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; or (3) to limit the applicability of any other sanctions or penalties.

(e) Attorneys as Witnesses. If an attorney offers himself as a witness on behalf of his client and gives evidence on the merits, he shall not argue the case to the jury, unless by permission of the court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 44

PROOF OF OFFICIAL RECORD.

(a) Authentication of Copy. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

(b) Proof of Lack of Record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by an applicable statute, or by the rules of evidence at common law. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 45

SUBPOENA.

Subpoenas are governed by RCW 12.16.010 through 12.16.050, inclusive. Provided, that subpoenas may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case shall be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney. [Adopted Feb. 13, 1963, effective July 1, 1963; amended July 14, 1966, effective August 1, 1966.]

RULES 46–50

(RESERVED)

RULE 51

INSTRUCTIONS TO JURY; OBJECTIONS.

At the close of the evidence the court on its own motion, or on the request of either party, shall instruct the jury on the law either orally or in writing or both. Any party may file written request that the court instruct the jury. At the same time copies of requested instructions shall be furnished to adverse parties. The court need not grant any requested instruction if the matter is fairly covered by the instruction given. The court shall not instruct with respect to matters of fact or comment upon the evidence. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 52

FINDINGS BY THE COURT.

If a jury trial is not demanded, the judge shall hear the evidence, and decide all questions of fact and law and render judgment accordingly. He is not required to make findings of fact or conclusions of law. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 53

(RESERVED)

VII. JUDGMENTS (RULES 54–63)

RULE 54

JUDGMENTS; COSTS.

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any final order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings. Judgments may be in a writing signed by the court or may be oral confirmed by an entry in the record.

(b) Judgment Upon Multiple Claims. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decisions, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the

claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 55

DEFAULT.

(a) Judgment. When the defendant fails to appear and plead before or at the time specified in the notice, or within one hour thereafter, or upon continuance, or for trial, judgment shall be given on motion of the plaintiff as follows: When the defendant has been served with a true copy of the complaint, judgment shall be given upon proof satisfactory to the court. In those cases where interest and attorney's fees are claimed by virtue of a written instrument, a copy of said instrument shall be filed and the court shall set a reasonable attorney's fee.

(b) Setting Aside Default. The court shall have full power at any time after a judgment has been given by default to vacate and set aside said judgment for any good cause and upon such terms as the court shall deem sufficient and proper. Such judgment shall be set aside only upon 5 days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the court within 20 days after the entry of the judgment. The court shall hear the application to set aside such judgment either upon affidavits or oral testimony as the court may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits. No court shall issue a transcript or pay out or turn over money or property received by the court by virtue of any default judgment until the expiration of the said 20 days for moving to set aside such default judgment.

Nothing herein contained shall limit the power of the court to set aside a judgment, at any time, where the court lacked jurisdiction to enter the judgment, or where the judgment was obtained by fraud.

(c) Plaintiffs, Counterclaimants, Cross–Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third–party plaintiff, or a party who has pleaded a cross–claim or counterclaim. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 56–57

(RESERVED)

RULE 58

ENTRY OF JUDGMENT.

Upon the verdict of a jury, the court shall immediately render judgment thereon. If the trial is by the judge, judgment shall be entered immediately after the close of the trial, unless he reserves his decision, in which event the trail shall be continued to a day certain, but not longer than 15 days. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 59

(RESERVED)

RULE 60

RELIEF FROM JUDGMENT OR ORDER.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 61

(RESERVED)

RULE 62

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

When the court has ordered a final judgment on some but not all the claims presented in the action, under the conditions stated in rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 63

(RESERVED)

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS (RULES 64–71)

RULE 64

GARNISHMENT.

Chapter 12.32 of the Revised Code of Washington and Special Proceedings Rules for Superior Court Rule 91.04W "Service of copy of writ of garnishment on defendant or judgment debtor" shall continue in full force and effect and shall be fully applicable to garnishment in courts of limited jurisdiction. [Adopted June 14, 1963, effective July 1, 1963.]

RULES 65–67

(RESERVED)

RULE 68

OFFER OF JUDGMENT.

At any time more than 5 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within

5 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable then the offer, the offeree must pay the cost incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 69–71

(RESERVED)

IX. APPEALS
(RULES 72–76)

RULE 72

(RESERVED)

RULE 73

APPEAL TO A SUPERIOR COURT.

(a) When and How Taken. When an appeal is permitted by law from a court of limited jurisdiction to a superior court such appeal shall be taken by serving a copy of notice of appeal on the adverse party or his attorney, and filing, within 20 days after the judgment is rendered or decision made, the original notice of appeal with acknowledgement or affidavit of service in the court of limited jurisdiction and, unless such appeal be by a county, city, town or school district, filing a bond or undertaking, as herein provided. No appeal, except when such appeal is by a county, city, town or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the court of limited jurisdiction with one or more sureties, in the sum of one hundred dollars, conditioned that the appellant will pay all costs that may be awarded against him on appeal; or if a stay of proceedings in the court of limited jurisdiction be claimed, except by a county, city, town or school district, a bond or undertaking, with two or more personal sureties, or a surety company as surety, to be approved by the court of limited jurisdiction, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against him on appeal, be so executed and filed.

(b) Stay of Proceedings. Upon an appeal being taken and a bond filed to stay all proceedings, the court of limited jurisdiction shall allow the same and make an entry of such allowance, and all further proceedings on the judgment in such court shall thereupon be suspended; and if in the meantime execution shall have been issued, such court shall give the appellant a certificate that such appeal has been allowed.

(c) Release of Property Taken on Execution. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the judgment debtor that may have been taken on execution.

(d) No Dismissal for Defective Bond. No appeal allowed by a court of limited jurisdiction shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the superior court such bond as he should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect.

(e) Judgment Against Appellant and Sureties. In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant in whole or in part, such judgment shall be rendered against him and his sureties on the bond on appeal. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 74

(RESERVED)

RULE 75

RECORD ON APPEAL TO A SUPERIOR COURT.

(a) Transcript; Procedure in Superior Court; Pleadings in Superior Court. Within 10 days after the appeal has been taken in a civil action or proceeding, the appellant shall file with the clerk of the superior court a transcript of all entries made in the docket of the court of limited jurisdiction relating to the case, together with all the process and other papers relating to the case filed in the court of limited jurisdiction which shall be made and certified by such court to be correct upon the payment of the fees allowed by law therefor, and upon the filing of such transcript the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as provided in these rules. The issue before the court of limited jurisdiction shall be tried in the superior court without other or new pleadings, unless otherwise directed by the superior court.

(b) Transcript; Procedure on Failure to Make and Certify; Amendment. If upon an appeal being taken the court of limited jurisdiction fails, neglects or refuses, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the superior court and the court shall issue an order directing the court of limited jurisdiction to make and certify such transcript upon the payment of such fees. Whenever it appears to the satisfaction of the superior court that the return of the court of limited jurisdiction to such order is substantially erroneous or defective it may order the court of limited jurisdiction to amend the same. If the judge of the court of limited jurisdiction fails, neglects or refuses to comply with any order issued under the provisions of this section he may be cited and punished

for contempt of court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 76

(RESERVED)

X. COURT AND CLERKS (RULES 77–80)

RULE 77

(RESERVED)

RULE 77.04

ADMINISTRATION OF OATH.

The oaths or affirmations of all witnesses

(1) Shall be administered by the judge;

(2) Shall be administered to each witness on coming to the stand, not to a group and in advance; and

(3) The witness shall stand while the oath or affirmation is pronounced. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 78–80

(RESERVED)

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RULE 81

(RESERVED)

RULE 82

JURISDICTION AND VENUE——UNAFFECTED.

These rules shall not be construed to extend or limit the jurisdiction of the courts of limited jurisdiction or the venue of actions therein. Jurisdiction and venue shall be governed by RCW 3.20.100, 3.20.110, 3.34.110, 3.50.280, 3.66.040 and 3.66.050. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULES 83–84

(RESERVED)

RULE 85

TITLE.

These rules may be known and cited as Civil Rules for Courts of Limited Jurisdiction and they may be referred to as JCR.* [Adopted Feb. 13, 1963, effective July 1, 1963.]

*Reviser's note: By order of Supreme Court dated May 5, 1967, effective July 1, 1967, these rules were redesignated Civil Rules for Justice Court and may be referred to as JCR.

RULE 86

EFFECTIVE DATE.

These rules take effect on the dates specified by the Supreme Court and thereafter all procedural laws in conflict therewith shall be of no further force and effect. They govern all proceedings in actions after they take effect, and also all further proceedings in actions pending on their effective dates, except to the extent that in the opinion of the court, expressed by its order, the application of rules in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the procedure existing at the time the action was brought applies. [Adopted Feb. 13, 1963, effective July 1, 1963.]

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See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 1.03

LOCAL COURT RULES——AVAILABILITY.

Courts of limited jurisdiction may adopt such special rules not inconsistent with these general rules as they may deem necessary for their respective courts. The court, upon the adoption of such rules, shall (a) arrange for the duplication and distribution of such rules, (b) send a copy of such rules to (1) the Administrator for the Courts, (2) the Recording Secretary of the Judicial Council, (3) the President of the Magistrates' Association, (4) the State Law Library, and (5) the Clerk of the Supreme Court, and (c) keep a copy of such rules readily available for inspection. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 1.04

STYLE AND FORM.

The complaint, warrant, summons, motions, briefs, orders, decisions of the court and all other papers or forms required by or employed under these rules shall be plainly written typed or printed. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 2——PRELIMINARY PROCEEDINGS

RULE 2.01

COMPLAINT——CITATION AND NOTICE.

(a) Complaint.

(1) *Initiation.* Except as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint.

(2) *Contents.* The complaint shall be in writing and shall set forth:

(i) the name of the court;

(ii) the title of the action and the name of the offense charged;

(iii) the name of the person charged; and

(iv) the offense charged, in the language of the statute, together with a statement as to the time, place, person, and property involved to enable the defendant to understand the character of the offense charged.

(3) *Verification.* The complaint shall be signed under oath by the Prosecuting Attorney or other authorized officer.

(b) Citation and Notice to Appear.

(1) *Issuance.* Whenever a person is arrested for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the arrested person a citation and notice to appear in court, in lieu of continued custody. In determining whether to issue a citation and notice to appear, a peace officer may consider the following factors:

(i) whether the person has identified himself satisfactorily;

(ii) whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;

(iii) whether the person has ties to the community reasonably sufficient to assure his appearance or whether there is substantial likelihood that he will refuse to respond to the citation; and

(iv) whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process.

(2) *Contents.* The citation and notice shall contain substantially the same information as the "Uniform Traffic Ticket and Complaint," sponsored by the American Bar Association Traffic Court Program, adopted in JTRT 2.01, and shall include:

(i) the name of the court and a space for the court's docket, case or file number;

(ii) the name of the person, his address, date of birth, and sex;

(iii) the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer;

(iv) the time and place at which the person is to appear in court which need not be a time certain, but may

be within 72 hours or within a greater period of time not to exceed 15 days after the date of the citation;

(v) a space for the person to sign a promise to appear.

(3) *Release.* To secure his release, the person must give his written promise to appear in court as required by the citation and notice served.

(4) *Certificate.* The citation and notice to appear shall contain a form of certificate by the citing official that he certifies, under penalties of perjury, as provided by RCW 3.50.140, and any law amendatory thereof, that he has reasonable grounds to believe, and does believe, the person committed the offense contrary to law. The certificate need not be made before a magistrate or any other person. Such citation and notice when signed by the citing officer and filed with a court of competent jurisdiction shall be deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.

(5) *Additional Information.* The citation and notice may also contain such identifying and additional information as may be necessary and appropriate for law enforcement agencies in the state.

(6) *Approval of Form.* To insure uniformity, the format and use of the citation and notice, provided herein, shall be subject to approval by the office of Administrator for the Courts.

(c) Citizen Complaints. Any person wishing to make a complaint shall appear before the judge empowered to commit persons charged with offenses against the state. The judge shall examine on oath the complainant and any witnesses he may require, take their statements, and cause the statements and the complaint to be subscribed under oath by the person or persons making it.

(1) *Citizen's Complaint——Alternate Method.* The judge may consider any complaint on the basis of an affidavit sworn to before the judge, a clerk, commissioner or notary public where the judge is satisfied that probable cause exists, that the complaining witness is aware of the gravity of initiating a criminal complaint, the necessity of a court appearance for himself and witnesses, the possible liability for false arrest and consequences of perjury, such affidavit may be in substantially the form as provided herein.

STATE OF WASHINGTON }
COUNTY OF _____ } ss. No. _____

AFFIDAVIT OF COMPLAINING WITNESS

DEFENDANT:

Name _____ Name _____
Address _____ Address _____
Phone _____ Bus. _____ Phone _____ Bus. _____

WITNESSES:

Name _____ Name _____
Address _____ Address _____
Phone _____ Bus. _____ Phone _____ Bus. _____

Name _____ Name _____
Address _____ Address _____
Phone _____ Bus. _____ Phone _____ Bus. _____

I, the undersigned complainant understand that I have the choice of complaining to a prosecuting authority rather than signing this affidavit. I elect to use this method to start criminal proceedings. I understand that the following are some but not all of the consequences of my signing a criminal complaint: (1) the defendant may be arrested and placed in custody. (2) the arrest if proved false may result in a lawsuit against me. (3) if I have sworn falsely I may be prosecuted for perjury. (4) this charge will be prosecuted even though I might later change my mind. (5) witnesses and complainant will be required to appear in court on the trial date regardless of inconvenience, school, job, etc.

Following is a true statement of the events that led to filing this charge. I (have) (have not) consulted with a prosecuting authority concerning this incident.

On the day of , 19__, at _____
(location)

_____

_____

Signed _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 19__.

Court Commissioner, Clerk,
Judge or Notary Public

(d) Filing. The original of the complaint or citation and notice, shall be filed with the clerk of the court, and sufficient copies shall be prepared in order to provide a copy for each defendant.

(e) Exceptions. Traffic cases shall be processed as provided in the Traffic Rules for Justice Courts, and public intoxication cases may be processed under existing procedure, by Citation and Notice or by Uniform Traffic Ticket and Complaint. [Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963. Amended June 28, 1968, effective July 5, 1968. Amended Oct. 23, 1969, effective Nov. 7, 1969.]

