1978
WASHINGTON
COURT RULES
With Amendments through July 31, 1978

Published under authority of chapter 1.08 RCW.

This Volume 10 contains all Washington Rules of Court promulgated prior to July 31, 1978, and replaces the Rules of Court appearing in Volume 0 of the 1976 edition of the Revised Code of Washington and in Volume 9, the 1977 Supplement thereto.

WASHINGTON COURT RULES

1978 Edition

CERTIFICATE

The 1978 edition of the Washington Rules of Court, 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

RULES OF COURT

1978 Edition
(as of July 31, 1978)

Table of Contents

PREFACE

1. Order adopting rules, November 22, 1950.

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)
Judicial Information System Committee Rules	(JISCR)	

GENERAL RULES (GR)

Table of Contents

Rule 1 Classification system for court rules.

PART I. RULES OF GENERAL APPLICATION

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Discipline Rules for Attorneys	DRA
Judicial Information System Committee Rules	JISCR

PART II. RULES FOR APPELLATE COURT ADMINISTRATION

Supreme Court Administrative Rules	SAR
Court of Appeals Administrative Rules	CAR

PART III. RULES ON APPEAL

Rules of Appellate Procedure	RAP

PART IV. RULES FOR SUPERIOR COURT

Superior Court Administrative Rules	AR
Superior Court Civil Rules	CR
Superior Court Special Proceedings Rules	SPR
Superior Court Criminal Rules	CrR
Superior Court Mental Proceedings Rules	MPR
Juvenile Court Rules	JuCR

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

[Amended September 8, 1976, effective September 24, 1976; amended January 28, 1976, effective July 1, 1976; amended January 31, 1974, effective July 1, 1974; adopted June 28, 1967, effective July 1, 1967.]

Rule 2 Holidays. (a) In event any legal holiday falls on Saturday all the Courts of the State shall be closed on the preceding day (Friday).

(b) In event any legal holiday falls on Sunday all the Courts of the State shall be closed on the following day (Monday).

(c) All Clerk's offices shall likewise be closed on such days. [Adopted February 3, 1977, effective February 3, 1977.]

Rule 3 Filings--Time Extended. In event the last day for filing any document or for doing any other thing or matter in the office of any Clerk of any court shall fall upon a day when such Clerk's office shall be closed according to Rule 2 then and in that event the time for such filing or other thing or matter shall be extended until the end of the next business day upon which such office shall be open for business. [Adopted February 3, 1977, effective February 3, 1977.]

Rule 4 Law librarian. The time and manner of observing holidays by the Law Library on days herein designated and on days immediately before and/or after such days shall be subject to the direction of the State Law Librarian. [Adopted February 3, 1977, effective February 3, 1977.]

Rule 5 Audits. The judicial branch of the government of the State of Washington is a separate and co-equal division of said state government. The funds for operation of the judicial branch and many funds which pass through the Courts are public funds of the State and/or of various subdivisions, agencies or municipalities of the State. Every Court in this State must, upon demand, submit all financial records of such Court to the State Auditor or his agents for inspection and audit, as to all funds received, disbursed or in possession of said

Court. [Adopted February 8, 1977, effective February 8, 1977.]

Rule 6 Sessions of courts. (a) Sessions of the Supreme Court shall be held in accordance with SAR 4.

(b) Sessions of the Court Of Appeals shall be held in accordance with CAR 4.

(c) Sessions of the superior courts shall be held in accordance with CR 77(f). [Adop. Jan. 30, 1978, eff. Jan. 30, 1978.]

CODE OF JUDICIAL CONDUCT (CJC)

Table of Contents

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. [Amended June 19, 1974, effective July 1, 1974; Adopted October 31, 1974, effective January 1, 1974. Prior: Canons of Judicial Ethics, Adopted November 22, 1950, effective January 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 October 31, 1973, effective January 1, 1974. Prior: Canons of

Judicial Ethics, Adopted November 22, 1950, effective January 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 October 31, 1973, effective January 1, 1974. Prior: Canons of Judicial Ethics, Adopted October 31, 1950, effective January 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 may permit broadcasting, televising, recording, and taking photographs in the courtroom during sessions of the court, including recesses between sessions, under the following conditions:

(a) Permission shall have first been expressly granted by the judge and under such conditions as the judge may prescribe;

(b) The media personnel will not distract participants or impair the dignity of the proceedings; and

(c) No witness, juror or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such a witness, juror or party be broadcast or telecast.

Note: The Illustrative Broadcast Guidelines and Illustrative Print Media Guidelines set forth below were attached to the order amending Canon 3(A)(7) as illustrative only and were not adopted by the court.

ILLUSTRATIVE BROADCAST GUIDELINES

1. *Officers of court.* The judge has the authority to direct whether broadcast equipment may be taken within the courtroom. The broadcast news person should advise the bailiff prior to the start of a court session that he or she desires to electronically record and/or broadcast live from within the courtroom. The bailiff may have prior instructions from the judge as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the judge or bailiff, the position should be behind the front row of spectator seats by the least used aisleway or other unobtrusive but viable location.

2. *Pooling.* Unless the judge directs otherwise, no more than one TV camera should be taking pictures in the courtroom (as presently constructed) at any one time. Where coverage is by both radio and TV, the microphones used by TV should also serve for radio and radio should be permitted to feed from the TV sound system. Multiple radio feeds, if any, should be provided by a junction box. It should be the

responsibility of each broadcast news representative present at the opening of each session of court to achieve an understanding with all other broadcast representatives as to who will function at any given time, or, in the alternative, how they will pool their photographic coverage. This understanding should be reached outside the courtroom and without imposing on the judge or court personnel.

Broadcast coverage outside the courtroom should be handled with care and discretion, but need not be pooled.

3. *Broadcast equipment.* All running wires used should be securely taped to the floor. All broadcast equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient film and/or tape capacities should be provided to obviate film and/or tape changes except during court recess. No camera should give any indication of whether it is or is not operating such as a red light on some studio cameras. No additional lights should be used without the specific approval of the presiding judge and then only as he may specifically approve as may be needed in the case of appellate hearings.

4. *Decorum.* Broadcast representatives' dress should not set them apart unduly from other trial spectators. Camera operators should not move tripod-mounted cameras except during court recesses. All broadcast equipment should be in place and ready to function no less than 15 minutes before the beginning of each session of court.

ILLUSTRATIVE PRINT MEDIA GUIDELINES

1. The judge has authority to direct whether photographs may be taken within the courtroom. The photographer should advise the bailiff, prior to the start of a court session, that he desires to take photographs. The bailiff may have prior instructions from the judge as to where the photographer may position himself. In the absence of any directions from the judge or bailiff, the photographer should remain behind the front row of spectator seats.

2. Unless the judge directs otherwise, no more than one still picture photographer is to be taking pictures in the courtroom at any one time. It is the responsibility of each photographer present at the opening of each session of court to achieve an understanding with all other photographers present as to which will function at any given time, or, in the laternative, how they will pool their photographic coverage. This understanding must be reached outside the courtroom and without imposing the judge or court personnel.

3. The photographer's dress and equipment should not set him apart unduly from other trial spectators. Cameras which operate without flash and with a minimum of noise should be utilized.

4. The photographer's movements in and out of the courtroom and while taking pictures should be unobtrusive. He should not, for example, assume body positions inappropriate for spectators.

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.

[Amd. July 23, 1976, eff. Sept. 20, 1976; adopted October 31, 1973, effective January 1, 1974. Prior: Canons of Judicial Ethics, Adopted November 22, 1950, effective January 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 October 31, 1973, effective January 1, 1974. Prior: Canons of Judicial Ethics, Adopted November 22, 1950, effective January 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 October 31, 1973, effective January 1, 1974. Prior: Canons of Judicial Ethics, Adopted November 22, 1950, effective January 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 October 31, 1973, effective January 1, 1974. Prior: Canons of Judicial Ethics, Adopted November 22, 1950, effective January 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 October 31, 1973, effective January 1, 1974. Prior: Canons of

Judicial Ethics, Adopted November 22, 1950, effective January 2, 1951.]

CODE OF PROFESSIONAL RESPONSIBILITY (CPR)

Table of Contents

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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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-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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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.

DR 8-103 Lawyer Candidate Judicial Office.

(A) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Canon 7 of the Code of Judicial Conduct. [Adopted April 5, 1977, effective July 1, 1977.]

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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 December 7, 1971, effective January 1, 1972. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 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 November 9, 1971. Prior: Canons of Professional Ethics, Adopted November 22, 1950, effective January 2, 1951.]

*"Confidence" and "secret" are defined in DR 4-101(A).

ADMISSION TO PRACTICE RULES (APR)

(Formerly: Rules for Admission to Practice)

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 January 29, 1965, effective February 12, 1965. Prior: Adopted December 2, 1955, effective December 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 shall pay an examination and admission fee of one hundred dollars ($100).

(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 two hundred twenty-five dollars ($225).

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. [Amd. Mar. 7, 1978, eff. May 1, 1978; amd. Nov. 16, 1973, eff. Jan. 1, 1974; amd. Dec. 29, 1970, eff. Mar. 10, 1971; amd. Sept. 18, 1968, eff. Sept. 28, 1968; amd. Dec. 29, 1970, eff. Mar. 10, 1971; amd. June 26, 1968, eff. Aug. 1, 1968; amd. May 9, 1967; amd. June 25, 1965, eff. May 9, 1967; amd. Jan. 29, 1965, eff. Feb. 27, 1965. Prior: Adop. Dec. 2, 1955, eff. Dec. 15, 1955.]

Rule 3 Attorney applicants.

A. Definition

An "attorney applicant" means an attorney who (1) has been in the active full time practice of law in a state or territory of the United States or a foreign country for a period of five 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 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 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. [Amd. June 4, 1976, eff. July 1, 1976; amd. March 5, 1971, eff. March 10, 1971; amd. December 29, 1970, eff. March 10, 1971; amd. September 18, 1968, eff. September 27, 1968; amd. June 26, 1968, eff. August 1, 1968; amd. January 29, 1965, eff. February 12, 1965. Prior: Adop. December 2, 1955, eff. December 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. [Amended June 19, 1974, effective July 1, 1974; Amended January 29, 1965, effective February 12, 1965. Prior: Adopted December 2, 1955, effective December 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."

[Amended April 26, 1974, effective April 26, 1974; Amended December 29, 1970, effective March 10, 1971; Amended June 25, 1965, effective July 9, 1965; Amended January 29, 1965, effective February 12, 1965. Prior: Amended February 6, 1964; Adopted December 2, 1955, effective December 15, 1955.]

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. [Amended January 29, 1965, effective February 12, 1965. Prior: Adopted December 2, 1955, effective December 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 who is eligible to take the bar examination in this state (herein referred to as the Applicant), while rendering service in either a Bar Association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and solely in that capacity, may, upon application and approval, practice law and appear as counsel before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(i) In any such matter, litigation, or administrative proceeding, an active member of the Washington State Bar Association must be associated with the Applicant; shall be counsel of record in all litigation and administrative proceedings; and shall be the person responsible for the conduct of the matter, litigation, or administrative proceeding.

(ii) The Applicant shall apply to sit for and shall take the first bar examination which is given more than 90 days after the date of his or her admission to practice under this Rule. Failure to do so shall automatically revoke the Applicant's right to practice under this Rule.

(iii) If the Applicant does not pass the bar examination, such Applicant's right to practice under this Rule shall terminate on the date that the bar examination results are published.

(iv) If the Applicant passes the bar examination, he or she shall, at the earliest practicable date, apply for active membership in the Washington State Bar Association and shall become an active member therein at the first opportunity. Either the failure to apply or the failure to become an active member for any reason shall terminate the Applicant's right to practice under this Rule.

(v) The Supreme Court may terminate the Applicant's right to practice under this Rule at any time, with or without cause.

(vi) The Applicant's right to practice under this Rule shall, unless sooner terminated pursuant to the other provisions of this Rule, terminate in any event 1 year after the original date of his or her admission to practice.

(2) Application to practice under this Rule shall be made to the Supreme Court of the State of Washington, and the Applicant shall be subject to the Discipline Rules for Attorneys and the Code of Professional Responsibility. [Amended March 10, 1977, effective July 1, 1977; amended March 31, 1975, effective July 1, 1975; amended November 5, 1973, effective January 1, 1974; amended January 29, 1965, effective February 12, 1965. Prior: Adopted December 2, 1955, effective December 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. [Amended December 29, 1970, effective March 10, 1971; Adopted May 20, 1966, effective May 20, 1966.]

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, as hereinafter provided and not otherwise.

B. Application for Limited License as a Legal Intern——Qualifications——Procedure.

(1) *Qualifications*——The applicant when submitting an application 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 the applicant's 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 or her tutor; or

(c) Make the application before the expiration of nine (9) months following graduation from an approved law school, and submit satisfactory evidence thereof to the Washington State Bar Association;

(d) Certify in writing under oath that he or she has read, is familiar with, and will abide by, the Code of Professional Responsibility as adopted by the Supreme Court, and this Rule.

(2) *Procedure*

(a) The applicant shall submit an application on a form provided by the Washington State Bar Association. Such application shall set forth all of the qualifications of the applicant required in Rule 9B. There shall be no fee for filing such application.

(b) The application shall give the name of, and shall be signed by, the supervising attorney 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. The supervising attorney shall be relieved of such responsibilities upon the termination of such limited license or at such earlier time as the supervising attorney or the applicant shall give written notice to the Washington State Bar Association and the Supreme Court of the State of Washington requesting that the supervising attorney 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 examine and evaluate such application and 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 of 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.

(1) A legal intern shall be authorized to engage in the limited practice of law, in civil and criminal matters, as authorized by the provisions of this Rule 9. A legal intern shall be subject to the Code of Professional Responsibility and Disciplinary Rules as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the bar of this state, and shall be personally responsible for all services preformed as an intern. Upon recommendation of the Disciplinary Board, a legal intern may be precluded from sitting for the Bar Examination or from being admitted as a member of the

Washington State Bar Association within the discretion of the Board of Governors. Any such intern barred from the Bar Examination or from recommendation for admission by the Board of Governors shall have the usual rights of appeal to the State Supreme Court.

(2) A judge may exclude a legal intern from active participation in a case filed with the court in the interest of orderly administration of justice or for the protection of a litigant or witness, and shall thereupon grant a continuance to secure the attendance of the supervising attorney.

(3) No legal intern may receive payment from a client for his or her services; however, nothing contained herein shall prevent a legal intern from being paid for his or her services by the intern's employer or to prevent the employer from making such charges for the service of the legal intern as may otherwise be proper. A legal intern and his or her supervising attorney or an attorney from the same office shall, before the intern undertakes to perform any services for a client, inform the client of the legal intern's status as such.

(4) A legal intern may participate in Superior Court and Court of Appeals proceedings, including depositions, provided the supervising attorney or another attorney from the same office is present. Ex parte and agreed orders may be presented to the court by a legal intern without the presence of his or her supervising attorney or another attorney from the same office.

(5) After a reasonable period of in–court supervision, which shall be not less than one occasion in both jury and nonjury trials, a legal intern may, without the presence of the supervising attorney, participate in proceedings in courts from the judgment of which there is a right of trial de novo, except as otherwise provided in Rule 9C(6).

(6) Either the supervising attorney or an attorney from the same office shall be present in the representation of a defendant in all preliminary criminal hearings.

D. Supervising Attorneys——Qualifications, Responsibilities and Duties.

(1) The supervising attorney shall be an active member of the Washington State Bar Association and shall have been actively engaged in the practice of law in the State of Washington or elsewhere for at least three years at the time the application is filed.

(2) The supervising attorney or another attorney from the same office shall direct, supervise and review all of the work of the legal intern and both shall assume personal professional responsibility for any work undertaken by the legal intern while under his or her 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 correspondence or legal document, the intern's 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. In any proceeding in which a legal intern appears before the court, the legal intern must advise the court of the intern's status and the name of the intern's supervising attorney.

(3) 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 the intern by the supervising attorney, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(4) 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.

(5) No attorney shall be authorized to become a supervising attorney if the attorney is subject to pending disciplinary proceedings (following the service of a formal complaint) or if the attorney has ever been censored, reprimanded, suspended or disbarred. No attorney without the express approval of the Board of Governors shall be authorized to become a supervising attorney if the attorney is or within the previous 12 months has been the subject of any complaint received by the Washington State Bar Association which has not been resolved in the attorney's favor.

(6) An attorney currently acting as a supervising attorney may be terminated as a supervising attorney at the discretion of the Board of Governors. When an intern's supervisor is so terminated, the intern shall cease performing any services under this rule and shall cease holding himself or herself out as a legal intern until written notice of a substitute supervising attorney, signed by the intern and by a new and qualified supervising attorney, is given to the Washington State Bar Association and to the Supreme Court of the State of Washington.

(7) The failure of a supervising attorney, or an attorney acting as a supervising attorney, to provide adequate supervision or to comply with the duties set forth in this Rule 9 shall be grounds for disciplinary action pursuant to the Discipline Rules for Attorneys.

(8) For purposes of the attorney–client privilege, an intern shall be considered a subordinate of the attorney providing supervision for the intern.

(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 be valid, unless revoked, for a period of 17 months, provided that a person who fails the Washington State Bar examination shall not continue to serve or to be eligible to become a legal intern after the date the results of the said Bar examination are made public.

(2) The approval given to a law student by his or her law school dean or the dean's designee or to a clerk by

his or her tutor 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 graduation or ceases to be in good academic standing or if the law clerk ceases to comply with APR 2(d).

(3) 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 cause.

(4) An intern shall immediately cease performing any services under this rule and shall cease holding himself or herself out as a legal intern: Upon termination for any reason of said intern's limited license under this rule; upon the resignation of the intern's supervising attorney; upon the suspension or termination by the Board of Governors of the Washington State Bar Association of the supervising attorney's status as supervising attorney; or upon the withdrawal of approval of the intern pursuant to APR 9(E)(2).

(5) Any person applying for permission to take the Washington State Bar examination who has ever had his or her limited license revoked shall disclose that fact on his or her application and explain the reason for revocation, if known.

F. Termination of this Rule.

This rule shall expire on December 31, 1978, unless continued by order of the Supreme Court. [Amended December 16, 1977, effective December 31, 1976; amended September 26, 1973, effective December 31, 1973; amended February 29, 1972, effective February 29, 1972; amended May 21, 1971, effective May 21, 1971; adopted June 4, 1970, effective June 4, 1970.]

Order of Supreme Court relating to term of limited license for legal interns:

WHEREAS, the Court on December 16, 1976, adopted amendments to APR 9(E)(1) relating to the term of the limited license of a legal intern, which amendments became effective December 31, 1976, and

WHEREAS, one of the amendments provided for the termination of the limited license of an intern who failed the Washington State Bar examination, and

WHEREAS, there are presently some legal interns having limited licenses heretofore granted pursuant to provisions of Admission to Practice Rule 9(E) in effect prior to December 31, 1976, who have previously failed to pass the Washington State Bar examination, and who will be immediately affected by the amendment to APR 9(E)(1),

NOW, THEREFORE, IT IS HEREBY ORDERED:

(a) That the limited license to practice as a legal intern of any legal intern who as of December 31, 1976, has previously failed to pass the Washington State Bar examination shall be extended to and shall expire on February 1, 1977.

(b) That by administrative en banc conference the Chief Justice is authorized to sign this order on behalf of the court.

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 December 29, 1970, effective March 10, 1971.]

Rule 11 Continuing legal education

Rule 11.1 Purpose. It is of primary importance to the members of the Bar and to the public that attorneys continue their legal education throughout the period of their active practice of law. These rules will establish the minimum requirements for continuing legal education. [Adopted November 29, 1976, effective January 1, 1977.]

Rule 11.2 Educational Requirement.

A. Minimum Requirement. Each active member of the Bar Association shall complete a minimum of 15 credit hours of approved or accredited legal education (as provided in Rule 11.4 hereof) during each calendar year after 1976. If a member completes more than 15 such hours in a given calendar year after 1976, the excess credit may be carried forward and applied to such member's education requirement for either or both of the next two succeeding calendar years. Such legal education completed between September 1, 1976, and December 31, 1976, shall be credited as though it had been completed in 1977.

B. New Admission. An attorney shall not be required to comply with this rule during the calendar year in which he or she is admitted nor for the following full calendar year. [Adopted November 29, 1976, effective January 1, 1977.]

Rule 11.3 Board of Continuing Legal Education. There is hereby established a Board of Continuing Legal Education (referred to herein as the Board) consisting of seven members. Six of the members of the Board must be active members of the Washington State Bar Association (referred to herein as the Bar Association). The seventh member shall not be a member of the Bar Association. The Supreme Court shall designate a chairperson of the Board, who shall serve at the pleasure of the Court. The members of the Board shall be nominated by the Bar Association and appointed by the Supreme Court. Of the members first appointed, two shall be appointed for 1 year, three for 2 years, and two for 3 years. Thereafter, appointments shall be for a 3–year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year, except that no term shall end prior to September 30, 1977. [Adopted November 29, 1976, effective January 1, 1977.]

Rule 11.4 Powers of the Board. The Board shall approve individual courses and may accredit all or portions of the entire legal educational program of a given organization which, in the Board's judgment, will satisfy the education requirements of these rules. It shall determine the number of credit hours to be allowed for each such course. It shall discover and encourage the offering of such courses and programs by established organizations, whether offered within or outside of this state. The Board may adopt regulations pertinent to these powers subject to the approval of the Bar Association and the

Supreme Court. Individual compliance with the educational or time requirements of these rules may be waived or modified by the Board upon a showing of undue hardship, age or infirmity. [Adopted November 29, 1976, effective January 1, 1977.]

Rule 11.5 Expenses of the Board. Members of the Board shall not be compensated for their services. For their actual and necessary expenses incurred in the performance of their duties, they shall be reimbursed by the Bar Association in a manner consistent with the Association's reimbursement of its committee members. The Bar Association shall furnish the Board with the necessary staff and clerical help to carry out its duties and shall pay all expenses reasonably and necessarily incurred by the Board, pursuant to a budget for the Board which the Board shall submit annually to the Bar Association, subject to approval by the Association. [Adopted November 29, 1976, effective January 1, 1977.]

Rule 11.6 Reports and Enforcement.

A. Compliance Report. On or before each January 31st hereafter, commencing January 31, 1978, each active member shall file a report with the Bar Association in such form as the Bar Association shall prescribe concerning such member's completion of accredited legal education during the preceding calendar year. If such member has not completed the minimum education requirement for the preceding year, compliance may still be accomplished by making up the deficiency within the first 4 months of the next succeeding calendar year, filing a supplemental report with the Bar Association by May 1 of such year evidencing such compliance in such form as the Bar Association shall prescribe and by paying a special $50.00 filing fee therefor.

B. Delinquency. Any member who has not so complied by May 1 of each year hereafter, commencing with May 1, 1978, may be removed (or conditionally removed) from the roll of active members of the Bar and transferred to inactive status pending such member's compliance with Section A above. To effect such removal the Board shall by written notice to the noncomplying member advise of the pendency of removal proceedings unless within 10 days of receipt of such notice such member shall complete and return to the Board an accompanying form of petition which may be accompanied by affidavit(s) in support of request for extension of time for or exemption from compliance with Section A above or for a ruling by the Board of substantial compliance therewith.

1. Unless such petition be so filed, the Board shall report such fact to the Supreme Court with its recommendations for appropriate action. The Supreme Court shall enter such order or conditional order as it deems appropriate.

2. If such petition be so filed, the Board may, in its discretion, approve the same without hearing, or may enter into agreement on terms with such member as to time and requirements for achieving compliance with the provisions of Section A.

3. If the Board does not so approve such petition or enter into such agreement with terms, the Board shall hold a hearing upon the petition and shall give the member at least 10 days' notice of the time and place thereof. Testimony taken at the hearing shall be under oath and the oath shall be administered by the chairperson of the Board. For good cause shown the Board may rule that the member has substantially complied with these rules for the year in question or, if he or she has not done so, it may grant the member an extension of time within which to comply and may do so upon terms as it may deem appropriate. As to each such application the Board shall enter written findings of fact and an appropriate order, a copy of which shall be mailed forthwith to the member at the address on file with the Bar Association. Any such order shall be final unless within 10 days from the date thereof the member shall file with the Bar Association at its office a written appeal to the Board of Governors of the Bar Association.

4. In its consideration of petitions for relief hereunder, the Board shall consider factors of hardship such as age or disability, or of restricted practice.

C. Appeal to Board of Governors. Any such appeal shall be considered by the Board of Governors at its next regular meeting (unless that meeting takes place less than 5 days following the perfection of the appeal, in which event it shall be the second meeting following thereafter). To perfect such appeal the member shall, at the member's expense, within 15 days of the filing of the notice of such appeal, cause to be transcribed and filed with the Bar Association a narrative report of proceedings in compliance with RAP 9.3. The Board chairperson shall certify that the narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause. Upon the filing of any such notice of appeal to the Board of Governors, the Bar Association shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding, which transcript shall be certified by the Board chairperson. The Board of Governors may require the member to submit his or her argument in writing and it may, but shall not be obligated to, permit the member or his or her counsel to appear in person before it. The Board of Governors may affirm, reverse or modify the ruling of the Board of Continuing Legal Education as it deems appropriate. The decision of the Board of Governors shall be reduced to writing and a copy thereof shall be mailed forthwith to the member at the member's address. The decision of the Board of Governors shall be final, unless within 10 days from date thereof, the member shall file with the Bar Association at its office a written notice of appeal to the Supreme Court.

D. Appeal to the Supreme Court. To perfect such appeal to the Supreme Court, the member shall at the member's expense, if testimony was taken before the Board of Governors, cause to be transcribed and filed with the Bar Association as to proceedings before the Board of Governors, a narrative report of proceedings in compliance with RAP 9.3. The President of the Bar Association shall certify that any such narrative report of proceedings contains a fair and accurate report of the

occurrences in and evidence introduced in the cause. The Bar Association shall prepare a transcript of all orders and other documents pertinent to the proceeding before the Board of Governors, which transcript shall be certified by the President of the Bar Association. The Bar Association shall then file promptly with the Clerk of the Supreme Court said narrative report of proceedings and the transcripts pertinent to the proceedings before the Board and the Board of Governors. The matter shall be heard in the Supreme Court on the motion calendar and the provisions of RAP 17.4 and RAP 17.5 shall be applicable thereto.

E. Time. The times set forth in this rule for filing notices of appeal are jurisdictional. The Board of Governors or the Supreme Court, as to appeals pending before each such body respectively, may, for good cause shown:

1. extend the time for the filing or certification of said statement of facts, or

2. dismiss the appeal for failure to prosecute the same diligently.

F. Costs. If the member prevails in his or her appeal before the Board of Governors or in his or her appeal to the Supreme Court, the member shall be awarded costs against the Bar Association in an amount equal to his or her reasonable expenditures for the preparation of the statement or statements of facts.

G. Change of Status. Once an attorney has been transferred to inactive membership status for noncompliance with these Rules, the attorney affected must comply with the then applicable regulations of the Board for transfer from inactive to active status. [Adopted November 29, 1976, effective January 1, 1977.]

Rule 11.7 Confidentiality. The files and records of the Bar Association, as they may relate to or arise out of any failure of a member of the Association to satisfy these continuing legal education requirements, shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the attorney affected, or pursuant to a proper subpoena duces tecum, or as directed by this Court. [Adopted November 29, 1976, effective January 1, 1977.]

DISCIPLINE RULES FOR ATTORNEYS (DRA)

Table of Rules

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
Rule III	Rule 1.1
Rule IV	
A–F, G	Rule 2.1
H	Rule 2.6
Rule V	Rule 2.5
Rule VI	Rule 2.7
Rule VII	
A, B	Rule 2.2
C, D & E	Rule 2.3
Rule VIII	Rule 3.1
Rule IX	
A–E	Rule 3.2
F	Rule 3.1
G–M	Rule 3.2
N	Rule 4.1
	Rule 4.2
Rule X	
A	Rule 5.1
B	Rule 5.2
C	Rule 5.3
D	Rule 5.4
	Rule 5.5
	Rule 5.6
Rule XI	Rules 6.1 through 6.6
Rule XII	Rules 7.1 through 7.3
Rule XIII	
A	Rule 8.2
B	Rule 8.4
C, D	Rule 8.5
E	Rule 8.6
F	Rule 8.7
G	Rule 8.1
Rule XIV	
A–D	Rule 10.1
E, F	Rule 10.2
Rule XV	
A–E	Rule 12.1
F	Rule 12.2
G	Rule 12.3
H	Rule 12.4
I	Rule 3.2
J	Rule 12.4
K	Rule 12.5
L	Rule 12.6
N	Rule 6.6

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
Rule 1	Rule III
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.
1.2 Sanctions.

Rule 1.1 Grounds. An attorney at law may be subjected to the disciplinary sanctions or actions set forth in Rule 1.2 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 or her conduct as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. 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 or her 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 or her to do or cease doing an act which he or she ought in good faith to do or forbear.

(c) Violation of his or her oath or duties as an attorney.

(d) Wilfully appearing without authority as an attorney for a party to an action or proceeding.

(e) Permitting his or her name to be used as an 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 or her application for admission to the bar or admission to the bar examination or reinstatement or in support thereof.

(g) Suspension, disbarment or other disciplinary sanction 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 or her 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) Violation of the Code of Professional Responsibility of the profession adopted by the Supreme Court of the State of Washington.

(j) Wilful violation of Rule 2.6, Rule 3.2(k), wilful disregard of the subpoena or notice of a Local Administrative Committee, Hearing Panel, State Bar Counsel, Disciplinary Board, or Board of Governors of the Association, wilful disregard of a restraining order issued pursuant to Rule 2.5(b)(3), wilful disregard of a stipulation approved pursuant to Rule 3.3, wilful failure to cooperate with an attorney appointed pursuant to Rule 4.4, wilful violation of Rule 13.2, or the making of a false statement under oath in any document filed with the Association.

(k) Conduct demonstrating unfitness to practice law.

(l) Engaging in the practice of law while on inactive status. [Amd. Apr. 25, 1978, eff. May 15, 1978; adop. Jan. 21, 1975, eff. Feb. 3, 1975.]

Rule 1.2 Sanctions. The disciplinary sanctions or actions affecting the status of an attorney are censure, reprimand, suspension or disbarment or transfer to inactive status. [Adopted January 21, 1975, effective February 3, 1975.]

Order of Supreme Court adopting rules for discipline of attorneys and superseding prior rules:

The Board of Governors of the Washington State Bar Association having recommended a complete revision of the DRA to update and provide the Association with the organization and procedures to efficiently discharge its functions; and

The proposed DRA having been distributed to the members of the Bench and Bar for comment; and

The court having reviewed the proposal and the comments received from the Bench and Bar and having made such changes as were considered desirable; Now, therefore,

IT IS HEREBY ORDERED:

a. The existing DRA is superseded by the DRA attached hereto except as to pending matters heard by a trial committee. Such pending matters shall be completed under the DRA in effect at the time of the hearing by the trial committee, and

b. The revised DRA shall be published expeditiously in the Washington Reports and shall become effective on February 3, 1975.

DATED at Olympia, Washington this 21st day of January, 1975.

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

Rule 2.1 Local administrative committee.

(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 and who have been admitted to practice not less than 5 years.

(b) Term of Office. The members of the Local Administrative Committees shall serve at the pleasure of the

Board of Governors. The Board of Governors shall designate each year one member of each Local Administrative Committee to serve as chairperson thereof for 1 year or until his or her successor is appointed. Members heretofore appointed by the Board of Governors shall continue to serve until replaced.

(c) Duties. It shall be the duty of a Local Administrative Committee to:

(1) Take cognizance of any alleged or apparent violation of the rules of professional conduct coming to its attention, whether by complaint or otherwise, to investigate the same promptly and to submit a report to the Board within 30 days from the date the matter first came to the attention of such committee, unless the time is extended by said Board.

(2) *Initiate Reports.*

(i) Reports shall be in such form and pursuant to such procedures as may from time to time be prescribed by the Board.

(ii) Reports made by Local Administrative Committees shall form a part of the permanent records of the Association and may be used as a basis for the commencement of disciplinary proceedings.

(d) Perpetuation of Testimony. Where, in the discretion of a Local Administrative Committee or State Bar Counsel, 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 need not be sworn.

(e) Authority.

(1) *Trivial Matters.* The committee shall have power conditionally 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 Board; upon filing of such written report with the Board such conditional disposition shall be deemed conclusive unless the Board acts otherwise within 60 days from receipt of such report.

(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 Board.

(f) Special Circumstances. The Board, 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 or bar staff for investigation; or

(3) Direct the filing of a formal complaint without investigation.

(g) Matters Involving Related Pending Civil or Criminal Litigation.

(1) Processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation may be deferred when authorized by the board. In such event, the respondent attorney shall make all reasonable efforts to obtain the prompt trial and disposition of such pending litigation.