RULE 2.02

WARRANT OR SUMMONS UPON COMPLAINT.

(a) Issuance of Warrant of Arrest. If it appears from the complaint or from an affidavit or affidavits filed therewith, that there is reasonable cause to believe that an offense has been committed and that the defendant has committed it, the judge, except as otherwise provided in 2.02(b), shall issue a warrant for the arrest of the defendant unless he has already been arrested in connection with the offense charged and is in custody or has been released on obligation to appear in court. Before ruling on a request for a warrant the judge may require the complainant to appear personally and may examine under oath the complainant and any witnesses he may produce.

(b) Issuance of Summons in Lieu of Warrant of Arrest.

(1) *Where summons may issue.* In any case in which the judge finds sufficient grounds for issuing a warrant pursuant to 2.02(a), he may issue a summons commanding the defendant to appear in lieu of a warrant.

(2) *When summons must issue.* If the complaint charges the commission of one or more misdemeanors

or gross misdemeanors, the judge shall issue a summons instead of a warrant unless he has reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent serious bodily harm to the accused or another, in which case he may issue a warrant.

(3) *Failure to appear on summons.* If a person summoned fails to appear in response to the summons, or if service is unsuccessful, a warrant for his arrest may issue.

(c) Form. (1) *Warrant.* The warrant shall be in writing and in the name of the State of Washington, shall be signed by the judge with the title of his office, and shall state the date when issued and the municipality or county where issued. It shall specify the name of the defendant, or if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged against the defendant; if the offense charged is triable in the county in which the warrant issues, the warrant shall command that the defendant be arrested and brought forthwith before the the judge issuing the warrant. If the offense is bailable, the warrant shall contain the release provisions then fixed by the judge pursuant to JCrR 2.09.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the judge issuing it at a stated time and place.

(d) Execution or Service.

(1) *Execution of warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Service of summons.* The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at his address.

(e) Return. The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to Rule 2.03. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge by whom issued and shall be cancelled by him. The person to whom a summons has been delivered for service shall, on or before the return date, make return thereof to the judge before whom the summons is returnable. The judge for reasonable cause can also order that the warrant be returned to him.

(f) Defective Warrant or Summons.

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) *Issuance of new warrant or summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant, or the offense with which he is charged, or that although not guilty of the offense specified in the warrant or summons there is reasonable ground to believe that he is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new complaint to be filed and shall thereupon issue a new warrant or summons. [Adopted April 18, 1973, effective July 1, 1973. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

Comment: supersedes RCW 10.04.010, 10.04.030; RCW 10.16.010.

RULE 2.03

PROCEEDINGS BEFORE THE JUDGE——PROCEDURE FOLLOWING EXECUTION OF A WARRANT, OR ARREST WITHOUT A WARRANT——BAIL——PRELIMINARY HEARING.

(a) Preliminary Appearance.

(1) Any person arrested for any offense, including capital cases and other felonies and not released shall be taken without unnecessary delay before a judge. The term "without unnecessary delay" means as soon aa practically possible. In any event, delay beyond the close of business of the judicial day next following the day of arrest shall be deemed unnecessary. The court may, for good cause shown and recited in the order, enlarge the time prior to preliminary appearance.

(2) The judge shall inform the person of the crime for which he is arrested and of the rights of a person charged with a crime and shall provide for pretrial release pursuant to Rule 2.09.

(b) Filing of Complaint. When a person arrested without a warrant is brought before a judge, a complaint shall be filed within twenty–four hours after appearance before the court, or within such further time as the court shall specify.

(c) Effect of Failure to Grant Preliminary Appearance or File Complaint.

(1) If a person arrested and not released is not afforded preliminary appearance within the time prescribed by section (a), including any enlargement, the court shall order such a person brought before the court forthwith, and in default thereof, the court shall order his immediate release, unless good cause to the contrary be shown.

(2) If a complaint is not filed as provided by section (b), the court shall order the immediate release of such person.

(d) Preliminary Hearing.

(1) When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the defendant has committed a felony.

(2) If the court finds probable cause, or if the parties waive preliminary hearing, the court shall bind the defendant over to the superior court. If the court finds probable cause, an information shall be filed without unnecessary delay or, if it is not, the defendant shall be discharged. The court shall file the transcript in superior court promptly after notice that the information has

been filed. The transcript shall include, but not be limited to, the bond and any exhibits filed in the court of limited jurisdiction. Jurisdiction shall vest in the superior court when the information is filed.

(3) After the preliminary hearing, or a waiver thereof, the court may defer a bind-over order if the parties stipulate in writing that the case shall remain in the court of limited jurisdiction for a specified time not exceeding 30 days.

(4) A preliminary hearing shall be conducted as follows:

(i) The defendant may as a matter of right be present at such hearing.

(ii) The court shall inform the defendant of the charge unless the defendant waives such reading.

(iii) Witnesses shall be examined under oath and may be cross-examined.

(iv) The defendant may testify and call witnesses in his behalf.

(5) If a preliminary hearing on the felony complaint is held and the court finds that probable cause does not exist, the charge shall be dismissed, and may be refiled only if a motion to set aside the finding is granted by the superior court. The superior court shall determine whether, at the time of the hearing on such motion, there is probable cause to believe that the defendant has committed a felony. [Adopted April 18, 1973, effective July 1, 1973. Prior: Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963.]

Comment: supersedes RCW 10.04.030, modifies if not supersedes RCW 10.16.090.

RULE 2.04

COMPLAINT AND CITATION——SUFFICIENCIES.

(a) Complaint. The complaint shall not be deemed insufficient for lack of a formal caption or commencement, or a formal conclusion, or any other matter not necessary to a plain, concise and definite statement of the essential facts constituting the specific offense or offenses with which the defendant is charged, nor for lack of any other matter not necessary to such statement, nor need it negative any exception, excuse or proviso contained in any statute creating or defining the offense charged. Allegations made in one count may be incorporated by reference in another count. It may be alleged in any count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. Unnecessary allegations may be disregarded as surplusage and on motion of the defendant prior to trial may be stricken from the complaint by the court. The complaint shall state for each count the official or customary citation of any applicable statute, rule, regulation, ordinance, or other provision of law which the defendant is alleged therein to have violated; but, error in the citation or its omission shall not be ground for dismissal of the complaint or for reversal of a conviction unless the error or omission mislead the defendant to his prejudice.

(b) Citation and Notice. No citation and notice issued pursuant to the provision of Rule 2.01(b) shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific offense with which the defendant is charged, nor by reason of defects or imperfections which do not tend to prejudice substantial rights of the defendant. Any defendant upon request shall be entitled as a matter of right to a bill of particulars. [Adopted Feb. 13, 1963, effective July 1, 1963. Amended June 28, 1968, effective July 5, 1968.]

RULE 2.05

COMPLAINT——JOINDER OF OFFENSES AND DEFENDANTS.

(a) Joinder of Offenses. Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or connected transactions or transactions constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and it shall not be necessary to charge all the defendants in each count. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2.06

SEVERAL COMPLAINTS FOR SAME OFFENSE—— JURISDICTION——CONSOLIDATION.

(a) Several Complaints for Same Offense——Same Court. If two or more complaints are filed against the same defendant in the same court for the same offense, the court shall order the complaints to be consolidated.

(b) Several Complaints for Same Offense——Different Courts. If two or more complaints are filed against the same defendant for the same offense in different courts, and if each court has jurisdiction, the court in which the first complaint was filed shall try the case and upon motion by either party, or the judge, the second or several complaints shall be forwarded to the court in which a complaint was first filed for consolidation and trial. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2.07

COMPLAINT——LOSS OR DESTRUCTION——COPY.

When a complaint has been lost or destroyed a copy thereof certified by the court may be substituted and the case shall proceed without delay from that cause. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 2.08

PROCEDURE ON FAILURE TO OBEY CITATION AND NOTICE TO APPEAR.

(a) Residents. The court shall issue a warrant for the arrest of any defendant who is a resident of this state and who has failed to appear before the court either in

person or by counsel in answer to a citation and notice to appear upon which he has given his written promise to appear. If the warrant is not executed within 30 days after issue, the court shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained.

(b) Nonresidents. If a nonresident defendant fails to appear before the court either in person or by counsel in answer to a citation and notice to appear upon which he has given his written promise to appear, the court shall mail a notice to the defendant at the address stated in the citation and notice to appear requesting him to abide by his promise and appear in person or by counsel on a day certain, and notifying him that he may also be charged for his failure to appear after a written promise to do so. If the nonresident defendant fails to respond within 30 days after the date set in the notice, the court shall issue a warrant for his arrest, and shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained. [Adopted June 28, 1968, effective July 5, 1968.]

RULE 2.09

PRETRIAL RELEASE.

(a) Any defendant charged with an offense shall at his first court appearance be ordered released on his personal recognizance pending trial unless the court determines that such recognizance will not reasonably assure his appearance, when required. When such a determination is made, the court shall impose the least restrictive of the following conditions that will reasonably assure his appearance or if no single condition gives that assurance, any combination of the following conditions:

(1) place the defendant in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the defendant during the period of release;

(3) require the execution of an unsecured appearance bond in a specified amount;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(5) require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) require the defendant return to custody during specified hours; or

(7) impose any condition other than detention deemed reasonably necessary to assure appearance as required.

(b) In determining which conditions of release will reasonably assure the defendant's appearance, the court shall, on the available information, consider the relevant facts including: the length and character of the defendant's residence in the community, his employment status and history and financial condition; his family ties and relationships; his reputation, character and mental condition; his history of response to legal process, his prior criminal record; the willingness of responsible members of the community to vouch for the defendant's reliability and assist him in appearing in court; the nature of the charge; and any other factors indicating the defendant's ties to the community.

(c) Conditions of Release. Upon a showing that there exists a substantial danger that the defendant will commit a serious crime or that the defendant's physical condition is such to jeopardize his safety or that of others or that he will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court, upon the defendant's release, may impose one or more of the following conditions:

(1) prohibit him from approaching or communicating with particular persons or classes of persons;

(2) prohibit him from going to certain geographical areas or premises;

(3) prohibit him from possessing any dangerous weapons, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs;

(4) require him to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) detain him until his physical condition permits his release.

(d) A court authorizing the release of the defendant under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform him of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest may be issued immediately upon any such violation.

(e) Review of Conditions. Upon determining the conditions of release, the court, upon request, after twenty-four hours from the time of release, may review the conditions previously imposed.

(f) Amendment of Order. The court ordering the release of a defendant on any condition specified in this rule may at any time on change of circumstances or showing of good cause amend its order to impose additional or different conditions for release.

(g) Upon a verified application by the prosecuting attorney alleging with specificity that a defendant has willfully violated a condition of his release, a court shall order the defendant to appear for immediate hearing or issue a warrant directing the arrest of the defendant for immediate hearing. A law enforcement officer having probable cause to believe that a defendant released pending trial for a felony is about to leave the state or that he has violated a condition of such release, imposed pursuant to section (c), under circumstances rendering the securing of a warrant impracticable, may

arrest the defendant and take him forthwith before the court.

(h) Release After Verdict. A defendant (1) who is charged with a capital offense, or (2) who has been found guilty of a felony and is either awaiting sentence or has filed an appeal, shall be released pursuant to this rule, unless the court finds that the defendant may flee the state or pose a substantial danger to another or to the community. If such a risk of flight or danger exists, the defendant may be ordered detained.

(i) Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(j) Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(k) Defendant Discharged on Recognizance or Bail——Absence——Forfeiture.

If the defendant has been discharged on his own recognizance, on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest. [Adopted April 18, 1973, effective July 1, 1973.]

Comment: supersedes RCW 10.04.030; RCW 10.16.030, 10.16.040, 10.16.070.

RULE 2.10

SEARCH AND SEIZURE.

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a magistrate upon request of a peace officer or prosecuting attorney.

(b) Property Which May be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(c) Issuance and Contents. A warrant shall issue only on an affidavit or affidavits establishing the grounds for issuing the warrant. Such affidavit or affidavits may consist of an officer's sworn telephonic statement to the judge; provided, however, such sworn telephonic testimony must be electronically recorded at the time transmitted and retained in the court records and reduced to writing as soon as possible thereafter. If the magistrate finds that probable cause for the issuance of a warrant exists, he shall issue a warrant or direct an individual whom he authorizes for such purpose to affix his signature to a warrant identifying the property and naming or describing the person or place or thing to be searched. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. The judge shall record a summary of any additional evidence on which he relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property specified. It shall designate a magistrate to whom it shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that he is lawfully entitled to possession thereof. If the motion is granted, the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress. [Adopted April 18, 1973, effective July 1, 1973.]

RULE 2.11

RIGHT TO AND ASSIGNMENT OF COUNSEL.

(a) Types of Proceedings.

(1) The right to counsel shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to counsel shall accrue as soon as feasible after the defendant is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest.

(2) Counsel shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made because geographical considerations or other factors make it necessary.

(c) Explaining the Availability of a Lawyer.

(1) When a person is taken into custody he shall immediately be advised of his right to counsel. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires counsel shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning counsel, and any other means necessary to place him in communication with a lawyer.

(d) Assignment of Counsel.

(1) Unless waived, counsel shall be provided to any person who is financially unable to obtain one without causing substantial hardship to himself or his family. Counsel shall not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

(2) The ability to pay part of the cost of counsel shall not preclude assignment. The assignment of counsel may be conditioned upon part payment pursuant to an established method of collection.

(e) Withdrawal of Attorneys. Whenever a criminal cause has been set for trial, no attorney shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

(f) Services Other Than Counsel. Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them by a motion. Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The courts, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by an affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same cases or for the same services from any other source. [Adopted April 18, 1973, effective July 1, 1973.]

Comment: supersedes RCW 10.01.110.

CHAPTER 3——ARRAIGNMENT AND PREPARATION FOR TRIAL

RULE 3.01

ARRAIGNMENT.

Arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to him the substance of the charge, and calling on him to plead thereto. He shall be given a copy of the complaint before he is called upon to plead. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.02

ARRAIGNMENT——TIME TO DETERMINE PLEA AND TO CONSULT COUNSEL.