(2) The acquittal of the respondent attorney on criminal charges or a verdict or judgment in his or her favor in a civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same material allegations. [Adopted January 21, 1975, effective February 3, 1975.]

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 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. 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, and who have been active members of the Association for at least 5 years.

(b) Term of Office. The members of the Local Trial Committees shall serve at the pleasure of the Board of Governors; provided, however, that any member designated to serve on a Hearing Panel shall continue as a member of the Local Trial Committee until the completion of his or her duties as a member of such Hearing Panel. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 2.3 Hearing panel.

(a) Hearing Panel. Each disciplinary matter referred for hearing shall be heard by a Hearing Panel appointed by the chairperson of the Board. A Hearing Panel shall consist of either one or three members, as determined by said chairperson. The Panel may be composed of not more than one attorney member from the Board, not more than one member from the Local Trial Committee of the county or special district where the respondent attorney had his or her residence at the time of the alleged violation of the rules of professional conduct, and one or more members from trial committees elsewhere in the state. In the event the Panel consists of more than one member, the chairperson of the Board shall designate a chairperson of that Panel to conduct the hearing. The 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 chairperson of the Board.

(b) Authority and Duties of Hearing Panel. 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 chairperson shall pass on all questions of procedure and admission of evidence. The Panel shall make its findings of fact, conclusions of law and recommendation, submitting them to the Board together with all pleadings, documents and exhibits in accordance with Rule 3.2(1).

(c) Disagreement. In the event of disagreement the dissenting member shall file independent findings, conclusions and recommendation within 15 days after the time provided for in Rule 3.2(1). [Adopted January 21, 1975, effective February 3, 1975.]

Rule 2.4 Disciplinary board.

(a) Membership.

(1) *Composition.* The Board shall be comprised of two lay members appointed by the Supreme Court and one attorney member from each congressional district in the state of Washington. Attorney members shall be appointed by the Board of Governors. Each member, whether lay or attorney, shall have one vote.

(2) *Qualification.* Lay members must be residents of the state of Washington. Attorney members must have been active members of the Washington State Bar Association for at least 10 years and their residences must be in the congressional district from which they are appointed.

(3) *Quorum.* Five or more members shall constitute a quorum. Given a quorum, the concurrence of a majority of those present shall constitute the action of the Board.

(4) *Disqualification.* In the event any complaint is made to the Washington State Bar Association, alleging a violation of the rules of professional conduct by an attorney member of the Board, such member shall take a leave of absence from the Board until the matter is resolved, unless otherwise directed by the Board of Governors. If a disciplinary sanction is imposed against the member, he or she shall be ineligible to serve further on the Board. The resulting vacancy shall be filled as set forth in Rule 2.4(e).

(b) Term of Office. The term of office for all members of the Board shall be three years or until his or her successor is appointed or takes office. One of the initial lay members shall be appointed for a two year term. All terms of office shall expire on September 30 of the appropriate year. Members may not serve consecutive terms.

(c) Continuity. Notwithstanding the expiration of the term of office of a member of the Board, he or she shall have the authority to act in any matter assigned to him or her prior to the expiration of his or her term.

(d) Chairperson. The Board of Governors shall designate one member of the Board to act as its chairperson and another as its vice chairperson. The chairperson shall have duties and powers as are specified in the Discipline Rules for Attorneys, and shall preside at Board meetings. The vice chairperson shall serve in the absence or at the request of the chairperson.

(e) Vacancies. Vacancies in attorney membership on the Board and in the office of the chairperson and vice chairperson shall be filled by the Board of Governors. Vacancies in lay membership shall be filled by the Supreme Court.

(f) Responsibilities.

(1) *General.* The Board shall have the powers and duties provided in these Discipline Rules for Attorneys, together with those delegated to it in writing by the Board of Governors.

(2) *Specific.* The Board shall review all reports or allegations of violations of the rules of professional conduct or matters within the purview of Rules 4.1–.4 and take such action pursuant to these Discipline Rules for Attorneys as it deems appropriate.

(3) *Letter of Admonition.* Where it appears to the Board that, even if the findings of the Local Administrative Committee or bar staff were true, the misconduct charged is not of sufficient magnitude to warrant a trial, the 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 Hearing Panels or of the Board in specific disciplinary matters. It shall, however, have the responsibility generally for the proper functioning of the Local Administrative Committees, Trial Committees, the Disciplinary Board, the bar staff, and bar counsel. Any publicity with reference to pending disciplinary proceedings shall be released only through the Board of Governors.

(5) *Meetings.* The Board shall hold at least eight meetings a year at such times and places as it may determine. [Amd. Apr. 25, 1978, eff. May 15, 1978; amd. May 2, 1975, eff. July 1, 1975; adop. Jan. 21, 1975, eff. Feb. 3, 1975.]

Rule 2.5 State bar counsel.

(a) Appointment and Duties. The Executive Director of the State Bar Association under the direction of 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 other duties as shall be required by the Executive Director or the Board. He shall not participate in post–hearing deliberations of either the hearing panel or of the Board.

(b) Discovery Prior to Formal Complaint. Where bar counsel deems it advisable to utilize discovery procedures with regard to the attorney being investigated or a witness, prior to the filing of a formal complaint, he or she may do so.

(1) *Procedure.* All such proceedings shall be in conformity with the Superior Court Civil Rules.

(2) *Subpoenas.* A member of the Board or State Bar Counsel 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.

(3) *Show Cause–Restraining Proceedings.* In addition to and supplemental of the existing Superior Court Civil Rules, the Board or Hearing Panel may, by and through Bar Counsel, for good cause shown and supported by affidavit, require the respondent attorney to appear, together with such records or data as the Board or Hearing Panel may require, and to show cause why said respondent attorney should not be proceeded against as provided for in Rule 9.2 herein or be restrained, pendente lite, upon such terms and conditions as the Board or Hearing Panel may determine. No bond or other security or undertaking shall be required in such proceeding. Notice shall be by personal service; however, in the event that, and upon affidavit by Bar Counsel that said attorney cannot be then found, notice by mail, postage prepaid, to the last known address of said attorney on file with the Bar Association shall be deemed sufficient. The time for said notice shall be not less than 5 days. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 2.6 Respondent Attorney.

Responsibility. It shall be the duty and the obligation of an attorney who is the subject of a disciplinary investigation to cooperate with the Local Administrative Committee, State Bar Counsel or bar staff as requested, subject only to the proper exercise of his privilege against self–incrimination where applicable, by:

(a) Furnishing any papers or documents;

(b) Furnishing in writing a full and complete explanation covering the matter contained in such complaint; and

(c) Appearing before the Committee at the time and place designated. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 2.7 Complainant.

Duties of Complainant. Upon request, the person complaining shall furnish to the Local Administrative Committee, the bar staff, or State Bar Counsel documentary and other evidence in his or her possession and the names and addresses of witnesses, and assist in securing evidence in relation to the facts charged. [Adopted January 21, 1975, effective February 3, 1975.]

III. DISCIPLINARY PROCEEDINGS

Rule

Rule 3.1 Pleadings.

(a) Pleadings. The only pleadings permissible 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. Informality in the complaint or answer shall be disregarded.

(b) Formal Complaint. If the 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 or her to know the charge against him or her and shall be signed by State Bar Counsel or the Executive Director of the Washington State Bar Association.

(1) *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 conduct demonstrating unfitness to practice law.

(2) *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 of further proceedings, suspension or disbarment, or any absence of such record, shall be made a part of the record prior to the recommendations of the Hearing Panel to the Board.

(3) *Joinder of Charges.* The 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.

(4) *Commencement of Proceedings.* 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.

(5) *Procedural Irregularity.* No technical irregularity shall affect the validity of such complaint or of any proceeding pursuant thereto.

(c) 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 two 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 10 days, from the date of service, exclusive of the date of service, in which to 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 15 days from the date of service, or the date of mailing, exclusive of the date of service or mailing of the complaint to you, in which to answer.

Upon the filing of your answer or in case of your failure to answer, further proceedings will be had in accordance with the Discipline Rules For Attorneys.

Washington State Bar Association
By _____
State Bar Counsel/
Executive Director

Address: _____
_____, Washington
Date of Mailing: The _____ day of _____, 19__.

(d) Answer. The answer must contain:

(1) *Denials.* A general or specific denial of each material allegation of the complaint that is controverted by the respondent attorney, or a denial of knowledge or information thereof sufficient to form a belief. Any allegation, not denied will be deemed admitted.

(2) *Affirmative Defenses.* A statement of any matter constituting a defense or justification, in ordinary and concise language without repetition.

(3) *Address.* An address at which all further pleadings, notices and other documents in relation to the proceeding may be served upon the respondent attorney.

(4) *Verification.* A verification before some officer authorized to administer oaths.

(e) Miscellaneous.

(1) *Filing of Answer.* The original and two copies of the answer shall be filed in the office of the Association.

(2) *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 chairperson of the Panel, to answer the amendment, to procure evidence, and to defend against the charges set forth therein. The chairperson of the Panel may at any time allow or require other amendments to the complaint or to the answer.

(3) *Time Within Which To Answer.* If personal service is made upon the respondent attorney in the state of Washington, he or she shall be allowed 10 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 15 days from the date of service, or the date of mailing, exclusive of the date of service or mailing, in which to answer.

(4) *Extension of Time.* For good cause shown the chairperson of the Panel may extend the time for any pleading.

(f) 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 or her in the manner as is required for personal service of a summons in civil actions in the Superior Court.

(ii) *Service If Not Found in Washington.* If the respondent attorney cannot be found in the state of Washington, then by leaving a copy thereof at his or her place of usual abode 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 or her at his or her last known (a) place of abode, (b) office address maintained by him or her 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 or by mail as set forth in subsection (ii) above.

(iv) *Service Where Question of Mental Competence.* If a guardian or guardian ad litem has been duly appointed for the respondent attorney who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, service as above shall also be had on said guardian or guardian ad litem. Where a complaint is filed under Rule 4.1(b), service as above shall also be had on the person having the care and custody of the respondent attorney, if there be such a person.

(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 or her 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 shall 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.* Proof of service by affidavit of service, sheriff's return of service, or a signed acknowledgment of service, shall be filed in the office of the Association. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 3.2 Hearings.

(a) Where Held. All disciplinary hearings shall be held within the state of Washington at such place as may be directed by the Board or Panel chairperson.

(b) Date of Hearing. The chairperson of the Panel shall cause notice of the time and place of the hearing to be given to respondent attorney at least 10 days prior thereto. The hearing shall occur not earlier than 30 days or later than 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 30 days and the total period of time of all postponements shall not exceed 60 days unless approved by the Board. An application for postponement by the respondent attorney or by the Association shall be supported by affidavit and served and filed at least 7 days prior to the scheduled hearing, unless such time be shortened by the Panel chairperson.

(d) Representation. The Association shall be represented at hearings before the Panels by appropriately designated State Bar Counsel. The respondent attorney may be represented by counsel.

(e) Disqualification. The name 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 10 days prior to the hearing. The unchallenged members or member, if any, of the Panel shall rule upon the challenge or challenges. If a challenge is sustained, the chairperson of the Board shall forthwith appoint some person or persons of the stated qualifications to fill the vacancy or vacancies of the Panel. In the event challenges are directed against all the members of the Panel, the chairperson of the 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. The respondent attorney shall have no peremptory challenges.

(f) Default. In no event shall a default be entered against the respondent attorney. If he or she 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 at least 10 days prior to the hearing, the hearing of a disciplinary matter before a Panel shall not be public.

(h) Procedure. Each member of the Board or chairperson of the Hearing Panel 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 or her defense and upon timely application may have issued such subpoenas as any member of the Board or the chairperson of the Hearing Panel deems necessary. Subpoenas shall be served in the same manner as in civil cases in Superior Court. Witnesses shall testify under oath administered by the chairperson 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 Superior Court except as otherwise provided in these rules.

(1) *Authority for Taking.*

(i) *Within State.* The chairperson of the Board or chairperson 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 chairperson of the Board or the chairperson 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 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 Superior Court Civil Rules, limited and prescribed as follows: Such rights shall be available only upon such terms, and with such limitations, as the Panel chairperson deems just. The Panel chairperson shall have discretion to decide whether to permit such limited discovery and the terms or limitations thereon. In exercising such discretion the chairperson 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 chairperson.

(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 chairperson of the Panel as provided in the preceding paragraph. Should such attorney fail so to do, the chairperson of the Panel shall report the same to the Board, and such failure may constitute a violation of the rules of professional conduct.

(l) Findings, Conclusions and Recommendations. Within 20 days after the hearing, the chairperson of the Panel shall cause findings, conclusions and recommendations to be filed with the Board. [Adopted January 21, 1975, effective February 3, 1975.]

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. Such stipulation may contain the imposition of terms and conditions of probation or deferment regarding respondent attorney's violations. No such stipulation shall be effective unless approved by the Board and no stipulation for suspension or disbarment shall be effective unless approved by the Supreme Court. The stipulation may be presented to the 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 Board and the Supreme Court to form an opinion as to the propriety of the discipline being agreed upon, and, if approved, 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 record;

(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 Board and/or the Supreme Court, the disciplinary action agreed to in the stipulation shall follow. 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.

(c) Stipulation not Approved. If the stipulation is not approved by the 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 admissible in evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action. [Adopted January 21, 1975, effective February 3, 1975.]

IV. INCOMPETENCY OR INCAPACITY TO PRACTICE LAW

Rule

Rule 4.1 Transfer to inactive status.

(a) Automatic Transfer. In the event that any court of competent jurisdiction, has, as to an active member of this association, either:

(1) Appointed a guardian for the person or estate of such member, or for both; or

(2) Entered a civil commitment order; or

(3) Has acquitted such attorney for a crime on the ground of insanity; or

(4) Has held that such attorney is mentally incapable of assisting in his own defense in a criminal action, such member shall automatically be transferred from active to inactive membership status upon the entry of such judgment or order, regardless of the pendency of an appeal therefrom. The respondent attorney shall be forthwith notified of such action in writing, by the Association's mailing notice to him at the last address filed by the attorney with the Association. A certified copy of such judgment or order shall be filed forthwith with the Board, which shall transmit such record to the Supreme Court together with advice that such member has been transferred to inactive status. A request by bar counsel to the clerk of a court in this state rendering such judgment or order for a certified copy thereof shall be deemed good cause shown for compliance with such request, pursuant to RCW 71.05.390(5).

(b) Discretionary Transfer. If it appears to the Board that there is reasonable cause to believe that an active member, as to whom there has been no such judicial determination as that referred to in Rule 4.1(a), is unable to conduct his or her law practice adequately because of insanity, mental illness, senility, excessive use of alcohol or drugs, or other mental incapacity, a complaint in the name of the Association shall be served upon such attorney and shall be referred to a Hearing Panel for a hearing on the issue of the capacity of the member to

conduct his or her practice adequately. The Panel, at the conclusion of its hearing, shall prepare findings, conclusions, and recommendation as to whether or not the respondent attorney should be placed on the inactive roll. The record of such proceedings shall thereafter be reviewed by the Board which shall make findings and conclusions, based thereon and shall enter an appropriate order.

(1) *Transfer to Inactive Status.* An order of the Board transferring a member to inactive status shall become effective forthwith upon the service of a copy of such order upon the respondent member or his or her attorney of record. Within 15 days of the service of such order, the respondent attorney may appeal such order to the Supreme Court by filing a notice of appeal with the Association. Upon service of such a notice, 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 shall remain in effect, regardless of the pendency of such appeal, unless and until reversed by the Supreme Court.

(2) *Applicable Rules.* The procedures prescribed in these Disciplinary Rules for Attorneys shall apply to a proceeding instituted pursuant to Rule 4.1(b), except as modified elsewhere in Rules 4.1–.4.

(c) Service of Process. Notice, pleadings and other documents herein otherwise required to be served upon the respondent attorney shall:

(1) If a court of competent jurisdiction in this state has appointed a guardian of the person of such attorney; or

(2) If, pursuant to these rules, a guardian ad litem has been appointed to represent such attorney,

be served upon such guardian or guardian ad litem, or upon the respondent attorney's counsel of record.

(d) Appointment of Guardian Ad Litem.

(1) *By Chairperson of the Board.* In the event the respondent attorney does not appear by an attorney within the time required by these rules for the filing of an answer, the chairperson of the Board shall appoint a member of the Washington State Bar Association as guardian ad litem for such respondent attorney.

(2) *By Chairperson of Hearing Panel.* A member of the Association may be appointed as guardian ad litem for the respondent attorney by the chairperson of the Hearing Panel pursuant to Rule 4.3(b). [Adopted January 21, 1975, effective February 3, 1975.]

Rule 4.2 Reinstatement to active status. Any member who has been placed on the inactive roll for any reason encompassed within Rule 4.1, may petition for reinstatement to active membership as hereinafter provided.

(a) Petitioner. The petition for reinstatement shall be in writing, verified by the petitioner, and shall be filed with the Board.

(b) Investigation. The Board, 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.

(c) Hearing Date. The Board shall fix a time and place for a hearing upon the petition by the Board, and shall cause notice thereof to be served upon the petitioner and upon such other persons as it may designate at least 10 days prior thereto. Such hearing shall be held within 30 days of the date the petition is filed, unless continued for good cause.

(d) Reinstatement. The petition shall be approved by the Board upon an affirmative showing by the petitioner that he or she is again able to conduct the practice of law adequately; 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.

(e) 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 30 days after service upon the petitioner of a copy of the order of the Board 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 January 21, 1975, effective February 3, 1975.]

Rule 4.3 Effect of incompetency on pending disciplinary proceedings.

(a) Proceedings Held in Abeyance. If the respondent attorney has been or is subject to being transferred to inactive status pursuant to the provisions of Rule 4.1, all proceedings based upon a formal complaint calling for disciplinary sanctions (as distinguished from transfer to inactive status) 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.

(b) Panel Determination of Incompetency. If it shall appear to the chairperson of the Hearing Panel that there is reasonable cause to believe that the respondent attorney is incapable of conducting a proper defense to the formal complaint against him, the chairperson 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 or her. It shall be the duty of the chairperson of the Panel to appoint a member of the Association as guardian ad litem for the respondent attorney in the proceeding in this subsection provided, should the respondent attorney not have counsel of his or her own choosing.

(c) 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 panel shall prepare its findings of fact to that effect,

shall suspend further proceedings and transmit the entire record to the Board.

(d) Action by Board. If the decision of the Panel after the hearing provided herein, is that the respondent attorney is incapable of conducting a proper defense to the formal complaint against him or her the evidence relating thereto shall be filed with the Board. If the Board does not concur in the findings of the Panel, the Panel shall continue in accordance with the Rules. If such Board concurs in the decision of the Panel, the Board shall enter an order transferring the respondent attorney to inactive status. The effective date of such order and appellate procedures shall be as provided in Rule 4.1(b)(1).

(e) Proceedings After Transfer to Inactive Status. When it shall appear to the Board, upon application made by or on behalf of the respondent attorney or by bar counsel, and pursuant to the procedures set out in Rule 4.2, that such attorney is now mentally capable of conducting a proper defense to the formal complaint in question, the Board shall appoint a Hearing Panel. Thereafter a hearing on the formal complaint and proceedings thereunder shall be had as is provided by these rules in other cases. If the 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 January 21, 1975, effective February 3, 1975.]

Rule 4.4 Appointment of counsel to protect clients' interests.

(a) Procedure. Whenever an attorney has been transferred to inactive status because of incapacity of disability, or disappears, or dies, or is suspended or disbarred and fails to carry out the obligations under Rule 6.7 within 10 days of the date of such order disbarring or suspending such attorney, and no partner, personal representative or other responsible party capable of conducting the attorney's affairs is known to exist, the Presiding Judge of the appropriate Superior Court, upon application of the Association and proper proof of the facts, shall appoint an attorney or attorneys to take possession of the files and records of such attorney, inventory them, and to take such action as seems indicated to protect the interests of the clients of said attorney or as required under Rule 6.7, including but not limited to assuming control of the trust account of such attorney. Any bank honoring such a court order shall be exonerated from any liability resulting therefrom.

(b) Disclosure. Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of the court which appointed the attorney to make such inventory. [Adopted January 21, 1975, effective February 3, 1975.]

V. REVIEW BY THE BOARD

Rule

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 Rules 5.1–.6 shall be served upon the respondent attorney or his or her counsel. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 5.2 Statement in support or opposition. At any time within 10 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 Board a typewritten statement in support of or in opposition to the findings, conclusions and recommendation 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 or her counsel, or State Bar Counsel, as the case may be. [Adopted January 21, 1975, effective February 3, 1975.]

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 newly discovered evidence; provided, however, that such statement shall contain a complete outline of such newly discovered 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 Board. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 5.4 Board review. Each proceeding in which a hearing has occurred shall be reviewed by the 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 Board. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 5.5 Transcript of the record. (a) The Board or the chairperson 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 or her counsel and State Bar Counsel, each of whom shall have 10 days from the date of service of the transcript to file objections to the contents thereof with the chairperson of the Panel.

(b) 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 chairperson, 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 or her counsel or State Bar Counsel or after argument, if argument is deemed necessary by the chairperson of the Panel. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 5.6 Board action.

(a) Decision of Board. Prompt decision of the Board upon such review shall be made. The 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 or her counsel.

(b) Transcript Required For Suspension or Disbarment. No suspension or disbarment shall be recommended by the 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 Board shall dissent from the findings, conclusions and recommendation of the majority of the Board in a matter in which the majority recommends suspension or disbarment, he or she or they shall state briefly his or her or their reasons therefor, and a copy shall be served upon the respondent attorney or his or her 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 Board or if the recommendation is that the respondent attorney be censured or reprimanded or that further proceedings be suspended, and the censure or reprimand or suspension of proceedings 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 Board determines that the respondent attorney should be censured or reprimanded, a formal order signed by the chairperson of the Board shall be entered, which shall provide that if the respondent attorney or his or her counsel does not file in the office of the Association a written refusal to accept such censure or reprimand within 15 days of the date such order is served, the censure or reprimand shall be deemed accepted. Within 20 days after the respondent attorney has filed his or her written refusal to accept a censure or reprimand, he or she shall order a transcript of the testimony taken before the hearing panel and pay the cost thereof. When the proposed transcript is received by the respondent attorney, he or she shall promptly 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 indigent 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.

(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.

(h) Record to Supreme Court. If a censure or reprimand is not accepted, or if the recommendation of the Board is that respondent attorney be suspended or disbarred, the record shall be transmitted to the Supreme Court. Provided however, if the Board suspends further proceedings in a matter pursuant to Rule 5.6(i), notice of such action shall be sent to the Supreme Court where it shall remain confidential unless such suspension is later revoked pursuant to Rule 5.6(j).

(i) Suspension of Proceedings.

(1) Where the Board has acted upon the findings, conclusions and recommendations of a hearing panel and has itself recommended the suspension of the respondent attorney from the practice of law, it may, in its discretion and for a period of not to exceed 3 years, stay or suspend all further proceedings in the matter until otherwise ordered by said board, upon such terms as the Board may determine, provided said attorney stipulates in writing to such stay and to the terms and conditions thereof within 15 days of the service upon such attorney of said proposed order of suspension. If said attorney does not so stipulate, then the proposed stay shall be null and void and the record in the matter shall be transmitted to the Supreme Court for action by the court. As a condition to the suspension of further proceedings, said Board may order the respondent attorney to pay all costs and expenses of the proceedings pursuant to Rule 7.1, to make restitution to any person who may have suffered loss or damage by reason of the disciplinary violations in question, to report periodically to, or to permit periodic inspections of the attorney's trust account and the like by, a probation officer designated by said Board under

conditions specified by said Board, may order respondent attorney to submit to specified treatment for alcoholism, drug addiction, or emotional disturbance, and may order such other conditions as said Board deems appropriate to assist in the rehabilitation of the respondent attorney. For this purpose, any active member of the Association so designated by said Board may act as the respondent attorney's probation officer.

(2) When and if the respondent attorney has, in the opinion of the Board, satisfactorily completed his or her period of probation, the file on the disciplinary charges in question against said attorney shall be closed, subject, however, to being considered in connection with Rule 10.1, and in connection with any subsequent disciplinary offense as provided in Rule 3.1(b).

(j) Revocation of Suspension. The Board may, at any time for good cause shown, revoke its suspension of further proceedings against the respondent attorney and transmit the entire record to the Supreme Court for action by it as provided in Rule 5.6, provided that such revocation may not be ordered after expiration of the period for which further proceedings were suspended. Before ordering revocation said Board shall cause an order to show cause why its suspension of further proceedings should not be revoked, signed by the chairperson of the Board or by State Bar Counsel, to be served on the respondent attorney as provided in Rule 3.1(f) notifying him of a hearing before said Board no less than 5 days nor more than 30 days after the date of such service upon him upon the issue of the revocation of said Board's suspension of further proceedings against the respondent attorney. Following such hearing, if said Board orders revocation, it shall make written findings of fact upon the matter involved in said revocation hearing, conclusions of law and an order of revocation, which shall be signed by the chairperson of said Board and transmitted to the Supreme Court along with said entire record.

(k) Chairperson Not Disqualified. Neither the chairperson of the Board nor a member or members of the Board who also served on a Hearing Panel are, by virtue of that office or service, disqualified from participating in the discussion before the Board of that Panel's findings and recommendations or from participating in that Board's vote on the matter.

(l) Information to Local Administrative Committee. Upon referral to a Panel, a final disposition of a complaint by the Board or upon recommendation to the Supreme Court by the Board of disbarment or suspension, or upon a suspension of proceedings pursuant to Rule 5.6(i), notice of the action taken shall be given by the Board to the chairperson of the Local Administrative Committee which investigated the complaint.

(m) Information to Complainant. The complainant in all cases shall be advised by the Board of the final disposition of the complaint.

(n) Information to Members of Panel. Notice of the action taken by the Board on matters considered by a Panel shall be given to all members of the Hearing Panel. [Adopted January 21, 1975, effective February 3, 1975.]

VI. REVIEW BY THE SUPREME COURT

Rule

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 or her counsel. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 6.2 Objections by respondent attorney. The respondent attorney may file objections to the findings, conclusions and recommendations of the 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 20 days after the filing of the record in which to file with the Board three copies and to file with the Supreme Court 25 copies of his or her objections. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 6.3 Answer of the bar association.

(a) If Objections Filed. The Association shall have 10 days from the day of the service of the objections on the Association in which to serve upon the respondent attorney or his or her 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 20 day period above provided, the Association shall have 10 days from the expiration of such period in which to mail respondent attorney one copy and file with the Clerk of the Supreme Court 15 copies of the Association's brief. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 6.4 Reply of respondent attorney. The respondent attorney shall have 10 days from the day of service of the Association's brief in which to file with the Board and the Supreme Court a like number of reply briefs. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 6.5 Hearing.

(a) **Setting.** Disciplinary proceedings shall have priority and be set upon compliance with the above rules or respondent's failure to timely file the required briefs.

(b) **Argument.** The Association must file a brief and present oral argument. Respondent attorney may submit the cause on the record. If a brief has not been filed, on behalf of the respondent attorney, oral argument may not be presented on his or her behalf unless so authorized by the court. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 6.6 Opinion.

(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 1–50, but the petition will not stay the judgment unless a stay is entered by the court. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 6.7 Disbarred or suspended attorneys.

(a) A disbarred attorney, or one who is suspended for longer than 60 days, shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his or her disbarment or suspension and his or her consequent inability to act as an attorney after the effective date of his or her disbarment or suspension and shall advise said clients to seek legal advice elsewhere. An attorney suspended for 60 days or less shall similarly notify all such clients, except that such clients shall be advised to seek legal advice elsewhere if they feel they need such advice during the period of such suspension.

(b) A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his or her clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party (or directly to the adverse party, if not represented by counsel) in such matter or proceeding, or his or her disbarment or suspension and consequent inability to act as an attorney after the effective date of his or her disbarment or suspension. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in his or her place. In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any case or legal matter of any nature.

(d) Within 10 days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the Supreme Court an affidavit showing:

(1) That he or she has fully complied with the provision of the order and with these Rules;

(2) That he or she has served a copy of such affidavit upon State Bar Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him or her; and

(3) Attaching to such affidavit a copy of the form of letter of notification sent to such attorneys clients, together with a list of the names and addresses of all clients to whom such notice was sent.

(e) The Board shall cause a notice of the suspension or disbarment to be published in the Washington State Bar News and a newspaper of general circulation in the county in which the disciplined attorney maintained his or her practice.

(f) The Board shall promptly transmit a certified copy of the order of suspension or disbarment to the Presiding Judge of the Superior Court of the county in which the disciplined attorney maintained his or her practice. The Presiding Judge may take such further action as he or she deems necessary.

(g) A disbarred or suspended attorney shall keep and maintain written records of the various steps taken by him or her under these Rules so that, upon any subsequent proceeding instituted by or against him or her proof of compliance with these Rules and with the disbarment or suspension order will be available. Proof of compliance with these Rules shall be a condition precedent to any petition for reinstatement. [Adopted January 21, 1975, effective February 3, 1975.]

VII. COSTS

Rule

Rule 7.1 Costs and expenses. In all cases resulting in the administration of censure, reprimand, suspension or disbarment, or suspension of proceedings pursuant to Rule 5.6(i), counsel for the Association shall serve upon the respondent attorney and file in the office of the Association his or her verified statement of costs and expenses for the disciplinary proceedings to the time the 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 reasonably and 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, expenses incurred in carrying out the terms of an order suspending further proceedings pursuant to Rule 5.6(i), a reasonable attorney's fee, expenses incurred pursuant to Title 13, as well as all other direct provable expenses of the office of the Association. The Board shall recommend a reasonable attorney's fee, which fee shall not exceed the actual cost to the Association for its legal representation in the matter. The Board may waive payment of any or all costs and expenses if it deems such waiver to be in the interests of justice.

(b) Statement of Costs and Expenses. In all cases in which the 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 or she is notified of the proposed censure or reprimand, together with a statement by said Board as to the amount of said costs and expenses which it, in its discretion, deems just to assess against said respondent attorney, and if the respondent attorney accepts the censure or reprimand, the amount thereof as so determined by the Board shall be paid in accordance with Rule 7.1(e). If the respondent attorney refuses to accept the censure or reprimand, or excepts to the statement of costs and expenses, the statement of costs and expenses together with the Board's statement as to the amount thereof assessed by it against the respondent attorney, 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 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 proceeding in the Supreme Court shall be served upon the respondent attorney and filed with the Clerk of the Supreme Court within 10 days after the hearing in that court, and the respondent attorney shall have 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 Board recommends suspension or disbarment, the said statement of costs and expenses together with a statement by said board as to the amount of said costs and expenses which it, in its discretion, deems just to assess against said respondent attorney shall be served on the respondent attorney at the time he is notified of the recommendation of the 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 10 days after the service of the statement of costs and expenses upon the respondent attorney.

(e) Payment of Costs and Expenses. In all cases of censure or reprimand, the respondent attorney shall pay the assessed costs and expenses within 30 days or such other longer period of time as is determined by the Board under Rule 7.1(b) or Rule 7.1(c). Should the respondent attorney fail to pay the costs and expenses as herein provided, such failure shall be grounds for suspension and the Association may move the Supreme Court for an order suspending said attorney from the practice of law until said costs and expenses are paid.

(f) Assessment Upon Dismissal of Charges. In all cases in which the Board dismisses the charges against a respondent attorney following a hearing upon the charges, the Board shall fix the amount of said attorney's costs and expenses which the Board, in its discretion, deems just to assess against the Association, which sum shall be paid by the Association within 30 days of the entry of such order. [Amd. Apr. 25, 1978, eff. May 15, 1978; adop. Jan. 21, 1975, eff. Feb. 3, 1975.]

Rule 7.2 Supreme court expenses.

(a) Cost Bill. A verified statement:

(1) by the Association of any additional expenses to it occasioned by the proceedings in the Supreme Court, and

(2) by the respondent attorney of all costs and expenses incurred by him in the defense of such charges from their commencement through the proceedings in the Supreme Court,

shall be served upon the adverse party and filed with the Clerk of the Supreme Court within 10 days after the hearing in that court.

(b) Exceptions. The parties shall have 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 proceedings, shall fix the amount of the costs and expenses to be paid by the parties as it shall deem just. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 7.3 Termination of suspension.

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 January 21, 1975, effective February 3, 1975.]

VIII. REINSTATEMENT AFTER DISBARMENT

Rule

Rule 8.1 Restrictions against petitioning.

(a) Time of Petition. No petition for reinstatement shall be filed within a period of 3 years next after disbarment or within a period of 2 years next after an adverse decision of the Supreme Court upon a former petition filed by or on behalf of the same person. If, prior to disbarment, the attorney was suspended from the practice of law, pendente lite, pursuant to the provisions of Rule 9 hereof, the period of such suspension may be credited toward the 3 years referred to above. If an attorney has been disbarred solely because of his conviction of a crime involving moral turpitude pursuant to Rule 1.1(a), and said conviction is later reversed and said charges are dismissed on their merits, the Supreme Court may in its discretion, upon application by said attorney, enter an order reinstating the attorney to active status.