The defendant shall not be required to plead to the complaint until he shall have had a reasonable time to examine the complaint. If the defendant appears in court without counsel, the court shall advise him of his right to counsel, and, if available his right to trial by jury, enter this fact on the record, and, if time is requested to consult counsel, grant the defendant a reasonable time to consult counsel and determine his plea. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.03

ARRAIGNMENT——APPEARANCE BY COUNSEL ONLY.

If the complaint is for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel. Any court may adopt a local rule, not limited to misdemeanors, substantially as follows: attorneys–at–law may enter a plea of not guilty in writing on all (here insert type of case) cases. No further arraignment shall be required. [Adopted Feb. 13, 1963, effective July 1, 1963; amended May 12, 1969, effective July 1, 1969.]

RULE 3.04

ARRAIGNMENT——PROCEDURES——EFFECT OF.

(a) Upon arraignment, the court shall ask the defendant his true name and, if it has been incorrectly stated in the complaint, order the complaint corrected accordingly.

(b) The defendant may move to set aside the complaint on the grounds that the complaint:

(1) does not satisfy the requirements of these Rules, or

(2) does not set forth facts constituting a crime, or

(3) contains matter which, if true, would constitute a defense or other legal bar to the action.

(c) If the motion is well taken, the court shall order appropriate amendments or corrections to be made, if permitted under Rule 2.04; otherwise, the court shall order the complaint dismissed.

(d) If the motion of dismissal is sustained because the complaint contains matter which is a legal defense or bar to the action, the judgment shall be final and the defendant must be discharged; if sustained for any other reason, the dismissal shall not bar another prosecution for the same offense.

(e) If the motion is overruled, or well taken, followed by appropriate amendments or corrections, the defendant shall enter his plea. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.06

ARRAIGNMENT——PLEAS.

(1) The defendant may plead not guilty, former conviction, dismissal under Rule 3.04(d), or acquittal, which may be pleaded with or without the plea of not guilty, or guilty. The plea of guilty can be made only by the defendant in open court. The court may refuse to accept a plea of guilty and shall not accept such plea without first determining of record that the plea is made voluntarily and with understanding of the nature of the charge. If the defendant fails or refuses to plead to the complaint, or the court refuses to accept a plea of guilty, a plea of not guilty shall be entered by the court.

(2) The court may, at any time before judgment, permit any plea to be withdrawn and an appropriate plea substituted, if it deems such action necessary in the interest of justice.

(3) The plea of not guilty is a denial of every material allegation in the complaint. All matters of fact may be given in evidence under it, except a former conviction or acquittal. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.07

COMPLAINTS——WHEN TRIED.

The defendant, charged by complaint, may be tried, with his consent, immediately following his plea to the complaint, or on the first available court day, unless in either case the trial be continued to a day certain for good cause. [Adopted Feb. 13, 1963, effective July 1, 1963; rule amended July 14, 1966, effective August 1, 1966.]

RULE 3.08

CONTINUANCES——TRIAL WITHIN SIXTY DAYS——DISMISSAL.

Continuances may be granted to either party for good cause shown. Also, the court, on its own motion, may postpone the trial for good and sufficient reason. In either case, the continuance or postponement must be to a date certain. If the defendant is not brought to trial within 60 days from the date of appearance, except where the postponement was requested by the defendant, the court shall order the complaint to be dismissed, unless good cause to the contrary is shown. Dismissal under such circumstances shall be a bar to further prosecution for the offense charged. [Adopted Feb. 13, 1963, effective July 1, 1963; rule amended July 14, 1966, effective August 1, 1966.]

RULE 3.10

WITNESSES——PROCESS——SUBPOENA.

(a) Before trial, upon request of the defendant, the prosecuting attorney shall file with the court the names of the witnesses he intends to call at the trial and shall provide a copy of the list for the defendant or his counsel.

(b) Both the prosecution and the defendant are entitled to subpoena such witnesses as are necessary, such process to be issued by the judge or the clerk of the court and directed to the sheriff of any county or any peace officer of any municipality in the state in which such witness may be.

(c) When so required by the court, the applicant for subpoena, either in person or by counsel, shall show to the satisfaction of the court, the materiality of the testimony which is expected to be obtained from such witness.

See CrR 101.16W.

(d) The procedure for compelling attendance of witnesses shall be as established in Chapter 5.56 RCW, RCW 10.04.060, 10.16.010, 10.16.140, 10.16.145, 10.16-.150, 10.16.160, 10.16.190; and 12.16.010 and 12.16.040. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.11

WITNESSES——CONTINUED OBLIGATION TO ATTEND——DISMISSAL.

When a witness has been subpoenaed he shall remain in attendance until the case is disposed of, unless he be excused or dismissed as provided in CrR 101.12W, Witnesses in Criminal Cases; and he shall be liable for contempt for any default or failure to appear. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.12

SUBPOENA DUCES TECUM——MOTION TO QUASH——PRODUCTION AND INSPECTION.

(a) A subpoena duces tecum may be issued by the court upon application of either party, commanding the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court, on motion made promptly, may quash or modify the subpoena if compliance would be illegal, unreasonable or oppressive.

(b) The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may, upon their production, permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 3.13

PROCESS——CRIMINAL.

The court may issue criminal process to any person anywhere in the state. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 4——TRIAL

RULE 4.01

CONDUCT OF TRIAL.

All judicial proceedings and trials shall be held in open court, and shall be conducted in accordance with these rules. Questions pertaining to the conduct of the

trial and not covered by these rules or appropriate statutes shall be determined by the trial judge acting within his sound discretion. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.02

PROCEDURE UPON A PLEA OF GUILTY.

If the defendant pleads guilty, the judge may, if he wishes or if he has any doubts as to the plea, examine a witness or witnesses concerning the circumstances of the charge. If he is satisfied, either with or without the examination of witnesses, that the defendant is guilty, the judge shall assess the punishment and enter judgment accordingly. If, after an examination of a witness or witnesses, he is not satisfied as to the guilt of the defendant, he may, in his discretion, refuse to accept the plea and enter a plea of not guilty. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.03

PROCEDURE ON A PLEA OF NOT GUILTY, OR, OF FORMER ACQUITTAL OR CONVICTION, OR BOTH.

The proceedings upon the trial of criminal and traffic offenses with respect to a plea of not guilty, or, of former acquittal or conviction, or both, in all courts of limited jurisdiction shall be the same as those which apply to the trial of criminal cases in superior court except as altered by these rules or by statute. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.04

TRIAL TOGETHER OF COMPLAINTS.

The court may order two or more complaints to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under a single complaint. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.05

RELIEF FROM PREJUDICIAL JOINDER.

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint by such joinder for trial together, the court may order a separate trial of counts, grant a severance of defendants, or provide whatever other relief justice requires. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.06

PRESENCE OF THE DEFENDANT.

The defendant shall be present during the trial. A person being prosecuted for an offense punishable only by a fine may with the approval of the court be absent if with the approval of the court some responsible person undertakes to be bail for stay of execution and payment of the fine and costs that may be assessed against the defendant. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.07

TRIAL BY JURY OR BY THE COURT.

(a) Trial By Jury——Waiver. When a trial by jury is authorized by the constitution, statutes or decisions of the Supreme Court, either the state or the defendant may demand a jury, which shall consist of six or less citizens of the state, who shall be impaneled and sworn as required by law. Demand for jury trial must be made at the time the defendant's plea is entered; otherwise, it shall be deemed waived, unless the court rules to the contrary.

(b) Trial By Jury——Selection. A jury shall be selected as follows: the judge shall write in a panel the names of eighteen persons, citizens of the county, from which the defendant, or his attorney, must strike one name, the prosecuting attorney one, and so on alternately until each party shall have stricken six names, and the remaining six names shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid the judge shall strike the name in behalf of such party.

(c) Trial By the Court. Unless the court refuses to assent, the parties may waive the right to trial by jury either explicitly or by failing to demand a jury trial in a timely manner, and trial shall be by the court. In trials for violation of municipal ordinances, except as indicated in rule 4.07 (a), trial shall be by the court without a jury. Where trial is by the court, the court shall make a general finding and may, in its discretion, find the facts specifically.

(d) Issues of Law. The court shall decide all questions of law which shall arise in the course of a trial. The judge may, with the consent of all parties, answer questions asked by jurors pertaining to the law applicable to the case.

(e) Issues of Fact——Judge May Charge Jury as to Law. Issues of fact shall be tried by the jury in jury cases and by the judge in nonjury cases. In cases tried by a jury, the judge shall not comment on the evidence; however, the court shall instruct the jury either orally or in writing as to the law governing the case. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.08

ORDER OF TRIAL.

(a) The order of trial in jury cases shall be as follows:

(1) Where trial by jury is requested, and authorized, a qualified jury, selected as provided by law, shall be sworn well and truly to try the case.

(2) Unless both parties waive opening statements, the prosecutor shall make the opening statement outlining the evidence which will be offered by the prosecution, and the defendant or his counsel may immediately thereafter make the opening statement for the defendant or such opening statement may be reserved until after the conclusion of the prosecution's case–in–chief.

(3) The prosecutor shall submit evidence in support of the prosecution.

(4) Defendant's attorney may challenge the sufficiency of the evidence at the close of the prosecution's case–in–chief, and, if sustained, the case shall be dismissed; otherwise, the defendant may then offer evidence in defense.

(5) If the defendant's counsel shall have reserved his opening statement until the close of the prosecution's case–in–chief, he may then state the case for the defense; if such statement has already been made, he may then offer evidence in support thereof or he may, by proper motion, challenge the sufficiency of the prosecution's case–in–chief to sustain a conviction.

(6) The parties may thereafter respectively offer testimony in rebuttal only unless the court, for good cause shown or believing that the interests of justice will be best served thereby, permits the parties to offer evidence upon their original cases.

(7) If the jury is instructed, the instructions shall be given prior to argument by counsel.

(8) Unless both parties waive argument and agree that the cause be decided by the court or submitted to the jury without argument, the prosecutor shall make the opening argument and the counsel for the defendant may follow and the prosecutor may conclude the argument. The length of time of all arguments shall be fixed by the court in its discretion and announced before the arguments are commenced. Equal time shall be allowed each party.

(b) The order of trial in nonjury cases shall be the same as in subsection (a) except as to such portions as are not applicable to nonjury cases. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.09

EVIDENCE.

Until such time as rules of evidence for the trial of criminal cases in all courts are promulgated, the rules evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions.

With respect to confessions, in jury cases, the procedure set forth in CrR 101.20W shall apply, upon demand of the defendant. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.10

AMENDMENTS TO COMPLAINT——CONTINUANCE.

The court may permit a complaint to be amended at any time before judgment if no additional or different offense is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall not be granted upon such amendment unless the defendant shall satisfy the court that the amendment has made it necessary for him to have additional time in which to prepare his defense. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 4.11

MOTION FOR JUDGMENT OF DISMISSAL.

Motions for directed verdict are abolished and motions for judgment of dismissal are substituted in their place. The court either on motion of a defendant, or on its own motion, shall order entry of judgment of dismissal of one or more offenses charged by complaint if, after the evidence on either side is closed, the court concludes as a matter of law that such evidence is not sufficient to sustain a judgment of conviction of such offense or offenses. If a defendant's motion for judgment of dismissal at the close of the prosecution's case–in–chief, is not granted, the defendant may offer evidence without having reserved the right. If defendant's motion is granted, the state shall have the right to appeal from the court's ruling. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 5——VERDICT, JUDGMENT AND SENTENCE

RULE 5.01

TRIAL BY THE COURT.

Where trial is by the court, the court shall make a general finding and may, in its discretion, find the facts specifically. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.02

VERDICT OF JURY.

(a) When all members of the jury have agreed upon a verdict of guilty or not guilty, it must be signed by the foreman and returned by the jury to the judge in open court.

(b) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If at the conclusion of the poll all of the jurors do not concur, the jury may be directed to retire for further deliberations or may be discharged by the court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.03

BAIL, SENTENCE AND JUDGMENT.

(a) Bail. Pending sentence, the court may commit the defendant or continue or alter the bail.

(b) Sentence. Before imposing sentence, the court shall afford the defendant, and the prosecution, an opportunity to make a statement and to present information in extenuation, mitigation, or aggravation of punishment. Upon a finding of guilty, in courts established under RCW 3.30 through 3.74, the sentence shall be determined and imposed by the court. In other courts of limited jurisdiction, unless the case is tried without a jury, the jury imposes the sentence.

(c) Judgment. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the judgment shall be entered accordingly. [Adopted Feb. 13, 1963, amended June 14, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970 also March 26, 1971, effective Apr. 16, 1971.]

RULE 5.04

JUDGMENT AND SENTENCE——PRESENCE OF DEFENDANT——WARRANT FOR ARREST.

The defendant must be personally present when sentence and judgment are pronounced unless the court, upon request, consents to the absence of the defendant. If the defendant is in custody, he must be brought before the court for judgment and sentence; if he is not present when his personal attendance is necessary, the court may order the issuance of a warrant for his arrest. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.05

JUDGMENT AND SENTENCE——DUTY OF JUDGE AND CLERK.

Whenever a judgment upon a conviction shall be rendered in any court, the judge or clerk of such court shall enter such judgment on the court record, stating briefly the offense for which such conviction shall have been had; but the omission of this duty, either by the judge or clerk, shall not affect or impair the validity of the judgment. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 5.06

JUDGMENT SET ASIDE.

The court may for cause, on its own initiative, or on motion of the defendant set aside a judgment of conviction and order a new trial at any time before the time for appeal has expired and before an appeal has been taken. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 6——APPEALS

RULE 6.01

APPEALS——PERFECTING OF.

(a) Venue. Appeals shall be to the superior court of the county in which the court of limited jurisdiction is located. The appeal from a justice court located in a joint justice court district shall be made to the superior court of the county where the offense was alleged to have been committed.

(b) Notice of Appeal. The appeal shall be taken by serving a copy of a written notice of appeal containing the address of the appellant and his attorney upon the attorney for the party in whose favor judgment was entered and by filing the original thereof with acknowledgment or affidavit of service thereof with the court in which the case was tried within 10 days after entry of judgment. If a motion for a new trial or for arrest of judgment has been timely made, such notice and proof of service may be filed within 10 days after entry of the order denying the motion.