(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 January 21, 1975, effective February 3, 1975.]

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 January 21, 1975, effective February 3, 1975.]

Rule 8.3 Fees. The petition shall be accompanied by the application and the total fees required of an attorney applicant under the Admission to Practice Rules. [Adopted January 21, 1975, effective February 3, 1975.]

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, Board, State Bar Counsel, or to such other person or persons as may be determined by the Board of Governors. [Adopted January 21, 1975, effective February 3, 1975.]

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 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(a). Except by its leave no person other than the petitioner or petitioner's counsel shall be heard orally by the Board of Governors. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 8.6 Action by the board of governors.

(a) Requirements 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 Admission to Practice Rules for attorney applicants, and that his or her 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 January 21, 1975, effective February 3, 1975.]

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 Admission to Practice Rules and payment of the costs incidental to the reinstatement proceedings.

(b) Petition Denied. If the petition for reinstatement is denied, the examination and admission fee shall be refunded to the petitioner. [Adopted January 21, 1975, effective February 3, 1975.]

IX. SUSPENSION

Rule

Rule 9.1 Suspension for conviction of a felony.

(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, and upon the filing of a certified copy of such conviction with the Supreme Court. Provided, however, that the 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 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 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 occurring 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 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 Admission to Practice Rules.

(d) Investigation. In its discretion the 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 Board.

(e) Notice of Hearing. The Board shall fix a time and place for hearing of the petition by the Board and shall serve notice thereof 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 Board that the petitioner possesses the qualifications and meets the requirements as set forth in Rule 3B of the Admission to Practice Rules, excepting subsections 6, 7, 8 and 9 thereof, and that his or her 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 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 January 21, 1975, effective February 3, 1975.]

Rule 9.2 Suspension during pendency of disciplinary proceedings.

(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 injury to the public, the Association, on recommendation of the Board (with no more than two members dissenting,) may petition the Supreme Court for an order suspending the respondent attorney during the pendency of the disciplinary proceedings. If the court, finds a continuation of practice by the attorney will result in substantial risk of 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 acts 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. An order to show cause to be signed by the Chief Justice of the Supreme Court shall be issued thereon requiring the respondent attorney to be and appear before the Supreme Court on that court's first motion day following the expiration of 7 calendar days after the date on which such show cause order was signed, or on such other date as the Chief Justice may set, then and there to show cause why the prayer of the Petition for Suspension Pending Disciplinary Proceedings should not be granted.

(c) Service. Service of the petition and order to show cause shall be by service of a certified copy of such order to show cause and an uncertified copy of such petition served in the manner provided in Rule 3.1(f)(1) at least 5 calendar days before the scheduled show cause hearing.

(d) Answer to Petition. The answer may contain additional facts relating only to the issue of substantial risk of injury to the public, shall be verified by respondent or respondent's counsel, and may be supported by documents or affidavits. The answer shall be filed with the Clerk of the Supreme Court at least 3 days before the scheduled show cause hearing. 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 Rule 9.2(d) by filing in the office of the Association.

(f) Costs. No costs shall be taxed. [Adopted January 21, 1975, effective February 3, 1975.]

X. SUSPENSION FOR CUMULATIVE DISCIPLINE

Rule

Rule 10.1 Criteria. An attorney disciplined after the effective date of this rule who has a record of:

(a) Three or more censures and/or reprimands; or

(b) Any combination of a suspension or disbarment plus one or more censures or reprimands shall be subject to suspension from the practice of law. For purposes of this Rule, a suspension of further proceedings pursuant to Rule 5.6(i) shall be deemed to be the equivalent of a reprimand. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 10.2 Procedure. (a) Upon an attorney's accumulation of discipline as provided in Rule 10.1, the 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 in the manner provided in Rule 3.1(f)(1) 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 January 21, 1975, effective February 3, 1975.]

XI. GENERAL PROVISIONS

Rule

Rule 11.1 Definitions.

(a) Residence. For the purpose of these rules, a member of the Association is a resident of that county, district or congressional district in which he or she maintains, or last maintained, his or her principal office for the practice of law whether that county, district or congressional district is his or her place of abode or not.

(b) District. When used alone in these rules, the term "district" shall refer to those districts only that are created under Rule 2.1.

(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 Disciplinary Board 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 January 21, 1975, effective February 3, 1975.]

Rule 11.2 Papers. All pleadings, briefs, documents or notices in these rules provided for must be typewritten or printed. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 11.3 Filing. Whenever in these rules it is required that any document shall be filed with the Board or the Board of Governors, such documents shall be served on the Association at its office. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 11.4 Expenses.

(a) Local Administrative Committee, Trial Committee, Board and Panels. The members of the Local Administrative Committees, Local Trial Committees, Panels, and the 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 January 21, 1975, effective February 3, 1975.]

Rule 11.5 Representation of respondent. A former president of the Association, a former member of the Board of Governors or Board, shall not represent a respondent attorney in proceedings under these rules until after the lapse of 2 years following expiration of his or her term of office. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 11.6 Reciprocal discipline. (a) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been disciplined in another jurisdiction, the Supreme Court shall forthwith direct the Association to issue a notice directed to the respondent attorney containing:

(1) A copy of said order from the other jurisdiction; and

(2) An order directing that the respondent attorney inform the court within 30 days from service of the notice, of any claim by the respondent attorney that the imposition of the identical discipline in this state would be unwarranted, and the reasons therefor.

State Bar Counsel shall cause this notice to be served upon the respondent attorney in the manner provided in Rule 3.1(f)(1).

(b) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until such stay expires.

(c) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this state. [Adopted January 21, 1975, effective February 3, 1975.]

Rule 11.7 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 or her 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.

(3) The Association may forward to the National Discipline Data Bank maintained by the American Bar Association for use by the various state bar associations copies of any briefs filed by either side at any stage of a disciplinary proceeding; provided that the name of the respondent attorney shall be withheld unless some type of disciplinary action has been finally determined.

(4) The Bar Association shall provide the Chief Judge of the Ninth Circuit Court of Appeals and the Chief Judge of each of the Federal Judicial Districts in the State of Washington a copy of any disciplinary action by the Bar Association or the Supreme Court including censures, reprimands, suspensions, or disbarments.

(b) Disclosure. Notwithstanding all prior or existing rules relating to the confidentiality of these proceedings, the Board of Governors may inform the public of disciplinary investigation or proceedings against any attorney when, in the judgment of the Board, it is determined that the matters involved are of such grave importance that the integrity of the Bar and the public interest are affected thereby.

(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 is given and accepted by an attorney who has been previously disbarred, suspended or reprimanded, notice of such censure, including the attorney's name, shall be published in the Washington State Bar News.

(3) Notice of all reprimands administered by the Board of Governors, including the attorney's name, shall be published in the Washington State Bar News, unless the Board specifically provides otherwise.

(4) The Board of Governors may authorize publication in the Washington State Bar News of any final action taken by the Board since the last such publication, provided that the name of the respondent attorney shall be withheld as to all disciplinary matters which were dismissed, or where no disciplinary action was taken, or where a letter of admonition or censure was given (subject to Rule 11.7(c)(2)).

(d) Disciplinary Record. The disciplinary record of any attorney shall consist of a brief summary of any complaint made against him or her and the disposition or status 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 chairperson 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. [Amended December 26, 1975, effective January 1, 1976; amended March 11, 1975, effective July 1, 1975; adopted January 21, 1975, effective February 3, 1975.]

Rule 11.8 Terms of office. Notwithstanding anything to the contrary in these rules provided, members of Local Administrative Committees, Trial Committees and attorney members of the Disciplinary Board shall serve at the pleasure of the Board of Governors. [Adopted January 21, 1975, effective February 3, 1975.]

XII. EXONERATION FROM LIABILITY

Rule 12.1 Exoneration from liability. No cause of action shall accrue in favor of a respondent attorney or any other person arising from an investigation or proceeding pursuant to these rules against the Association, its officers or agents, (including but not limited to its staff, members of the Board of Governors, Disciplinary Board, Hearing Panels and Local Administrative Committees, Bar Counsel, an attorney appointed pursuant to Rule 4.4, and probation officers appointed pursuant to Rule 5.6(i), provided only that such Association or individual shall have acted in good faith. The burden of proving bad faith in this context shall be upon the party asserting same. [Adopted January 21, 1975, effective February 3, 1975.]

XIII. AUDITS

Rule
13.1 Audit and investigation of books and records.
13.2 Cooperation of attorney.
13.3 Declaration or questionnaire.
13.4 Disclosure.
13.5 Regulations.

Rule 13.1 Audit and investigation of books and records. The Board and its Chairman shall have the following authority to examine, investigate and audit the books and records of any attorney for the purpose of ascertaining and reporting whether (CPR) DR 9–102 has been or is being complied with by such attorney:

(a) The Board may from time to time authorize examinations of the books and records of any attorneys or firms of attorneys, selected at random. Such examinations shall extend only to the books and records of such attorneys or firms of attorneys.

(b) The Chairman of the Board may, upon information that a particular attorney or firm of attorneys may not be in compliance with (CPR) DR 9–102, authorize an examination limited to the scope set forth in section (a).

(c) Upon the examination set forth in section (a) or (b), if the Chairman of the Board shall determine that further examination is warranted, the Chairman may then order an appropriate audit of the attorney's or the firm's books and records, including verification of the information therein from available sources. [Adopted June 14, 1977, effective July 1, 1977.]

Rule 13.2 Cooperation of attorney. It shall be the duty and obligation of any attorney or firm who is subject to examination, investigation and audit under Rule 13.1 to cooperate with the person conducting the examination, investigation or audit subject only to the proper exercise of any privilege against self–incrimination where applicable, by:

(a) Producing to such person forthwith all evidence, books, records and papers as such person shall request for the purpose of his or her examination, investigation or audit;

(b) Furnishing forthwith such explanations as the person may require for the purpose of his or her examination, investigation or audit;

(c) Producing, in those cases where the examination, investigation or audit is being conducted pursuant to Rule 13.1(c), to such person forthwith written athorization, directed to any bank or depository, for the person to examine, investigate or audit trust and general accounts, safe deposit boxes and other forms of maintaining trust property by the attorney in such bank or depository. [Adopted June 14, 1977, effective July 1, 1977.]

Rule 13.3 Declaration or questionnaire. The Association shall cause to be directed annually to each attorney a written declaration or questionnaire designed to determine whether such attorney is complying with (CPR) DR 9–102. Such declaration or questionnaire shall be completed, executed and delivered by such attorney to the Association on or before the date of delivery specified in such declaration or questionnaire. [Adopted June 14, 1977, effective July 1, 1977.]

Rule 13.4 Disclosure. The examination and Audit Report shall be open to the Disciplinary Board, the attorney examined, investigated or audited, and to the Board of Governors upon its request, unless a disciplinary proceeding is commenced in which event the disclosure provision of Rule 11.7 shall apply. [Adopted June 14, 1977, effective July 1, 1977.]

Rule 13.5 Regulations. The Board may adopt regulations pertinent to the powers set forth in this rule subject to the approval of the Board of Governors and the Supreme Court. [Adopted June 14, 1977, effective July 1, 1977.]

JUDICIAL INFORMATION SYSTEM COMMITTEE RULES (JISCR)

Table of Rules

Rule
1 Judicial Information System.
2 Composition.
3 Staff.
4 Budgets.
5 Standard Data Elements.
6 Reports.
7 Codes and Case Numbers.
8 Retention.
9 Communications Links with Other Systems.
10 Attorney Identification Numbers.
11 Security, Privacy, and Confidentiality.
12 Dissemination of Court Information.
13 Local Court Systems.
14 Control of Data Processing Equipment.
15 Record and Dissemination Data Processing.
16 Effective Date.

Rule 1 Judicial information system. It is the intent of the Supreme Court that a state–wide Judicial Information System be developed. The system is to be designed and operated by the Administrator for the Courts under the direction of the Judicial Information System Committee and with the approval of the Supreme Court pursuant to RCW 2.56. The system is to serve the courts of the State of Washington. [Adop. Sept. 8. 1976, eff. May 15, 1976.]

Rule 2 Composition. a. Membership. The Judicial Information System Committee (JISC) shall be representative of the judiciary of the state of Washington and shall be appointed by the Chief Justice with the approval of the Supreme Court from a list of names submitted by representative groups and associations from within the Judicial system and shall be composed of a Supreme Court Justice (the Supreme Court), a Court of Appeals Judge (Court of Appeals), three superior court judges (Superior Court Judges' Association), three judges of courts of limited jurisdiction (Washington Magistrates Association), the Supreme Court Clerk, two county clerks (Washington State Association of County Clerks),

a prosecuting attorney (Washington State Prosecuting Attorneys' Association), a lay citizen (Chief Justice), a representative of the Washington State Bar Association, a director of juvenile court services (Juvenile Directors Association), the Executive Director of the Washington State Data Processing Authority, the Administrator for the Courts, two superior court administrators (Association of Washington Superior Court Administrators) and three clerks/administrators from courts of limited jurisdiction (Washington State Court Administrators Association).

b. Terms of Office. The term of membership for those who are appointed to represent specific organizations shall be for a term of three years with the initial term as determined by lot, staggered so as to insure that an equal number of terms expire each year. Any vacancy in the membership of the committee shall be filled in the same manner in which the original appointment was made and the term of membership shall expire on the same date as the original appointment expiration date.

c. Operation. The Supreme Court Justice shall be the chairperson. The members of the committee shall elect a vice–chairperson from among themselves. Meetings of the committee shall be called regularly and at a minimum of four times per year at the discretion of the chair. Any members with two unexcused absences from regularly scheduled JISC meetings during any calendar year shall be requested to resign and the respective association shall appoint a successor to fulfill the unexpired term. Ad hoc committees may also be established for the purpose of making special studies and recommendations to the JISC as required and as recommended by the chair and approved by the committee. The JISC shall review the work of the Administrator for the Courts with regard to the Judicial Information System and be responsible for recommendations to the Supreme Court concerning policies, procedures and rules which affect the operation of the Judicial Information System or any new or presently existing information system projects within the state judiciary. [Adop. Sept. 8, 1976, eff. July 1, 1976.]

Rule 3 Staff. Staff for the Judicial Information System Committee will be provided by and be responsible to the Administrator for the Courts who will be charged with providing operational, statistical and other information to legitimate and appropriate users of judicial information. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 4 Budgets. The Administrator for the Courts, under the direction of the Judicial Information System Committee, and with the approval of the Supreme Court, shall prepare funding requests for personnel, hardware and software as required for a phased implementation of the Judicial Information System. Any budget requests prepared by the Administrator for the Courts shall address the issues of control and dissemination of data from court files, developmental and operational priorities, a clear definition of operational expenses and security and privacy of information and facilities within the system. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 5 Standard data elements. A standard court data element dictionary for the Judicial Information System shall be prepared and maintained by the Administrator for the Courts with the approval of the Judicial Information System Committee. Any modifications, additions or deletions from the standard court data element dictionary must be reviewed and approved by the Judicial Information System Committee. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 6 Reports. The Administrator for the Courts shall furnish to the courts and clerks of the state, standard report formats as recommended and approved by the Judicial Information System Committee. Records and reports either in computerized or manual formats, shall be in accordance with the standard court data elements established by the Judicial Information System Committee and consistent with the definitions contained therein. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 7 Codes and case numbers. The Administrator for the Courts shall establish, with the approval of the Judicial Information System Committee, a uniform set of codes and case numbering systems for criminal charges, civil actions, juvenile referrals, attorney identification and standard disposition identification codes. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 8 Retention. The Administrator for the Courts shall establish retention periods for all computerized records based upon the recommendations of the Judicial Information System Committee and consistent with state law. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 9 Communications link with other systems. The Judicial Information System will serve as the communications link for the courts with all local, regional, state–wide and national noncourt systems. The Judicial Information System shall perform all functions relating to the transfer of computerized judicial data or information except as specifically approved by the Supreme Court upon the recommendations of the Judicial Information System Committee. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 10 Attorney identification numbers. The Office of the Administrator for the Courts will assign and maintain a uniform attorney identification number consistent with the number currently utilized by the Washington State Bar Association. The use of such code numbers will be subject to rules promulgated by the Supreme Court upon recommendations by the Judicial Information System Committee and the Board of Governors of the Washington State Bar Association. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 11 Security, privacy and confidentiality. All Court record systems must conform to the privacy and confidentiality rules as promulgated by the Supreme

Court upon the recommendation of the Judicial Information System Committee, which rules shall be consistent with all applicable law relating to public records. Any modifications, additions or deletions from the established rules must be reviewed by the Judicial Information System Committee and approved by the Supreme Court. Additionally:

(a) Courts obtaining information from computerized files subject to special security and privacy administrative rules or legislative direction must insure that all such rules or legislative enactments are followed in the handling of such information.

(b) In all automated systems, duplicate records must be prepared regularly and stored separately and a transaction log kept of all record changes covering the entire time period since the preparation of the last duplicate set of records.

(c) The Office of the Administrator for the Courts will maintain a library of court system documentation for the state. All automated information systems which have received approval from the Supreme Court to collect, store and/or disseminate computerized judicial information must submit to the Office of the Administrator for the Courts and maintain on file, a copy of all system documentation related to the collection, storage and dissemination of such information. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 12 Dissemination of court information. The Judicial Information System Committee will adopt rules consistent with all applicable law relating to public records, governing the release of information contained within the Judicial Information System. Such rules and any amendments thereto shall be forwarded to the Supreme Court and, unless altered by the Court or returned to the Judicial Information System Committee for its further consideration and recommendations, shall take effect forty–five (45) days after the receipt of such rules by the Supreme Court. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 13 Local court systems. Counties or cities wishing to establish automated court record systems shall provide advance notice of the proposed development to the Judicial Information System Committee and the Office of the Administrator for the Courts, ninety (90) days prior to the commencement of such projects for the purpose of review and approval. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 14 Control of data processing equipment. Data processing for courts shall be processed on computer equipment managed and controlled by the courts. In exceptional instances where extreme care has been taken to ensure the integrity of the internal function of the courts, explicit approval may be obtained from the Supreme Court upon the recommendation of the Administrator for the Courts and the Judicial Information System Committee, to utilize facilities not totally managed and controlled by the courts. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 15 Record and dissemination data processing. The Office of the Administrator for the Courts shall be responsible for the recording and dissemination of decisions concerning the policies of the Supreme Court in the area of data processing, except for such policies as relate to the preparation of Appellate Court opinions and their publication in the official law reports which are the responsibility of the Reporter of Decisions and the Commission on State Law Reports. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Rule 16 Effective date. These rules, with the exception of Rule 2, shall take effect on May 15, 1976. Rule 2 shall take effect on July 1, 1976, and until such time, the Superior Courts Management Information System (SCOMIS) Committee formed on February 21, 1974 shall continue to function as directed by this Court. [Adop. Sept. 8, 1976, eff. May 15, 1976.]

Part II
RULES FOR APPELLATE COURT ADMINISTRATION

Table of Rules	Abbreviation	Formerly
Supreme Court Administrative Rules	SAR	(RPBSC)
Court of Appeals Administrative Rules	CAR	(CAR)

SUPREME COURT ADMINISTRATIVE RULES (SAR)

Rule

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 or the identity of the assignment justice prior to the time the opinion is filed by the clerk of the supreme court. [Amd. Jan. 30, 1978, eff. Jan. 30, 1978; adop. July 2, 1969, eff. July 18, 1969. Prior: Adop. Nov. 22, 1950, eff. Jan. 2, 1951; rule amd., adop. 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. [Rescinded Jan. 28, 1976, eff. July 1, 1976; adop. July 2, 1969, eff. July 18, 1969. Prior: Adop. Nov. 22, 1950, eff. Jan. 2, 1951; proviso added, adop. Dec. 14, 1953, eff. Mar. 1, 1954.]

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 State law library. The following Rules shall govern the operation of the State Law Library:

(a) *State Law Library——General.* The primary function of the State Law Library shall be to maintain a legal research library at the state capitol for the use of all state officials and employees, equipped to serve them effectively with legal research materials required by them in connection with their official duties. Specifically

included, but not limited to, are members, staff and employees of the:

(1) Supreme Court

(2) Office of Administrator of the Courts

(3) Attorney General Department

(4) Legislature

(5) Governor's Office

(6) Commissions, agencies, and boards of all branches of state government.

(b) *Public Use.* In addition to the groups provided in section (a), the Library shall be open to the public each day of the week from 8 a.m. to 5 p.m. except Saturdays, Sundays and those legal holidays provided in RCW 1.16.050.

(c) *After–Hours Use.* In addition to the hours for public use as provided in section (b), and when required by them in connection with their official duties, those persons provided for in section (a) may, upon application to the Law Librarian, have access to the library collection during evenings, weekends and holidays.

(d) *State Law Librarian——Appointments.* The Court will appoint a Law Librarian who may be removed at its pleasure.

(e) *State Law Librarian——Duties.* The State Law Librarian shall:

(1) Maintain as complete and up–to–date law library as possible;

(2) Administer the library in accordance with the best professional standards and protect library property from loss or damage;

(3) Do legal research for any Supreme Court Justice when he requests it;

(4) Establish, develop and maintain legal research libraries for each division of the Court of Appeals;

(5) Upon request, advise and consult with Board of Trustees, or other administrative bodies, of county law libraries in the development, improvement, arrangement and maintenance of county law library collections and services;

(6) Promote improved state–wide law library service to all citizens of the State of Washington by lending of legal materials and providing reference assistance in any manner not inconsistent with the primary responsibility of the State Law Library as set forth in section (a);

(7) Make distribution of legislative journals, session laws, *Washington Reports* and *Washington Appellate Reports* as required by statute;

(8) Perform any and all other duties as may be prescribed by the Supreme Court or by statute. [Amd. June 4, 1976, eff. July 1, 1976; adop. July 2, 1969, eff. July 18, 1969. Prior: Adop. Nov. 22, 1950, eff. 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. No justice pro tempore shall be appointed who has less than five years service as a judge of record.

(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. Justices pro tempore shall not author majority opinions other than in those cases wherein they prevail by concurring or dissenting opinion.

(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 December 16, 1976, effective January 1, 1977; adopted July 2, 1969, effective July 18, 1969; amended, adopted September 3, 1969, effective September 12, 1969. Prior: Adopted March 13, 1963, effective March 13, 1963; amended, adopted April 29, 1963, effective April 29, 1963; Subsec. (2) amended, effective March 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.]

COURT OF APPEALS ADMINISTRATIVE RULES (CAR)

Rule

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 each division of the court of appeals shall be held at the headquarters, and, by orders of the chief judge of the division, 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. Conferences and ceremonial sessions may be held at any location within the geographical boundaries of any division by order of its chief judge. [Amd. Jan. 30, 1978, eff. Jan. 30, 1978; adop. July 2, 1969, eff. 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. The judges of each division will select its chief judge. Generally the judge of each 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 four judges, the chief judge shall assign the judges to panels. [Amd. Jan. 30, 1978, eff. Jan. 30, 1978; adop. July 2, 1969, eff. 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. [Rescinded Jan. 28, 1976, eff. July 1, 1976; adop. July 2, 1969, eff. July 11, 1969; amd. Sept. 3, 1969, eff. Sept. 12, 1969; amd. Nov. 29, 1971, eff. 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.

(b) Law Clerks and Secretaries. Each judge and chief judge is entitled to not less than one law clerk and one secretary. [Amd. Jan 30, 1978, adop. Jan. 30, 1978; adop. July 2, 1969, eff. 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 cases. (a) Generally. A judge of one division of the Court of Appeals may sit in any other division, and a case may be transferred from one division to another, as directed by written order of the Chief Justice of the Supreme Court.

(b) For Settlement Conferences. A judge or judge pro tempore of the Court of Appeals may be assigned to expedite the use of settlement conferences provided for under CAROA 64 as follows:

(1) Judge. A judge of one division of the Court of Appeals may sit in any other division as a settlement conference judge or to replace during argument and decision a judge of another division who has acted as a settlement conference judge, as directed by written order of the Chief Justice of the Supreme Court.

(2) Judge Pro Tempore. A retired judge of a court of record may sit in any division of the Court of Appeals as a settlement conference judge or to replace during argument and decision a judge who has acted as a settlement conference judge, as appointed by the Chief Justice of the Supreme Court. [Amended July 13, 1977, effective February 28, 1977; amended December 10, 1975, effective March 1, 1976; 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. Fiscal services for the court of appeals 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, with the advice and assistance of at least one judge from each of the divisions, 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 the 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. [Amd. Jan. 30, 1978, eff. Jan. 30, 1978; amd. Sept. 3, 1969, eff. Sept. 12, 1969; adop. July 2, 1969, eff. July 11, 1969.]

Rule 24 Procedure. [Rescinded Jan. 28, 1976, eff. July 1, 1976; adop. July 2, 1969, eff. 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.]

Part III
RULES ON APPEAL

Title of Rules	Abbreviation
Rules of Appellate Procedure	RAP

RULES OF APPELLATE PROCEDURE (RAP)

TITLE 1 Scope and purpose of rules.

Rule
1.1 Scope of rules.
1.2 Interpretation and waiver of rules by court.

TITLE 2 What trial court decisions may be reviewed——Scope of review.

Rule
2.1 Methods for seeking review of trial court decision——Generally.
2.2 Decisions of the superior court which may be appealed.
2.3 Decisions of the trial court which may be reviewed by discretionary review.
2.4 Scope of review of a trial court decision.
2.5 Circumstances which may affect scope of review.

TITLE 3 Parties.

Rule
3.1 Who may seek review.
3.2 Substitution of parties.
3.3 Consolidation of cases.
3.4 Title of case and designation of parties.

TITLE 4 Where to seek review of a trial court decision.

Rule
4.1 Review of trial court decision by the court of appeals.
4.2 Direct review of trial court decision by supreme court.
4.3 Transfer of cases by supreme court.

TITLE 5 How and when to initiate review of trial court decision: Court of appeals settlement procedure.

Rule
5.1 Review initiated by filing notice of appeal or notice for discretionary review.
5.2 Time allowed to file notice.
5.3 Content of notice——Filing.
5.4 Filing of notice and service by clerk.
5.5 Civil appeal statement and settlement conference in court of appeals.

TITLE 6 Acceptance of review.

Rule
6.1 Appeal as a matter of right.
6.2 Discretionary review.

TITLE 7 Authority of trial court and appellate court pending review.

Rule
7.1 Authority of trial court before review accepted.
7.2 Authority of trial court after review accepted.
7.3 Authority of appellate court.

TITLE 8 Supersedeas, injunctions, and other orders to insure effective review——Bonds.

Rule
8.1 Supersedeas in the trial court.
8.2 Release of defendant or juvenile during review.
8.3 Appellate court orders needed for effective review.
8.4 Bond with individual sureties——Justification——Objection.
8.5 State as obligee on bond.
8.6 Termination of supersedeas, injunctions, and other orders.

TITLE 9 Record on review.

Rule
9.1 Composition of record on review.
9.2 Verbatim report of proceedings.
9.3 Narrative report of proceedings.
9.4 Agreed report of proceedings.
9.5 Filing and service of report of proceedings——Objections.
9.6 Designation of clerk's papers and exhibits.
9.7 Preparing clerk's papers and exhibits for appellate court.
9.8 Transmitting record on review.
9.9 Correcting or supplementing report of proceedings before transmittal to appellate court.
9.10 Correcting or supplementing record after transmittal to appellate court.
9.11 Additional evidence on review.

TITLE 10 Briefs.

Rule
10.1 Briefs which may be filed.
10.2 Time for filing briefs.
10.3 Content of brief.
10.4 Preparation and filing of brief by party.
10.5 Reproduction and service of briefs by clerk.
10.6 Amicus curiae brief.
10.7 Submission of improper brief.
10.8 Additional authorities.

TITLE 11 Oral argument on merits.

Rule
11.1 Oral arguments to which title applies.
11.2 Who may present oral argument.
11.3 Date of argument.
11.4 Time allowed and order of argument.
11.5 Conduct of argument.
11.6 Submitting case without oral argument.

TITLE 12 Appellate court decision and procedure after decision.

Rule
12.1 Basis for decision.
12.2 Disposition on review.
12.3 Forms of decision.
12.4 Motion for reconsideration of decision terminating review.
12.5 Mandate.
12.6 Stay of mandate pending decision on application for review by Untied States supreme court.
12.7 Finality of decision.
12.8 Effect of reversal on intervening rights.
12.9 Recall of mandate.

TITLE 13 Review by the supreme court of court of appeals decision.

Rule
13.1 Methods of seeking review.
13.2 Decisions reviewed as a matter of right.
13.3 Decisions reviewed as a matter of discretion.
13.4 Discretionary review of decision terminating review.
13.5 Discretionary review of interlocutory decision.
13.6 Acceptance of review.
13.7 Proceedings after acceptance of review.

TITLE 14 Costs.

Rule
14.1 Costs generally.
14.2 Who is entitled to costs.
14.3 Expenses allowed as costs.
14.4 Cost bill.
14.5 Objections to cost bill.
14.6 Award of costs.

Order of Supreme Court adopting Rules of Appellate Procedure (RAP) and rescinding and amending certain prior rules:

Whereas, in May, 1972, a Task Force was organized by the Washington Judicial Council after consultation with the Board of Governors of the Washington State Bar Association, to draft proposed rules of court governing practice before the Supreme Court and Court of Appeals, and

Whereas, in February, 1974, after 21 months of study, drafting and review, the Washington Proposed Rules of Appellate Procedure were distributed to the members of the Washington Bench and Bar for comment, and

Whereas, after having received comments from the Washington Bench and Bar a revised version of the Washington Proposed Rules of Appellate Procedure were considered by the Washington Judicial Council on June 26 and 27, 1974 and again on September 26 and 27, 1974, and

Whereas, on November 10, 1974, the Washington Proposed Rules of Appellate Procedure as amended by the Judicial Council were submitted to the Supreme Court for approval, and

Whereas, on November 25 and 26, 1974, the Supreme Court met with members of the Appellate Rules Task Force to consider the Proposed Rules, and

Whereas, the Supreme Court, after considering the Proposed Rules on En Banc Conferences on February 26, 1975; April 7 and 8, 1975; July 23, 1975; November 19, 1975; and December 3, 1975, and

Whereas, the Court has determined that the Proposed Rules set forth in the attachment hereto provide a uniform procedure which will afford prompt determination of appellate cases on the merits, and

Whereas, the Court has determined that publication of the comments, references and index of the Task Force to the Rules will aid the Bench and Bar, and

Whereas, the forms set forth in the Appendix to these Rules are illustrative only; Now, therefore, It is hereby

ORDERED:

a. The Washington Rules of Appellate Procedure as set forth in the attachment hereto are adopted.

b. Supreme Court Administrative Rule 15 (SAR 15); Supreme Court Rules on Appeal I–1 through I–67 (ROA I–1 through ROA I–67); Supreme Court Rule on Appeal II–1 through II–4 (ROA II–1 through II–4); Court of Appeals Administrative Rules 15, 24 (CAR 15, 24); Court of Appeals Rules on Appeal 1 through 66 (CAROA 1 through 66); Superior Court Civil Rule 62 (c), (d), (e), (g) (CR 62 (c), (d), (e), (g)); Superior Court Criminal Rules 7.4(d)(2), 7.7 (CrR 7.4(d)(2), 7.7) are rescinded.

c. The General Rules are amended as set forth in the attachment hereto.

d. The Comments, References and Index to the Rules are solely those of the Advisory Task Force on Appellate Rules and are not adopted by the Court.

e. A person may use any form which substantially complies with these rules. The forms in the Appendix are only illustrative.

f. The Rules, Comments, References, Index and Appendix of Forms will be published expeditiously in the Washington Reports.

g. These Rules shall become effective on July 1, 1976; provided that the rules rescinded by this order will continue to apply to any case pending before the Supreme Court or the Court of Appeals on July 1, 1976; and provided further that Rules of Appellate Procedure 18.11 (RAP 18.11) shall be effective until February 28, 1977 or further order of the Court.

TITLE 1——SCOPE AND PURPOSE OF RULES

Rule 1.1 Scope of rules.

(a) Review of Trial Court Decision. These rules govern proceedings in the Supreme Court and the Court of Appeals for review of a trial court decision.

(b) Review of Decision of Court of Appeals. These rules also establish the procedure for seeking review of a decision of the Court of Appeals by the Supreme Court. Review of a decision of the Court of Appeals is governed by Title 13 of these rules.

(c) Special Proceedings. These rules also establish the procedure for original actions in the Supreme Court and the Court of Appeals and the procedure for determining

questions of law certified by a federal court, all called "special proceedings." Special proceedings are governed by Title 16 of these rules.

(d) Application to Both Appellate Courts. Each rule applies to proceedings both in the Supreme Court and in the Court of Appeals, unless a different application is indicated. Both the Supreme Court and the Court of Appeals are called "appellate court."

(e) Application to Civil and Criminal Proceedings and Juvenile Court Proceedings. Each rule applies to both civil and criminal proceedings, unless a different application is indicated. If different rules apply in civil and criminal proceedings, the criminal rule applies to review of a decision in a juvenile offense proceeding, and the civil rule applies to review of any other decision by a juvenile court.

(f) Action of Appellate Court. The appellate court clerk and commissioner are given authority by these rules to make some decisions, called rulings. An act performed on the authority of these rules is action taken by the appellate court whether that act is performed by the clerk or a commissioner or by the judges of the Supreme Court of the Court of Appeals.

(g) Superseding Effect of Rules. These rules supersede all statutes and rules covering procedure in the Supreme Court and the Court of Appeals, unless one of these rules specifically indicates to the contrary.

(h) Effect of Subsequent Legislation. If a statute in conflict with a rule is enacted after these rules become effective and that statute does not supersede the conflicting rule by direct reference to the rule by number, the rule applies unless the rule specifically indicates that statutes control. If a statute in conflict with a rule is enacted after these rules become effective and that statute does supersede the conflicting rule by direct reference to the rule by number, the statute applies until such time as the rule may be amended or changed by the Supreme Court through exercise of its rule making power. [Amd. July 18, 1978, eff. July 1, 1978; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:

Rule 18.22, Statutes and Rules Superseded.

Comment: The Rules of Appellate Procedure are a complete revision of the rules for procedure in Washington's appellate courts. Unless a specific rule indicates that a different application is intended, the rules govern all actions in both the Supreme Court and the Court of Appeals, in both civil and criminal cases.

The rules supersede the Supreme Court Rules on Appeal, the Court of Appeals Rules on Appeal, SAR 15, CAR 15 and 24, CrR 7.7, and parts of CR 62. They also supersede numerous statutes relating to appellate procedure. Particular rules, however, expressly defer to any statute on the subject. Rule 5.2, for example, requires that a notice of appeal be filed within the time established by statute in a particular kind of case.

Under the former rules it was not clear which statutes were superseded and which were not. Compare *Taylor v. Greenler*, 54 Wn.2d 682, 344 P.2d 515 (1959).

Rule 1.2 Interpretation and waiver of rules by court.

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in Rule 18.8(b).

(b) Words of Command. Unless the context of the rule indicates otherwise: "Should" is used when referring to an act a party or counsel for a party is under an obligation to perform. The court will ordinarily impose sanctions if the act is not done within the time or in the manner specified. The word "must" is used in place of "should" if extending the time within which the act must be done is subject to the severe test under Rule 18.8(b) or to emphasize failure to perform the act in a timely way may result in more severe than usual sanctions. The word "will" or "may" is used when referring to an act of the appellate court. The word "shall" is used when referring to an act that is to be done by an entity other than the appellate court, a party, or council for a party.

(c) Waiver. The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in Rule 18.8(b) and (c). [Adopted January 28, 1976, effective July 1, 1976.]

References: Rule 18.8, Waiver of Rules and Extension and Reduction of Time, (b) Restriction on extension of time, (c) Restriction on changing decision.

Rule 18.9, Violation of Rules.

Comment: (a) *Interpretation.* Noncompliance with the rules will ordinarily not prevent a decision on the merits. Prior cases to the contrary are superseded. Compare *Hill v. Tacoma*, 40 Wn.2d 718, 246 P.2d 458 (1952); *Glass v. Windsor Navigation Co.*, 81 Wn.2d 726, 504 P.2d 1135 (1973).

The rule reflects the recent cases in which the court has disregarded technical violations of the rules to reach the merits. See *King County Republican Cent. Comm. v. Republican State Comm.*, 79 Wn.2d 202, 484 P.2d 387 (1971), and *Beritich v. Starlet Corp.*, 69 Wn.2d 454, 418 P.2d 762 (1966), where the Supreme Court stated:

> The hallmark of procedural reform is the conviction that rules of pleading, practice, and procedure are to be drafted, adopted, and interpreted to the end that the merits of a controversy are the ultimate determinates——instead of the procedural jousting which unfortunately characterized common law actions.

Federal law is generally in accord with Rule 1.2. 9 Morre, *Federal Practice* 534–35; *Foman v. Davis*, 371 U.S. 178 (1962).

(c) *Waiver.* Section (c) makes clear the power of the courts to expedite or delay the determination of cases by prescribing a time schedule other than that provided by the rules. The rule also establishes a court policy to waive or alter the rules where injustice would otherwise result. See *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969).

TITLE 2——WHAT TRIAL COURT DECISIONS MAY BE REVIEWED——SCOPE OF REVIEW

Rules

Rule 2.1 Methods for seeking review of trial court decision——Generally.

(a) Two Methods for Seeking Review of Trial Court Decisions. The only methods for seeking review of decisions of the superior court by the Court of Appeals and by the Supreme Court are the two methods provided by these rules. The two methods are:

(1) Review as a matter of right, called "appeal"; and

(2) Review by permission of the reviewing court, called "discretionary review."

Both "appeal" and "discretionary review" are called "review." The term "decision" refers to rulings, orders, and judgments of the trial court, or the appellate court, as the context indicates.

(b) Writ Procedure Superseded. The procedure for seeking review of trial court decisions established by these rules supersedes the review procedure formerly available by extraordinary writs of review, certiorari, mandamus, prohibition, and other writs formerly considered necessary and proper to the complete exercise of appellate and revisory jurisdiction of the Supreme Court and the Court of Appeals. Original writs in the appellate court are not superseded and are governed by Title 16. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References: Rule 16.2, Original Action Against State Officer.
Rules 16.3–16.15, Personal Restraint Petition. Const. Art. 4 § 4.

Comment: (a) *Two Methods for Seeking Review of Trial Court Decisions.* Section (a) establishes the forms of review and other terminology used throughout the rules.

(b) *Writ Procedure Superseded.* Section (b) supersedes the various extraordinary writs as procedural mechanisms. Review by way of extraordinary writ under the former rules has been the most confusing of all the appellate procedures, and precedent for almost any arguable position can be found. Feigenbaum, *Interlocutory Appellate Review Via Extraordinary Writ*, 36 Wash. L. Rev. 1 (1961).

Rule 2.1 simplifies and clarifies review of nonappealable orders or judgments by establishing a single method of seeking review by permission of the appellate court, called *discretionary review.* Once discretionary review is granted, the remaining procedure is the same as in an ordinary appeal. See Rule 6.2. Similar systems are found in Alaska and Vermont.

RCW 8.04.070, 19.10.110, 29.79.170, 29.79.210, 43.24.120 and similar statutes restricting review as a matter of right are superseded as they relate to the procedure for review of trial court decisions. Whether review is by appeal or discretionary review is now governed by Rules 2.2 and 2.3.

Rule 2.2 Decisions of the superior court which may be appealed.

(a) Generally. Except as provided in section (b), a party may appeal from only the following superior court decisions:

(1) *Final Judgment.* The final judgment entered in any action or proceeding, except a final decree of adoption.

(2) *Interlocutory Decree of Adoption.* An interlocutory decree of adoption.

(3) *Decision Determining Action.* Any written decision affecting a substantial right in a civil case which in effect determines the action and prevents a final judgment or discontinues the action.

(4) *Order of Public Use and Necessity.* An order of public use and necessity in a condemnation case.

(5) *Juvenile Court Disposition.* The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) *Deprivation of All Parental Rights.* A decision depriving a person of all parental rights with respect to a child.

(7) *Order of Incompetency.* A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.

(8) *Order of Commitment.* A decision ordering commitment, entered after a sanity hearing.

(9) *Order on Motion for New Trial or Amendment of Judgment.* An order granting or denying a motion for new trial or amendment of judgment.

(10) *Order on Motion for Vacation of Judgment.* An order granting or denying a motion to vacate a judgment.

(11) *Order on Motion for Arrest of Judgment.* An order arresting or denying arrest of a judgment in a criminal case.

(12) *Order Denying Motion To Vacate Order of Arrest of a Person.* An order denying a motion to vacate an order of arrest of a person in a civil case.

(13) *Final Order After Judgment.* Any final order made after judgment which affects a substantial right.

(b) Appeal by State or a Local Government in Criminal Case. The State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) *Final Decision, Except Not Guilty.* A decision which in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information.

(2) *Pretrial Order Suppressing Evidence.* A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) *Arrest or Vacation of Judgment.* An order arresting or vacating a judgment.

(4) *New Trial.* An order granting a new trial.

(5) *Disposition in Juvenile Offense Proceeding.* A disposition in a juvenile offense proceeding which is outside the standard range of disposition for the offense.

(c) Multiple Parties of Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment which does not dispose of all of the claims or counts as to all of the parties, but only after an express direction by the trial court for entry of judgment and a written finding that there is no

just reason for delay. The finding may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required finding. In the absence of the required finding, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties. [Amd. July 18, 1978, eff. July 1, 1978; adop. Jan. 28, 1976, eff. July 1, 1976.]

Comment: The rule sets forth the decisions which may be appealed as a matter of right. Except as discussed in this comment, Rule 2.2 conforms to established practice. See Orland, 3 Wash. Prac. (2d) p. 189 *et seq.*

Various statutes appear to limit review of superior court decisions to certiorari in particular kinds of cases. The court has held that this sort of statute precludes an appeal as a matter of right. *Berman v. Urquhart*, 48 Wn.2d 85, 291 P.2d 655 (1955). The statutes which limit review to review by certiorari are superseded by these rules. One statutory order, the order of public use and necessity, would be appealable under Rule 2.2 because the rule expressly so states. Others, such as those provided by RCW 19.10.110, 29.79.170, 29.79.210, and 43.24-.120, are left to judicial interpretation in particular factual situations. For example, if a judgment or order entered pursuant to RCW 19.10-.110 fell within the scope of Rule 2.2, it would be appealable as a matter of right. If not, it would be subject only to discretionary review.

(a)(1) *Final Judgment.* A decree of adoption is interlocutory and does not become a final judgment until six months later. RCW 26.32-.120, 26.32.130. In order to minimize disruption of the family, however, an appeal must be taken within thirty days after entry of the interlocutory decree. See Rule 2.2(a)(2). No appeal from the final judgment is permitted.

(a)(2) *Interlocutory Decree of Adoption.* An appeal is allowed from an interlocutory decree of adoption. See comment 2.2(a)(1).

(a)(3) *Decision Determining Action.* By statute, certain orders are "final" for the purpose of seeking review, e.g., RCW 7.20.140, 11.52-.016, 11.52.020, 11.52.022, 30.30.090, 26.32.120, 26.32.130, 33.40.120. The rule supersedes these and similar statutes as they relate to the appropriate method of appellate review. Individual orders, however, would still be appealable if they fell within the scope of Rule 2.2.

(a)(4) *Order of Public Use and Necessity.* Most orders of public use and necessity have been subject to review only by extraordinary writ. See CAROA 57(b)(4); RCW 8.04.070; *Taylor v. Greenler*, 54 Wn.2d 682, 344 P.2d 515 (1959). Current practice, however, is to uniformly accept review of the order. Rule 2.2 makes the order appealable as a matter of right, eliminating the necessity of seeking permission to obtain review.

(a)(5) *Determination of Dependency or Delinquency.* Decisions in juvenile court have traditionally been reviewable only by extraordinary writ. See CAROA 57(b)(3); *In re King*, 39 Wn.2d 875, 239 P.2d 553 (1952). Current practice, however, is to uniformly accept review of most juvenile court decisions. Rule 2.2 makes orders of dependency and delinquency appealable as a matter of right, eliminating the necessity of seeking permission to obtain review. All other juvenile court decisions would be subject to appeal if the decision fits within one of the classifications in this rule; otherwise, the decision would be subject to discretionary review.

(a)(6) *Deprivation of All Parental Rights.* An appeal is allowed from an order depriving a person of all parental rights because of its fundamental impact upon the parties.

(a)(7) *Order of Incompetency.* An appeal is allowed because of the order's fundamental impact on the person affected by the decision.

(a)(8) *Order of Commitment.* An appeal is allowed because of the order's fundamental impact on the person affected by the decision.

(a)(9) *Order on Motion for New Trial or Amendment of Judgment.* The lack of an appeal from an order denying a new trial has been a pitfall for inexperienced counsel who attempt to exhaust the remedies provided by the civil or criminal rules before seeking appellate review. See *In re King*, 39 Wn.2d 875, 239 P.2d 553 (1952). Rule 2.2 avoids this problem by permitting an appeal from an order granting or denying a new trial. See also comment 2.4(c).

(a)(10) *Order on Motion for Vacation of Judgment.* Under the old rules, the appealability of orders vacating or refusing to vacate judgment has been unclear. With respect to the denial of a motion to vacate judgment, compare *Smith v. Stiles*, 68 Wash. 345, 123 P. 448 (1912) with *Sound Inv. Co. v. Fairhaven Land Co.*, 45 Wash. 262, 88 P. 198 (1907). With respect to the granting of a motion to vacate judgment, compare *Fairley v. Durkee's Famous Foods, Inc.*, 178 Wash. 141, 33 P.2d 1073 (1934) and *Marie's Blue Cheese v. Andre's Better Foods*, 68 Wn.2d 756, 415 P.2d 501 (1966) with *Sengfleder v. Powell–Sanders Co.*, 40 Wash. 686, 82 P. 931 (1905) and *Brandtjen & Kluge, Inc. v. Nanson*, 9 Wn.2d 362, 115 P.2d 731 (1941). Under these rules, both an order vacating and refusing to vacate a judgment are appealable.

(a)(11) *Order on Motion for Arrest of Judgment.* Traditionally, the State has been permitted to appeal from an order arresting judgment, but no comparable appeal is allowed the defendant from an order refusing to arrest judgment. See CAROA 14(8)(3). Rule 2.2 permits a comparable appeal by the defendant.

(a)(12) *Order Denying Motion to Vacate Order of Arrest of a Person.* The rule refers to a refusal to vacate the order of arrest for contempt of court contemplated by RCW 7.20.040.

Prior rules have permitted review as a matter of right from certain additional decisions. The Task Force, however, has determined that review of these orders should more appropriately be discretionary. Accordingly, the following orders are omitted from Rule 2.2(a):

CAROA 14(3): An order granting or denying a motion for temporary injunction, heard upon notice to the adverse party, and any order vacating or refusing to vacate 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;

CAROA 14(4): An order discharging or refusing to discharge an attachment;

CAROA 14(5): An order appointing or removing, or refusing to appoint or remove, a receiver;

CAROA 14(6): An order affecting a substantial right in a civil action or proceeding, which . . . (4) sets aside or refuses to affirm an award of arbitrators, or refers the cause back to them.

(b) *Appeal by State or a Local Government in Criminal Case.*

(b)(1) *Final Decisions Except Not Guilty.* Prior law is retained. See CAROA 14(8)(1), 14(8)(5). The phrase "demurrer to an indictment or information" (CAROA 14(8)(2)) has been restated as "Any decision . . quashing, or dismissing an indictment or information." The term "demurrer" is inappropriate under the Superior Court Criminal Rules. See CrR 8.3.

(b)(2) *Order Suppressing Evidence.* The new rules permit the State to appeal from a pretrial order suppressing evidence if the trial court finds that the practical effect of the pretrial order is to terminate the case. This policy is suggested by federal practice where an appeal is permitted with certain restrictions and is recommended by the President's Commission on Law Enforcement and Administration and the American Bar Association. See 18 U.S.C. § 3731; "The Challenge of Crime in a Free Society——A Report by the President's Commission on Law Enforcement and Administration of Justice," p. 140 (February 1967); "American Bar Association Project on Minimum Standards Relating to Criminal Appeals," § 1.4 (March 1969).

(b)(3) *Arrest or Vacation of Judgment.* The terms *arrest of judgment* and *vacation of judgment* are used interchangeably in the Superior Court Criminal Rules.

(b)(4) *New Trial.* The old rules authorized the State to appeal from the granting of a new trial only in jury cases. CAROA 14(8)(4). There is no reason to limit the rule to jury trials. Accordingly, the rule permits a state's appeal from all orders granting a new trial.

Rule 2.2(b) is intended to avoid constitutional problems of double jeopardy. See *State v. Brunn*, 22 Wn.2d 120, 154 P.2d 826, 157 A.L.R. 1049 (1945). A state's appeal would not be accepted if it would place the defendant in double jeopardy. *State v. Ridgley*, 70 Wn.2d 555, 424 P.2d 632 (1967).

(c) *Multiple Parties or Multiple Claims or Counts.* The rule is a companion to CR 54(b) and clarifies the appealability of a judgment entered pursuant to that rule. The rule departs from CR 54(b) in two respects. First, it is applicable to both civil and criminal cases. Second, for purposes of an appeal, the required finding may be entered after the entry of judgment. See *Schiffman v. Hanson Excavating Co.*, 82 Wn.2d 681, 513 P.2d 29 (1973), which suggests that the finding may be entered after the judgment under the old rules.

To be distinguished is a partial summary judgment on the issue of liability alone pursuant to CR 56(c), from which no appeal is permitted. *Gazin v. Hieber*, 8 Wn. App. 104, 504 P.2d 1178 (1972).

Rule 2.3 Decisions of the trial court which may be reviewed by discretionary review.

(a) Decision of Superior Court. A party may seek discretionary review of any act of the superior court not appealable as a matter of right.

(b) Considerations Governing Acceptance of Review. Discretionary review will be accepted only:

(1) If the superior court has committed an obvious error which would render further proceedings useless, or

(2) If the superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act, or

(3) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court.

(c) Effect of Denial of Discretionary Review. The denial of discretionary review of a decision does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: *Generally.* The rule represents a new procedure for seeking review of decisions which are not appealable. The various extraordinary writs are consolidated into a single action called *discretionary review*. See generally comment 2.2.

(a) *Decision of Superior Court.* Section (a) states the general rule that discretionary review is the appropriate remedy when an appeal as a matter of right is unavailable.

(b) *Considerations Governing Acceptance of Review.* Section (b) sets forth criteria by which discretionary review is granted or denied. Subsection (b)(1) states the general test established by decisional law. See *Oliver v. American Motors Corp.*, 70 Wn.2d 875, 425 P.2d 647 (1967) and *State v. Harris*, 2 Wn. App. 272, 469 P.2d 937 (1970). Subsection (b)(2) provides that when the status quo or the freedom of a party to act is substantially affected, the less restrictive *probable error* test applies. The subsection applies primarily to orders pertaining to injunctions, attachments, receivers, and arbitration, which have formerly been appealable as a matter of right. CAROA 14. Subsection (b)(3) governs the relatively unusual case calling for the exercise of revisory jurisdiction. See Const. Art. 4 § 4; RCW 2.04.010.

No attempt is made to list certain types of cases in which review is uniformly accepted. Compare CAROA 57(b). The prior practice of granting or denying review according to the nature of the case generated a confusing body of decisional law and has been abandoned by the courts in recent years. Compare Feigenbaum, *Interlocutory Appellate Review via Extraordinary Writ*, 36 Wash. L. Rev. 1 (1961), with *Oliver v. American Motors Corp.*, 70 Wn.2d 875, 425 P.2d 647 (1967) and *State v. Harris*, 2 Wn. App. 272, 469 P.2d 937 (1970).

Rule 2.4 Scope of review of a trial court decision.

(a) Generally. The appellate court will, at the instance of appellant, review the decision or parts of the decision designated in the notice of appeal or notice for discretionary review and other decisions in the case as provided in sections (b), (c), (d), and (e). The appellate court will, at the instance of the respondent, review those acts in the proceeding below which if repeated on remand would constitute error prejudicial to respondent. The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice for discretionary review, or (2) if demanded by the necessities of the case.

(b) Order or Ruling Not Designated in Notice. The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review.

(c) Final Judgment Not Designated in Notice. The appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely post–trial motion based on (1) CR 59 [Reconsideration, New Trial and Amendment of Judgments], (2) CrR 7.4 [Arrest of Judgment], or (3) CrR 7.6 [New Trial].

(d) Order Deciding Alternative Post–Trial Motions in Civil Case. An appeal from the judgment granted on a motion for judgment notwithstanding the verdict brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the judgment notwithstanding the verdict, the appellate court will review the ruling on the motion for a new trial.

(e) Order Deciding Alternative Post–Trial Motions in Criminal Case. An appeal from an order granting a motion in arrest of judgment brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the order granting the motion in arrest of judgment, the appellate court will review the ruling on a motion for new trial. [Adopted January 28, 1976, effective July 1, 1976.]

References:

Rule 5.2, Time Allowed To File Notice, (f) Subsequent notice by other parties.

Comment: (a) *Generally.* Section (a) states the general rule that the appellate court begins by reviewing the decisions designated in the notice of appeal or notice for discretionary review. The rule clarifies the established policy of requiring the respondent to file notice in order to seek affirmative relief in the appellate court. See *Waagen v. Gerde*, 36 Wn.2d 563, 219 P.2d 595 (1950); *Fraser v. Monroe*, 1 Wn. App. 14, 459 P.2d 64 (1969). *Cf. Leland v. Frogge*, 71 Wn.2d 197, 427 P.2d 724 (1967). The remaining sections set forth the extent to which decisions not designated in the notice may be reviewed.

(b) *Order or Ruling Not Designated in Notice.* Generally, the appellate court considers the entire proceeding below and may review any decision prejudicially affecting the decision designated in the notice. A pitfall under prior rules has been that the failure to appeal an appealable order may prevent its review upon appeal from final judgment. *In re Estate of Kruse*, 52 Wn.2d 342, 324 P.2d 1088 (1958). What is an appealable order is not always clear. The rule solves the problem by including prior appealable orders within the scope of review. A number of other states are in accord. 79 A.L.R.2d 1352 (1961).

Section (b) applies only to orders entered, or rulings made, prior to acceptance of review. *Acceptance of review* is defined in Rules 6.1 and 6.2. The procedure for seeking review of decisions entered after acceptance of review is to initiate a separate review. See Rule 5.1(e).

(c) *Final Judgment Not Designated in Notice.* Under prior law an appeal from the decision on a timely filed motion for new trial, arrest of judgment, or amendment of judgment did not bring the final judgment up for review. CAROA 14(7); *Nestegard v. Investment Exch.*, 5 Wn. App. 618, 489 P.2d 1142 (1971). Rule 2.4(c) eliminates this pitfall if the motion is timely and is brought under CR 59, or CrR 7.4 or 7.6.

(d) *Order Deciding Alternative Post-Trial Motions in Civil Case.* Section (d) conforms to established practice. See ROA I-16; CAROA 16; CR 50.

(e) *Order Deciding Alternative Post-Trial Motions in Criminal Case.* The substance of the preceding section is made applicable to criminal cases by rewording it in language consistent with the Superior Court Criminal Rules.

Rule 2.5 Circumstances which may affect scope of review.

(a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction.

(b) Acceptance of Benefits.

(1) *Decision Subject to Modification.* A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2).

(2) *Other Decisions——Security.* If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of the decision without losing the right to obtain review of that decision. The trial court making the decision shall fix the amount and type of security to be given by the party accepting the benefits.

(3) Conflict With Statutes. In the event of any conflict between this section and a statute, the statute governs.

(c) Law of the Case Doctrine Restricted. The following provisions apply if the same case is again before the appellate court following a remand:

(1) *Prior Trial Court Action.* If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the trial court even though a similar decision was not disputed in an earlier review of the same case.

(2) *Prior Appellate Court Decision.* The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (a) *Errors Raised for the First Time on Review.* The rule states the general rule that the court reviews only issues which the record shows have been argued and decided at the trial level. *State v. Davis*, 41 Wn.2d 535, 250 P.2d 548 (1952). The rule then states the exceptions to the general rule. Exceptions (1), (2), and the last sentence in section (a) have previously been found in ROA I-43 and RCW 4.32.290 [4.32.190]. Exception (2) uses the phrase "failure to establish facts" rather than the traditional "failure to state a claim." The former phrase more accurately expresses the meaning of the rule in modern practice. Exception (3) is intended to encompass developing case law. Thus, certain constitutional questions can be raised for the first time on review. See, e.g., *State v. Myers*, 6 Wn. App. 557, 494 P.2d 1015 (1972); *State v. Van Auken*, 77 Wn.2d 136, 460 P.2d 277 (1969).

These rules do not supersede court rules which define the means by which an error must be preserved in the trial court, such as CR 43, 46, and 51. RCW 4.80.050, as it relates to appellate procedure and the scope of appellate review, is superseded.

(b) *Acceptance of Benefits.* By decisional law, a party loses the right to review by accepting the benefits of the decision, subject to certain exceptions for cases of coercion or extreme hardship, e.g., *Maxham v. Berne*, 88 Wash. 158, 152 P. 673 (1915). See generally 169 A.L.R. 985 (1947). Subsections (1) and (2) modify existing decisional law, but not statutory law.

(b)(1) *Decision Subject to Modification.* Subsection (b)(1) abrogates the acceptance of benefits rule for decisions in cases which are continuous in nature and subject to modification. The purpose of Rule 2.5(b)(1) is to fully implement the various statutes recognizing the necessity of immediate relief. Examples fall primarily within the law of domestic relations. See, e.g., *Bennett v. Bennett*, 63 Wn.2d 404, 387 P.2d 517 (1963); RCW Ch. 26.09. Under these rules, a spouse may accept maintenance and support while seeking review of the amount awarded. Prior law to the contrary is superseded. Compare *Potter v. Potter*, 46, Wn.2d 526, 282 P.2d 1052 (1955).

(b)(2) *Other Decisions——Security.* Subsection (b)(2) is suggested by D. Mehrens, *Waiver of Right to Appeal*, 39 Neb. L. Rev. 739 (1960). There appears to be no justification for applying the acceptance of benefits rule if the party seeking review gives adequate security to make restitution in case the decision is reversed or modified.

(b)(3) *Conflict With Statutes.* The acceptance of benefits doctrine is found in several statutes, particularly in the area of eminent domain, e.g., RCW 37.16.130, 91.04.360, and 91.08.250. The statutes prevail over inconsistent portions of Rule 2.5(b).

(c) *Law of the Case Doctrine Restricted.* The term "law of the case" is used in various senses. See Note, 2 Gonz L. Rev. 105 (1967).

Subsection (c)(1) restricts the doctrine as it relates to trial court decisions after the case is remanded by the appellate court. The trial court may exercise independent judgment as to decisions to which error was not assigned in the prior review, and these decisions are subject to later review by the appellate court. Prior law to the contrary is superseded. Compare *Adamson v. Traylor*, 66 Wn.2d 338, 402 P.2d 499 (1965).

To be distinguished is a case which is reviewed by the Court of Appeals and then, without an intervening remand, by the Supreme Court. The scope of review in this situation is governed by Rule 13.7.

TITLE 3——PARTIES

Rule

Rule 3.1 Who may seek review. Only an aggrieved party may seek review by the appellate court. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Generally, only an aggrieved party may seek review. The doctrine applies equally to appeals as a matter of right and to discretionary review (review by extraordinary writ under previous rules). *State ex. rel. Simeon v. Superior Court*, 20 Wn.2d 88, 145 P.2d 1017 (1944); *Temple v. Feeney*, 7 Wn. App. 345, 499 P.2d 1272 (1972). A person may be an aggrieved party even though that person was not a party to the proceedings below. For example, a complainant mother may be an aggrieved party in a filiation proceeding brought in the name of the State, as in *State v. Casey*, 7 Wn. App. 923, 503 P.2d 1123 (1972).

Rule 3.2 Substitution of parties.

(a) Substitution Generally. The appellate court will substitute parties to a review when it appears that a party is deceased or legally incompetent or that the interest of a party in the subject matter of the review has been transferred.

(b) Duty To Move for Substitution. A party with knowledge of the death or declared legal disability of a party to review, or knowledge of the transfer of a party's interest in the subject matter of the review, shall promptly move for substitution of parties. The motion and all other documents must be served on all parties and on the personal representative or successor in interest of a party, within the time and in the manner provided for service on a party. If a party fails to promptly move for substitution, the personal representative of a deceased of legally disabled party, or the successor in interest of a party, should promptly move for substitution of parties.

(c) Where To Make Motion. The motion to substitute parties must be made in the appellate court if the motion is made after review is accepted. In other cases, the motion should be made in the trial court.

(d) Procedure Pending Substitution. A party, a successor in interest of a party, a personal representative of a deceased or legally disabled party, or an attorney of record for a deceased or legally disabled party who has no personal representative, may without waiting for substitution file (1) a notice of appeal, (2) a notice for discretionary review, (3) a motion for reconsideration, (4) a petition for review, and (5) a motion for discretionary review of a decision of a trial court or of the Court of Appeals.

(e) Time Limits. The time reasonably necessary to accomplish substitution of parties is excluded from computations of time made to determine whether the following have been timely filed: (1) a notice of appeal, (2) a notice for discretionary review, (3) a motion for reconsideration, (4) a petition for review, and (5) a motion for discretionary review of a decision of a trial court or the Court of Appeals.

(f) Public Officer. If a public officer is a party to a proceeding in the appellate court and during its pendency dies, resigns, or otherwise ceases to hold office, a party or the new public officer may move for substitution of the successor as provided in this rule. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (a) *Substitution Generally.* Previous rules have spoken only in terms of substitution upon the death of a party. However, RCW 4.20.050 has been construed to permit substitution of parties on appeal for reasons other than death. *Baker v. Northwest Bldg. & Inv. Co.*, 33 Wash. 677, 74 P. 825 (1903) (conveyance of affected property); *Wright v. Seattle Groc. Co.*, 101 Wash. 266, 172 P. 345 (1918) (assignment of judgment). Rule 3.2 broadens the scope of substitution accordingly.

(b) *Duty To Move for Substitution.* Section (b) creates a duty to move for substitution in certain enumerated circumstances. Decisional law suggests that a proper decision may depend upon the courts' knowledge of a substitution of parties. See, e.g., *Malo v. Anderson*, 76 Wn.2d 1, 454 P.2d 828 (1969).

(f) *Public Officer.* The Task Force rejected the federal practice of automatically substituting successors in public office. See FRAP 43. In some cases, a public officer may have liability in an official *and* a personal capacity, and liability may not be clear in a particular case. Accordingly, section (f) requires that public officers be substituted by motion.

Rule 3.3 Consolidation of cases.

(a) Cases Consolidated in Trial Court. If two or more cases have been consolidated for trial by order of the trial court, the cases remain consolidated for the purpose of review unless the appellate court otherwise directs.

(b) Cases Consolidated in Appellate Court. The appellate court, on its own initiative or on motion of a party, may order the consolidation of cases or the separation of cases for the purpose of review. A party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases. If two or more cases have been consolidated for review in the Court of Appeals, the cases remain consolidated for review in the Supreme Court unless the Supreme Court otherwise directs. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (a) *Cases Consolidated in Trial Court.* Cases consolidated at trial remain consolidated on review unless the appellate court orders to the contrary.

(b) *Cases Consolidated in Appellate Court.* Section (b) gives the appellate court discretion to consolidate cases not consolidated at trial. The rule makes it the duty of a party to move for consolidation when consolidation appears to be indicated for reasons of economy and efficiency.

Rule 3.4 Title of case and designation of parties.

The title of a case in the appellate court is the same as in the trial court except that the party seeking review by appeal is called an "appellant," the party seeking review by discretionary review is called a "petitioner," and an adverse party on review is called a "respondent." [Adopted January 28, 1976, effective July 1, 1976.]

Comment: This rule is limited to what a party is called in the title of a case on review. Rule 10.4(e) discourages references in briefs to a party by such designations as "appellant" or "respondent."

TITLE 4——WHERE TO SEEK REVIEW OF A TRIAL COURT DECISION

Rule

Rule 4.1 Review of trial court decision by the court of appeals.

(a) Decisions Reviewed by Court of Appeals. A party may seek review in the Court of Appeals of any trial court decision which is subject to review as provided in Title 2.

(b) Division of Court of Appeals.

(1) *Division I.* A party must seek review in Division I of the Court of Appeals of a decision by a trial court located in any of the following counties: Island, King, San Juan, Skagit, Snohomish, or Whatcom.

(2) *Division II.* A party must seek review in Division II of the Court of Appeals of a decision by a trial court located in any of the following counties: Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, or Wahkiakum.

(3) *Division III.* A party must seek review in Division III of the Court of Appeals of a decision by a trial court located in any of the following counties: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, or Yakima. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (a) *Decisions Reviewed by Court of Appeals.* Current practice is retained. A party may seek Court of Appeals review of any case——even a case which is subject to direct review by the Supreme Court.

(b) *Division of Court of Appeals.* The statutes do not require that a case be heard in a particular court of appeals. As a matter of practice, the courts have accepted cases according to the geographical provisions of RCW 2.06.020. The rule incorporates this practice.

Rule 4.2 Direct review of trial court decision by supreme court.

(a) Types of Cases Reviewed Directly. A party may seek review in the Supreme Court of a decision of a trial court which is subject to review as provided in Title 2 only in the following types of cases:

(1) *Authorized by Statute.* A case in which a statute authorizes direct review in the Supreme Court.

(2) *Law Unconstitutional.* A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.