(c) The Record. After a notice of appeal is filed, the justice court shall immediately, and in no event later than 10 days thereafter, file with the clerk of the superior court in which the appeal is pending a transcript duly certified by such justice court, furnished without charge, containing a copy of all written pleadings and docket entries, and including exhibits introduced into evidence in the trial before the justice court. A cash bail or bail bond filed in the justice court shall at the same time be transferred to the superior court, there to be held pending disposition of the appeal. Evidence not offered in trial in the superior court shall be returned to the justice court.

(d) Notice of Filing. The justice court shall give prompt notice of the filing or mailing to the respondent and appellant, giving such particulars as date of filing or mailing and superior court file number, if known. Where the justice court is not located at the county court house, such filing may be made by certified mail, in which case the justice court shall advise appellant and respondent of the date of mailing.

(e) Noting for Trial. Within 20 days after the transcript is filed, appellant shall note the case for trial and otherwise diligently prosecute the appeal. [Adopted Dec. 23, 1968, effective Jan. 3, 1969; amended May 12, 1969, effective July 1, 1969. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 6.02

IMPOSITION OF SENTENCE PENDING APPEAL.

(a) Stay of Sentence. All sentences shall be stayed if an appeal is taken and the defendant posts cash bail or his bond to the state which shall be deposited with the clerk of the court, in such reasonable sum with sureties as the lower court judge may require, upon the following conditions: that he will diligently prosecute the appeal, that he will within 10 days after the same is filed in the superior court note the case for trial, and will appear at the court appealed to and comply with any sentence of the superior court, and will, if the appeal is dismissed for any reason, comply with the sentence of the lower court.

(b) Impositions of Sentence. If the appellant fails to provide security, sentence imposed shall be executed. [Adopted Dec. 23, 1968, effective Jan. 3, 1969. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 6.03

APPEAL——PROSECUTION THEREOF.

(a) Failure to Certify Transcript. If the lower court fails, neglects or refuses to make and certify the transcript within the time allowed, the appellant may make application to the superior court not later than twenty days after the filing of the notice of appeal and the superior court shall issue an order to make and certify the transcript.

(b) Dismissal for Want of Prosecution. Where the cause has not been noted for trial within 20 days after filing of the transcript, the superior court clerk shall forthwith note the appeal for dismissal for want of prosecution. If, after a hearing, it is determined that appellant has not met time requirements, the cause shall

be dismissed. Upon dismissal of the appeal for failure of appellant to proceed diligently with the appeal as herein required, or for any other cause, the judgment of the lower court shall be enforced by the judge thereof. If, at the time of such dismissal, cash deposit or appeal bond as hereinafter required has been furnished and is in the custody of the superior court, the same shall be returned to the lower court. The lower court shall have power to forfeit the cash bail or appeal bond and issue execution thereon for breach of any condition under which it is furnished.

(c) Dismissal on Clerk's Motion. In all justice court appeals wherein there has been no action of record during the ninety days just past, the clerk of the superior court shall mail notice to the appellant and counsel at the addresses contained in the notice of appeal and such appeal will be dismissed by the court for want of prosecution unless within thirty days following such mailing, action of record is made for an application in writing to the court and good cause shown why it should be continued as a pending case. If the appeal is dismissed, the clerk of the court will proceed as per section (b) above. [Adopted Dec. 23, 1968, effective Jan. 3, 1969; amended June 23, 1969, effective July 1, 1969. Prior: Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 8——DISQUALIFICATION OF JUDGE, CLERICAL MISTAKES, CONDUCT OF COURT

RULE 8.01

JUDGE, DISQUALIFICATION.

(a) Disqualification. In any case pending in any court of limited jurisdiction, unless otherwise provided by law, the judge thereof shall be deemed disqualified to hear and try the case when he is in anywise interested or prejudiced. The judge, of his own initiative, may enter an order disqualifying himself; and he shall also disqualify himself under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party or his attorney of record files an affidavit that such party cannot have a fair and impartial trial by reason of the interest or prejudice of the judge or for other ground provided by law. Only one such affidavit shall be filed on behalf of the same party in the case and such affidavit shall be made as to only one of the judges of said court.

(b) Affidavit of Prejudice. All right to an affidavit of prejudice will be considered waived where filed more than ten (10) days after the defendant's plea is entered, or the case is set for trial which ever should occur first, unless the affidavit alleges a particular incident, conversation or utterance by the judge, which was not known to the party or his attorney within the ten (10) day period. In multiple judge courts, or where a pro tem or visiting judge is designated as the trial judge, the ten (10) day period shall commence on the date that the defendant or his attorney has actual notice of assignment or reassignment to a designated trial judge. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970 also March 25, 1971, effective Apr. 16, 1971.]

RULE 8.02

JUDGE, DISQUALIFICATION——ANOTHER JUDGE.

When ever a justice of the peace is disqualified, said judge shall forthwith make an order transferring and removing the case to another judge authorized by law to hear such case. RCW 3.50.280 shall apply to municipal courts. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 8.03

CLERICAL MISTAKES.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order. If an appeal has been taken, such mistakes may be so corrected until the record has been filed in the appellate court, and thereafter while the appeal is pending may be so corrected with the leave of the appellate court. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 8.04

RULES OF COURT.

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules, or with any applicable statute. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER 10——MISCELLANEOUS

RULE 10.01

TIME——RULES FOR COMPUTING.

(a) In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable law, the day of the act, event or default after which the designated period of time begins to run is not to be counted or included, and the last day of the prescribed or allowed period so computed is to be counted and included, unless such last day be a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the allowed period is less than 7 days, intermediate Sundays and legal holidays, if any, shall be excluded in the computation.

(b) Whenever by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion: (1) with or without motion or notice order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion and notice permit the act to be done after the expiration of

the specified period where the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking an appeal as provided for in these rules. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 10.02

MOTIONS AND APPLICATIONS——NOTICE——SERVICE.

Reasonable notice shall be given to the opposing party or attorney of record of all motions and applications other than those ex parte. Where a motion or application is supported by an affidavit, a copy of such affidavit shall be served with the motion or application. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE 10.03

TITLE OF RULES.

These rules may be known and cited as Criminal Rules for Courts of Limited Jurisdiction, and they may be referred to as J Crim. R.* [Adopted Feb. 13, 1963, effective July 1, 1963.]

***Reviser's note:** By order dated May 5, 1967, effective July 1, 1967, these rules were redesignated as Criminal Rules for Justice Court and may be referred to as JCrR.

JUSTICE COURT TRAFFIC RULES (JTR)

(**Formerly:** Traffic Rules for Justice Court; Traffic Rules for Courts of Limited Jurisdiction.)

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SCOPE.

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RULE T1.02

PURPOSE AND CONSTRUCTION.

See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T1.03

LOCAL COURT RULES——AVAILABILITY.

Local rules of any court to which these rules apply shall be supplementary to and consistent with these rules. The judge of each court shall (a) arrange for the duplication and distribution of such local rules, (b) send a copy of such rules to (1) the Administrator for the Courts, (2) the Recording Secretary of the Judicial Council, (3) the Chief of the State Patrol, (4) the President of the Magistrates' Association, (5) the Supreme Court Law Library, and (6) the local county law library, and (c) keep a copy of such rules readily available for inspection. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T1.04

DEFINITIONS.

As used in these rules, unless the context, and substantive or statutory law, requires otherwise:

(1) "Traffic Offense" means any violation, other than a felony, of a statute relating to the licensing of vehicle operators, any violation, other than a felony, of a statute, ordinance, or resolution of a county or municipal corporation or regulation relating to the operation or use of motor vehicles and any violation, other than a felony, of a statute, ordinance, resolution, or regulation relating to the use of streets and highways by pedestrians or by the operation of any vehicle; except non-moving traffic offenses under county or municipal ordinance, resolution, or regulation.

(2) "Non-Moving Traffic Offense" means any parking or standing of vehicles in violation of a statute, ordinance or regulation and any violation of a statute, ordinance, or regulation while the vehicle is not in operation.

(3) "Traffic Case" means a court case involving a traffic offense.

(4) Where reference is made in these rules to any section of RCW Title 46, Motor Vehicles, the reference is intended to mean and to include comparable provisions of municipal ordinances and county ordinances and resolutions. [Adopted Feb. 13, 1963, effective July 1, 1963.]

CHAPTER T2——PRELIMINARY PROCEEDINGS

RULE T2.01

COMPLAINT AND CITATION——FORM AND USE——DEFECTS.

(a) In traffic cases the complaint and citation shall be substantially in the form known as the "Uniform Traffic Ticket and Complaint" sponsored by the American Bar Association Traffic Court Program. The Uniform Traffic Ticket and Complaint shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. Except when electronic data processing equipment is being used, the required parts, which must be the original, the first, the second, and the last carbon respectively, are:

(1) The complaint, printed on white paper;

(2) The abstract of court record for the state licensing authority, which shall be a copy of the complaint, printed on yellow paper;

(3) The traffic citation, printed on green paper; and

(4) The police record, which shall be a copy of the complaint, printed on pink paper.

In the case of law enforcement agencies utilizing electronic data processing equipment, or desiring to use such format, the required parts, which must be the original, the first, the second, and the last carbon respectively, are:

(1) The abstract of court record for the state licensing authority, which shall be identical to the complaint and printed on yellow paper;

(2) The traffic citation, printed on green paper;

(3) The police record, which shall be identical to the complaint and printed on pink paper; and

(4) The complaint, printed on a white card.

(b) Each of the parts shall contain the following information or blanks in which such information shall be entered:

(1) The name of the court and a space for the court's docket, case or file number;

(2) The name of the person cited, his address, date of birth, sex, operator's license number, his vehicle's make, year, type, license number and state in which licensed;

(3) The offense of which he is charged, the date, the time and place at which the offense occurred, the date on which the citation was issued, and the name of the citing officer. Several offenses may be cited on one ticket;

(4) In all cases where the person is not arrested, the time and place at which the person cited is to appear in court or the traffic violations bureau need not be to a time certain but may be within 72 hours or within a greater period of time not to exceed 15 days after the date of the citation.

(5) A space for the person cited to sign a promise to appear; and

(6) A space for the entry of bail in accordance with the established bail schedule.

(c) Each of the parts may also contain such identifying and additional information as may be necessary or apporpriate for law enforcement agencies in the state.

(d) (1) *Complaint——Officers.* The complaint shall contain a form of certificate by the citing official to the effect that he certifies, under penalties of perjury, as provided by RCW 3.50.140, and any law amendatory thereof, he has reasonable grounds to believe, and does believe, the person cited committed the offense(s) contrary to law. The certificate need not be made before a magistrate or any other person. Such complaint when signed by the citing officer and filed with a court, or traffic violations bureau, of competent jurisdiction shall be deemed a lawful complaint for the purpose of prosecuting the traffic offenses charged therein.

(2) *Complaint by others.* Where a person other than a police officer wishes to make a traffic violation charge, he shall do so by filling out and signing a complaint on the form provided for by these rules. He shall fill out the form and sign it before a magistrate. Such complaint when prepared in compliance with this rule and

filed with a court of competent jurisdiction shall be deemed a lawful complaint for the purpose of prosecuting the traffic offenses charged therein.

(e) The reverse side of the complaint may be used to record court action, and may, together with the complaint, constitute the docket of the court of all traffic cases. If not so used, then the docket shall be maintained as required by statute or other court rule.

(f) The reverse side of the abstract of court record shall contain such matters as may be necessary to bring the disposition of the complaint to the attention of the Director of Motor Vehicles.

(g) The reverse side of the police record may contain the police report of action on the case.

(h) The traffic citation shall also contain a notice to the person cited that the complaint will be filed. The reverse side of the traffic citation shall set forth information as to his right to deposit bail and to a trial, or to forfeit bail and the consequences thereof.

(i) To insure uniformity, the format and use of the uniform complaint and citation, provided herein, shall be subject to approval by the office of Administrator for the Courts. [Adopted Feb. 13, 1963, effective July 1, 1963; subd. (b)(4) amended July 14, 1966, effective Aug. 1, 1966; subd. (i)(1), (2), (3) deleted July 14, 1966, effective Aug. 1, 1966; subd. (j) renumbered as subd. (i) July 14, 1966, effective Aug. 1, 1966; amended June 23, 1967, effective July 1, 1967.]

RULE T2.02

COMPLAINT AND CITATION——ARREST BY WARRANT——CHARGE WITHOUT ARREST——PROCEDURE.

(a) All traffic violations shall be prosecuted by complaint in the form provided in rule T2.01 and applicable state statutes.

(b) Whenever any person is arrested by an officer for any violation of the traffic laws or regulations of the state, a county or a city, the officer shall fill out the complaint and citation form in accordance with rule T2.01 and applicable statutes. The arresting officer shall serve a copy of the complaint and citation on the person and either

(1) Take the person arrested directly and without delay before an officer authorized to accept bail, or a judge, for deposit of bail; or

(2) if bail is not deposited, before a judge as hereinafter provided; or

(3) permit the person charged with the violation to give his written promise to appear in court or traffic violations bureau by signing the original traffic citation prepared by the officer, in which event the officer shall deliver the violator's copy of the citation to the person, and thereupon the officer shall release the person from custody.

(c) Obtaining Jurisdiction of a Person not Arrested. Whenever any person is charged with the violation of the traffic laws or regulations of the state, a county, or a city, but is not arrested, the court shall issue a summons, or in the alternative, a warrant, in the same manner as in Rule 2.02 of the Criminal Rules for Justice Court. Said summons may be served or warrant executed as provided for in said Rule 2.02 of the Criminal Rules for Justice Court. Before proceeding as above, the court may notify the defendant by mail, of the charge, of the existence of a complaint, the date and time or interval of time in which the defendant is to appear, the place to appear, whether the charge is mandatory or forfeitable, and if forfeitable, the amount of bail which may be required. Upon posting bail or upon obtaining personal recognizance, the court shall obtain jurisdiction of the person of the defendant in a like manner as if the summons had been served on the defendant or warrant executed.

(d) (1) Execution of Warrant. The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) Service of Summons. The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, by certified mail, postage prepaid, to the defendant at his address. [Adopted Feb. 13, 1963, effective July 1, 1963; subdivisions (c) and (d) added July 14, 1966, effective Aug. 1, 1966; amended, adopted Dec. 17, 1970, effective Apr. 16, 1971.]