(3) *Conflicting Decisions.* A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(4) *Public Issues.* A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) *Action Against State Officer.* An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus.

(6) *Death Penalty.* A case in which the death penalty has been decreed.

(b) Statement of Grounds for Direct Review. A party seeking direct review of a trial court decision in the Supreme Court must file a short written statement with the Supreme Court indicating (1) the grounds upon which the party contends direct review should be granted, and (2) whether the case is one which the Supreme Court would probably review if decided by the Court of Appeals in the first instance. In an appeal, the party must file the statement on or before the filing of the party's opening brief. In a proceeding for discretionary review, the party must file the statement with the motion.

(c) Effect of Denial of Direct Review. If the Supreme Court denies direct review of a proceeding the case will be transferred without prejudice and without costs to the Court of Appeals for determination. The Supreme Court may transfer to the Court of Appeals for determination a motion filed in the Supreme Court for discretionary review of a trial court decision. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 4, Statement of Grounds for Direct Review.

Comment: (a) *Types of Cases Reviewed Directly.* Rule 4.2 sets forth the types of cases which may be reviewed by the Supreme Court without an intermediate review by the Court of Appeals. The rule conforms to established practice. ROA I–14. In civil cases, the amount in controversy must be at least two hundred dollars, subject to several qualifications and exceptions. Const. Art. 4 § 4; Orland, 3 Wash. Prac. (2d) 171–174 (1968).

RCW 43.21B.190 expressly permits certain decisions to be appealed directly to the Supreme Court. The rules give deference to this statute and to other similar statutes providing for direct review which may be enacted in the future.

(b) *Statement of Grounds for Direct Review.* The written argument required by Rule 4.2(b) is filed separately from the party's brief. Prior practice has been to include the argument within the brief. A separate document is more convenient for the court.

(c) *Effect of Denial of Direct Review.* Current practice is, on transfer, to set the case for oral argument at the same time it would have been set if filed originally in the Court of Appeals.

Rule 4.3 Transfer of cases by supreme court. The Supreme Court, to promote the orderly administration of justice may, on its own initiative or on motion of a party, transfer a case from the Court of Appeals to the Supreme Court or from one division to another division of the Court of Appeals. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule is a change from prior practice in that the motion procedure is expressly made available to request a transfer.

RCW 2.06.030 authorizes the Court of Appeals to certify a jurisdictional determination to the Supreme Court whenever a majority of the Court of Appeals "is in doubt" as to the proper reviewing court. This is an administrative provision, and it is not superseded by these rules.

TITLE 5——HOW AND WHEN TO INITIATE REVIEW OF TRIAL COURT DECISION: COURT OF APPEALS SETTLEMENT PROCEDURE

Rule

Rule 5.1 Review initiated by filing notice of appeal or notice for discretionary review.

(a) Review Initiated by Notice. A party seeking review of a trial court decision reviewable as a matter of right must file a notice of appeal. A party seeking review of a trial court decision subject to discretionary review must file a notice for discretionary review. Each notice must be filed with the trial court within the time provided by Rule 5.2.

(b) Filing Fee. The first party to file a notice of appeal or a notice for discretionary review must, at the time the notice is filed, pay the statutory filing fee to the clerk of the superior court in which the notice is filed.

(c) Incorrectly Designated Notice. A notice for discretionary review of a decision which is appealable will be given the same effect as a notice of appeal. A notice of appeal of a decision which is not appealable will be given the same effect as a notice for discretionary review.

(d) Cross Review. Cross review means review initiated by a party already a respondent in an appeal or a discretionary review. A party seeking cross review must file a notice of appeal or a notice for discretionary review within the time allowed by Rule 5.2(f).

(e) Final Judgment Entered After Notice for Discretionary Review Has Been Filed. If a final judgment is entered after a notice for discretionary review is filed, a party seeking review of the final judgment must file a notice of appeal from the judgment within the time provided by Rule 5.2.

(f) Order Entered After Review Accepted. If a party wants to seek review of a trial court decision entered pursuant to Rule 7.2 after review in the same case has been accepted by the appellate court, the party must initiate a separate review of the decision by timely filing a notice of appeal or notice for discretionary review, except as provided by Rules 7.2(i), 8.1(d) and 8.2(b). [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References:

Rule 2.2, Decisions of the Superior Court which may be appealed; Rule 2.3, Decisions of Trial Court which may be Reviewed by Discretionary Review; Rule 7.2, Authority of Trial Court After Review Accepted.

RCW 2.32.070, Fees——Supreme Court Clerk, Clerks of Court of Appeals.

Comment: (a) *Review Initiated by Notice.* An appeal is initiated by filing a notice of appeal. In this respect, the rule conforms to established practice. The rule, however, adds that discretionary review is also initiated by notice. Appeals and discretionary review should be as procedurally similar as possible. See generally comments 2.1 and 6.2.

(b) *Filing Fee.* See RCW 2.32.070.

(c) *Incorrectly Designated Notice.* The rule avoids a pitfall found in previous rules. It is frequently difficult to determine whether an order is appealable as a matter of right. Under the old rules, an attempted appeal from a nonappealable order or judgment is dismissed. *Hayton v. Independent Petroleum Co.*, 27 Wn.2d 856, 180 P.2d 557 (1947). Conversely, certiorari has been denied solely on the grounds that the order sought to be reviewed was sufficiently final to make an appeal the appropriate remedy. In the meantime, the time to do the proper thing may have expired. *State v. Superior Court*, 139 Wash. 704, 247 P. 457 (1926). But compare ROA I–57(j).

A party seeking review should not be prejudiced by an inappropriate choice of procedure, particularly when an order is only arguably appealable. The rule provides that the court will treat an inappropriate notice as if it were the correct one. Discretionary review, of course, might still be declined.

(d) *Cross Review.* See Rule 2.4(a), which defines the circumstances in which a notice of cross review is necessary.

(e) *Final Judgment Entered After Notice for Discretionary Review Has Been Filed.* A constructive notice of appeal would confuse the running of time limits and the scope of review. The rule requires a notice of appeal to secure review of the final judgment.

(f) *Order Entered After Review Accepted.* Rule 7.2(e) gives the trial court authority to hear post–judgment motions, even though review of the judgment has been accepted. The decision on the motion is reviewable only by initiating a separate review which, in the discretion of the appellate court, may be consolidated with the review of the judgment. See comment 7.2(e).

Rule 5.2 Time allowed to file notice.

(a) Notice of Appeal. Except as provided in Rules 3.2(e), 5.2(d) and (f), and 15.2(a), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court which the party filing the notice wants reviewed, or (2) the time provided in section (e).

(b) Notice for Discretionary Review. Except as provided in Rules 3.2(e), 5.2(d) and (f) and 15.2(a) a notice for discretionary review must be filed in the trial court within 30 days after the entry of the decision of the trial court which the party filing the notice wants reviewed.

(c) Date Time Begins to Run. The date of entry of a trial court decision is determined by CR 5(e) and 58.

(d) Time Requirements Set by Statute Govern. If a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision, the notice required by these rules must be filed within the time period established by the statute.

(e) Effect of Certain Post–Trial Motions. A notice of appeal of orders deciding certain timely post–trial motions designated in this paragraph must be filed in the trial court within (1) 30 days after the entry of the order, or (2) if a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of a decision, the number of days after the entry of the order established by the statute for initiating review. The post–trial motions to which this rule applies are a Motion for Arrest of Judgment under CrR 7.4, a Motion for New Trial under CrR 7.6, a Motion for Reconsideration or New Trial under CR

59, and a Motion for Amendment of Judgment under CR 59.

(f) Subsequent Notice by Other Parties. If a timely notice of appeal or a timely notice for discretionary review is filed by a party, any other party who wants relief from the decision must file a notice of appeal or notice for discretionary review within the later of (1) 14 days after service by the trial court clerk of the notice filed by the other party, or (2) the time within which notice must be given as provided in sections (a), (b), (d) or (e).

(g) Effect of Premature Notice. A notice of appeal or notice for discretionary review filed after the announcement of a decision but before entry of the decision will be treated as filed on the day following the entry of the decision. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References:

Rule 2.2, Decisions of the Superior Court Which May be Appealed, (c) Multiple parties or multiple claims or counts; Rule 15.2, Determination of Indigency and Rights of an Indigent Party, (a) Motion for Order of Indigency. Rule 18.8, Waiver of Rules and Extension and Reduction of Time, (b) Restrictions on Extension of Time; CR 5, Service and Filing of Pleadings and Other Papers; CR 58, Entry of Judgment.

Comment: *Generally.* Rule 5.2 imposes a general 30-day time limit for seeking review. With respect to appeals, the rule conforms to current practice. With respect to discretionary review, the time limit is extended from 15 to 30 days to promote uniformity. See ROA I-57(e), CAROA 57(e). The time may be extended because of the pendency of a motion for an order of indigency under Rule 15.2(a).

The *entry* of a decision is defined by CR 5(e) and 58. The effect of a notice filed before a decision is entered is determined by Rule 5.2(g). An untimely notice will be considered only in the narrow circumstances provided in Rule 18.8(b).

(d) *Time Requirements Set by Statute Govern.* The rule preserves statutory time limits for filing notice. The statutes generally express public policy about finality of trial court decisions. Statutory time periods govern——and they may be shorter than the time periods provided by this rule. The statutes include:

RCW 8.04.070, 8.04.098. Order of Public Use and Necessity. Five days.

RCW 8.03.040 [8.08.040]. Eminent Domain by Counties. Five days.

RCW 8.16.130. Eminent Domain by School Districts. Sixty days.

RCW 29.65.110. Election Contests (Appeal). Ten days.

RCW 29.79.170. Election Contests (Certiorari). Five days.

RCW 29.79.210. Initiative and Referendum (Certiorari). Five days.

RCW 29.82.160. Review of Superior Court Decision in Recall Election Case. Fifteen days.

RCW 35.44.260. Review of Assessments for Local Improvements. Fifteen days.

RCW 36.94.290. Review of Assessment for Local Utility Improvement. Fifteen days.

RCW 47.32.060. Review of Superior Court Decision in Favor of Highway Commission Regarding Obstruction of Right of Way. Five days.

RCW 54.16.160. Review of Assessment for Local Utility District. Fifteen days.

RCW 56.20.080. Review of Assessment for Sewer District. Fifteen days.

RCW 57.16.090. Review of Assessment for Water District. Fifteen days.

RCW 85.08.440. Review of Apportionment of Diking or Drainage Assessment. Fifteen days.

RCW 85.15.130, 85.16.190, 85.16.210, 85.18.140, 85.32.200. Review of Superior Court Decision on Objections to Certain Assessments. Fifteen days.

RCW 87.56.225. Review of Decision Regarding Dissolution of Insolvent Irrigation District. Sixty days.

RCW 90.03.200. Review of Determination of Water Rights. Sixty days.

(e) *Effect of Certain Post-Trial Motions.* Rule 2.4(c) allows the judgment to be reviewed upon review of certain post-trial orders. Rule 5.2(e) accommodates Rule 2.4(c) by starting the time running from the date of the entry of the decision on the designated timely-filed post-judgment motions.

(f) *Subsequent Notice by Other Parties.* The rule changes two prior procedures. A coparty, ROA I-33(2), and a cross-appellant, ROA I-33(3), become simply "any other party," and their time for seeking review, now 20 days from the date the original notice is filed, is reduced to not less than 14 days from that date. This conforms to federal practice. The necessity of seeking cross review is governed by Rule 2.4(a). The necessity of notice by a coparty is governed by Rule 5.3(d) and (i).

(g) *Effect of Premature Notice.* The rule, suggested by Federal Rule of Appellate Procedure 4(b), offers a practical solution to the awkward legal problem raised by a premature notice. Prior law to the contrary is superseded. Compare *Glass v. Windsor Navigation Co.*, 81 Wn.2d 726, 504 P.2d 1135 (1973).

Rule 5.3 Content of notice——Filing.

(a) Content of Notice of Appeal. A notice of appeal must (1) be titled a notice of appeal, (2) specify the party or parties seeking the review, (3) designate the decision or part of decision which the party wants reviewed, and (4) name the appellate court to which the review is taken.

(b) Content of Notice for Discretionary Review. A notice for discretionary review must comply in content and form with the requirements for a notice of appeal, except that it should be titled a notice for discretionary review.

(c) Identification of Parties, Counsel, and Address of Defendant in Criminal Case. The party seeking review should advise the trial court clerk of the name and address of the attorney for each of the parties by placing this information on the notice. In a criminal case the attorney for the defendant should also notify the appellate court clerk of the defendant's address, by placing this information on the notice. The attorney for a defendant in a criminal case must also keep the appellate court clerk advised of any changes in defendant's address during review.

(d) Multiple Parties Filing Notice. More than one party may join in filing a single notice of appeal or notice for discretionary review.

(e) Notices Directed to More than One Case. If cases have been consolidated for trial, separate notices for each case or a single notice for more than one case may be filed. A single notice for more than one decision will be given the same effect as if a separate notice had been filed for each decision. If cases have not been consolidated for trial, separate notices must be filed.

(f) Defects in Form of Notice. The appellate court will disregard defects in the form of a notice of appeal or a notice for discretionary review if the notice clearly reflects an intent by a party to seek review.

(g) Notices Directed to More than One Court. If a notice of appeal or a notice for discretionary review is filed which is directed to the Court of Appeals and a notice is filed in the same case which is directed to the Supreme Court, the case will be treated as if all notices were directed to the Supreme Court.

(h) Amendment of Notice Directed to Portion of Decision. The appellate court may, on its own initiative or on the motion of a party, permit an amendment of a notice to include additional parts of a decision in order to do justice. The appellate court may condition the amendment on appropriate terms, including payment of a compensatory award under Rule 18.9.

(i) Notice by Fewer than All Parties on a Side——Joinder. If there are multiple parties on a side of a case and fewer than all of the parties on that side of the case timely file a notice of appeal or notice for discretionary review, the appellate court will grant relief only (1) to a party who has timely filed a notice, (2) to a party who has been joined as provided in this section or (3) to a party if demanded by the necessities of the case. The appellate court will permit the joinder on review of a party who did not give notice only if the party's rights or duties are derived through the rights or duties of a party who timely filed a notice or if the party's rights or duties are dependent upon the appellate court determination of the rights or duties of a party who timely filed a notice.

(j) Assistance to Defendant in Criminal Case. The trial court clerk shall, if requested by a defendant in a criminal case in open court or in writing, file a notice of appeal or notice for discretionary review on the defendant's behalf. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 1, Notice of Appeal;
Form 2, Notice for Discretionary Review;
Rule 3.3, Consolidation of Cases; Rule 4.2, Direct Review of Trial Court Decision by Supreme Court.

Comment: (a) *Content of Notice of Appeal.* Section (a) is adapted from FRAP 3(c) without material change and conforms to established Washington practice in civil cases. ROA I–33; CAROA 33. Prior rules for criminal cases have required additional statements relating to the offense, sentence, and place of confinement. ROA I–46; CAROA 46. These additional statements are not required by Rule 5.3(a). The value of having this information in the notice is outweighed by the desirability of uniform practice.

(b) *Content of Notice for Discretionary Review.* Discretionary review is initiated by notice similar to a notice of appeal. See comment 5.1

(d) *Multiple Parties Filing Notice.* The rule retains the prior practice of permitting coparties to join in a single notice. See ROA I–33; CAROA 33.

(e) *Notices Directed to More than One Case.* Compare *Oerter v. Georger*, 70 Wash. 110, 126 P. 103 (1912).

(f) *Defects in Form of Notice.* Defects in form do not affect the validity of the notice. Prior law is in accord. See ROA I–52; *State v. Mitchell*, 2 Wn. App. 943, 472 P.2d 629 (1970).

(g) *Notices Directed to More than One Court.* The Supreme Court may exercise its authority to transfer a case pursuant to Rule 4.3.

(h) *Amendment of Notice Directed to Portion of Decision.* A notice may be amended to include additional parts of a decision. Terms may be imposed. This is consistent with the general policy of the rules to promote decisions on the merits. Compare ROA I–52.

(i) *Notice by Fewer than All Parties on a Side——Joinder.* The phrase "necessity of the case" has become a term of art and is retained. See *Mon Wai v. Parks*, 46 Wn.2d 138, 278 P.2d 676 (1955). This rule also permits the joinder of a party under the specified circumstances so that relief may be granted to that party. For example, a surety should appropriately have the benefit of a decision on review in favor of the surety's principal.

Rule 5.4 Filing of notice and service by clerk. The clerk of the trial court shall immediately upon filing of a notice of appeal or notice for discretionary review (1) file a copy of the notice with the appellate court designated in the notice, and transmit the filing fee to that court, and (2) serve by mail a copy of the notice on each party of record. The clerk shall indicate on the notice in the clerk's file, or on a separate paper, the date the notice was mailed to each party. Failure by the clerk to file the notice with the appellate court has no effect on the rights of any party to review. Failure by the clerk to serve a party with notice does not prejudice the rights of the party seeking review. The clerk or a party may correct the oversight by serving the notice at any time. A party prejudiced by the clerk's failure to serve the notice may move in the appellate court for appropriate relief. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule returns to a former practice of service by the trial court clerk in both civil and criminal cases. Previous rules requiring a party to properly serve the notice have led to problems of invalidity for violations of the rules. *Braman v. Kuper*, 51 Wn.2d 676, 321 P.2d 275 (1958). Rule 5.4 directs the clerk to serve notice. To assure consistency with Rule 1.2(a), improper service does not prejudice the rights of a party. The task force recognizes that a full and fair hearing may be impossible if a party below has not been served. See *Davey v. Brownson*, 3 Wn. App. 820, 478 P.2d 258 (1970). The rule, therefore, provides a convenient procedure for later service and gives the appellate court authority to fashion remedies to provide a fair hearing.

Rule 5.5 Civil Appeal Statement and Settlement Conference in Court of Appeals

(a) Application of Rule. This rule applies only to an appeal to the Court of Appeals from a trial court decision in a civil case.

(b) Service and Filing of Civil Appeal Statement. A party that files a notice of appeal must, within 15 days after the notice is filed, serve on all other parties and file in the Court of Appeals a "civil appeal statement" in the form provided in section (c).

(c) Form of Civil Appeal Statement. The statement should be captioned "Civil Appeal Statement," contain the title of the case as provided in Rule 3.4, and contain under appropriate headings and in the order here indicated:

(1) Nature of Case and Decision. A short statement of the substance of the case below and the basis for the trial court decision.

(2) Issues Presented for Review. A statement of each issue the party intends to present for review by the Court of Appeals.

(3) Relief Sought In Court of Appeals. The relief the party seeks in the Court of Appeals.

(4) Trial Court. The name of the court from which the appeal was taken.

(5) Judge. The name of the trial court judge who made the decision which is being reviewed.

(6) Date of Decision. The date the decision was entered in the trial court.

(7) Post Decision Motions. A statement of each post decision motion made in the trial court including the nature of the motion, the date the motion was made, the decision on the motion, and the date the decision was entered.

(8) Notice of Appeal. The date the notice of appeal was filed. A copy of the notice should be attached to the statement.

(9) Counsel. The name, address, and telephone number of counsel for each party.

(10) Method of Disposition in Trial Court. A statement of the method used to decide the case in the trial court.

(11) Relief Granted by Trial Court. A short statement of the relief granted by the trial court.

(12) Relief Denied by Trial Court. A short statement of the relief sought by the party making the statement which was denied by the trial court.

(13) Certificate of Counsel. A statement signed by counsel for the party filing the statement certifying that the appeal is taken in good faith; the appeal is not taken for the purpose of delay; and that the party represented by counsel is or is not prepared to immediately take all steps to complete the appeal. If the statement indicates the party is not prepared to immediately take all steps to complete the appeal, the certificate of counsel must state why the party is not prepared to immediately complete the appeal.

(d) Answer to Civil Appeal Statement. A respondent must file an answer to the civil appeal statement within seven days after service of the statement on respondent. The answer should include any modifications to the civil appeal statement that the respondent feels are necessary to give the settlement conference judge a fair presentation of the matters material to settlement of the case. To the extent reasonably necessary to meet this objective, the answer should correct any errors in the civil appeal statement, and present any new issues or modify those presented in the civil appeal statement.

(e) Notice of Settlement Conference. The Chief Judge of the Court of Appeals will determine if one or more settlement conferences are appropriate in each civil appeal. The clerk of the Court of Appeals will notify each party if a settlement conference is to be held. The notice will specify the date, time, and place of the conference; the name of the judge or judge pro tempore who will conduct the conference; and whether the parties are required to attend the conference.

(f) Stay Pending Settlement Conference. Unless the notice of the settlement conference states otherwise, a party who has received a notice of settlement conference is not required to take any further steps to complete the review until the settlement conference is concluded. After the settlement conference is completed, the clerk or a commissioner or the settlement judge will establish the dates within which the remaining steps in the review should be completed.

(g) Attendance at Settlement Conference. The attorney for each party, and the party if the notice requires it, must attend the settlement conference on the date, time, and place specified in the clerk's notice. Those in attendance should be ready to seriously consider the possibility of settlement, limitation of the issues to be presented for review, and other matters which may promote the prompt and fair disposition of the appeal.

(h) Settlement Conference Order. If the parties agree to settle the case, limit the issues, or to other matters to promote the prompt and fair disposition of the appeal, the settlement judge may enter an order consistent with that agreement. If the settlement conference order fully settles the case, the clerk of the Court of Appeals will immediately issue the mandate to the trial court with directions to enter judgment as indicated in the order. In all other cases the order is binding on the parties during the review proceeding, unless the appellate court otherwise directs on its own initiative or on motion of a party for good cause shown and on those terms the appellate court deems appropriate.

(i) Sanctions. If a party or counsel for a party fails to comply with this rule or to comply with a settlement conference order, the Court of Appeals may impose sanctions or dismiss the review proceeding as provided in Rule 18.9.

(j) Settlement Conference Judge May Be Disqualified. The settlement conference judge may hear the appeal on the merits unless (1) the judge decides the best interests of justice would be served by refraining from hearing the case on the merits, or (2) a party disqualifies the judge by request to the clerk of the appellate court. A party may disqualify the judge without cause. Each clerk of the Court of Appeals shall adopt and implement a procedure to preserve the confidentiality of the identity of a party who disqualifies the judge. [Adopted February 28, 1977, effective February 28, 1977]

References
Form 21, Civil Appeal Statement.

Comment: This rule, as Rule 18.11, was initially effective on a trial basis from March 1, 1976 through February 28, 1977. The Supreme Court, in making the rule permanent, has caused it to be retitled and relocated as Rule 5.5. The Court of Appeals has experienced a substantial and dramatic increase in the number of review proceedings being filed in that court. As a result, the backlog in the Court of Appeals has reached crisis proportions.

The procedure established by this rule was suggested to the Supreme Court by several of the judges of the Court of Appeals who studied a similar, but not identical, procedure being used by the New York Supreme Court Appellate Division. The New York experience indicates this procedure holds substantial promise to help reduce the backlog of appellate cases.

TITLE 6——ACCEPTANCE OF REVIEW

Rule

Rule 6.1 Appeal as a matter of right. The appellate court "accepts review" of a trial court decision upon the timely filing in the trial court of a notice of appeal from a decision which is reviewable as a matter of right. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 2.2, Decisions of the Superior Court which may be Appealed.

Comment: Title 6 establishes an important concept called *acceptance of review.* The acceptance of a case for review causes the general authority over the case to shift to the appellate court (Title 7) and serves as the point from which subsequent events are timed. See e.g., Rules 3.2(c), 7.2(a).

Under Rule 6.1, review of a decision appealable as a matter of right is accepted automatically upon the timely filing of a notice of appeal. This is consistent with current practice. Cf. ROA I-32.

Rule 6.2 Discretionary review.

(a) Generally. The appellate court accepts discretionary review of a trial court decision by granting a motion for discretionary review.

(b) Time To Make Motion. The party seeking discretionary review must file in the appellate court a motion for discretionary review within 15 days after filing the notice for discretionary review. If a party files a notice of appeal from a decision which may not be subject to review as a matter of right, the clerk or a party may note for hearing the question whether the decision is reviewable as a matter of right and, if the decision is reviewable by discretion, the question whether review should be accepted.

(c) Regular Motion Procedure Governs. A motion for discretionary review is governed by the motion procedure established by Title 17.

(d) Notice of Decision on Motion. The clerk of the appellate court will promptly give written notice to the parties and the trial court of the appellate court's decision on the motion for discretionary review. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 3, Motion for Discretionary Review;
Rule 2.3, Decisions of the Trial Court which may be Reviewed by Discretionary Review; Rule 17.3, Content of Motion, (b) Motion for Discretionary Review; Rule 17.6, Decision on Motion.

Comment: The motion procedure is used to determine whether review is accepted. The motion must be filed within 15 days after the notice for discretionary review is filed. The clerk notes for hearing the question of the granting of discretionary review if a party files a notice of appeal from a nonappealable decision. See Rule 5.1(b).

A case subject to discretionary review is accepted by granting a motion for discretionary review. Once review is accepted, the remaining steps are the same whether the case is an appeal or a discretionary review. See also comment 2.1.

TITLE 7——AUTHORITY OF TRIAL COURT AND APPELLATE COURT PENDING REVIEW

Rule

Rule 7.1 Authority of trial court before review accepted. The trial court retains full authority to act in a case before review is accepted by the appellate court, unless the appellate court directs otherwise as provided in Rule 8.3. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The case proceeds normally in the trial court until review is accepted, unless the appellate court directs otherwise pursuant to Rule 8.3. Acceptance of review shifts the general authority over the case to the appellate court, and the trial court may act only as provided in Rule 7.2. Ambiguous concepts of "jurisdiction" are abandoned in favor of defining "authority to act."

Rule 7.2 Authority of trial court after review accepted.

(a) Generally. After review is accepted by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in Rule 8.3.

(b) Settlement of Record. The trial court has authority to settle the record as provided in Title 9 of these rules.

(c) Enforcement of Trial Court Decision. Except to the extent a decision has been superseded as provided in Rule 8.1, the trial court has authority to enforce any decision of the trial court and a party may execute on any judgment of the trial court. Any person may take action premised on the validity of a trial court decision until enforcement of the decision is superseded as provided in Rule 8.1.

(d) Attorney Fees and Costs. The trial court has authority to award attorney fees and costs for an appeal in a marriage dissolution, a legal separation, a declaration of invalidity proceeding, and in an action to modify a decree in any of these proceedings.

(e) Post-Judgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) post-judgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the entry of the trial court decision. A party should seek the required permission by motion. The decision granting or denying a post-judgment motion may be subject to review. A party may only obtain review of the decision on the post-judgment motion by initiating a separate review in the manner and within the time provided by these rules. If review of a post-judgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in Rule 3.3(b).

(f) Release of Defendant in Criminal Case. In a criminal case, the trial court has authority to fix conditions of release of a defendant and to revoke a suspended or deferred sentence.

(g) Questions Relating to Indigency. The trial court has authority to decide questions relating to indigency as provided in Title 15 of these rules.

(h) Supersedeas, Stay, and Bond. The trial court has authority to act on matter of supersedeas, stays, and bonds as provided in Rules 8.1 and 8.4, CR 62(a), (b), and (h), and chapter 6.08 RCW

(i) Costs. The trial court has authority to act on claims for costs and objections to costs. A party may obtain review of a trial court decision on costs in the same review proceeding as that challenging the judgment without filing a separate notice of appeal or notice for discretionary review.

(j) Juvenile Court Decision. The trial court has authority to act on matters of supersedeas, stays, bonds, and the release of a person pending review of a juvenile court proceeding. [Amd. July 18, 1978, eff. July 1, 1978; amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:

Rule 5.1, Review Initiated by Filing Notice of Appeal or Notice for Discretionary Review, (e) Order entered after review accepted; Rule 8.1, Supersedeas in the Trial Court; Rule 8.3, Appellate Court Orders Needed for Effective Review; Rule 8.4, Bond with Individual Sureties——Justification——Objection; CR 62, Stay of Proceedings to Enforce a Judgment, (a) Automatic stays, (b) Stay on motion for new trial or for judgment, (h) Multiple claims or multiple parties; chapter 6.08 RCW, Stay of Execution.

Comment: (a) *Generally.* Rule 7.2 and the rules which follow define the respective powers of the trial and appellate courts in terms of "authority to act." Rule 7.1 defined the trial court's authority to act *before* acceptance of review. Rule 7.2 defines the trial court's authority to act *after* acceptance of review.

(c) *Enforcement of Trial Court Decision.* Section (c) conforms to established practice and clarifies what has been frequently misunderstood under prior rules. If the party seeking review does not supersede enforcement pursuant to Rules 8.1 or 8.2, the acceptance of appellate review does not diminish the prevailing party's right to enforce the decision below. See *Baisch v. Gibson*, 138 Wash. 127, 244 P. 259 (1926); *Malo v. Anderson*, 76 Wn.2d 1, 454 P.2d 828 (1969). The decision may be enforced in the trial court as if no review had been sought. If an unsuperseded judgment is enforced and later reversed or modified by the appellate court, the rights of persons affected may be adjusted as provided in Rule 12.8.

(d) *Attorney Fees and Costs.* Section (d) is suggested by *Bennett v. Bennett*, 63 Wn.2d 404, 387 P.2d 517 (1963).

(e) *Post-Judgment Motions and Actions To Modify Decision.* The rule changes present Washington practice and conforms to practice generally followed in federal court. See 9 J. Moore, Federal Practice pp. 734–740 (1973); *Weiss v. Hunna*, 312 F.2d 711 (2d Cir. 1963).

Previous Washington practice required a party to file a motion in the appellate court requesting leave to file the post-judgment motion in the superior court. *Doss v. Schuller*, 47 Wn.2d 520, 288 P.2d 475 (1955). The petitioner had to make a showing on the merits of his motion twice: first in the appellate court, and later in the trial court. Nevertheless, the decision of the appellate court on the motion only authorized the petitioner to proceed below. The trial court was free to deny the motion. *Palmer v. Cozza*, 2 Wn. App. 900, 901, 471 P.2d 102, 103 (1970).

Rule 7.2 reverses the procedure. The motion will be made in the trial court in the first instance, and the motion will be presented to the appellate court only if the trial court is inclined to grant the motion. Under these rules, the motion is heard first in the court best equipped to evaluate the grounds for a post-trial motion. Unnecessary work for the appellate court is eliminated. The trial court decision on the motion may be reviewed as any other trial court decision. See also comment 5.1(e).

(f) *Release of Defendant in Criminal Case.* A defendant in a criminal case may be released pending review as provided by the Superior Court Criminal Rules or by statutes. See, e.g., CrR 3.2(h). The A.B.A. gives criteria for release pending review and recommends a procedure for appellate review of bail decisions, but such criteria and procedure are not included in these rules. See American Bar Association, *Standards Relating to Criminal Appeals*, § 2.5 (1970). Standards for release on bail are more appropriately governed by criminal rules and statutes.

Rule 7.3 Authority of appellate court. The appellate court has the authority to determine whether a matter is properly before it, and to perform all acts necessary or appropriate to secure the fair and orderly review of a case. The Court of Appeals retains authority to act in a case pending before it until review is accepted by the Supreme Court, unless the Supreme Court directs otherwise. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule states the broad authority of the appellate court to act. It clarifies the effect of Supreme Court review of a decision of the Court of Appeals on the authority of the Court of Appeals to act.

TITLE 8——SUPERSEDEAS, INJUNCTIONS, AND OTHER ORDERS TO INSURE EFFECTIVE REVIEW——BONDS

Rule

Rule 8.1 Supersedeas in the trial court.

(a) Application of Civil Rules. This rule provides a means of delaying the enforcement of a trial court decision in a civil case in addition to the means provided in CR 62(a), (b), and (h).

(b) Supersedeas by Bond or Other Security. Except when prohibited by statute, a party may supersede the enforcement of a money judgment or decision affecting property by filing a supersedeas bond executed by one or more sureties approved by the trial court. The bond must be conditioned for the satisfaction of the judgment in full together with interest and costs, and the satisfaction in full of any probable modification of the judgment by the appellate court. If a party seeks to supersede only part of a decision, the bond amount shall be adjusted to accomplish the purpose desired. The trial court may authorize a party to post security other than a bond.

(1) *Money Judgment.* If the judgment is for the recovery of money not wholly secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied and unsecured, together with interest thereon, unless the court, after notice and hearing and for good cause shown, fixes a different amount.

(2) *Decision Affecting Property.* If the decision determines the disposition of property in controversy, or if the property is in the custody of the sheriff, or if the proceeds of the property or a bond for its value are in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure any money judgment plus the amount of loss which a party may be entitled to recover as a result of

the inability of the party to enforce the judgment during review.

(c) Supersedeas by Party Not Required to Post Bond. If a party is not required to post a bond, that party shall file a notice that the decision is superseded without bond and, after filing the notice, the party shall be in the same position as if the party had posted a bond pursuant to the provisions of this rule.