RULE T2.03

PROCEDURE UPON ARREST WITHOUT A WARRANT——UNDER A WARRANT——PERSONAL RECOGNIZANCE——BAIL.

(a) Bail schedules——Traffic cases. The Court Administrator shall furnish to every court of limited jurisdiction and every such court shall furnish to each law enforcement office within its jurisdiction, the bail schedule of subsections (k), (l), and (m) covering major traffic offenses. Whenever bail is required for any such traffic offense, it shall be that shown on the schedule unless the judge of the court having jurisdiction thereof shall, by written order showing the reason therefor in each case, set bail in a different amount.

Each judge, or the presiding judge in a multiple judge court, with jurisdiction to hear and determine traffic cases is authorized to establish by order of court a schedule of bail which shall be as uniform as possible for traffic offenses triable in his court which are not included in the schedule approved by the Supreme Court and found in JTR T2.03 (k), (l), and (m). A copy of such schedule shall be distributed to (1) the Administrator for the Courts, (2) the Recording Secretary of the Judicial Council, (3) the Chief of the State Patrol, (4) the President of the Magistrate's Association, (5) the prosecuting attorney and sheriff of the county, (6) the chief of police of each city or town within the court's jurisdiction, and (7) the clerk of the judge's court and with the clerk of the traffic violations bureau, if any. The order of the court establishing the bail schedule shall be prominently displayed in all places where bail may be deposited.

(b) Procedure upon arrest without a warrant——Traffic cases. Where a person is arrested without a warrant for a traffic offense committed in the officer's presence and the arresting officer proceeds under Rule

T2.02(b)(1) to take the person before a judge, or the clerk or deputy of the court, or to the county jail, or, in a proper case, to the municipal jail, the judge, or the clerk or deputy clerk or the sheriff or chief of police, or their deputies in charge of the jail is authorized to accept, and the person is entitled to deposit, bail in accordance with the schedule established under Rule T2.03(a) for his appearance at a time and place to be then made known to him. The sheriff, chief of police, any other authorized peace officer or such persons as the court may authorize, may release the defendant on personal recognizance if he is a resident of the county or has substantial local contacts.

If bail is not deposited, or the person refuses to deposit bail or he is not released on personal recognizance, he shall be taken without unnecessary delay, and in any event within twenty-four hours, exclusive of nonjudicial days, before the proper judge for arraignment upon the complaint issued under Rule T2.02(b).

(c) Procedure following execution of warrant—— Traffic cases. Whether or not bail is fixed upon a warrant issued in a traffic case, the officer making an arrest thereunder shall take the person directly and without delay before the judge or an official authorized to accept and justify bail. If bail has been fixed in the warrant, the bail so set may be required of the person under arrest. If no bail was set in the warrant, then the appropriate bail schedule on file shall apply. If bail is not deposited, or the person refuses to deposit bail, he shall be taken without unnecessary delay, and in any event within twenty-four hours exclusive of nonjudicial days, before the proper judge for arraignment upon the complaint.

(d) Cash bail. Any person arrested with or without a warrant for a traffic offense may, in the place of giving bail, deposit with the official before whom he is taken, or the judge, or the clerk of the court or the traffic violations bureau to which he is held to answer, the sum of money mentioned in the warrant or set forth in the bail schedule for the offense with which he is charged. He shall be given a receipt by such official, judge or clerk.

(e) Release on bail. Upon the depositing of bail under this rule, the person shall be discharged from custody if his physical condition warrants, subject to his appearance at the time and place indicated in the citation or warrant.

(f) Personal recognizance at arraignment. Any person arrested or cited for a traffic violation and who wishes to contest such arrest or citation, shall at the time of arraignment, be released on his own personal recognizance if his physical condition warrants and if he is a resident of the county or has substantial local contacts unless there is good cause for refusal. If the judge finds the person is not a resident of the county, has insufficient local contacts or good cause for refusal is shown, he may require bail to be posted to insure the person's appearance at trial by entering a written order specifying reasons and terms thereof. Such order may be a simple docket entry.

(g) Administrative personal recognizance. If a person appears on any traffic offense at the time or within the time interval designated on the ticket or notice, and requests a trial, or if appearance is mandatory, the clerks of the court or Violations Bureau shall set the matter for arraignment or trial and grant personal recognizance unless the person is not a resident of the county, has insufficient local contacts or good cause for refusal is shown.

(h) Review. In all cases the person charged shall have the right of review by the judge of the ruling of any clerk or official as to the amount of bail or refusal to grant personal recognizance.

(i) Condition for release on personal recognizance. Whenever release on personal recognizance is granted under this rule the judge or clerk may condition such release on the defendant's signing a written promise to appear acknowledging the trial or arraignment date. Such promise may be in the following form.

Trial date _____, 19__ at _____M.
I agree to appear at that time. If I fail to appear, a warrant will be issued with bail set at $_____.
I understand that clerical personnel have no authority to grant further delay.

Dated _____,19__

_____
Defendant

(j) Bail schedule. The bail schedule as set forth in sections (k), (l), and (m) below is adopted. References are to the appropriate section of the Revised Code of Washington and, if applicable, appropriate local or municipal codes may also be cited.

(k) Mandatory court appearance. Court appearance in the following cases is mandatory. Forfeiture of bail shall not constitute a final disposition for the following cases without a special order of the court showing the reasons therefor. Such order may be a simple docket entry:

	Bail + TSE* Total
1. Driving while intoxicated (DWI) (RCW 46.61.506) (mandatory)	$250
2. Reckless driving (RCW 46-.61.500) (mandatory)	$250
3. Hit and run attended vehicle (RCW 46.52.020) (mandatory)	$250
4. Wrong way on a freeway (RCW 46.61.150) (mandatory)	$250
5. Disobeying school patrol (RCW 46.61.385) (mandatory)	$ 50
6. Passing stopped school bus (RCW 46.61.370) (with lights flashing) (mandatory)	$ 50
7. Altered license and fraudulent loaning of license	

	Bail +	TSE*	Total
(RCW 46.20.336) (mandatory)			$ 50
8. Driving during period of suspension (RCW 46.20.342) (mandatory)			$250
9. Driving in violation of financial responsibility (RCW 46.20.342——46.29.625) (mandatory)			$250
10. Switching license plates (RCW 46.16.240) (mandatory)			$ 50
11. Physical control while intoxicated (RCW 46.61.506) (mandatory)			$100

(l) Qualified mandatory cases. The case may be closed and forfeiture permitted when satisfactory proof of correction is furnished for the following offenses:

	Bail +	TSE	Total
1. Driving without a license or improper license (RCW 46.20.021)	$20 +	$ 5	$ 25
2. Expired (RCW 46.16.010)	$ 5 +	$ 5	$ 10
3. Missing license plate (RCW 46.16.240)	$ 5 +	$ 5	$ 10

(m) Other violations.

	Bail +	TSE	Total
1. Speeding (RCW 46.61.400) $2 per mile for the first 14 m.p.h. over the posted limit and TSE $3 per mile for 15 to 29 m.p.h. over the posted limit and TSE $5 per mile for each mile over 29 m.p.h. over the posted limit and TSE			
2. Failure to stop at sign or stop light (RCW 46.61-.360)	$20 +	$ 5	$ 25
3. Failure to yield right–of–way (RCW 46.61.190)	$20 +	$ 5	$ 25
4. Following too close (RCW 46.61.145)	$20 +	$ 5	$ 25
5. Failure to signal (RCW 46-.61.305)	$10 +	$ 5	$ 15
6. Impeding traffic (RCW 46-.61.425)	$20 +	$ 5	$ 25
7. Improper lane usage or lane change (RCW 46.61.140).	$20 +	$ 5	$ 25
8. Wrong way on a one–way street (RCW 46.61.135)	$10 +	$ 5	$ 15
9. Wrong way on a freeway access (RCW 46.61.155)	$50 +	$15	$ 65
10. Negligent driving (RCW 46-.61.525)	$50 +	$15	$ 65
11. Failure to dim lights (RCW 46.37.230) (passing or following)	$10 +	$ 5	$ 15
12. Hit and run unattended vehicle (RCW 46.52.010)	$80 +	$20	$100
13. Improper passing (RCW 46-.61.100–130)	$20 +	$ 5	$ 25
14. Prohibited and improper turn (RCW 46.61.305)	$10 +	$ 5	$ 15
15. Prohibited U–turn (RCW 46.61.295)	$10 +	$ 5	$ 15
16. Crossing double yellow line (RCW 46.61.130)	$20 +	$ 5	$ 25
17. Driving on shoulder or sidewalk (RCW 46.61.100)	$15 +	$ 5	$ 20
18. Operating with obstructed vision (RCW 46.61.615)	$20 +	$ 5	$ 25
19. License not in driver's possession (RCW 46.20.190).	$ 5 +	$ 5	$ 10
20. Violation of license restriction (RCW 46.20.041) (including insurance covering wrong vehicle)	$20 +	$ 5	$ 25
21. No license (RCW 46.16.010)	$25 +	$10	$ 35
22. Defective equipment (RCW 46.37.010)	$15 +	$ 5	$ 20
23. Defective lights (RCW 46-.37.040–070)	$ 5 +	$ 5	$ 10
24. Throwing or depositing debris (RCW 46.61.650)	$100 +	$25	$125
25. Spilling or failing to secure loads (RCW 46.61.655)	$50 +	$15	$ 65
26. Failure to comply with restrictive signs (RCW 46-.61.050)	$10 +	$ 5	$ 15
27. Failure to appear	Amount in the discretion of the local court		

(n) Multiple offenses. Where multiple violations arising from one incident are charged and any one of the charges is mandatory, the total bail shall not exceed $500.

(o) Judicial Council review. This bail schedule shall be reviewed annually by the Judicial Council which shall file a written report with the Supreme Court recommending retention or modification of this schedule. [Adopted Feb. 13, 1963, effective July 1, 1963; amended, adopted Dec. 17, 1970 also Sept. 27, 1971, effective Nov. 9, 1971; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

**Traffic Safety Education assessment imposed by RCW 46.81*

RULE T2.04

DISPOSITION AND RECORDS OF TRAFFIC COMPLAINTS AND CITATIONS.

(a) Deposit in Court. Every traffic enforcement officer upon issuing a traffic complaint and citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city,

town or county, shall deposit the complaint and the abstract of court record copy of such traffic complaint and citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau. This duty may be performed by the officer's supervisor. In either case, deposit as directed must be made within 48 hours after issuance of the traffic complaint and citation, nonjudicial days excluded.

(b) Disposal of Traffic Cases. Upon such deposit as required by subsection (a), the case may be disposed of only by trial in said court or by other official action by a judge of that court, including removal of the case to a court having jurisdiction over the particular violation as charged in the complaint, or by forfeiture of bail or by deposit of sufficient bail with or payment of a fine to the traffic violations bureau by the person to whom such traffic complaint and citation was issued.

(c) Improper Disposal of Traffic Complaint and Citation Tickets. It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic complaint and citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(d) Duties——Chief Administrative Officer. The chief administrative officer of every traffic enforcement agency shall require the return to him of a copy of every traffic complaint and citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic complaint and citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator. Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic complaint and citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original of the traffic complaint and citation was deposited, or to which it was forwarded. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T2.05

PROCEDURE ON FAILURE TO OBEY CITATION.

(a) Residents. The court shall issue a warrant for the arrest of any defendant who is a resident of this state and who has failed to appear before the court or the traffic complaint and citation upon which he has given his written promise to appear. If the warrant is not executed within 30 days after issue, the court shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained.

(b) Nonresidents. If a nonresident defendant fails to appear before the court or the traffic violations bureau either in person or by counsel in answer to a traffic complaint and citation upon which he has given his written promise to appear, the court shall mail a notice to the defendant at the address stated in the complaint and citation requesting him to abide by his promise and appear in person or by counsel on a day certain, and notifying him that his failure to appear after a written promise to do so is a misdemeanor for which he may also be charged. If the nonresident defendant fails to respond within 30 days after the date set in the notice, the court shall issue a warrant for his arrest and shall make an entry of the notification on the docket, and may add a charge against the defendant for failure to appear after a written promise to do so, and mark the case closed, subject to being reopened when the appearance of the defendant is thereafter obtained. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T2.06

TRAFFIC VIOLATIONS BUREAU——PROCEDURE.

(a) Traffic Violations Bureau. A traffic violations bureau may be established by any city or town under the supervision of the court having jurisdiction over violations of its ordinances, and by any judge, or by the presiding judge in a multiple judge court, having jurisdiction of traffic cases to assist in the processing of traffic cases.

(b) Traffic Violations Bureau——Authority.

(1) *General.* The traffic violations bureau is authorized to process in accordance with this rule and state statute such traffic offenses under city ordinance or county ordinance or resolution or state law as may be designated by written order of the court having jurisdiction of such traffic cases.

(2) *Authority to accept bail.* The court may by its order authorize the traffic violations bureau to receive the deposit of bail for appearance in court for specified offenses under a bail schedule issued under rule T2.03. The traffic violations bureau, upon accepting the prescribed bail, shall issue (a) a receipt to the alleged violator, and (b) a notice of trial date, prepared in triplicate, the reverse side of which shall bear a legend informative of the legal consequences of bail forfeiture. The second copy of the notice of trial date shall be forwarded to the clerk of the court and the third copy shall be retained by the traffic violations bureau.

(3) *Authority to accept forfeiture of bail——Consequences.* The court may by its order authorize the traffic violations bureau (i) to accept forfeiture of bail in specified cases in accordance with a bail schedule issued under rule T2.03 in lieu of depositing bail for appearance, in which case a receipt shall be issued to the alleged violator, the reverse side of which shall contain a statement indicating that forfeiture of bail shall terminate the case and may be considered by the Director of Motor Vehicles only, and for no other purpose, as having the same effect as conviction of the offense charged; and (ii) to forfeit bail deposited for appearance on notification by the clerk of the court of failure of the defendant to appear. Forfeiture of bail under either (i) or (ii) shall be construed as payment of a fine for the offense charged only for the purpose of the distribution of the funds and shall terminate the case.