(d) Objection to Supersedeas Decision. A party may object to a supersedeas decision of the trial court by motion in the appellate court. [Adopted January 28, 1976, effective July 1, 1976.]

References:
CR 62, Stay of Proceedings to Enforce a Judgment.
RCW 48.28.010, Requirements Deemed Met by Surety Insurer.

Comment: (a) *Application of Civil Rules.* Rule 8.1 supplements CR 62(a), (b) and (h) and supersedes CR 62(c), (d), (e), (f) and (g). The authority to suspend, modify, restore, or grant an injunction after acceptance of review should rest solely with the appellate court.

Chapter 6.08 RCW, which provides for a temporary stay of execution upon the filing of a bond, is not designed to accomplish supersedeas on review and is not superseded by Rule 8.1.

(b) *Supersedeas by Bond or Other Security.* The rule is derived substantially from present ROA I–23, except for the deletion of ROA I–23(2), Effect of Supersedeas, which appears redundant. The language is altered to eliminate the term *stay* in favor of more descriptive terminology.

The relief afforded by Rule 8.1 is available as a matter of right. However, the rule applies only to money judgments and decisions affecting property. A party may seek to delay the enforcement of other decisions under Rule 8.3 by a motion to the appellate court. The descriptive terminology established by Rules 8.1 and 8.3 simplifies the task of determining whether supersedeas is available. One need not research the question whether a particular decision is self–executing. Compare *State ex rel. Austin v. Superior Court*, 6 Wn.2d 61, 106 P.2d 1077 (1941). Nor is it necessary to research the question whether an injunction is mandatory or prohibitory. Compare *State ex rel. Langlie v. Wright*, 35 Wn.2d 703, 215 P.2d 407 (1958). If the decision falls within Rule 8.1, supersedeas is available as a matter of right. If the decision is not among those listed in Rule 8.1, supersedeas is available only in the discretion of the appellate court. See also comment 8.3.

These rules do not purport to treat the effect of supersedeas on the running of statutory time limitations for redemption, execution of judgment, or the commencement of a new action. See generally *Baisch v. Gibson*, 138 Wash. 127, 244 P. 259 (1926); *Kuper v. Stojack*, 57 Wn.2d 482, 358 P.2d 132 (1960); RCW 4.16.240. See also comment 7.2(c).

(c) *Supersedeas by Party Not Required To Post Bond.* Statutory law excuses particular parties from posting a supersedeas bond. See, e.g., RCW 2.10.210, 4.92.030, 8.04.150, 8.08.080, 8.20.120, 41.26.230, 41.40.440, 43.21B.190, 43.21B.200, 50.32.130, 51.52.110, 74.08.080, 85.05.130, 85.06.130, and 91.04.325. The rule requires these parties to give a notice to insure that other parties are aware of the intent to supersede.

(d) *Objection to Supersedeas Decision.* Fast action may be necessary. Thus, the quicker motion procedure is available to review trial court supersedeas decisions, as well as the usual slower review procedure.

Rule 8.2 Release of defendant or juvenile during review.

(a) Release Not Governed by These Rules. The conditions under which a defendant in a criminal case or a juvenile in a juvenile offense proceeding may be released pending review are set forth in the criminal rules, juvenile court rules, and in statutes.

(b) Objection to Decision. A party may object to a trial court decision relating to release of a defendant or a juvenile during a review of a criminal case or a juvenile offense proceeding by motion in the appellate court. [Amd. July 18, 1978, eff. July 1, 1978; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:
RCW 9.95.062, Appeal stays execution——credit for time in jail pending appeal;
RCW 10.73.040, Bail pending appeal;
CrR 3.2, Pretrial Release, (h) Release after Verdict.

Rule 8.3 Appellate court orders needed for effective review.

Except when prohibited by statute, the appellate court has authority to issue orders, before or after acceptance of review, to insure effective and equitable review, including authority to grant injunctive or other relief to a party. The appellate court will ordinarily condition the order on furnishing a bond or other security. A party seeking the relief provided by this rule should use the motion procedure provided in Title 17. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule gives the appellate court broad discretionary authority to issue orders to insure effective and equitable review. The rule may be used to seek to delay the enforcement of judgments not subject to supersedeas as a matter of right. See generally comment 8.1. The rule may also be used to seek a stay of trial court proceedings pending acceptance of review. Without limiting relief formerly available, the rule avoids the ambiguous distinctions between injunctions, writs, stays, and supersedeas by using the single term *order*. However, statutes restricting delays in enforcement or stays of proceedings on review take precedence over these rules. See e.g. RCW 48.31.190(6).

The motion procedure provided by Title 17 is used to obtain the order. The motion may be filed before or after acceptance of review and, in an emergency, may be filed in the manner provided by Rule 17.4(b). An order issued pursuant to Rule 8.3 will ordinarily be conditioned on the furnishing of a bond or other adequate security.

Rule 8.4 Bond with individual sureties——Justification——Objection.

(a) Scope of Rule. An individual who is a resident of this state may be a surety on a bond, except that a party may not act as a surety. This rule applies to justification of and objection to a surety on a bond given pursuant to Rule 8.1 or 8.3, but only if the surety is a person other than a surety company authorized to transact surety business in this state.

(b) Justification. The bond must be accompanied by an affidavit signed by each surety affirming that (1) the surety is a resident of this state, and (2) the surety alone or the sureties together have a net worth, excluding property exempt from execution, at least equal to twice the penalty in the bond.

(c) Objection. A party may object to the sufficiency of the surety on the bond or the form of the bond by a motion in the trial court made within 7 days after the party making the motion is served with the bond and the supporting affidavit or affidavits. If the trial court determines that the bond is improper as to form or that the net worth of the surety is inadequate, the supersedeas or other order conditioned upon the posting of the bond may be preserved only by furnishing a proper new bond within 7 days of the entry of the order declaring the first bond deficient. [Adopted January 28, 1976, effective July 1, 1976.]

References:

RCW 19.72.020, Individual sureties——Eligibility.

Comment: The Rule is similar to ROA I–26 and I–27. Section (a) prohibits a party from acting as a surety.

Rule 8.5 State as obligee on bond. The obligee in a bond given pursuant to Rule 8.1 or 8.3 may be named as the State of Washington for the benefit of whom it may concern. If the State is named as the obligee, anyone has the same right upon or concerning the bond as if named as an obligee in the bond. The State of Washington shall not, solely because the State is named as an obligee, be sued or named as a party in any suit on the bond. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 8.5 is similar to ROA I–25.

Rule 8.6 Termination of supersedeas, injunctions, and other orders. The issuance of the mandate as provided in Rule 12.5 terminates any delay of enforcement of a trial court decision obtained pursuant to Rule 8.1 and terminates orders entered pursuant to Rule 8.3. [Adopted January 28, 1976, effective July 1, 1976.]

References:

Rule 12.2, Disposition on Review.

Comment: Rule 8.6 clarifies established law. The mandate issued pursuant to Rule 12.5 terminates delays in enforcement of decisions obtained pursuant to Rule 8.1 and orders obtained pursuant to Rule 8.3.

TITLE 9——RECORD ON REVIEW

Rule

Rule 9.1 Composition of record on review.

(a) Generally. The "record on review" may consist of (1) a "report of proceedings", (2) "clerk's papers", and (3) exhibits.

(b) Report of Proceedings. The report of proceedings may take the form of a "verbatim report of proceedings" as provided in Rule 9.2, a "narrative report of proceedings" as provided in Rule 9.3, or an "agreed report of proceedings" as provided in Rule 9.4.

(c) Clerk's Papers. The clerk's papers include the pleadings, orders, and other papers filed with the clerk of the trial court.

(d) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review. [Adopted January 28, 1976, effective July 1, 1976.]

References:

Rule 13.7, Proceedings (in Supreme Court) After Acceptance of Review (of Court of Appeals decision), (a) Procedure.

Comment: The old rules governing the record on review have unfortunately operated in some cases to prevent a decision on the merits. The rules in Title 9, based on the Federal Rules of Appellate Procedure, simplify preparation of the record on review and give the court a better opportunity to consider the case on its merits.

Rule 9.1 requires one record, not two. Under the old rules, the record has been sent to the appellate court in two packages, one called the "statement of facts," certified by the trial judge, and one called the "transcript," certified by the superior court clerk. ROA I–37, I–44.

If counsel erred by putting in the transcript that which should have been in the statement of facts, the material was stricken from the record, and assignments of error based on the stricken material would not be considered by the court, e.g., *Clark v. Fowler*, 58 Wn.2d 435, 363 P.2d 812 (1961); *Popovich v. Department of Labor & Indus.* 66 Wn.2d 908, 406 P.2d 593 (1965). Rule 9.1 establishes a single, unified record, ending the need to research and decide at one's peril which is the appropriate package in which to place a document.

The next step taken by Rule 9.1 is to adopt descriptive terminology. The record of the proceedings in trial is no longer the "statement of facts," but the "report of proceedings." If the report of proceedings is a word for word record of the trial, it is called a *verbatim report of proceedings*; if it is in narrative form, a *narrative report of proceedings*; and if it is agreed, an *agreed report of proceedings*. The papers filed with the trial court are no longer the "transcript," but the "clerk's papers," and the exhibits.

The ambiguity of previous terminology has unfortunately raised problems of interpretation which tend to penalize parties for attorney error. See, e.g., *Warner v. Hearst Publications*, 20 Wn.2d 552, 148 P.2d 315 (1944); *Porter v. Chicago, M., St. P. & Pac. R.R.*, 41 Wn.2d 836, 252 P.2d 306 (1953); *Clark v. Fowler*, 58 Wn.2d 435, 363 P.2d 812 (1961). The unified record and descriptive terminology of Rule 9.1 provide a simplified procedure designed to minimize the chances of a defective or incomplete record.

Rule 9.2 Verbatim report of proceedings.

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 45 days after acceptance of review. The party seeking review must file with the appellate court a statement that arrangements have been made for the transcription of the report. The statement must be filed within 45 days after acceptance of review. The party must indicate the date that the statement was ordered and the financial arrangements

which have been made for payment of transcription costs.

(b) Content. A party should arrange for the transcription of only those portions of the verbatim report of proceedings necessary to present the issues raised on review. If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding. If the party seeking review intends to urge that the court erred in giving or failing to give an instruction, the party should include in the record all of the instructions given, the relevant instructions proposed, the party's objections to the instructions given, and the court's ruling on the objections.

(c) Notice of Partial Report of Proceedings and Issues. If a party seeking review arranges for less than all of the verbatim report of proceedings, the party should file and serve on all other parties within 45 days after review is accepted a description of the parts of the verbatim report of proceedings which the party intends to include in the record and a statement of the issues the party intends to present on review. Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the description and notice file and serve on all other parties a designation of additional parts of the verbatim report of proceedings. If the party seeking review refuses to provide the additional parts of the verbatim report of proceedings, the party seeking the additional parts may provide them at the party's own expense or apply to the trial court for an order requiring the party seeking review to pay for the additional parts of the verbatim report of proceedings.

(d) Payment of Expenses. If a party fails to make arrangements for payment of the costs of the verbatim report of proceedings at the time the verbatim report of proceedings is ordered, the party may be subject to sanctions as provided in Rule 18.9.

(e) Index. The verbatim report of proceedings should include an index indicating, under the headings listed below, the pages where the following appear:

(1) *Proceedings.* The beginning of each proceeding and the nature of that proceeding;

(2) *Witnesses.* The testimony of each witness and the type of examination;

(3) *Exhibits.* The marking and admission into evidence of exhibits and depositions;

(4) *Motions.* All motions and decisions of motions;

(5) *Argument.* Opening and closing arguments;

(6) *Instructions.* All instructions proposed and given.

Any other events should be listed under a suitable heading which would help the reviewing court locate separate parts of the verbatim report of proceedings.

(f) Form Generally. The verbatim report of proceedings must be on 8 1/2 inch by 11 inch paper. Margins should be lined 1 3/8 inches from the left and 5/8 inches from the right side of each page. The type should fill the space between the lines. Indentations from the left lined margin should be: 1 space for "Q" and "A"; 3 spaces for the body of the testimony; 8 spaces for commencement of a paragraph; and 10 spaces for quoted authority. Typing should be double spaced or 1 1/2 spaced except that comments by the reporter should be single spaced. If double spaced, the page should have 25 lines of type. If 1 1/2 spaced, the page should have 33 lines of type. Type must be pica type or its equivalent with no more than 10 characters an inch.

(g) Form When at Public Expense. A verbatim report of proceedings provided at public expense must be in the form provided by section (f), except the report must be on 8 1/2 inch by 13 inch paper and typing must be double spaced 30 lines of type to the page. Comments by the reporter must be single spaced. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References:

Form 15, Statement of Arrangements, Title 6, Acceptance of Review.

Comment: *Generally.* Under the new rules a report of proceedings may be in one of three forms: a verbatim report of proceedings, a narrative report of proceedings, or an agreed report of proceedings. It is the first of these three forms with which Rule 9.2 is concerned.

(a) *Transcription and Statement of Arrangements.* Section (a) retains the time limits for arranging for a typewritten verbatim report of the proceeding and for filing a statement that this has been done. ROA I–34; CAROA 34. The report may be prepared by a court reporter or any other person.

(b) *Content.* The use of an abbreviated report of proceedings is encouraged if a report of the entire trial is unnecessary. This lessens the cost of the record for the litigants and relieves the court of the burden of reading unnecessarily lengthy records. See *Lofgren v. Western Wash. Corp.*, 65 Wn.2d 144, 396 P.2d 139 (1964). The report may be supplemented under Rule 9.10 if the appellate court determines additional parts of the record are necessary.

Section (b) details the content of a report of proceedings in two troublesome situations. The two situations outlined are sufficiently important to warrant special mention. With respect to review of a verdict or finding of fact, see *Whitney v. McKay*, 54 Wn.2d 672, 344 P.2d 497 (1959). With respect to review of a jury instruction, see ROA I–34(9), CR 51(f), and *Stuart v. Consolidated Foods Corp.*, 6 Wn. App. 841, 496 P.2d 527 (1972). If a party seeking review intends to urge that the court erred in determining the sufficiency of evidence in an administrative hearing, the party should include the entire record of the administrative proceeding. *Tunget v. Employment Security Dep't*, 78 Wn.2d 954, 481 P.2d 436 (1971).

(c) *Notice of Partial Report of Proceedings and Issues.* Section (c) requires notice to be given when the appellant or petitioner intends to include a report of less than all of the proceedings. The trial court may direct the preparation of additional parts of the record and may require the party seeking review to pay the cost.

(e) *Index.* The rule is derived from current practice in King County and ROA I–34(6). A properly prepared index is an important aid to the appellate court.

(f) *Form.* Letter–sized paper is required. This conforms to federal practice and the trend towards letter–sized paper for all legal documents. The rule allows, but does not require, lines to be 1 1/2–spaced. A letter–sized page 1 1/2–spaced contains as much written material as a double spaced legal–sized page with no sacrifice in readability.

Contrary to prior practice, the verbatim report of proceedings need not be certified by the trial judge. It is simply submitted to the trial judge for his review. Compare ROA I–36, I–37, I–38, I–39. This change accomplishes two things: it eliminates one appearance in court in most cases, and reduces the cost of an appeal accordingly; and, it frees trial judges from the ministerial task of signing a certificate when there is no dispute between the parties on the content of the record. The adversary system helps insure an accurate report. See comment 9.5. Of course, if the parties or the trial judge does not agree to the report, the trial judge must have a hearing and settle the disputed portions of the record. The procedure for additions or correction is provided by Rules 9.5 and 9.9. See FRAP 10(e).

Rule 9.3 Narrative report of proceedings. The party seeking review may prepare a narrative report of proceedings. A party preparing a narrative report must exercise the party's best efforts to include a fair and accurate statement of the occurrences in an evidence introduced in the trial court material to the issues on review. A narrative report should be in the same form as a verbatim report, as provided in Rule 9.2(e) and (f). If any party prepares a verbatim report of proceedings, that report will be used as the report of proceedings for the review. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 9.3 governs the second form of report of proceedings permitted by Rule 9.1. The old rules do not expressly authorize a narrative report of proceedings, but decisional law indicates that the Supreme Court has no objection to this practice. *Glaser v. Holdorf*, 53 Wn.2d 92, 330 P.2d 1066 (1958).

A narrative report must be prepared in good faith and must fairly and accurately portray the proceedings below. The narrative report may not be used as a vehicle for seeking an advisory opinion, even if the parties stipulate to its contents. Intentional disregard of this rule would violate DR 7–104 of the Code of Professional Responsibility.

The narrative report must be submitted to the trial judge in accordance with Rule 9.5(b). Any party may object to the narrative report under Rule 9.5(a).

If one party prepares a verbatim report of proceedings (Rule 9.2), it is unfair to permit a review of the case solely on the basis of a narrative report. Consequently, the rule provides that a verbatim report, if prepared, will be used as the report of proceedings for review. The reasonable costs of preparing the verbatim report may be recovered if the party preparing the verbatim report prevails on review. See Rules 14.2 and 14.3.

Rule 9.4 Agreed report of proceedings. The parties may prepare and sign an agreed report of proceedings setting forth only so many of the facts averred and proved or sought to be proved as are essential to the decision of the issues presented for review. The agreed report of proceedings must include only matters which were actually before the trial court. An agreed report of proceedings should be in the same form as a verbatim report, as provided in Rule 9.2(e) and (f). [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 9.4 authorizes a stipulated statement of the case, called an agreed report of proceedings. The agreed report may consist of excerpted portions of a verbatim report of proceedings arranged in a meaningful form, a narrative statement, or some of both.

An agreed report must be prepared in good faith and must accurately portray the proceedings below. The agreed report may not be used as a vehicle for seeking an advisory opinion, even if the parties stipulate to its contents. Intentional disregard of this rule would violate DR 7–104 of the Code of Professional Responsibility.

The agreed report must be submitted to the trial judge in accordance with Rule 9.5(b).

Rule 9.5 Filing and service of report of proceedings——Objections.

(a) Generally. The party seeking review must file the report of proceedings with the clerk of the trial court, and then submit it to the judge as provided in section (b), within 90 days after review is accepted by the appellate court. The party must at the time of filing the report of proceedings serve one copy on an adverse party and serve and file notice of the filing on all other parties. A party may serve and file objections to, and propose amendments to, a narrative report of proceedings or a verbatim report of proceedings within 10 days after receipt of the report of proceedings or receipt of the notice of filing of the report of proceedings. If objections or amendments to the report of proceedings are served and filed, the report of proceedings and any objections or proposed amendments must be submitted to the trial court judge before whom the proceedings were held for settlement and approval. The trial court may direct the party seeking review to pay for the expense of any modifications of the proposed report of proceedings.

(b) Submission of Report of Proceedings to Trial Judge. A report of proceedings must be submitted to the trial court judge before whom the proceedings were held for approval. The judge may call the parties to appear before the court for the purpose of adding to or correcting the report of proceedings. The report of proceedings is deemed approved if the trial court judge does not otherwise notify the parties within 10 days after submission of the report to the judge and if a party has not objected to the report as provided in section (a).

(c) Substitute Judge May Settle Report of Proceedings. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions as provided in section (a), or unable to promptly accept and review the report as provided in section (b), another judge may act in the place of the judge before whom the proceedings were held.

(d) Use of Copy of Report of Proceedings. The party who has the right to file the next brief must be given the use of the copy of the report of proceedings. If more than one party has the right to file the next brief, the parties must cooperate in the use of the report of proceedings. When all brief are filed, the copy of the report of proceedings should be returned to the party who paid for it. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Title 6, Acceptance of Review.

Comment: (a) *Generally.* Rule 9.5 retains the 90-day time limit for filing and serving the report of proceedings. The time limit begins to run from the filing of a notice of appeal or the acceptance of discretionary review. ROA I–34(2) and CAROA 34(2) are in accord. In the interest of uniformity, the rule applies to both civil and criminal cases. Compare ROA I–46(e)(2)(i) and (ii). The objection procedure is similar to the old rules. Certification is not required.

(b) *Submission of Report of Proceedings to Trial Judge.* A report of proceedings must be submitted to the trial judge. This is to insure its accuracy and prevent parties from seeking an appellate court advisory opinion.

Rule 9.6 Designation of clerk's papers and exhibits. The party seeking review should, within 30 days after review is accepted, serve on all other parties and file a designation of those clerk's papers and exhibits the party wants the trial court clerk to transmit to the appellate court. Any other party may in the same manner designate additional clerk's papers or exhibits for transmittal to the appellate court. Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court. [Adopted January 28, 1976, effective July 1, 1976.]

References:

Title 6, Acceptance of Review.

Comment: Rule 9.6 describes the procedure for designating the clerk's papers and exhibits to be included in the record. The parties should designate only those papers and exhibits necessary for review. See comment 9.2(b).

Rule 9.7 Preparing clerk's papers and exhibits for appellate court.

(a) **Clerk's Papers.** The clerk of the trial court shall make copies at cost, not to exceed 50 cents a page, of those portions of the clerk's papers designated by the parties and prepare them for transmission to the appellate court. The clerk shall assemble the copies and number each page of the clerk's papers in chronological order of filing. The clerk shall prepare a cover sheet for the papers with the title "Clerk's Papers" and prepare an alphabetical index to the papers. The clerk shall promptly send a copy of the index to each party.

(b) **Exhibits.** The clerk of the trial court shall assemble those exhibits designated by the parties and prepare them for transmission to the appellate court. Exhibits which are papers should be assembled in the order the exhibits are numbered with a cover sheet which lists the exhibits and is titled "Exhibits." [Amd. Apr. 25, 1978, eff. May 15, 1978; adop. Jan. 28, 1976, eff. July 1, 1976.]

Comment: It is the responsibility of the superior court clerk to prepare the clerk's papers and exhibits designated by the parties for transmission to the appellate court. Rule 9.7 states how this should be done. All counsel will receive a copy of the index to the clerk's papers; page references in briefs can then correspond to the pages in the clerk's papers sent to the appellate court.

Rule 9.8 Transmitting record on review.

(a) **Duty of Trial Court Clerk.** Except as provided in section (b), the clerk of the trial court shall transmit the record on review to the appellate court when requested by the clerk of the appellate court. The clerk shall endorse on the face of the record the date upon which the record on review is transmitted to the appellate court.

(b) **Cumbersome Exhibits.** The clerk of the trial court shall transmit to the appellate court exhibits which are difficult or unusually expensive to transmit only if the appellate court directs or if a party makes arrangements with the clerk to transmit the exhibits at the expense of the party requesting the transfer of the exhibits.

(c) **Temporary Transmittal to Another Court.** If the record or any part of it is needed in another court while a review is pending, the clerk of the appellate court will, on the order or ruling of the appellate court, transmit the record or part of it to the clerk of that court, to remain there until the purpose for which it is transmitted has been satisfied or until the clerk of the appellate court requests its return. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

Comment: It is the responsibility of the superior court to transmit the record on review to the appellate court when requested. Exhibits which are difficult or expensive to mail will be transmitted only if the appellate court so directs or if a party arranges with the clerk for their transmission. A party should also arrange with the appellate court clerk for the receipt of the exhibits.

Statutes prescribing inconsistent time limits for transmission of the record are superseded. See Rule 18.12.

Rule 9.9 Correcting or supplementing report of proceedings before transmittal to appellate court. The report of proceedings may be corrected or supplemented by the trial court on motion of a party, or on stipulation of the parties, at any time prior to the transmission of the report to the appellate court. The trial court may impose the same kinds of sanctions provided in Rule 18.9(a) as a condition to correcting or supplementing the report of proceedings after the time provided in Rule 9.5. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 9.9, adapted from FRAP 10(e), supplements the procedure in Rule 9.5 for amending or correcting the report of proceedings before it is sent to the appellate court. Monetary sanctions may be imposed under Rule 18.9 against a party who did not make a good faith effort to correct or amend the report at the time established in Rule 9.5.

Rule 9.10 Correcting or supplementing record after transmittal to appellate court. If a party has made a good faith effort to provide those portions of the record required by Rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits, or (2) correct, or direct the supplementation or correction of, the report of proceedings. The appellate court may impose sanctions as provided in Rule 18.9(a) as a condition to correcting or supplementing the record on review. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 9.10, derived from FRAP 10(e), establishes liberal provisions for correcting or adding to the record after it has been sent to the appellate court. The rule relates only to additions or corrections to the record of earlier proceedings in the trial court. To be distinguished is the procedure for introducing new evidence on review under Rule 9.11.

The rule alleviates the risk in providing an abbreviated record. A party need only assemble a record which appears to be adequate for purposes of review Issues presented for review will not be decided on the basis that the record is incomplete, except in the unusual case where a party fails to make a good faith effort to provide the relevant portions of the record. Errors in judgment will not be penalized by dismissal of the case. If a decision on the merits requires study of additional parts of the record, the court will request the additional materials. Prior law to the contrary is superseded. Compare *Harris v. Kuhn*, 80 Wn.2d 630, 497 P.2d 164 (1972); *Tunget v. Employment Security Dep't*, 78 Wn.2d 954, 481 P.2d 436 (1971); *Barnes v. Central Wash. Deaconess Hosp.*, 5 Wn. App. 13, 485 P.2d 85 (1971). Monetary sanctions may be imposed under Rule 18.9(a) against a party who did not make a good faith effort to correct or supplement the record before transmittal to the appellate court.

Rule 9.11 Additional evidence on review.

(a) **Remedy Limited.** The appellate court may only on its own initiative direct that additional evidence be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change

the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through post-judgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

(b) Where Taken. The appellate court will ordinarily direct the trial court to take additional evidence and find the facts based on that evidence. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The proper disposition of a case may, in very exceptional circumstances, be dependent upon the consideration of new evidence by the appellate court. For example, the parties to a contract dispute may have inadvertently failed to offer the contract in evidence after it was marked as an exhibit. This rule permits the introduction of new evidence at the appellate level——but only on the initiative of the court and only if all six listed conditions are met. The rule corresponds to California and Michigan practice, except that this rule is stricter. Compare California Appellate Rule 23 and Michigan Court Rule 810.

TITLE 10——BRIEFS

Rule

Rule 10.1 Briefs which may be filed.

(a) Scope of Title. The rules in this title apply only to the briefs referred to in this rule, unless a particular rule indicates a different application is intended.

(b) Briefs Which May Be Filed in Any Review. The following briefs may be filed in any review: (1) a brief of appellant or petitioner, (2) a brief of respondent, and (3) a reply brief of appellant or petitioner.

(c) Reply Brief of Respondent. If the respondent is also seeking review, the respondent may file a brief in reply to the response the appellant or petitioner has made to the issues presented by respondent's review.

(d) Pro Se Supplemental Brief in Criminal Case. A defendant in a review of a criminal case may file a brief supplementing the brief filed by the defendant's counsel, but only if the defendant files a notice of intention to file a pro se supplemental brief. The notice of intent should be filed within 30 days after the defendant has received the brief prepared by defendant's counsel, a notice from the clerk of the appellate court advising the defendant of the substance of this section, Rule 10.2(e), and 10.3(d), and a form of notice of intention to file a pro se supplemental brief. The clerk will advise all parties if the defendant files the notice of intention.

(e) Amicus Curiae Brief. An amicus curiae brief may be filed only if permission is obtained as provided in Rule 10.6. If an amicus curiae brief is filed, a brief in answer to the brief of amicus curiae may be filed by a party.

(f) Briefs in Cases Involving Cross Review. If a cross review is filed, the party first filing a notice of appeal or notice for discretionary review is deemed the appellant or petitioner for the purpose of this title, unless the parties otherwise agree or the appellate court otherwise orders.

(g) Briefs in Consolidated Cases and in Cases Involving Multiple Parties. In cases consolidated for the purpose of review and in a case with more than one party to a side, a party may (1) join with one or more other parties in a single brief, or (2) file a separate brief and adopt by reference any part of the brief of another.

(h) Other Briefs. The appellate court may in a particular case authorize or direct the filing of briefs on the merits other than those listed in this rule. [Adopted January 28, 1976, effective July 1, 1976.]

References:

Form 7, Notice of Intent to File Pro Se Supplemental Brief;

Rule 13.7, Proceedings (in Supreme Court) After Acceptance of Review (of Court of Appeals decision), (a) Procedure;

Rule 16.10, Personal Restraint Petition——Briefs.

Comment: Rule 10.1 conforms to current practice, except section (d). When the clerk sends a criminal defendant the brief prepared by defendant's counsel, the clerk will also send defendant a notice. The notice will inform the defendant of defendant's right to file a pro se supplemental brief and the procedure to be employed if the brief is filed. If the defendant wants to file a brief, a notice of intent to do so must be filed within 30 days of receipt of the brief filed by defendant's counsel. The form is provided by the clerk. The defendant need not obtain permission to file the brief as in ROA I–46. Motions under the old rule were uniformly granted.

Sections (f), (g), and (h) clarify practices which were ambiguous in the old rules, or not expressly covered.

Rule 10.2 Time for filing briefs.

(a) Brief of Appellant or Petitioner. The brief of an appellant or petitioner should be filed with the appellate court within 45 days after the report of proceedings is filed in the trial court; or, if the record on review does not include a report of proceedings, within 45 days after the party seeking review has filed the designation of clerk's papers and exhibits.

(b) Brief of Respondent in Civil Case. The brief of a respondent in a civil case should be filed with the appellate court within 30 days after service of the brief of appellant or petitioner.

(c) Brief of Respondent in Criminal Case. The brief of a respondent in a criminal case should be filed with the appellate court within 60 days after service of the brief of appellant or petitioner or, if a defendant files a pro se supplemental brief, within 30 days after service of the pro se supplemental brief.

(d) Reply Brief. A reply brief of an appellant or petitioner should be filed with the appellate court within the sooner of 30 days after service of the brief of respondent or 14 days before oral argument.

(e) Pro Se Supplemental Brief in Criminal Case. A pro se supplemental brief in a criminal case should be filed with the appellate court within 60 days after the defendant has received the brief prepared by counsel and has had an opportunity to view the report of proceedings.

(f) Brief of Amicus Curiae. A brief of amicus curiae must be filed with the appellate court not later than the date fixed by the appellate court.

(g) Answer to Brief of Amicus Curiae. A brief in answer to the brief of amicus curiae may be filed with the appellate court not later than the date fixed by the appellate court.

(h) Sanctions for Late Filing. The appellate court will ordinarily impose sanctions under Rule 18.9 for failure to timely file a brief. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 18.6, Computation of Time, (c) Filing by Mail
Rule 17.8, Accelerated Disposition of Review by Motion

Comment: (a) *Brief of Appellant or Petitioner.* The rule retains the time limit under ROA I–41. In the interest of uniformity, Rule 10.2(a) applies to both civil and criminal cases. It should be noted, however, that the time limits may be shortened or extended pursuant to Rule 18.8.

(b) *Brief of Respondent in Civil Case.* The rule retains the time limit under ROA I–41.

(c) *Brief of Respondent in Criminal Case.* The old rule is expanded from 30 days (ROA I–46) to 60 days. A notice of intent to file a pro se supplemental brief may be given as late as 30 days after the criminal defendant has received the brief prepared by defendant's counsel. The respondent's brief should answer the pro se brief, if filed; and respondent's counsel will not know if one is to be filed until the first 30 days has expired. See comments 10.1 and 10.2(e). Prior practice is retained with respect to the 30–day time limit after the respondent has been served with a pro se supplemental brief. See ROA I–46.

(d) *Reply Brief.* The old rules provided a time limit in civil cases of not less than 12 days prior to oral argument. ROA I–41.

(e) *Pro Se Supplemental Brief in Criminal Case.* The previous 60–day time limit is retained. See ROA I–46. The rule complies with *State v. Theobald*, 78 Wn.2d 184, 470 P.2d 188 (1970) and *Anders v. California*, 386 U.S. 738 (1967), which require that the defendant in a criminal case be given time to study counsel's brief and to raise any points the defendant chooses.

(g) *Answer to Brief of Amicus Curiae.* No comparable provision is found in the old rules.

Rule 10.3 Content of Brief.

(a) Brief of Appellant or Petitioner. The brief of the appellant or petitioner should contain under appropriate headings and in the order here indicated:

(1) *Title Page.* A title page, which is the cover.

(2) *Tables.* A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where cited.

(3) *Assignments of Error.* A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.

(4) *Statement of the Case.* A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

(5) *Argument.* The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary.

(6) *Conclusion.* A short conclusion stating the precise relief sought.

(7) *Appendix.* An appendix to the brief if deemed appropriate by the party submitting the brief.

(b) Brief of Respondent. The brief of respondent should conform to section (a) and answer the brief of appellant or petitioner. A statement of the issues and a statement of the case need not be made if respondent is satisfied with the statement in the brief of appellant or petitioner. If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues.

(c) Reply Brief. A brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(d) Pro Se Supplemental Brief in Criminal Case. The pro se supplemental brief in a criminal case should be limited to those matters which defendant believes have not been adequately covered by the brief filed by the defendant's counsel.