(c) Traffic Violations Bureau——Duties. The traffic violations bureau shall, not less than once a week or oftener as the judge directs, transfer to the clerk of the proper department of the court (1) all bail deposited for offenses where forfeiture is not authorized by court order, (2) a copy of each notice of trial date for which bail has been deposited, and on which shall appear the amount of bail deposited, and (3) a list of the names of all offenders who have forfeited bail under rule T2.06(b)(3)(i) and (ii). Once each week, on a day set by the court, the traffic violations bureau shall forward to the Director of Motor Vehicles the abstract of court record copy of the complaint and citation indicating the disposition of each case involving bail forfeiture during the previous week. [Adopted Feb. 13, 1963, effective July 1, 1963; amended June 23, 1967, effective July 1, 1967.]

CHAPTER T3——ARRAIGNMENT AND TRIAL——TRAFFIC CASES

RULE T3.01

SEPARATION OF TRAFFIC CASES.

(a) Separate Trial. Insofar as practicable, in the respective court or district, traffic cases shall be tried separate and apart from other cases, and may be designated as the "Traffic" section or division.

(b) Trial by Traffic Division. If a court sits in divisions and one division sitting in daily session has been designated as a traffic court, traffic cases shall be tried in that division only.

(c) Trial by Traffic Session. If a court has designated a particular session as a traffic session, traffic cases shall be tried only in that session, except for good cause shown.

(d) Other Cases; Designation of Particular Time. In all other cases, the court shall designate a particular day or days, or a particular hour daily on certain days, for the trial of traffic cases.

(e) Adjournment; Bail for Release. When a hearing is adjourned the court may detain the defendant in safe custody until the defendant is admitted to bail.

(f) Objections Before Trial. An objection to the validity or regularity of the complaint or process issued thereunder shall be made, orally or in writing, by the defendant before trial. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T3.03

TRAFFIC CASES——ARRAIGNMENT AND TRIAL.

The Criminal Rules for Courts of Limited Jurisdiction, insofar as they are not inconsistent with these rules, shall govern the proceedings in traffic cases following the preliminary proceeding provided for in Chapter T2 of these rules. [Adopted Feb. 13, 1963, effective July 1, 1963.]

RULE T3.04

AMENDMENT OF COMPLAINT OR CITATION—— CONTINUANCE.

The court may permit a complaint or citation to be amended at any time before judgment if no additional or different offense is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall not be granted upon such amendment unless the defendant shall satisfy the court that the amendment has made it necessary for him to have additional time in which to prepare his defense. [Adopted July 14, 1966, effective August 1, 1966.]

RULE T3.05

BREATHALYZER.

(a) Breathalyzer maintenance operator——Demand for testimony——Certification of machine. In the absence of a request to produce a breathalyzer maintenance operator at least 10 days prior to trial or such lesser time as the court deems proper, certificates in the following form are admissible in any court proceeding held pursuant to RCW 46.61.506 for the purpose of determining whether a person was operating a motor vehicle while under the influence of intoxicating liquors:

BREATHALYZER MAINTENANCE AND CHEMICAL CERTIFICATION

I, _____, do certify under penalty of perjury as follows:

I am a maintenance operator possessing a valid permit or certificate issued to me by the State Toxicologist by virtue of his Rules, WAC 448, Chapter 12, and RCW 46.61.506.

On _____ (date) at _____ (time) I examined, tested and calibrated a Breathalyzer Machine with Serial No. _____, using a sealed ampoule of chemicals with Control No. _____ according to the methods established and approved by the State Toxicologist.

I further certify that said machine was, on that date, in proper working order, and that the chemicals in ampoules with the above control number are suitable for use in this machine.

_____
Breathalyzer Maintenance Operator

Dated _____

(b) Continuance. The court at the time of trial shall hear testimony concerning the alleged offense and, if necessary, may continue the proceedings for the purpose of obtaining the maintenance operator's presence for testimony concerning the working order of the breathalyzer machine and his certification thereof. If, at the time the maintenance operator is produced, the prosecutor's breathalyzer evidence is insufficient, a motion to suppress the results of such tests shall be granted. [Adopted May 26, 1972, effective July 1, 1972.]

CHAPTER T10——MISCELLANEOUS

RULE T10.01

TITLE OF RULES.

These rules may be known and cited as Traffic Rules for Courts of Limited Jurisdiction, and they may be referred to as JTR. [Adopted Feb. 13, 1963, effective July 1, 1963.]

Reviser's note: By order of the Supreme Court dated May 5, 1967, effective July 1, 1967, these rules were redesignated Traffic Rules for Justice Court.

RULE T10.02

EFFECTIVE DATE.

These rules, insofar as applicable, take effect upon the date specified by the Supreme Court. They shall govern all proceedings in traffic cases brought after they take effect, and also all further proceedings in traffic cases then pending, except to the extent that in the opinion of the court their application in a particular action pending would not be feasible or would work injustice, in which event the former procedure would apply. [Adopted Feb. 13, 1963, effective July 1, 1963.]

APPENDIX TO PART V

1. Forward dated February 13, 1963
2. Order adopting rules for courts of limited jurisdiction dated February 13, 1963
3. Order extending effective date of rules dated April 2, 1963
4. Order amending and adding specified rules, dated June 14, 1963
5. Order reclassifying rules for courts of limited jurisdiction dated May 1, 1967

1. Forward dated February 13, 1963

On November 2, 30, and December 7, 1962, respectively, the suggested procedural rules for courts of limited jurisdiction, adopted by a majority of the members of the Judicial Council, were published. The publication invited study, suggestions, and criticisms by interested persons prior to the promulgation of the proposed rules by the Supreme Court. Many letters were received suggesting substantial changes. Several meetings were held, and some major changes, in addition to numerous less significant ones, have been made.

The principal objections to the rules were (1) that they established rules for jury trials in municipal courts in certain cases, and (2) that, under the statutory authority to adopt rules of procedure, the suggested rules contained substantive law.

As to (1), Art. 1, § 22, of the state constitution, provides in part that "In criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury . . ." Accordingly, the legislature provided for juries in the Superior Court and the Justice Court. No juries were provided by legislative enactment for Municipal Courts. This court, in *Bellingham* v. *Hite*, 37 Wn. (2d) 652, 225 P. (2d) 895 (1950), held that a city ordinance which did not provide for jury trial for persons charged with violation of city ordinances was not repugnant to Art. 1, § 22, of the state constitution, for the reason that the municipal court conviction became a nullity when the accused person appealed to the Superior Court, where the municipal ordinance violation was tried *de* novo, and a jury provided upon request.

The legislature, by § 77, chapter 299, Laws of 1961, RCW 3.50.280, has authorized jury trials in municipal courts in certain cases involving traffic violations and gross misdemeanors. Sections 2 and 96, chapter 299, Laws of 1961, RCW 3.30.020, 3.50.470, exclude those municipalities from the provision of chapter 299 whose governing bodies have, by resolution, decreed not to be governed by its provisions.

Therefore, rules of procedure have been prepared for the selection of juries for those municipal courts whose municipalities have qualified under chapter 299, Laws of 1961.

We have endeavored to incorporate in one rule book as much of the necessary statutory law (and have given such laws a rule number) relating to jurisdiction, process, arrest, bail, disposition of bail forfeitures, and rules of trial procedure as the judges will need in the determination of most of the causes before them. To accomplish this purpose, the law was given a rule number. The statutory law, in most instances, is set out verbatim in the rule. There is no desire or intention to abrogate the statutes dealing with substantive law, but, rather, to make them readily available.

The rules are designed to establish uniform procedure in this state for courts of limited jurisdiction. They are the first such rules promulgated by the Supreme Court for courts of limited jurisdiction. Comments, suggestions, and criticism of these proposed rules, as revised, are invited prior to April 1, 1963. If revisions are made, only the specific rule revised will be republished. The effective date of these rules and any revision thereof will be May 1, 1963.

The court expresses its appreciation to the members of the advisory committee of the Judicial Council who drafted the proposed rules previously published. We are likewise grateful to the Chief of the State Patrol, the Director of Licenses, Justice Court, Municipal Court, and Superior Court Judges, the prosecuting and city attorneys, practicing attorneys, city officials and mayors, the press, and many others, whose helpful suggestions have aided materially in the formulation of the rules as now presented.

RICHARD B. OTT
Chief Justice

2. IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ORDER 25700-A Paper No. 76	IN THE MATTER OF THE ADOPTION OF RULES FOR COURTS OF LIMITED JURISDICTION (Justice of the Peace Courts, Municipal Courts, Police Courts) BY THE SUPREME COURT OF THE STATE OF WASHINGTON

WHEREAS, The Legislature enacted chapter 118, Laws of 1925, relating generally to Rules of Procedure, and chapter 299, Laws of 1961, relating to Justice Courts and other courts of limited jurisdiction in the state of Washington, and included provisions in chapter 299, Laws of 1961, pertaining to the promulgation and adoption of Rules of Procedure by the Supreme Court of Washington; and

WHEREAS, authority to promulgate and adopt uniform Rules of Procedure for the courts in the state of Washington is vested in the Supreme Court of Washington under the decision in *State ex rel. Foster-Wyman Lumber Company* v. *Superior Court for King County* (1928), 148 Wash. 1, 267 Pac. 770; and

WHEREAS, The Supreme Court of Washington requested technical assistance, advice and counsel from the Judicial Council, that a comprehensive study be made, and that proposed Rules of Procedure be drafted for the Courts of Limited Jurisdiction and submitted by the Judicial Council for consideration by the Supreme Court; and

WHEREAS, The Judicial Council established an advisory committee to do research and drafting, and to submit initial drafts of proposed Rules of Procedure for the Courts of Limited Jurisdiction, such committee being representative of all segments of the legal profession, of all the courts of Washington, and particularly representative of all judges of courts to be affected by the Proposed Rules of Procedure; and such advisory committee thus being reasonably representative of the public's interest in such matters, and, in fact, being composed of the following members:

M. Kenneth A. Cole, representing the Washington State Bar Association, and attorney for the Association of Washington Cities and Municipalities, 4th and Pike Building, Seattle, Washington;

Representative Keith H. Campbell (then Chairman), Judiciary Committee–Criminal, House of Representatives, Washington State Legislature, and member of the Washington State Judicial Council, W. 2204 Rockwell Avenue, Spokane, Washington;

Judge Ronald Danielson, Justice of the Peace, and Municipal Court Judge, City Hall, Bremerton, Washington;

Judge E. A. Davis, Justice of the Peace, (and then President of the Washington State Magistrates Association), 9714 Dawson Street, Bothell, Washington;

Mr. Walter J. Deierlein, Jr., Prosecuting Attorney, representing the Washington State Association of Prosecuting Attorneys, Legal Building, Mount Vernon, Washington;

Judge Ambrose C. Grady, Justice of the Peace, and presently President of the Washington State Magistrates Association, 112 Taylor Street, Port Townsend, Washington;

Mr. Marshall McCormick, Corporation Counsel, representing the Washington State Association of Municipal Attorneys, County–City Building, Tacoma, Washington;

Judge Ben McInturff, Justice of the Peace, Courthouse, Spokane, Washington;

Professor Robert Meisenholder, School of Law, University of Washington, Seattle 5, Washington;

Judge Solie M. Ringold, Superior Court for King County, representing the Superior Court Judges' Association, County–City Building, Seattle, Washington;

Judge Evangeline Starr, Justice of the Peace, 321 County–City Building, Seattle, Washington;

Dr. George Neff Stevens, School of Law, University of Washington, and Executive Secretary of Washington State Judicial Council, Seattle 5, Washington;

Judge Waldo Stone, Justice of the Peace, County–City Building, Tacoma, Washington;

And, WHEREAS, The advisory committee, after months of study, and liaison by its representative members with their particular organizations, including the judges of the courts of limited jurisdiction of the state of Washington, submitted proposed Rules of Procedure to the Judicial Council; and

WHEREAS, The advisory committee of the Judicial Council cause copies of the proposed Rules of Procedure to be distributed to interested individuals throughout the state, inviting and requesting comments and criticism thereon; and, after due consideration and careful revision by individual members of the Judicial Council, and by the said Council as a whole, at its regular meeting on October 12–13, 1962, the proposed Rules of Procedure, as finally revised and approved by the Judicial Council, were submitted to the Supreme Court; and

WHEREAS, the proposed Rules, designated (a) Traffic, (b) Civil, and (c) Criminal, containing general provisions respecting judicial administration, were ordered published by the Supreme Court in the Washington Advance Sheets, and were published therein on the following dates:

(a) Proposed Traffic Rules for Courts of Limited Jurisdiction, 160 Wash. Dec. No. 22, November 2, 1962;
(b) Proposed Civil Rules for Courts of Limited Jurisdiction, 160 Wash. Dec. No. 26, November 30, 1962;
(c) Proposed Criminal Rules for Courts of Limited Jurisdiction and Proposed General Rules for Courts of Limited Jurisdiction, 160 Wash. Dec. No. 27, December 7, 1962,

with a request for comment and criticism by any and all concerned, and with notice that such comment and criticism be filed, in writing, with the Supreme Court no later than thirty days after said publication; and

WHEREAS, all written comment and criticism filed with the Supreme Court was evaluated and given due consideration by the Supreme Court; and

WHEREAS, The Supreme Court, in executive session, on the 11th day of January, 1963, heard criticism and comment on the proposed Rules from all who had made request in writing to be heard, the Supreme Court having given further consideration to the proposed Rules, and having made further revisions thereof,

Now, Therefore, It is Hereby Ordered That Rules of Procedure, now designated (a) Traffic, (b) Civil, (c) Criminal, and (d) General, for the Courts of Limited Jurisdiction in the state of Washington, copies of such Rules being attached hereto and incorporated herein, be filed with this Order in the Office of the Clerk of the Supreme Court; that this Order and copies of the aforesaid Rules be made available for public inspection as in the case of other Orders and public records of the Supreme Court; and

It is further hereby *Ordered* That the aforesaid Rules be published expeditiously in the Washington Advance Sheets, together with notice therein that, for the purpose of due consideration and evaluation by the Supreme Court, comment, criticism, or objection to the aforesaid Rules may be filed in writing not later than April 1, 1963, in the Office of the Clerk of the Supreme Court.

It is further hereby *Ordered* That the Rules referred to and incorporated herein by this Order, subject only to further consideration and to such revision as may be made by Order of this Court, shall become effective as of May 1, 1963.

DATED this 13th day of February, 1963.

RICHARD B. OTT
Chief Justice

MATTHEW W. HILL — HUGH J. ROSELLINI
CHARLES T. DONWORTH — ROBERT T. HUNTER
ROBERT C. FINLEY — FRANK HALE
FRANK P. WEAVER — ORRIS L. HAMILTON

3. IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 25700–A

Paper No. 78

ORDER

IN THE MATTER OF EXTENDING THE EFFECTIVE DATE OF THE PROPOSED RULES FOR COURTS OF LIMITED JURISIDICTION

In Vol. 161, No. 8A, of the Official Advance Sheets of the Washington Reports, dated March 1, 1963, the effective date of the proposed Rules for Courts of Limited Jurisdiction was fixed as May 1, 1963. Since the publication of the proposed rules, suggestions for material amendments to the rules have been received. In order that the court may consider suggestions received prior to May 1, 1963,

IT IS ORDERED that the effective date of the proposed Rules for Courts of Limited Jurisdiction be extended to July 1, 1963.

DATED at Olympia, Washington, this 12th day of April, 1963.

By the Court:

RICHARD B. OTT
Chief Justice

MATTHEW W. HILL — HUGH J. ROSELLINI
CHARLES T. DONWORTH — ROBERT T. HUNTER
ROBERT C. FINLEY — ORRIS L. HAMILTON
FRANK P. WEAVER — FRANK HALE

4. IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 25700–A

Paper No. 80

ORDER AMENDING AND ADDING SPECIFIED RULES FOR COURTS OF LIMITED JURISDICTION

IN THE MATTER OF AMENDING AND ADDING CERTAIN RULES FOR COURTS OF LIMITED JURISDICTION (Justice of the Peace Courts, Municipal Courts, Police Courts) AS ADOPTED BY THE SUPREME COURT OF THE STATE OF WASHINGTON BY ORDER DATED FEBRUARY 13, 1963

The Supreme Court of the State of Washington, in conformity with its rule-making power, herewith amends and adds the following Rules for Courts of Limited Jurisdiction as more particularly set forth in the attachments hereto:

General Rule JAR 4(1) (Canons of Judicial Ethics)
Civil Rule 64 (Garnishment)
Criminal Rule 2.01(d) (The Complaint)
Criminal Rule 2.03(b)(2) (Proceedings before the Judge . . . Where Bail has not Been Fixed——Bail Schedules.)
Criminal Rule 2.03(f) (Proceedings before the Judge . . . Preliminary Examination——Felonies.)
Criminal Rule 5.03(a) (Sentence and Judgment)

These amendments and addition to the Rules for Courts of Limited Jurisdiction shall become effective July 1, 1963.

DATED this 14th day of June, 1963.

RICHARD B. OTT
Chief Justice

MATTHEW W. HILL — HUGH J. ROSELLINI
CHARLES T. DONWORTH — ROBERT T. HUNTER
ROBERT C. FINLEY — ORRIS L. HAMILTON
FRANK P. WEAVER — FRANK HALE

For order of the Supreme Court dated May 5, 1967, redesignating certain of the Rules for Courts of Limited Jurisdiction: See appendix to Part IV.

5. Order reclassifying rules for courts of limited jurisdiction dated May 1, 1967 (See Appendix to Parts I – IV supra)

INDEX FOR RULES FOR COURTS OF LIMITED JURISDICTION

The following abbreviations are used in this index:

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III. Justice Court Criminal Rules (JCrR)

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III. Justice Court Criminal Rules (JCrR)——cont.

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records of lower court on appeal, filing	JCrR	6.01
subpoena, issuance	JCrR	3.10
Complaints		
allegations		
incorporation by reference from one count into another	JCrR	2.04
unnecessary, disregarding or striking	JCrR	2.04
violation, specifying	JCrR	2.04
amendment		
authorized	JCrR	3.04,
	JCrR	4.10
continuance based on	JCrR	4.10
citation deemed complaint	JCrR	2.01 (b)(4)
citizen complaints	JCrR	2.01
consolidation, same defendant and offense	JCrR	2.06
contents	JCrR	2.01
dismissal, motion to set aside	JCrR	3.04
examination, reasonable time, defendant	JCrR	3.02
filing procedure	JCrR	2.01
joinder		
offenses or defendants, relief from prejudicial	JCrR	4.05
offenses or defendants, when	JCrR	2.05
trial together, complaints, when	JCrR	4.04
lost or destroyed, effect	JCrR	2.07
name of defendant, checking, arraignment	JCrR	3.04

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
plainly written, typed or printed	JCrR	1.04
plea of not guilty denies every allegation	JCrR	3.06
proceedings initiated by, exceptions	JCrR	2.01
requisites	JCrR	2.01
separate count for each offense	JCrR	2.05(a)
setting aside, grounds and effect, arraignment	JCrR	3.04
sufficiency	JCrR	2.01
trial		
two or more complaints tried together	JCrR	4.04
when tried	JCrR	3.07
verification	JCrR	2.01
Computation of time, rule for	JCrR	10.01
Consolidation of complaints, same offense	JCrR	2.06
Contempt		
judges failure to apply rules (See General rules JAR 7)		
witnesses failure to appear, subpoena	JCrR	3.11
Continuance		
complaint, amendment, when continuance granted	JCrR	4.10
trial, when	JCrR	3.08
Conviction		
appeal procedure	JCrR	6.01
contents of judgment	JCrR	5.03
defendant's presence required, pronouncement of sentence and judgment	JCrR	5.04
judge and clerk, duty of, effect of omission	JCrR	5.05
setting aside judgment, effect	JCrR	5.06
stay of execution, condition for granting, pending appeal	JCrR	6.02
Copies		
complaint, copy substituted for lost or destroyed	JCrR	3.01
complaint or citation, for each defendant	JCrR	2.01(d)
Counsel		
arraignment		
appearance by counsel only	JCrR	3.03
right to counsel and time to consult	JCrR	3.02
assignment of	JCrR	2.11(d)
attorneys, withdrawal	JCrR	2.11(e)
lawyer, explaining availability	JCrR	2.11(c)
proceedings		
stage	JCrR	2.11(b)
types	JCrR	2.11(a)
service other than	JCrR	2.11(f)
Courts (See also Judges; Justices of the peace; Superior court; Trial)		
appeal		
filing transcripts with superior court	JCrR	6.01
dismissal of, lower court judgment to enforce	JCrR	6.03
stay of execution pending	JCrR	6.02
superior court as tribunal, procedure of appeal	JCrR	6.01
bail		
cash deposit on appeal	JCrR	6.01
forfeiture, courts power	JCrR	6.03
stay of execution on appeal	JCrR	6.02
bond		
appeal		
cash bail	JCrR	6.01
deposit procedure	JCrR	6.01
forfeiture	JCrR	6.03
superior court to receive and return on dismissal	JCrR	6.03
bail (See bail)		
citation and notice to appear (See Citation and notice to appear)		
complaints (See Complaints)		
conduct of judicial proceedings and trials	JCrR	4.01
defined (See rule JAR 3)		
dismissal, motion by court for, grounds	JCrR	4.11
disqualification of judge		
procedure	JCrR	8.01
replacement	JCrR	8.02
evidence, not to comment on, jury trial	JCrR	4.07(e)
facts, judge trying in nonjury cases	JCrR	4.07(e)
jury (see Juries)		
justice		
appeal to superior court when justice court in joint justice district	JCrR	6.01
disqualification	JCrR	8.01, 8.02
examination of lay candidates (See rule JAR 1)		
presiding judge, appointment and duties (See rule JAR 4)		
law		
answering juror's questions	JCrR	4.07(d)
instructing juries	JCrR	4.07(e)
issues of, deciding	JCrR	4.07(d)
mistakes, clerical, when corrected	JCrR	8.03
municipal ordinance violation, trial by court	JCrR	4.07(c)
new trial, setting aside prior judgment of conviction	JCrR	5.06
opening statements	JCrR	4.08
pleas		
acquittal, procedure	JCrR	3.06, 4.03
dismissal	JCrR	3.06
failure to plead, effect	JCrR	3.06
former conviction	JCrR	3.06, 4.03
guilty		
condition upon which court will accept	JCrR	3.06
court's refusal to accept, effect	JCrR	3.06, 4.02
made only by defendant in open court	JCrR	3.06
not guilty		
entered by court, when	JCrR	3.06
entered by defendant	JCrR	3.06
nature and effect of plea	JCrR	3.06
substitution	JCrR	3.06
trial to follow defendant's plea	JCrR	3.07
when entered	JCrR	3.04
withdrawing, court's permitting	JCrR	3.06
postponement and continuance of trial, when	JCrR	3.08
process, issuance, scope	JCrR	3.13
publicity of court proceedings, governed by canon of judicial ethics (See rule JAR 4)		
rebuttal testimony after opening statement, when allowed	JCrR	4.08
records, mistakes in	JCrR	8.03
rules of court		
local rules, adoption of	JCrR	1.03
procedure in cases not prescribed by	JCrR	8.04
sentence and judgment		
defendant must appear for pronouncement	JCrR	5.04
determined by court	JCrR	5.03
separate dockets to be kept (See rule JAR 6)		
setting aside judgment of conviction, when	JCrR	5.06
special local court rules, adopting	JCrR	1.03
stay of execution, conditions for granting pending appeal	JCrR	6.02
subpoena		
duces tecum, issuance	JCrR	3.12
witnesses	JCrR	3.10
superior court		
appeal to	JCrR	6.01, 6.02, 6.03
dismissal of appeal to, grounds and effect	JCrR	6.03
mistake in lower court record, clerical, when corrected	JCrR	8.03
transcripts of lower court filed with	JCrR	6.01
time, period enlarged or act done after expiration period, when allowed	JCrR	10.01

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
trial without jury	JCrR	4.07(c), 5.01
verdict, signed to jury foreman, returned to open court	JCrR	5.02
witnesses, names filed	JCrR	3.10
Decisions, plainly written, typed or printed	JCrR	1.04
Defendant	JCrR	6.01,
appeal	JCrR	6.02, 6.03
arraignment		
charged in open court	JCrR	3.01
counsel, right to and time to consult	JCrR	3.02
name on complaint, checking at arraignment	JCrR	3.04
plea, time to determine	JCrR	3.02
arrest		
must be present for pronouncement of sentence and judgment	JCrR	5.04
warrant for	JCrR	2.02(a)
bail		
cash bail, deposit on appeal	JCrR	6.01
hearing on amount of bail	JCrR	2.02(a)
stay of execution on appeal	JCrR	6.02
bond		
appeal		
cash bail	JCrR	6.01
deposit procedure	JCrR	6.01
forfeiture	JCrR	6.03
stay of execution, conditions for	JCrR	6.02
superior court to receive and return on dismissal	JCrR	6.03
bail (See bail)		
charges, made in open court, arraignment	JCrR	3.01
citation and notice to appear		
bill of particulars	JCrR	2.04
failure to obey	JCrR	2.08
procedure and requisites	JCrR	2.01
sufficiency	JCrR	2.04
complaint		
consolidation	JCrR	2.06
continuance requested for amendment, when	JCrR	4.10
dismissal	JCrR	3.04
examination, allowing time for	JCrR	3.02
setting aside, grounds and effect	JCrR	3.04
trial together	JCrR	4.04, 4.05
conviction, judgment		
contents of	JCrR	5.03
setting aside, effect	JCrR	5.06
counsel, informed of right to	JCrR	2.03(e)
dismissal		
motion for judgment, grounds	JCrR	4.11
trial delay, bars further prosecution, exceptions	JCrR	3.08
disqualification of judge, filing affidavit	JCrR	8.01
evidence, offer of, after judgment of dismissal denied	JCrR	4.11
former conviction, procedure	JCrR	4.03
joinder		
procedure	JCrR	2.05(b)
relief from prejudicial	JCrR	4.05
trial together of complaints	JCrR	4.04
jury trial		
demand	JCrR	4.07(a)
selection procedure	JCrR	4.07(b)
waiver	JCrR	4.07(a)
name on complaint, checking at arraignment	JCrR	3.04
not guilty, judgment	JCrR	5.03
opening statements		
challenging sufficiency of prosecution's case	JCrR	4.08
length	JCrR	4.08
procedure	JCrR	4.08
rebuttal testimony, when	JCrR	4.08

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
reserving until close of prosecution's case	JCrR	4.08
waiver	JCrR	4.08
pleas		
acquittal	JCrR	3.06, 4.02
dismissal	JCrR	3.06
failure to plead, effect	JCrR	3.06
former conviction	JCrR	3.06
guilty		
condition upon which court will accept	JCrR	3.06
court's refusal to accept	JCrR	3.06, 4.02
made only by defendant in open court	JCrR	3.06
procedure judge follows thereafter	JCrR	4.02
not guilty		
entered by court	JCrR	3.06
entered by defendant	JCrR	3.06
nature and effect	JCrR	3.06
procedure		
criminal offenses	JCrR	4.03
traffic offenses	JCrR	4.03
substitution	JCrR	3.06
when entered	JCrR	3.04
withdrawing, when	JCrR	3.06
presence during		
pronouncement of judgment and sentence, mandatory, exceptions	JCrR	5.04
trial mandatory, exceptions	JCrR	4.06
sentence		
disposition of defendant pending	JCrR	5.03
imposition by court or jury	JCrR	5.03
presence during pronouncement, exception	JCrR	5.04
statement after sentence imposed, mitigating, allowing	JCrR	5.03
setting aside of judgment of conviction, motion	JCrR	5.06
stay of execution, conditions for granting pending appeal	JCrR	6.02
striking unnecessary allegation in complaint, motion	JCrR	2.04
subpoena		
duces tecum, inspection of objects	JCrR	3.12
showing materiality of testimony before issuance, when	JCrR	3.10
witnesses	JCrR	3.10
trial		
continuance or postponement of	JCrR	3.08
when	JCrR	3.07
witnesses		
names disclosed upon request, state witnesses	JCrR	3.10
subpoena	JCrR	3.10
Defenses		
continuance granted to prepare defense, complaint amended	JCrR	4.10
Denials		
plea, not guilty, denies every allegation in complaint	JCrR	3.06
Directed verdict, motion abolished, judgment of dismissal substituted	JCrR	4.11
Dismissal		
appeal, grounds and effect	JCrR	6.03
bars further prosecution, delay in bringing defendant to trial	JCrR	3.08
complaint, when	JCrR	3.04
defendant, delay in trial, effect, exception	JCrR	3.08
motion for judgment of dismissal		
grounds for granting	JCrR	4.11
replaces motion for directed verdict	JCrR	4.11
state may appeal	JCrR	4.11
plea entered by defendant	JCrR	3.06
Disqualification		
judges		
grounds, procedure	JCrR	8.01