(e) Amicus Curiae Brief. The brief of amicus curiae should conform to section (a) but should in all respects be limited to the issues of concern to amicus. Amicus must review all briefs on file and avoid repetition of matters in other briefs.

(f) Answer to Brief of Amicus Curiae. The brief in answer to a brief of amicus curiae should be limited solely to the new matters raised in the brief of amicus curiae.

(g) Special Provision for Assignments of Error. A separate assignment of error for each instruction which a party contends was improperly given or refused must be included with reference to each instruction or proposed instruction by number. A separate assignment of error for each finding of fact a party contends was improperly made or refused must be included with reference to the finding or proposed finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 5, Title Page for All Briefs and Petition for Review;
Form 6, Brief of Appellant;
Rule 3.4, Title of Case and Designation of Parties;
Rule 18.1, Attorney's Fees and Expenses, (b) Argument in brief.

Comment: (a) *Brief of Appellant or Petitioner.* Rule 10.3 departs somewhat from prior practice. Assignments of error are required but a brief now must also include a concise statement of the issues presented for review. The appellate court may impose sanctions under Rule 18.9 for failure to assign error even if disclosed in an issue presented for review. And see Rule 10.4(c) for including in the brief verbatim findings, instructions, etc.

The issues presented for review part of Rule 10.3(a) is patterned after the Federal Rules of Appellate procedure. The rule makes relevant to the Washington practitioner the many excellent treatises on drafting briefs for federal courts. The task force particularly recommends Wiener, F., *Briefing and Arguing Federal Appeals* (1967), and Stern & Gressman, *Supreme Court Practice* (1969).

Rule 10.4 Preparation and filing of brief by party.

(a) Typing and Filing Brief. One legible, clean, and reproducible copy of the brief must be filed with the appellate court. The brief should be typed with black ribbon on 20 lb. substance 8 1/2" x 11" white paper. The type should not be smaller than pica equivalent to 10 point type. Lines should not generally exceed 5 inches in length. Margins 2 inches on the left side and 1 1/2 inches on the right side and on the top and bottom of each page are preferred. Lines should be double or one and one-half spaced. Quotations may be single spaced and footnotes should be single spaced.

(b) Length of Brief. A brief of appellant, petitioner, or respondent, and a pro se brief in a criminal case should not exceed 70 pages if double spaced, or 54 pages if 1 1/2 spaced. A reply brief should not exceed 35 pages if double spaced, or 27 pages if 1 1/2 spaced. An amicus curiae brief should not exceed 30 pages if double spaced, or 23 pages if 1 1/2 spaced. The title sheet, table of contents, table of authorities, and appendix are not included for the purpose of determining compliance with this rule.

(1) *Waiver of Page Limitations.* Waiver of page limitations will be granted only upon a motion made at least 14 days before the brief is due. Such motion must set forth the extraordinary reasons why compliance with the usual provisions of Rule 10.4(b) cannot be met. The motion may be heard ex parte.

(c) Text of Statute, Rule, Jury Instruction, or the Like. If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by facsimile copy in the text or in an appendix to the brief.

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits.

(e) Reference to Party. References to parties by such designations as "appellant" and "respondent" should be kept to a minimum. It promotes clarity to use the designations used in the lower court, the actual names of the parties, or descriptive terms such as "the employee," "the injured person," and "the taxpayer."

(f) Reference to Record. A reference to the record should designate the page and part of the record. Exhibits should be referred to by number. The clerk's papers should be abbreviated as "CP"; exhibits should be abbreviated as "Ex"; and the report of proceedings should be abbreviated as "RP." Suitable abbreviations for other recurrent references may be used.

(g) Citations. Citations must be in conformity with the form used in current volumes of the Washington Reports. Decisions of the Supreme Court and of the Court of Appeals must be cited to the official report thereof and should include the national reporter citation and the year of the decision. The citation of other state court decisions should include both the state and national reporter citations. The citation of a United States Supreme Court decision should include the United States Reports, the United States Supreme Court Reports Lawyers' Edition, and the Supreme Court Reporter. The citation of a decision of any other federal court should include the federal reporter citation and the district of the district court or circuit of the court of appeals deciding the case. Any citation should include the year decided and a reference to and citation of any subsequent decision of the same case. [Amd. Mar. 7, 1978, eff. Mar. 24, 1978; amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1,1976.]

Comment: (b) *Length of Brief.* The maximum lengths prescribed by ROA I-42 are enlarged to conform to federal practice. See FRAP 28(g). Longer briefs may be filed with permission obtained under Rule 18.8. The rule permits optional 1 1/2 spacing between typewritten lines, with a commensurate reduction in the number of pages permitted. One and one-half spacing reduces the physical bulk of a brief without sacrificing readability.

(c) *Text of Statute, Rule, Jury Instruction, or the Like.* A party may use a copy from the official source of a statute, regulation, or the like.

(e) *Reference to Party.* For reference to a party in the title of a case, see Rule 3.4.

(f) *References to Record.* The abbreviations prescribed by ROA I-42 have been revised to conform to the terminology adopted by Title 9 of these rules.

Rule 10.5 Reproduction and service of briefs by clerk.

(a) Reproduction of Brief. The appellate court commissioner or clerk will arrange for the economical reproduction of each brief and bill the party or amicus filing the brief for the cost of reproduction. Each brief will be

reproduced in the number of copies deemed necessary by the commissioner or clerk. The party or amicus must pay the cost of reproduction of the brief within 10 days after receiving the bill from the clerk. The appellate court commissioner or clerk may permit, under appropriate standards, a governmental party to reproduce and directly supply to the commissioner or clerk the number of copies required by the court in lieu of reproduction of the briefs being made by the court.

(b) Service of Brief. The clerk will serve two copies of each brief on each party and one each on the defendant in a criminal case and on any amicus curiae. The clerk will also send five copies of each brief to the Washington State Law Library.

(c) Notice to Defendant in Criminal Case. In a criminal case, the clerk will, at the time of service of the brief, serve the defendant with a notice and form as provided in Rule 10.1(d). [Amend. May 3, 1976, eff. July 1, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Comment: Rule 10.5 relieves the parties of the responsibility for reproducing and serving briefs. The rule is similar to the practice in Alaska. The party files one legible typewritten brief with the appellate court. The clerk reproduces and brief, makes only as many copies as are needed, and mails a copy to each party and amicus. The parties are billed for the actual costs incurred by the clerk. This procedure is used for *all* documents filed in the appellate court where multiple copies are needed. Rule 10.5 will substantially reduce costs to litigants and assure briefs of a uniform quality acceptable to the court.

Rule 10.6 Amicus curiae brief.

(a) When Allowed by Motion. The appellate court may prior to oral argument, on motion, grant permission to file an amicus curiae brief only if all parties consent, or if the filing of the brief would assist the appellate court. An amicus curiae brief may be filed only by an attorney authorized to practice law in this state, or by a member in good standing of the bar of another state in association with an attorney authorized to practice law in this state.

(b) Motion. A motion to file an amicus curiae brief must include a statement of (1) applicant's interest and the person or group applicant represents, (2) applicant's familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties, (3) specific issues to which the amicus curiae brief will be directed, and (4) applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion.

(c) On Request of the Appellate Court. The appellate court may ask for an amicus brief at any stage of review. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: *Generally.* Amicus curiae procedures should serve the traditional purpose of rendering friend of the court opinions and advice to the appellate court. Providing access to the appellate court by those persons or groups who will be significantly affected by the outcome of the issues on review can materially assist the court in the decision-making process. Social order and confidence in the judicial system are promoted when interested persons have the opportunity to receive a fair hearing.

(a) *When Allowed by Motion.* The consent of all parties is sufficient to permit amicus participation. The last sentence limits those persons who might file amicus curiae briefs to attorneys authorized to practice law in this state, or members of a Bar of another state in association with an active member of the Bar of this state. The social interest to be served by permitting nonlawyers to file amicus briefs is outweighed by the inconvenience caused to the administration of justice in appellate courts.

Rule 10.7 Submission of improper briefs. If a party submits a brief which fails to comply with the requirements for content, style, legibility, and length provided by Rules 10.3 and 10.4, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief which fails to comply with these rules. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

Comment: The rule gives the court discretion in handling briefs which fail to conform to the requirements of Rules 10.3 and 10.4. The case will not be dismissed, but the offending party may be subject to sanctions under Rule 18.9(a).

Rule 10.8 Additional authorities. A party may file a statement of additional authorities, without argument. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: A statement of additional authorities may be filed within the time specified in the rule. The statement should not contain additional argument, but may include a short comment indicating the portion of the brief or argument of a party to which the authorities pertain.

TITLE 11——ORAL ARGUMENT ON MERITS

Rule

Rule 11.1 Oral arguments to which title applies. The rules in this title apply to all oral argument in the appellate court except an argument on a motion. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 17.5, Oral Argument of Motions.

Rule 11.2 Who may present oral argument.

(a) Party. A party of record may present oral argument only if the party has filed a brief.

(b) Amicus Curiae. Amicus curiae may present oral argument only if time is made available for the argument by a party, or if the appellate court grants additional time for argument by amicus curiae. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (b) *Amicus curiae.* Amicus curiae may present oral argument if time is made available by a party out of the party's allocated time. An amicus may be given an opportunity to argue, on court order, even if none of the parties is willing to grant amicus a portion of the party's argument time.

Rule 11.3 Date of argument.

(a) Notice. The clerk will advise all parties and others who have filed briefs of the time and place of oral argument.

(b) Postponement. A request to postpone oral argument must be made by motion filed reasonably in advance of the date fixed for oral argument. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 11.4 Time allowed and order of argument.

(a) Time allowed to a Party. Each side is allowed 30 minutes for oral argument. If there is more than one party to a side in a single review or in a consolidated review, the parties on that side will share the 30 minutes equally, unless the parties on that side agree to some other allocation.

(b) Time Allowed to Amicus Curiae. Amicus curiae may present oral argument with the consent of a party and within a portion of the time for oral argument allocated to that party, or within the time allowed by the court.

(c) Order of Argument. The appellant or petitioner is entitled to open and conclude oral argument. The party first filing a notice of appeal or a notice for discretionary review is deemed the appellant or petitioner for the purpose of this rule.

(d) Cross Review. The argument on any cross review must be made at the same time as the argument on the initial review.

(e) Failure to Appear. The appellate court will hear argument on behalf of a party who has filed a brief who appears at the time of oral argument. If none of the parties to the review appears for oral argument, the court may order oral argument at a later time or may decide the case on the briefs. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 18.8, Waiver of Rules and Extension and Reduction.

Comment: Rule 11.4 is derived from prior rules without material change. Additional time may be requested in advance pursuant to Rule 18.8. The court may require oral argument even if the parties wish to submit the case on the briefs. See also comments 11.5 and 11.6.

Rule 11.5 Conduct of argument.

(a) Scope of Argument. The court ordinarily encourages oral argument. The opening argument should include a fair and concise statement of the facts of the case. Counsel need not argue all issues raised and argued in the briefs.

(b) Reading at Length. Counsel should avoid reading at length from briefs, records, or authorities.

(c) Duplication of Argument. Counsel should avoid duplication of argument, particularly if there are multiple parties arguing in support of the same issue.

(d) Use of Exhibits. Counsel may, to promote clarity of argument, use exhibits brought up as a part of the record and demonstrative or illustrative exhibits not a part of the record. Counsel should arrange, before court convenes, for the placement in the courtroom of exhibits and equipment to be used in oral argument. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 18.1, Attorney's Fees and Expenses, (d) Oral Argument.

Comment: (a) *Scope of Argument.* Rule 11.5(a) is included as a guide to counsel. The task force particularly recommends the following authorities with respect to the effective use of oral argument: Stern & Gressman, *Supreme Court Practice* (4th ed. 1969); Wiener, *Briefing and Arguing Federal Appeals* (1961); Davis, *The Argument of an Appeal* (ALI, 1957).

(d) *Use of Exhibits.* The rule expressly permits the use of exhibits in the record, and demonstrative or illustrative exhibits not a part of the record. Picture projection equipment may also be used.

Rule 11.6 Submitting case without oral argument.

The appellate court may, on its own initiative or on motion of all parties, decide a case without oral argument. [Adopted January 28, 1976, effective July 1, 1976.]

TITLE 12——APPELLATE COURT DECISION AND PROCEDURE AFTER DECISION

Rule

Rule 12.1 Basis for decision.

(a) Generally. Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.

(b) Issues Raised by the Court. If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (a) *Generally.* The rule emphasizes the importance of the briefs and advises counsel that the court will ordinarily not consider issues raised for the first time at oral argument. *Francioli v. Brue*, 4 Wash. 124, 29 P. 928 (1892).

(b) *Issues Raised by the Court.* Section (b) is suggested by *Siegler v. Kuhlman*, 81 Wn.2d 448, 502 P.2d 1181 (1972). To reach a proper decision the court may be required to consider issues or theories not raised by the parties.

Rule 12.2 Disposition on review. The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require. Upon issuance of the mandate of the appellate court as provided in Rule 12.5, the action taken and decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in Rule 12.9, and except as provided in Rule 2.5(c)(2). [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 2.5, Circumstances which may Affect Scope of Review, (c) Law of The Case doctrine restricted.

Rule 8.6, Termination of Supersedeas, Injunctions, and Other Orders; Rule 18.1, Attorney's Fees and Expenses, (e) Fees and expenses determined after remand.

Comment: This rule broadly states the power of the appellate court. The time for initiating a new trial after a reversal by an appellate court is governed by RCW 4.16.240.

Rule 12.3 Forms of decision.

(a) Decision Terminating Review. A "decision terminating review" is an opinion, order, or judgment of the appellate court or a ruling of a commissioner or clerk of an appellate court if it:

(1) is filed after review is accepted by the appellate court filing the decision, and

(2) terminates review unconditionally, and

(3) is (i) a decision on the merits, or (ii) a decision by the judges dismissing review, or (iii) a ruling by a commissioner or clerk dismissing review, or (iv) an order refusing to modify a ruling by the commissioner or clerk dismissing review.

(b) Interlocutory Decision. An "interlocutory decision" is any opinion, order, or judgment of the appellate court or ruling of a commissioner or clerk which is not a decision terminating review.

(c) Ruling. A "ruling" is any determination of a commissioner or clerk of an appellate court. The ruling may be a decision terminating review or an interlocutory decision. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 17.6, Motion Decided by Ruling or Order

Comment: An understanding of the various forms of decision is essential to an understanding of what follows in Title 12.

The term *decision* is used in the broadest sense to mean all determinations or directions, whether they are in the form of an opinion, order, or ruling. This definition of *decision* conforms to current practice in the Court of Appeals. See CAR 15 as construed in *Reeploeg v. Jensen*, 81 Wn.2d 541, 503 P.2d 99 (1972). In the Supreme Court, *decision* has traditionally meant an opinion. See SAR 15, RCW 2.04-.160, RCW 2.04.170, and Const. Art. 4 § 2. Rule 12.3 adopts the Court of Appeals terminology.

Under the old rules, the proper form of post-decision remedy depended upon whether an opinion was written. See ROA I-50 and SAR 15. There is no necessary correlation between the *form* of a decision and the appropriate method of reviewing that decision. These rules make distinctions based upon the *effect* of the decision. *Decision terminating review* is defined in section (a) and an *interlocutory decision* is defined in section (b). At least five members of the Supreme Court consider all applications for discretionary review if the decision of the Court of Appeals terminates review. See comment 13.5. A motion for discretionary review of an interlocutory decision does not receive this same consideration.

Publication of decisions is governed by RCW 2.06.040. The task force was divided on the question whether all decisions of the Court of Appeals should be published. These rules do not supersede RCW 2.06-.040. The rule does not affect the current policy that unpublished opinions lack precedential value. *State v. Fitzpatrick*, 5 Wn. App. 661, 491 P.2d 262 (1971).

Rule 12.4 Motion for reconsideration of decision terminating review.

(a) Generally. A party may file a motion for reconsideration only of a decision terminating review which is not a ruling of the appellate court commissioner or clerk. The motion should be in the form and be served and filed as provided in Rules 17.3(a), 17.4(a) and (g), and 18.5, except as otherwise provided in this rule. A party must file a motion for reconsideration of a Court of Appeals decision terminating review as a condition of seeking review by the Supreme Court.

(b) Time. The party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court.

(c) Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

(d) Answer and Reply. A party should not file an answer to a motion for reconsideration or a reply to an answer unless requested by the appellate court.

(e) Length——One Copy. The motion, answer, or reply should not exceed 25 pages in length if double spaced or 20 pages if one and one-half spaced unless additional length is authorized under Rule 18.8. Only one legible copy should be filed.

(f) No Oral Argument. A motion for reconsideration will be decided without oral argument.

(g) Grant of Motion. If a motion for reconsideration is granted, the appellate court may (1) modify the decision without new argument, (2) call for new argument, or (3) takes such other action as may be appropriate.

(h) Only One Motion Permitted. Only one motion for reconsideration may be filed, even if the appellate court modifies its decision or changes the language in the opinion rendered by the court. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References:

Rule 17.3, Content of Motion, (a) Generally; Rule 17.4, Filing and Service of Motion——Response to Motion, (a) Filing and service generally, (g) Form of papers and number of copies;

Rule 18.5, Service and Filing of Papers. Rule 18.8, Waiver of Rules and Extension and Reduction of Time.

Comment: The rule eliminates the distinctions between petitions for rehearing, petitions for modification, and motions for reconsideration of orders. A motion is sufficient to argue that the court should reconsider any decision. Rule 12.4 applies only to reconsideration of a decision made by the judges and only to a decision terminating review. Modifications of rulings of the clerk or commissioner are sought by a motion to modify the ruling under Rule 17.7.

The rule represents a change in law governing reconsideration of decisions at the Court of Appeals level. Under the former rules, orders of the Court of Appeals do not become final for 30 days. A motion for reconsideration could be filed during the 30–day period. CAR 15; *Reeploeg v. Jensen*, 81 Wn.2d 541, 503 P.2d 99 (1972). Under the old rules, at the Supreme Court level, orders are final when entered and will not be reconsidered. SAR 15. New Rule 12.4 provides only for reconsideration of decisions terminating review, and applies to both the Supreme Court and the Court of Appeals. The time within which the motion must be filed is reduced from 30 to 20 days.

A motion for reconsideration may be filed in the Court of Appeals. A party must do so in order to seek review by the Supreme Court. See Rules 13.2(a) and 13.3(b). Compare CAROA 50(b).

Statutes relating to *petitions for rehearing* are superseded. See Rules 1.1(g) and 18.12.

The appellate court may give permission to file a motion in excess of the length provided in (e). See Rules 1.2(c) and 18.8(a).

Rule 12.5 Mandate.

(a) Mandate Defined. A "mandate" is the written notification by the clerk to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision.

(b) When Mandate Issued by Court of Appeals. The clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration of the decision has been earlier filed, (ii) a notice of appeal to the Supreme Court has been earlier filed, (iii) a petition for review to the Supreme Court has been earlier filed, or (iv) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, 30 days after filing the order denying the motion for reconsideration, unless a petition for review to the Supreme Court or a notice of appeal to the Supreme Court has been earlier filed.

(3) If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review.

(c) When Mandate Issued by Supreme Court. The Clerk of the Supreme Court issues the mandate for a Supreme Court decision terminating review upon stipulation of the parties that no motion for reconsideration will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration has been earlier filed, or (ii) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, upon filing the order denying the motion for reconsideration. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The appellate court's directions to the lower court are known by various names. The statutes use the word *judgment*. RCW 2.04.160, 2.04.170. Some Rules on Appeal say *mandate* (ROA I–59), but others say *remittitur* (ROA I–2(g)). Rule 12.5 settles on the word *mandate* to conform to federal practice.

Rule 12.5 does not change existing practice, except that the rule anticipates that a motion may be filed for reconsideration of a Supreme Court order terminating review and the mandate issues in 20 days if a motion for reconsideration is not filed. See comment 12.4.

Rule 12.6 Stay of mandate pending decision on application for review by United States Supreme Court. The appellate court will not stay issuance of the mandate for the length of time necessary to secure a decision by the United States Supreme Court on an application for review, except in a case in which the penalty of death has been imposed. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 12.7 Finality of decision.

(a) Court of Appeals. The Court of Appeals loses the power to change or modify its decision (1) upon issuance of its mandate in accordance with Rule 12.5, except when the mandate is recalled as provided in Rule 12.9, or (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals.

(b) Supreme Court. The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals in accordance with Rule 12.5. The Supreme Court loses the power to change or modify a Supreme Court decision upon issuance of the mandate of the Supreme Court in accordance with Rule 12.5, except when the mandate is recalled as provided in Rule 12.9.

(c) Special Rule for Costs. The appellate court retains the power to act on questions of costs as provided in Title 14 after the issuance of the mandate.

(d) Special Rule for Law of the Case. The appellate court retains the power to change a decision as provided in Rule 2.5(c)(2). [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 2.5, Circumstances which may affect Scope of Review,
(c) Law of the Case doctrine restricted,
(2) Prior appellate court decision.

Comment: As demonstrated by *Reeploeg v. Jensen*, 81 Wn.2d 541, 503 P.2d 99 (1972), there has been considerable confusion over the use of the word *final*. Rule 12.7 and the other rules in Title 12 consider finality in terms of finality for specific purposes.

Rule 12.7 addresses finality in the sense that, at some point, the appellate court loses the power to change or modify its decision. The rule restates the traditional doctrine that the court loses the power to change or modify its decision upon issuance of the mandate, or upon acceptance of review by a higher court. The one exception to this rule is a recall of the mandate under Rule 12.9.

Rule 12.8 Effect of reversal on intervening rights. If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, or the value of the property. An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 7.2(c) provides that any person may take action, including execution, which assumes the validity of the trial court decision which is not superseded. Rule 12.8 defines what happens in certain circumstances if a person has acted or relied on an earlier trial court decision which is modified or reversed. The rule relates to the rights of all parties, not just the appellant as under ROA I–61 and CAROA 61. Fact situations are possible in which it would be necessary to protect the rights of the respondent as well as the appellant. See *Malo v. Anderson*, 76 Wn.2d 1, 454 P.2d 828 (1969).

Rule 12.9 Recall of mandate.

(a) To Require Compliance With Decision. The appellate court may recall a mandate issued by it to determine if the trial court has complied with an earlier decision of the appellate court given in the same case. The question of compliance by the trial court may be raised by motion to recall the mandate, or by initiating a separate review of the lower court decision entered after issuance of the mandate.

(b) To Correct Error. The appellate court may recall a mandate issued by it to correct an inadvertent mistake, to modify a decision obtained by fraud of a party or counsel in the appellate court, or to modify a decision of the appellate court which was beyond the jurisdiction of the court.

(c) Time for Motion. The motion to recall the mandate must be made within a reasonable time. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: Rule 12.9 represents a common–law exception to the usual principles of finality expressed in Rule 12.7. See 84 A.L.R. 579 (1933). Several Washington cases discuss the doctrine. The most recent and most comprehensive is *Reeploeg v. Jensen*, 81 Wn.2d 541, 503 P.2d 99 (1972). The rule simplifies prior practice. The simple motion procedure is used to request a recall of the mandate. Decisional law has not fixed a rigid time limit in which to make the motion. A rigid time limit would not be appropriate. See *Kosten v. Fleming*, 17 Wn.2d 500, 136 P.2d 449 (1943), and cases cited therein. The motion must be made within a reasonable time.

TITLE 13——REVIEW BY THE SUPREME COURT OF COURT OF APPEALS DECISION

Rule

Rule 13.1 Methods of seeking review.

(a) Two Methods of Seeking Review. There are only two methods of seeking review by the Supreme Court of decisions of the Court of Appeals. The two methods are review as a matter of right, called "appeal," and review by permission of the Supreme Court, called "discretionary review." Both appeal and discretionary review are called "review."

(b) Writ Procedure Superseded. The procedure for seeking review of decisions of the Court of Appeals established by these rules supersedes the review procedure formerly available by extraordinary writs of review, certiorari, mandamus, prohibition, and other writs formerly considered necessary and proper to the complete exercise of appellate and revisory jurisdiction of the Supreme Court. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The terminology and principles established by Rule 2.1 are made applicable to review of decisions of the Court of Appeals by the Supreme Court. See generally comment 2.1.

Rule 13.2 Decisions reviewed as a matter of right.

(a) What May Be Appealed. A party may appeal from a Court of Appeals decision terminating review only if the trial court decision has been reversed and the Court of Appeals decision is not unanimous and only if the party has filed a timely motion for reconsideration under Rule 12.4.

(b) Procedure To Initiate Appeal. A party seeking an appeal must file a notice of appeal in the Court of Appeals within 30 days after an order is filed denying a timely motion for reconsideration of that decision. The notice must be in the form provided by Rule 5.3(a).

(c) Incorrect Designation. A motion for discretionary review or a petition for review of a decision appealable as a matter of right will be given the same effect as a notice of appeal. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 8, Notice of Appeal (Court of Appeals Decision).

Comment: (a) *What may be Appealed.* Current law is unchanged. See ROA II–2(a).

(b) *Procedure to Initiate Appeal.* The notice of appeal is filed in the Court of Appeals. The Court of Appeals must have the notice to prevent issuance of the mandate under Rule 12.5(b). The notice is forwarded to the Supreme Court along with all other Court of Appeals records in the case.

Rule 13.3 Decisions reviewed as a matter of discretion.

(a) What May Be Reviewed. A party may seek discretionary review by the Supreme Court of any decision of the Court of Appeals which is not a ruling and is not appealable as a matter or right, including:

(1) *Decision Terminating Review.* Any decision terminating review.

(2) *Interlocutory Decision.* Subject to the restrictions imposed by Rule 13.5(b), any interlocutory decision, including but not limited to (i) a decision denying a motion to modify a ruling of the commissioner or clerk which denies a motion for discretionary review, and (ii) if the clerk refers a motion for discretionary review to the court, a decision by the court which denies a motion for discretionary review.

(b) Decision Terminating Review. A party seeking review of a Court of Appeals decision terminating review which is not appealable must first file a motion for reconsideration under Rule 12.4 and must file a "petition for review" as provided in Rule 13.4.

(c) Interlocutory Decision. A party seeking review of an interlocutory decision of the Court of Appeals must file a "motion for discretionary review" as provided in Rule 13.5.

(d) Incorrect Designation of Motion or Petition. A motion for discretionary review of a decision terminating review will be given the same effect as a petition for review. A petition for review of an interlocutory decision will be given the same effect as a motion for discretionary review.

(e) Ruling by Commissioner or Clerk. A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. The decision of the Court of Appeals on a motion to modify a ruling by the commissioner or clerk may be subject to review as provided in this title. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 12.3, Forms of Decision;
Rule 17.3, Content of Motion, (b) Motion for discretionary review.

Comment: *Generally.* Rule 13.3 closely parallels Rule 2.3, governing discretionary review of a trial court decision. However, Title 13 provides two methods of seeking discretionary review of the Court of Appeals. The appropriate method is determined by the nature of the decision sought to be reviewed.

(a) *What may be Reviewed.* The rule states the general rule that decisions not appealable are subject to discretionary review. The two classes of decisions subject to discretionary review are set forth. The rule does not apply to review of rulings of a commissioner or clerk. Review of a ruling is obtained under Rule 17.7.

(b) *Decision Terminating Review.* Rule 13.3(b) retains the petition for review as the method of seeking discretionary review of a decision terminating review. The conditions governing acceptance of review of a decision terminating review differ from those governing acceptance of review of an interlocutory decision. These differences lend themselves to separate procedural treatment. See Rules 13.4 and 13.5.

(c) *Interlocutory Decision.* Interlocutory decisions were reviewable by extraordinary writ under the old rules. ROA II–4. Under these rules, review of an interlocutory decision is sought by a motion for discretionary review under Rule 13.5.

(d) *Incorrect Designation of Motion or Petition.* It may be difficult in some cases to determine whether a decision is a decision terminating review subject to review by petition for review, or an interlocutory decision subject to review by a motion for discretionary review. Review will not be denied solely because a party chose the wrong method for seeking discretionary review.

Rule 13.4 Discretionary review of decision terminating review.

(a) How To Seek Review. A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must file a petition for review in the Court of Appeals within 30 days after an order is filed denying a timely motion for reconsideration of that decision.

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

(1) if the decision of the Court of Appeals is in conflict with decision of the Supreme Court, or

(2) if the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals, or

(3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved, or

(4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) Content and Style of Petition. The petition for review should contain under appropriate headings and in the order here indicated:

(1) *Cover.* A title page, which is the cover.

(2) *Tables.* A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where cited.

(3) *Identity of Petitioner.* A statement of the name and designation of the person filing the petition.

(4) *Citation to Court of Appeals Decision.* A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration.

(5) *Issues Presented for Review.* A concise statement of the issues presented for review.

(6) *Statement of the Case.* A statement of the facts and procedure in the trial court and in the Court of Appeals relevant to the issues presented for review, with appropriate references to the record.

(7) *Argument.* A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument.

(8) *Conclusion.* A short conclusion stating the precise relief sought.

(9) *Appendix.* An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

(d) Answer and Reply. A party may file an answer to a petition for review, or a reply to an answer. If a party wants to raise an issue which is not raised in the petition for review, that party must raise that new issue in an answer filed within 15 days of the service on the party of the petition. The Supreme Court may call for an answer or a reply to an answer.

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with the requirements as to form for a brief as provided in Rules 10.3 and 10.4, except as otherwise provided in this rule.

(f) Length. The petition for review, answer, or reply should not exceed 20 pages if double-spaced or 15 pages if one and one-half spaced.

(g) Service and Reproduction of Petition, Answer, and Reply. The clerk will arrange for the reproduction of copies of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as provided in Rule 10.5. The clerk will serve the petition, answer, or reply as provided in Rule 10.5(b).

(h) No Oral Argument. The Supreme Court will decide the petition without oral argument. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 9, Petition for Review.

Comment: The procedural requirements of Rule 13.4 are substantially the same as under the old rules, except the petition under the new rules will be filed only in the Court of Appeals and the answer to the petition takes on added importance. Under the old rules, only issues raised in a petition would be considered——the new rules permit a party to raise an issue in an answer to a petition. A party does not have to answer a petition unless that party wants to raise an issue not presented in the petition.

Section (f) limits the length of a petition, answer, or reply. The considerations governing acceptance of review remain unchanged. The time for filing is the same as the time for filing a motion for discretionary review. The petition is reproduced by the clerk in the manner provided in Rule 10.5.

Under current practice, a petition for review is determined by at least 5 judges. The record and briefs filed in the Court of Appeals are reviewed by the Supreme Court when considering the petition for review. A decision terminating review is a final decision and deserves judicial consideration.

Rule 13.5 Discretionary review of interlocutory decision.

(a) How to Seek Review. A party seeking review by the Supreme Court of an interlocutory decision of the Court of Appeals must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after the decision is filed.

(b) Considerations Governing Acceptance of Review. Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

(1) if the Court of Appeals has committed an obvious error which would render further proceedings useless, or

(2) if the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act, or

(3) if the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

(c) Motion Procedure. The procedure for and the form of the motion for discretionary review is as provided in Title 17.

(d) Effect of Denial. Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the Court of Appeals decision or the issues pertaining to that decision. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 3, Motion for Discretionary Review.

Comment: Rule 13.5 corresponds to Rules 2.3 and 6.2 governing discretionary review of trial court decisions. The principles and terminology established are discussed in comments 2.3 and 6.2. The time within which to seek review is the same as that in which a notice of appeal must be filed.

Rule 13.6 Acceptance of review.

(a) Appeal. The Supreme Court accepts review of a Court of Appeals decision upon the timely filing in the Court of Appeals of a notice of appeal from a decision which is reviewable as a matter of right.

(b) Discretionary Review. The Supreme Court accepts discretionary review of a decision of the Court of Appeals by granting a motion for discretionary review or by granting a petition for review. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule makes the terminology established by Rule 6.2 applicable to review of decisions of the Court of Appeals by the Supreme Court. See comment 6.2.

Rule 13.7 Proceedings after acceptance of review.

(a) Procedure. The procedure in the Supreme Court, after acceptance of review of a decision of the Court of Appeals, is the same as the procedure in the Supreme Court after acceptance of review of a trial court decision, except that (1) the record in the Court of Appeals is the record on review in the Supreme Court, and (2) only the briefs filed in the Court of Appeals and the

documents submitted in connection with the motion for discretionary review or petition for review will be considered by the Supreme Court, unless additional briefs are requested by the Supreme Court.

(b) Scope of Review of Decision Subject to Appeal. On an appeal to the Supreme Court from a decision of the Court of Appeals, the scope of review in the Supreme Court is the same as if the Supreme Court had initially accepted direct review of the trial court decision.

(c) Scope of Review of Decision Subject to Discretionary Review. If the Supreme Court accepts review of a Court of Appeals decision which is subject to discretionary review, the Supreme Court will review only the questions raised in the motion for discretionary review or the petition for review and the answer. The Supreme Court may limit the issues to one or more of those raised by the parties.