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
transfer of case to another judge	JCrR	8.02
Dockets (See rule JAR 6)		
Documents (See also Records)		
subpoena duces tecum	JCrR	3.12
Evidence		
defendant offering, after judgment of dismissal denied	JCrR	4.11
insufficient, grounds for granting motion for judgment of dismissal	JCrR	4.11
judge not to comment on	JCrR	4.07(e)
opening statement		
defendant		
challenging sufficiency of prosecution's case	JCrR	4.08
procedure	JCrR	4.08
reserving until close of prosecution's case	JCrR	4.08
prosecution, procedure	JCrR	4.08
rebuttal testimony, when	JCrR	4.08
waiver	JCrR	4.08
preliminary examination, on	JCrR	2.03(f)
rules applicable	JCrR	4.09
Ex parte, applications to court, notice to adverse party not required	JCrR	10.02
Examination		
citizen complaints	JCrR	2.01(c)
justice of the peace, candidates for (See rule JAR 1)		
witnesses, upon plea of guilty	JCrR	4.02
Filing		
affidavits, disqualification of judge	JCrR	8.01
appeal on, transcript of lower court	JCrR	6.01
complaint or citation and notice	JCrR	2.01
notice of appeals	JCrR	6.01
records of lower court on appeal to superior court	JCrR	6.01
witnesses name, state, proper court	JCrR	3.10
Findings		
trial without jury	JCrR JCrR	4.07, 5.01
Forfeiture, bail	JCrR	6.03
Gross misdemeanors, citation and notice to appear	JCrR	2.01
Hearing, preliminary, before judge	JCrR	2.03(d)
Inspection, subpoena duces tecum, objects of	JCrR	3.12
Instructions, jury	JCrR	4.08
Intoxication, prosecution of public intoxication cases	JCrR	2.01
Issues		
facts		
court trying in nonjury case	JCrR	4.07(e)
jury to try	JCrR	4.07(e)
law, court shall decide	JCrR	4.07(d)
Joinder		
defendants	JCrR JCrR	2.05(b), 4.04
offenses, complaint	JCrR	2.05(a)
relief from prejudicial joinder of offenses or defendants	JCrR	4.05
trial together of two or more complaints	JCrR	4.04
Judges (See also Courts)		
appearance before, regulations	JCrR	2.02(f)(1)
bail, forfeiture, courts power	JCrR	6.03
conduct of trial, discretion, when	JCrR	4.01
contempt (See rule JAR 7)		
conviction, judgment, duty upon, effect of omission	JCrR	5.05
definition (See rule JAR 3)		
disqualification		
judge disqualifying self or party asking for disqualification	JCrR	8.01
justice court transferring case to another judge	JCrR	8.02
ethics (See rule JAR 4)		
evidence, not to comment on, jury trial	JCrR	4.07(e)
facts, trying in nonjury cases	JCrR	4.07(e)
jury selection procedure	JCrR	4.07(b)
justice district, multiple judges, presiding judge, appointment and duties (See rule JAR 5)		
law		
instructing juries	JCrR	4.07(e)
issues of, deciding	JCrR	4.07(d)
juror's questions about, answering	JCrR	4.07(d)
person arrested without warrant, appearance before	JCrR	2.03(b)
plea of guilty, procedure judge follows thereafter	JCrR	4.02
preliminary appearance, failure, effect	JCrR	2.03(c)
preliminary hearing	JCrR	2.03(d)
subpoena of witnesses for prosecution or defendant, issue	JCrR	3.10
Judgments		
appeal procedure	JCrR	6.01
conviction, contents of	JCrR	5.03
defendant must be present when judgment pronounced, exceptions	JCrR	5.03
discharge of defendant	JCrR	5.03
dismissal		
appeal to superior court, lower court judgment to be enforced	JCrR	6.03
motion for	JCrR	4.11
judge and clerk, duty upon conviction, effect of omission	JCrR	5.05
mistakes, clerical, when corrected	JCrR	8.03
motion for judgment of dismissal		
grounds	JCrR	4.11
replaces motion for directed verdict	JCrR	4.11
state's appeal from	JCrR	4.11
not guilty	JCrR	5.03
setting aside a judgment of conviction, when	JCrR	5.06
stay of execution, conditions for granting, pending appeal	JCrR	6.02
Judicial ethics (See rule JAR 4)		
Juries		
defendant demanding jury	JCrR	4.07(a)
facts, trying issues	JCrR	4.07(e)
instructions given prior to counsel's argument	JCrR	4.08
law		
instructions on	JCrR	4.07(e)
question of, court answering	JCrR	4.07(d)
number, six or less	JCrR	4.07(a)
order of trial	JCrR	4.08
polling after verdict, effect	JCrR	5.02
prosecution demanding	JCrR	4.07(a)
selection	JCrR	4.07(b)
state demanding	JCrR	4.07(a)
swearing in	JCrR	4.08
trial without	JCrR JCrR	4.07(c), 5.01
verdict		
judgment of conviction to state verdict	JCrR	5.03
signed by foreman, returned to open court	JCrR	5.02
waiver by defendant	JCrR	4.07(a)
Jurisdiction		
complaints, several issued for same offense, different courts	JCrR	2.06
scope of process	JCrR	3.13
Justices of the peace (See also Court; also Judges)		
appeal to superior court when justice court in joint justice district	JCrR	6.01
disqualification		
procedure	JCrR	8.01
replacement	JCrR	8.02
examination of candidates for (See rule JAR 1)		
Lawyer, explaining availability of	JCrR	2.11(c)

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
Misdemeanors		
appearance by counsel only, when	JCrR	3.03
citation and notice to appear	JCrR	2.01
Mistakes, clerical, court record, relief	JCrR	8.03
Motions		
directed verdict abolished, judgment of dismissal substituted	JCrR	4.11
dismissal, judgment of grounds	JCrR	4.11
modifying subpoena duces tecum	JCrR	3.12
notice to opposing party required, when	JCrR	10.02
plainly written, typed or printed	JCrR	1.04
quashing subpoena duces tecum	JCrR	3.12
setting aside		
complaint	JCrR	3.04
judgment of conviction	JCrR	5.06
striking unnecessary allegations in complaint	JCrR	2.04
subpoena duces tecum, quash or modify	JCrR	3.12
time period extended or excused	JCrR	10.01
Municipal ordinances, trial by court for violation	JCrR	4.07(c)
Names		
citation and notice to appear, contents	JCrR	2.02 (b)(2)
defendant's name on complaint, checking	JCrR	3.04
New trial, setting prior judgment of conviction aside	JCrR	5.06
Notices		
appeal	JCrR	6.01
citation and notice to appear (See Citation and notice to appear)		
motions and applications, adverse party to receive notice of	JCrR	10.02
Oaths, defined (See rule JAR 3)		
Officers		
citation and notice to appear, issuance by	JCrR	2.01
sheriff, subpoena of witnesses	JCrR	3.10
Opening statements		
defendant		
challenging sufficiency of prosecution's case	JCrR	4.08
procedure	JCrR	4.08
reserving right until close of prosecution's case	JCrR	4.08
length	JCrR	4.08
prosecution, procedure	JCrR	4.08
rebuttal testimony, when	JCrR	4.08
waiver	JCrR	4.08
Orders		
complaint, two or more, trial together	JCrR	4.04
mistakes, clerical, when corrected	JCrR	8.03
new trial granted upon setting judgment of conviction aside, when	JCrR	5.06
plainly written, typed or printed	JCrR	1.04
time period extended or excused	JCrR	10.01
Papers, subpoena duces tecum	JCrR	3.12
Pleadings		
citation and notice to appear (See Citation and notice to appear)		
complaint		
allegations		
incorporation by reference from one count into another	JCrR	2.04
unnecessary, disregarding or striking	JCrR	2.04
amendment		
arraignment	JCrR	3.04
continuance, when	JCrR	4.10
citizens complaints	JCrR	2.01
consolidation, same defendant and offense	JCrR	2.06
defendants, joinder	JCrR	2.05(b)
dismissal or amendment, motion to set aside	JCrR	3.04
examination by defendant, reasonable time	JCrR	3.02
filing procedure	JCrR	2.01
joinder		
complaints tried together, when	JCrR	4.04
offenses, when	JCrR	2.05(a), 4.05

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
relief from prejudicial joinder of complaints	JCrR	4.05
lost or destroyed, effect	JCrR	2.07
name of defendant, checking, arraignment	JCrR	3.04
plainly written, typed or printed	JCrR	1.04
pleas of not guilty denies every allegation	JCrR	3.06
proceedings initiated by, exception	JCrR	2.01
setting aside, grounds and effect	JCrR	3.04
separate count for each offense	JCrR	2.05(a)
sufficiency	JCrR	2.01
trial		
two or more complaints tried together	JCrR	4.04
when tried	JCrR	3.07
verification	JCrR	2.01
defendant required to plead after complaint examined	JCrR	3.02
motion		
directed verdict abolished, judgment of dismissal substituted	JCrR	4.11
judgment of dismissal, grounds	JCrR	4.11
plainly written, typed or printed	JCrR	1.04
setting aside		
complaint, effect	JCrR	3.04
judgment of conviction, effect	JCrR	5.06
striking unnecessary allegations in complaint	JCrR	2.04
subpoena duces tecum, quash or modify	JCrR	3.12
time limits extended or excused	JCrR	10.01
notice to opposing party required, when	JCrR	10.02
Pleas		
arraignment, time to make plea, reasonable	JCrR	3.02
dismissal	JCrR	3.06
failure to plead effect	JCrR	3.06
former acquittal or conviction		
plea at arraignment	JCrR	3.06
procedure		
criminal offenses	JCrR	4.03
traffic offenses	JCrR	4.03
guilty		
condition upon which court will accept	JCrR	3.06
court's refusal to accept, effect	JCrR	3.06
made only by defendant in open court	JCrR	3.06
procedure judge follows thereafter	JCrR	4.02
refusal to accept, court	JCrR	4.02
judgment of conviction to state plea	JCrR	5.03
not guilty		
entered by court, when	JCrR	3.06
entered by defendant	JCrR	3.06
nature and effect of plea	JCrR	3.06
procedure		
criminal offenses	JCrR	4.03
traffic offenses	JCrR	4.03
substitution	JCrR	3.06
trial to follow defendant's plea	JCrR	3.07
when entered	JCrR	3.04
withdrawing, court permitting	JCrR	3.06
Polling jury after verdict, effect	JCrR	5.02
Preliminary examination (See Examination)		
Pretrial release		
conditions		
generally	JCrR	2.09(c)
review	JCrR	2.09(e)
defendant discharged on recognizance or bail, absence, forfeiture	JCrR	2.09(k)
order, amendment	JCrR	2.09(f)
regulations	JCrR	2.09(a)
verdict, release after	JCrR	2.09(h)
Process (See Citation and notice to appear; Service; Subpoenas; Summons; Warrant)		
may issue anywhere in state	JCrR	3.13
Proof (See Evidence; also Pleadings; also Service)		
Prosecuting attorney		
appeal procedure	JCrR	6.01
defined (See rule JAR 3)		

III. Justice Court Criminal Rules (JCrR)——cont.

	Rule	No.
disqualification of judge, filing affidavit	JCrR	8.01
jury selection procedure	JCrR	4.07(b)
opening statements		
challenge by defendant	JCrR	4.08
length	JCrR	4.08
procedure	JCrR	4.08
rebuttal testimony, when	JCrR	4.08
waiver	JCrR	4.08
sentence imposed, statement in aggravation of punishment	JCrR	5.03
subpoena		
duces tecum, inspection of objects	JCrR	3.12
showing materiality of testimony before issuance, when	JCrR	3.10
witness, procedure	JCrR	3.10
warrant, return and cancellation upon request	JCrR	2.02(d)
witnesses		
names filed with court and defendant	JCrR	3.10
Publication (See Service)		
Radio		
court proceedings, improper publicizing (See rule JAR 4)		
Records (See also Records on appeal; also Transcripts on appeal)		
citation and notice to appear, failure to obey	JCrR	2.08
mistake, clerical, when corrected	JCrR	8.03
separate court docket to be kept, contents (See rule JAR 6)		
subpoena duces tecum	JCrR	3.12
Records on appeal		
contents	JCrR	6.01
filing of lower court records with superior court	JCrR	6.01
Rules		
contempt, failure of judge to apply rules (See rule JAR 7)		
court, procedure when none prescribed	JCrR	8.04
criminal rules for justice court, referred to as JCrR	JCrR	10.03
evidence, rules applicable	JCrR	4.09
local court rules, special, adopting	JCrR	1.03
scope	JCrR	1.01
time, computation of	JCrR	10.01
Search warrant		
execution and return with inventory	JCrR	2.10(d)
issuance		
authority	JCrR	2.10(a)
contents	JCrR	2.10(c)
motion for return of property	JCrR	2.10(e)
property which may be seized	JCrR	2.10(b)
Sentences		
appeal procedure	JCrR	6.01
court determining, imposing	JCrR	5.03
defendant, disposition pending sentence	JCrR	5.03
defendant must be present when sentence pronounced, exception	JCrR	5.04
judge and clerk, duty upon judgment and sentence, effect of omission	JCrR	5.05
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III. Justice Court Criminal Rules (JCrR)——cont.

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III. Justice Court Criminal Rules (JCrR)——cont.

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IV. Justice Court Traffic Rules (JTR)

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IV. Justice Court Traffic Rules (JTR)——cont.

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treated as conviction by director of motor vehicles, notice	JTR	2.06(b)
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IV. Justice Court Traffic Rules (JTR)——cont.

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IV. Justice Court Traffic Rules (JTR)——cont.

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