(d) Other Limitations on Scope of Review. The scope of review may be further affected by the circumstances set forth in Rule 2.5. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 2.5, Circumstances Which May Affect Scope of Review.

Comment: (a) *Procedure.* The record and briefs from the Court of Appeals are transferred to the Supreme Court. No additional briefs are permitted unless the Supreme Court orders otherwise. The old rules are substantially the same.

(b) *Scope of Review of Decisions Subject to Appeal.* If any party has an appeal to the Supreme Court, all issues originally before the Court of Appeals are considered by the Supreme Court——even decisions on issues which are not subject to appeal.

(c) *Scope of Review of Decision Subject to Discretionary Review.* The Supreme Court will review only the questions raised in the motion for discretionary review or petition for review and answer. See *Wood v. Postelthwaite*, 82 Wn.2d 387, 510 P.2d 1109 (1973). Similarly, a party who fails to join in the motion or petition will normally not derive any benefit from Supreme Court review.

TITLE 14—COSTS

Rule

Rule 14.1 Costs generally.

(a) When Allowed. The appellate court determines costs in all cases after the filing of a decision terminating review, except as provided in Rule 18.2 relating to voluntary withdrawal of review.

(b) Which Court Determines and Awards Costs. Costs on review are determined and awarded by the appellate court which accepts review and makes the final determination of the case.

(c) Who Determines and Awards Costs. If the court determines costs in its opinion or order, a commissioner or clerk will award costs in accordance with that determination. In all other circumstances, a commissioner or clerk determines and awards costs by ruling as provided in Rule 14.6(a). A party may object to the ruling of a commissioner or clerk as provided in Rule 14.6(b).

(d) Who is Entitled to Costs. Rule 14.2 defines who is entitled to costs.

(e) What Expenses are Allowed as Costs. Rule 14.3 defines the expenses which may be allowed as costs.

(f) How Costs are Claimed——Objections. A party claims costs by filing a cost bill in the manner provided in Rule 14.4. A party objects to claimed costs in the manner provided in Rule 14.5. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 18.1, Attorney's Fees and Expenses.

Comment: Costs are only awarded in a case after a decision terminating review has been filed.

The remainder of this rule is an introduction to the rules which follow.

Rule 14.2 Who is entitled to costs. A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review. If there is no substantially prevailing party on review, the commissioner or clerk will not award costs to any party. An award of costs will specify the party who must pay the award. A party who is a nominal party only will not be awarded costs and will not be required to pay costs. A "nominal party" is one who is named but has no real interest in the controversy. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: If the court determines costs in its decision terminating review, costs will be awarded in accordance with that determination. In all other circumstances, costs are awarded by a commissioner or clerk to the party who substantially prevails on review. If there is no substantially prevailing party on review, costs will not be awarded. In other words, the award of costs is based on who wins the review proceeding——not on who ultimately prevails on the merits. Costs will not abide the outcome of a new trial unless the court expressly so directs in its decision. This represents a departure from current practice.

Rule 14.3 Expenses allowed as costs.

(a) Generally. Only statutory attorney fees and the reasonable expenses actually incurred by a party for the following items which were reasonably necessary for review may be awarded to a party as costs: (1) preparation of the original and one copy of the report of proceedings, (2) copies of the clerk's papers, (3) preparation of an original document to be reproduced by the clerk, as provided in Rule 14.3(b), (4) transmittal of the record on review, (5) bonds given in connection with the review,

and (6) the lesser of the charges of the clerk for reproduction of briefs, petitions, and motions, or the costs incurred by the party reproducing briefs as authorized under Rule 10.5(a). If a party has incurred an expense for one of the designated items, the item is presumed to have been reasonably necessary for review, which presumption is rebuttable. The amount paid by a party for the designated item is presumed reasonable, which presumption is rebuttable.

(b) Special Rule for Cost of Preparing Original Document. The costs awarded for preparing an original document is an amount per page fixed from time to time by the Supreme Court. The cost for preparing an original document will only be awarded for a document which substantially complies with these rules and only for the actual number of pages of the document including the front cover and appendix. If a document is unreasonably long, costs will be awarded only for a reasonable number of pages.

(c) Special Rule for Indigent Review. An indigent may not recover costs from the State for expenses paid with public funds as provided in Title 15. The clerk or commissioner will claim costs due from other parties which reimburse the State for expenses paid with public funds as provided in Title 15. [Amd. June 21, 1976, eff. July 2, 1976; amd. May 3, 1976, eff. July 1, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:
Rule 18.1, Attorney's Fees and Expenses; RCW 4.84, Costs.

Comment: (a) *Generally.* Section (a) defines the expenses which may be awarded as costs. The specified expense must be reasonably necessary for review. For example, if the case is dismissed for failure to timely file a notice of appeal, the prevailing party would probably not be awarded costs for the expense of reproducing briefs on the merits. The charge for the specified item must also be reasonable. Thus, a party would not be awarded costs for a court reporter's overtime work occasioned by the party's delay in ordering the verbatim report of proceedings. An item of expense is presumed to be reasonably necessary for review and the amount is presumed reasonable. The presumptions are rebuttable.

(c) *Special Rule for Indigent Review.* This provision is new.

Rule 14.4 Cost bill.

(a) Generally. Except as provided in sections (b) and (c), a party seeking costs on review must file a cost bill with the appellate court and serve a copy of the cost bill on all parties within 10 days after the filing of an appellate court decision terminating review. If a party seeks costs for an expense incurred after the time to file a cost bill has expired, that party must serve on all parties and file a supplemental cost bill with the appellate court within 10 days after the expense was incurred. If a decision terminating review is modified to the extent that a different party is entitled to costs, the party seeking costs must file a cost bill with the appellate court and serve a copy of the cost bill on all parties within 10 days after the filing of the decision which modifies the original decision terminating review.

(b) When Costs Abide Final Result And There is No Second Review. If the costs on review are to abide the final determination in the trial court and that final determination is not reviewed by the appellate court, a party seeking costs must, within 30 days after the time to seek review of the trial court decision has expired, file with the appellate court and serve on each party: (1) a cost bill for costs on review, or if a cost bill was filed for the earlier review, a copy of the cost bill previously filed in the appellate court, (2) a copy of the final determination of the trial court, and (3) an affidavit stating that a notice of appeal or notice for discretionary review of the decision finally determining the case has not been filed.

(c) When Costs Abide Final Result and There is a Second Review. If the costs on review are to abide the final determination of the case by the trial court and that final determination is reviewed by the appellate court, the costs of the earlier review will be taxed at the same time the costs of the later review are taxed. A party seeking costs of the earlier review must file (1) a cost bill for costs on the earlier review or, if a cost bill was filed for the earlier review, a copy of the cost bill for the earlier review, and (2) a cost bill for the later review. [Amended November 9, 1976, effective January 1, 1977; adopted January 28, 1976, effective July 1, 1976.]

References:
Form 10, Cost Bill.
Rule 12.5, Mandate.

Comment: The rule changes current practice. See ROA I–55(c). Time limits have been extended from 10 to 30 days and the time begins to run on issuance of the mandate.

Rule 14.5 Objections to cost bill. A party may object to items in the cost bill of another party by serving on all parties and filing with the appellate court objections to the cost bill within 10 days after service of the cost bill upon the party. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 11, Objections to Cost Bill.

Comment: The rule conforms to current practice except that affidavits in support of objections are not required. Compare ROA I–55(c)(1). The use of affidavits is optional.

Rule 14.6 Award of costs.

(a) Commissioner or Clerk Awards Costs. A commissioner or the clerk will determine costs within 10 days after the time has expired for filing objections to the cost bill. The commissioner or clerk will notify the parties of the ruling on costs.

(b) Objection to Ruling. A party may only object to the ruling on costs by motion to the appellate court in the same manner and within the same time as provided for objections to any other rulings of a commissioner or clerk as provided in Rule 17.7.

(c) Transmitting Judgment for Costs. The commissioner or clerk will award costs in the mandate or in a supplemental judgment. An award of costs may be enforced as part of the judgment in the trial court. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 12.7, Finality of Decision, (c) Special rule for costs.

Comment: The rule conforms substantially to current practice. See ROA I–55(c) and (d). A party who wants review of the ruling on costs of a commissioner or clerk must file a motion to modify the ruling under Rule 17.7(a).

TITLE 15——SPECIAL PROVISIONS RELATING TO RIGHTS OF INDIGENT PARTY

Rule 15.1 Procedures to which title applies. The rules in this title define the procedure to be used (1) to determine indigency and to determine the expenses of an indigent party to review which will be paid from public funds as provided in Rule 15.2, (2) to obtain a waiver of charges imposed by the court as provided in Rule 15.3, (3) to claim payment from public funds for services rendered to an indigent party to review as provided in Rule 15.4, (4) to allow claims for expense as provided in Rule 15.5, and (5) to recover public funds expended on behalf of an indigent as provided in Rule 15.6. The rules in this title apply to all proceedings in the appellate court, except the rules apply to personal restraint petitions only to the extent defined in Rule 16.15(f) and (g). [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rules in this title establish a procedure comparable to that under ROA I–46 and I–47, and CAROA 46 and 47. The provisions for payment of review expense with public funds for certain civil cases correspond to ROA I–47 and CAROA 47, as amended by the Supreme Court on November 20, 1975.

Rule 15.2 Determination of indigency and rights of indigent party.

(a) Motion for Order of Indigency. A party seeking review partially or wholly at public expense must move in the trial court for an order of indigency. The motion must be served and filed within the time allowed for filing a notice of appeal or a notice for discretionary review. The time between the service and filing of the motion for an order of indigency and the determination of that motion is excluded from the time allowed for filing a notice of appeal or notice for discretionary review. The motion must be supported by an affidavit setting forth the moving party's total assets; the expenses and liabilities of the party; a statement of the amount, if any, the party can contribute towards the expense of review; a statement of the expenses the party wants waived or provided at public expense; a brief statement of the nature of the case and the issues sought to be reviewed; a designation of those parts of the record the party thinks are necessary for review; and a statement that review is sought in good faith. If the case is a civil case which does not involve a termination of parental rights or a disposition in a juvenile offense proceeding, the party must also demonstrate in the motion or the supporting affidavit that the issues the party wants reviewed have probable merit and that the party has a constitutional right to review partially or wholly at public expense.

(b) Action by Superior Court. The superior court shall decide the motion for an order of indigency, after a hearing if the circumstances warrant, as follows:

(1) *Denial Generally.* The superior court shall deny the motion if a party has adequate means to pay all of the expenses of review. The order denying the motion for an order of indigency shall contain findings designating the funds or source of funds available to the party to pay all of the expenses of review.

(2) *Cases Involving Crimes, Parental Rights, Juvenile Offenses.* In a criminal case, a case involving a termination of parental rights, or a case involving a disposition in a juvenile offense proceeding, the superior court shall grant the motion and enter an order of indigency if the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses of appellate review.

(3) *Other Civil Cases.* If the case is a civil case which does not involve a termination of parental rights or a disposition in a juvenile offense proceeding and if the party is unable by reason of poverty to pay for all of the expenses of review, the superior court shall enter findings of indigency. The superior court shall determine in those findings the portion of the record necessary for review and the amount, if any, the party is able to contribute towards the expense of review. The findings shall conclude with an order to the clerk of the superior court to promptly transmit to the Supreme Court, without charge to the moving party, the findings of indigency, the motion for an order of indigency, the affidavit in support of the motion, and all other papers submitted in support of or in opposition to the motion. The superior court clerk shall promptly transmit to the Supreme Court the papers designated in the findings of indigency.

(c) Action by Supreme Court. If findings of indigency and other papers relating to the motion for an order of indigency are transmitted to the Supreme Court, the Supreme Court will determine whether an order of indigency in that case should be entered by the superior court. The determination will be made by a department of the Supreme Court on a regular motion day without oral argument and based only on the papers transmitted to the Supreme Court by the superior court clerk, unless the Supreme Court directs otherwise. If the Supreme Court determines that the party is seeking review in good faith, that an issue of probable merit is presented, and that the party is entitled under the state or federal constitution to review partially or wholly at public expense, the Supreme Court will enter an order directing the trial court to enter an order of indigency. In all other cases, the Supreme Court will enter an order denying the party's motion for an order of indigency. The clerk of the appellate court will transmit a copy of the order

to the clerk of the superior court and notify all parties of the decision of the Supreme Court.

(d) Order of Indigency. An order of indigency shall designate the items of expense which are to be paid with public funds and, where appropriate, the items of expense to be paid by a party or the amount which the party must contribute towards the expense of review. The order shall designate the extent to which public funds are to be used for payment of the expense of the record on review, limited to those parts of the record reasonably necessary to review issues argued in good faith. The order of indigency shall appoint counsel if the party is entitled to counsel on review at public expense. The order of indigency must be transmitted to the appellate court as a part of the record on review.

(e) Continued Indigency Presumed. A party and counsel for the party who has been granted an order of indigency must bring to the attention of the trial court any significant improvement during review in the financial condition of the party. The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent.

(f) Appointment and Withdrawal of Counsel in Trial Court. The trial court shall determine questions relating to the appointment and withdrawal of counsel for an indigent party on review, except withdrawal as provided in section (h). If trial counsel is not appointed, trial counsel must assist counsel appointed for review in preparing the record.

(g) Review of Order of Indigency. Only a party in a criminal case, in a case involving permanent deprivation of parental rights, or in a case determining whether a juvenile is a delinquent may seek review of an order of indigency or an order denying an order of indigency. Review must be sought by a motion for discretionary review.

(h) Withdrawal of Counsel in Appellate Court. If counsel can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent. The motion should be supported by a brief. The motion and brief will be reproduced by the clerk and served on the opposing party and the person represented by counsel seeking to withdraw. [Amd. July 18, 1978, eff. July 1, 1978; amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References:
Form 12, Order of Indigency;
Rule 2.3, Decisions of the Trial Court which may be Reviewed by Discretionary Review.

Rule 15.3 Waiver of charges for reproducing briefs. The appellate court will waive the charges of the appellate court for reproducing briefs and other papers only to the extent authorized by the order of indigency. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule refers to the charges under Rule 10.5. Waiver of these charges must be specifically authorized by the order of indigency. See also Rule 15.2(b).

Rule 15.4 Claim for payment of expense for indigent party.

(a) Conditions for Payment. The expenses for an indigent party which are necessarily incident to review by an appellate court will be paid from public funds only if:

(1) an order of indigency is included in the record on review; and

(2) an order properly authorizes the expense claimed; and

(3) the claim is made by filing four copies of an invoice in the form and manner and within the time provided by this rule.

(b) Invoice Generally. Each invoice must include the appellate court caption and docket number and the name of the claimant. The claimant's social security number or the I.R.S. employer identification number of the claimant's firm must be included on each invoice, except one submitted by the superior court clerk. The invoice of a court reporter or a superior court clerk may be submitted as soon as the services have been performed or the expense incurred, but the invoice must be filed within 10 days after issuance of the mandate. The invoice must be filed in the appellate court to which the notice of appeal or notice for discretionary review was directed. Invoices filed in the Court of Appeals will be forwarded to the Supreme Court together with a statement indicating whether the requirements of this rule are satisfied.

(c) Invoice of Counsel. An invoice submitted by counsel representing an indigent party should be titled "Invoice of Counsel for Indigent Party." An invoice may be submitted only after oral argument, and not later than 10 days after issuance of the mandate. Counsel may submit only one invoice in the same review proceeding. The invoice must include a statement of the number of hours spent by counsel preparing the review, the amount of compensation claimed, and the reasonable expenses excluding normal overhead incurred by counsel for the review including travel expenses of counsel incurred for argument in the appellate court. Travel expenses may not exceed the amount allowable to state employees for travel by private vehicle. The invoice must include an affidavit of counsel stating that the items listed are correct charges for necessary services rendered and expenses incurred for proper consideration of the review and that counsel has not received and has not been promised compensation for the review from the indigent party or from any other source except as may have been approved by the court.

(d) Invoice of Court Reporter. An invoice submitted by the court reporter should be titled "Invoice of Court Reporter——Indigent Case." The invoice must state the number of pages transcribed and the billing rate per page. The billing rate must be at the rate per page or line page equivalent set by the Supreme Court for the original and one copy of that portion of the report of proceedings ordered by the superior court. Additional

copies which have been authorized and ordered from the reporter must be charged for as though reproduced by the most economical method available to the reporter. The superior court clerk shall certify the reporter's invoice as follows:

> I hereby certify that the amount claimed in this invoice is for that portion of the verbatim report of proceedings ordered by the trial court; that the typing of the report is in accordance with appellate rule 9.2(e) and (g); and that the bill is computed at the current rate per page set by the Supreme Court for the original and one copy, namely $_____per page.

(e) Invoice of Superior Court Clerk. An invoice submitted by the superior court clerk should be titled "Invoice of Superior Court Clerk——Indigent Case." The invoice must itemize the clerk's charges for the preparation of the record ordered by counsel for the indigent or the trial court and list the actual expenses of the clerk for transmittal of those portions of the record. The superior court clerk shall certify the clerk's invoice as follows:

> I hereby certify that the items listed in this invoice are correct charges for the preparation of those portions of the record ordered by counsel or the trial court and for the actual expense of transmittal of those portions of the record.

[Adopted January 28, 1976, effective July 1, 1976.]

Rule 15.5 Allowance of claim for payment of expense for indigent party.

(a) Allowance Generally. A commissioner or the Clerk of the Supreme Court determines all claims for expense by ruling. The commissioner or clerk will allow or disallow all or part of the claimed expense by ruling within 10 days after the invoice has been filed in the Supreme Court. The commissioner or clerk will notify the claimant of the ruling. A claimant may object to the ruling of the commissioner or clerk by motion to the Supreme Court, in the same manner and within the same time as an objection to any other ruling as provided in Rule 17.7.

(b) Disallowance of Claim. If a brief is unnecessarily long, improper in substance, or not in compliance with these rules, all or a portion of counsel's claim may be disallowed. If the court reporter or counsel has been dilatory, all or a portion of the claim of the court reporter or the claim of counsel may be disallowed. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 15.6 Recovery of public funds. If a case on review is returned to the trial court for further proceedings and the case involves a claim for a money judgment for the party on whose behalf public funds have been expended, the Clerk of the Supreme Court will indicate the amount of public funds expended on behalf of the party in the mandate or in a supplemental judgment. The amount indicated in the mandate and supplemental judgment is a lien on any settlement or judgment obtained by the party on whose behalf public funds have been expended. This lien must be satisfied prior to the payment of any other amounts to the party. If a judgment is entered, the judgment should reflect the lien imposed by this rule. The amount of the lien must be paid to the clerk of the superior court. The clerk of the superior court shall forward all funds recovered to the Clerk of the Supreme Court, who will credit these funds to the Indigent Appeal Allotment. [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:
Rule 14.3, Expenses Allowed as Costs, (c) Special Rule for Indigent Review.

TITLE 16——SPECIAL PROCEEDINGS IN THE SUPREME COURT AND COURT OF APPEALS

Rule

Rule 16.1 Proceedings to which title applies.

(a) Generally. The rules in this title establish the procedure for original actions in the Supreme Court and in the Court of Appeals, and the procedure for determining questions of law certified by a federal court.

(b) Original Actions in Supreme Court Against State Officers. Rule 16.2 defines the procedure for petitions against state officers for writs of mandamus, prohibition, quo warranto, and similar writs, but only when the proceeding is started for the first time in the Supreme Court.

(c) Original Actions in the Appellate Court——Personal Restraint Petition. Rules 16.3 through 16.15 define the procedure for a personal restraint petition, but only when the proceeding is started for the first time in the appellate court.

(d) Questions Certified by Federal Court. Rule 16.16 defines the procedure for determining questions of law certified by a federal court.

(e) Review of Decision of the Court of Appeals. Except as provided in Rule 16.14, a Court of Appeals decision in a special proceeding is subject to review by the Supreme Court only by discretionary review as provided in Title 13.

(f) Removal of Public Officer. Proceedings to remove a public officer are governed by statute and not these rules. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: There are certain proceedings in the Supreme Court and the Court of Appeals which cannot be handled under usual appellate rules. This title establishes a special set of rules for these *special proceedings*. The special proceedings include all original actions in the Supreme Court and in the Court of Appeals and determinations of questions of law certified to the Supreme Court by a federal court. The rules in the other titles do not apply to a special proceeding unless the special proceeding rule incorporates the rule in the other title.

Statutory proceedings to remove a public officer, heard by a special panel of superior court judges convened by the Chief Justice of the Supreme Court, are governed by statute and not these rules. See, e.g., RCW 28B.10.500, 43.21B.040, 51.52.040, 80.01.010, and 82.03.040.

Rule 16.2 Original action against state officer.

(a) Generally. The Supreme Court and the superior court have concurrent original jurisdiction of a petition against a state officer in the nature of quo warranto, prohibition, or mandamus. This rule applies only to an action originating in the Supreme Court.

(b) Initiating Proceeding. The proceeding is initiated by filing the petition in the Supreme Court and serving the petition on the proper parties. The petition must be noted for hearing before the commissioner or clerk as provided in Rule 17.4 for motions. The notice of hearing should be served with the petition. Service of the petition and notice must be made as provided in the Superior Court Civil Rules and statutes for service of a summons in a superior court action.

(c) Motion Procedure Governs. The petition is treated by the Supreme Court as a motion to a commissioner or clerk. Title 17 relating to motions governs the response to the petition, oral argument, decisions by ruling, and the means of objecting to the ruling of the commissioner or clerk.

(d) Decisions Made by Commissioner or Clerk. A commissioner or clerk will, at the hearing, determine if the petition should be decided by the Supreme Court. If the commissioner or clerk decides that the petition should be transferred, the petition will be transferred to a superior court for determination on the merits. If the petition is not transferred, the commissioner or clerk will refer questions of fact to a master or to the superior court unless an agreed and adequate written statement of facts is approved by the parties prior to or at the hearing. The commissioner or clerk will also determine the timing of all remaining steps in the proceeding, including time for filing briefs on the merits.

(e) Procedure if Petition is Not Transferred. The procedure if the petition is not transferred is the same as the procedure in the Supreme Court after acceptance of review of a trial court decision, except as otherwise directed by a ruling of the commissioner or clerk as provided in section (d).

(f) Statutory Time Limits Govern. If a statute provides a time within which a petition against a state officer in the nature of quo warranto, prohibition, or mandamus must be filed, the petition must be filed in the Supreme Court within the time period established by the statute.

(g) Costs. Costs are determined and awarded as provided in Title 14. The appellate court will award costs by supplemental judgment and will, on motion, transmit the judgment to the clerk of the superior court in the county selected by the party who is awarded costs. The supplemental judgment to the superior court shall be filed as a judgment in that court without payment of a filing fee. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 16, Petition Against State Officer;
Const. Art. 4 § 4; CR 4, Process, (d) Service; chapter 4.28 RCW, Commencement of Actions; chapter 7.16 RCW, Certiorari, Mandamus and Prohibition; chapter 7.56 RCW, Quo Warranto.

Comment: (a) *Generally.* Section (a) restates the constitutional scope of concurrent original Supreme Court jurisdiction for writs directed to state officers. To be distinguished is the scope of *appellate* jurisdiction over similar cases initiated in superior court. See Rule 4.2. This rule applies only to cases started in the Supreme Court.

Prior law defining "state officer" is applicable. Generally, the procedures set forth in Rule 16.2 (currently ROA I–58) may not be used to initiate review of a trial court decision. Lowry, *Supreme Court Practice*, Washington State Bar News, February 1971, p. 25. Although a trial court judge is technically a state officer, the judge is not a real party in interest with respect to an interlocutory order. *State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 107 P.2d 901 (1940); *Davis v. Gibbs*, 39 Wn.2d 180, 234 P.2d 1071 (1951). Review of a nonappealable trial court order should be sought under Rule 2.3

(b) *Initiating Proceeding.* ROA I–58 provides that the action is initiated "in the same manner as for the commencement of an ordinary civil action." Civil actions may be commenced in a variety of ways. The ambiguity in the old rule is avoided by the more precise language of Rule 16.2(b).

(c) *Motion Procedure Governs.* The complicated procedure under the old rules is abandoned in favor of the simpler motion procedure.

(d) *Decisions Made by Commissioner or Clerk.* Section (d) relieves the Chief Justice of the administrative details of referring the case to superior court for factual determinations and of determining the timing of remaining procedural steps in the Supreme Court. Delegation of these administrative decisions to the commissioner or clerk conserves valuable judicial time. See A. Tate, *Containing the Law Explosion*, 56 Judicature 228 (Jan. 1973). Adequate means for seeking review of a ruling by the clerk or commissioner are provided.

The Supreme Court may decline to exercise its original jurisdiction over a case which the court determines can more appropriately be adjudicated by a superior court. See *State ex rel. O'Connell v. Meyers*, 51 Wn.2d 454, 319 P.2d 828 (1957). The rule does not require that a case be transferred to the superior court of Thurston County. A different county may be more convenient.

(e) *Procedure if Petition is Not Transferred.* If the case is not transferred to a different court, the remaining procedural steps are the same as on an appeal, except as modified pursuant to Rule 16.2(d).

The deposit required by ROA I–58(c) is eliminated. Under the old rules the deposit is passed from one party to another. The deposit served no purpose sufficiently useful to justify the administrative burden on the court.

Rule 16.3 Personal restraint petition——Generally.

(a) Habeas Corpus and Post–Conviction Relief. Rules 16.3 through 16.15 establish a single procedure for original proceedings in the appellate court to obtain relief formerly available by a petition for writ of habeas corpus or by an application for post–conviction relief.

(b) Former Procedure Superseded. The procedure established by Rules 16.3 through 16.15 for a personal restraint petition supersedes the appellate procedure formerly available for a petition for writ of habeas corpus and for an application for post–conviction relief, unless one of these rules specifically indicates to the contrary. These rules do not supersede and do not apply to habeas corpus proceedings initiated in the superior court.

(c) Original Appellate Court Jurisdiction. The Supreme Court and the Court of Appeals have original concurrent jurisdiction in personal restraint petition proceedings. The Supreme Court will ordinarily exercise its jurisdiction by transferring the petition to the Court of Appeals. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Chapter 7.36 RCW, Habeas Corpus

Comment: Under current law there are two appellate court proceedings which may be used to challenge a restraint on personal liberty. Those two means are an application for post–conviction relief under CrR 7.7 and a Petition for Writ of Habeas Corpus under ROA I–56 or CAROA 56. Rules 16.3 through 16.15 supersede both of these procedures. New rules provide for a single procedure called a personal restraint petition. The procedure employed by the new rules is in many respects similar to the procedure under the superseded CrR 7.7, except the appellate court decides petitions where there are factual disputes after a reference hearing in superior court.

These rules do not supersede and do not apply to habeas corpus procedures in the Superior Court.

Rule 16.4 Personal restraint petition——Grounds for remedy.

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b) and the petitioner's restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one or more of the following reasons:

(1) the decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or

(2) the conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the constitution or laws of the State of Washington; or

(3) material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or

(4) there has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or

(5) other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or

(6) the conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the constitution or laws of the State of Washington; or

(7) other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown. [Amd. June 21, 1976, eff. July 2, 1976; adop. January 28, 1976, eff. July 1, 1976.]

References:
Chapter 7.36 RCW, Habeas Corpus

Comment: Relief will be granted only if a petitioner can meet the requirements of sections (b) and (c), subject to the restrictions in (d). The personal restraint petition may be used to challenge the legality of the restraint of the petitioner where the restraint is imposed in a criminal case or a civil case. The relationship between a personal restraint petition and other remedies defined in section (d) is consistent with

present law and is in accord with *ABA Standards Relating to Post–Conviction Remedies* (Approved Draft, 1968). See Standard 2.2 and the commentary at page 40. In cases challenging the propriety of a private restraint, a personal restraint petition is not the appropriate remedy if there is another adequate remedy. For example, a custody challenge in a domestic relations case might fit the technical requirements of sections (b) and (c). However, the petition would not be entertained if there was an adequate remedy by means of a domestic relations proceeding. Section (c) relates to the basis of petitioner's restraint. A petitioner must establish that the petitioner's restraint falls within one or more of the classifications in section (c). This section corresponds to Standard 2.1 of the ABA Standards.

Rule 16.5 Personal restraint petition——Where to seek relief.

(a) Court of Appeals. A personal restraint petition should be filed in the Court of Appeals.

(b) Supreme Court. If a personal restraint petition is filed in the Supreme Court, the Supreme Court will ordinarily transfer the petition to the Court of Appeals. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Chapter 7.36 RCW, Habeas Corpus

Comment: Old CrR 7.7(a) states that a petition for post–conviction relief is to be filed in the Court of Appeals. Rule 16.5 provides that *all* personal restraint petitions are to be filed in the Court of Appeals. If a personal restraint petition is filed in the Supreme Court, the Supreme Court will ordinarily transfer the petition to the Court of Appeals.

Rule 16.6 Personal restraint petition——Parties.

(a) Parties. If petitioner is under a restraint imposed by the state or local government, the petition should be captioned only with the name of the petitioner. If petitioner is not under a restraint imposed by the state or local government, the petition should be captioned with the name of the petitioner and the name of the person or agency restraining petitioner's liberty, as respondent. The petition may be brought by the person who is under a restraint or in the person's name by that person's guardian, conservator, parent, or attorney.

(b) Respondent——Restraint by Government. If petitioner is under a restraint imposed by the state or local government, the officer or agency responsible for the proceeding against petitioner at the time petitioner claims the proceeding was defective or improper shall respond to the petition. If there are two or more proper respondents, each shall serve and file a separate response unless they agree to joint representation and notify the appellate court and the petitioner of that agreement.

(c) Change of Respondent. If the petitioner is under a restraint imposed by the state or local government, the appellate court may on its own initiative or on motion substitute the proper respondent, and the clerk of the court will notify substituted respondent. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: (b) *Respondent.* The rules changes current criminal practice for Supreme Court habeas corpus and conforms to the practice which seems to be emerging under (but is not spelled out in) CrR 7.7. In Supreme Court habeas corpus proceedings under the old rules, the custodian of the prisoner is named as the respondent. If the petitioner is confined in a State institution the respondent is the secretary of the Department of Social and Health Services who appears and answers the petition through the Attorney General. Typically, the petition claims a defect in the proceeding against a petitioner in Superior Court at a time when the prosecution was handled by the county prosecutor. The responsibility for answering the petition should be that of the person or agency responsible for the proceeding at the time the claimed defect occurred. That person or agency will be more familiar with the proceeding and would be located in the area where any hearing would be held which should reduce the time and expense required to answer the petition. This rule makes this change by specifically defining who has the duty to respond to the petition.

Rule 16.7 Personal restraint petition——Form of petition.

(a) Generally. Under the titles indicated, the petition should set forth:

(1) *Status of Petitioner.* The restraint on petitioner; the place where petitioner is held in custody, if confined; the judgment, sentence, or other order or authority upon which petitioner's restraint is based, identified by date of entry, court, and cause number; any appeals taken from that judgment, sentence or order; and a statement of each other petition filed with regard to the same allegedly unlawful restraint, identified by the date filed, the court, the disposition made by the court, and the date of disposition.

(2) *Grounds for Relief.* A statement of (i) the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations, (ii) why other remedies are inadequate, and (iii) why the petitioner's restraint is unlawful for one or more of the reasons specified in Rule 16.4(c). Legal argument and authorities may be included in the petition, or submitted in a separate brief as provided in Rule 16.10(a).

(3) *Statement of Finances.* If petitioner is unable to pay the filing fee or fees of counsel, a request should be included for waiver of the filing fee and for the appointment of counsel at public expense. The request should be supported by a statement of petitioner's total assets and liabilities.

(4) *Request for Relief.* The relief petitioner wants.

(5) *Oath.* If a notary is available, the petition must be signed by the petitioner or his attorney and verified substantially as follows:

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

or,

After being first duly sworn, on oath, I depose and say: That I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

[Signature]

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public in and for the State of Washington, residing at _____

If a notary is not available, the petition must be subscribed by the petitioner or his attorney substantially as follows:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.
Dated This _____ day of _____, 19__.

[Signature]

If a notary is available and a petition is filed which is not verified, the appellate court will return the petition for

verified signature and advise the petitioner's custodian to make a notary available.

(b) Standard Form. The clerk of the appellate court will make the standard form of petition available to persons who are confined in state institutions and to others who may request the form. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 17, Personal Restraint Petition.

Comment: The standard form of petition is designed to assist a petitioner without counsel to prepare a petition which will permit a determination of the petitioner's claim on the merits. The device seems to work in Federal Court. *See comment, Washington Proposed Rules of Criminal Procedure*, 135. Standardized application forms for those without counsel are recommended in *ABA Standards Relating to Post–Conviction Remedies* § 3.2. CrR 7.7(a) seems to require the use of a standard form even if the application is prepared by an attorney. Section (b) of the new rule specifies a form of an application but does not require use of the standard form.

Rule 16.8 Personal restraint petition——Filing and service.

(a) Filing Fee. A personal restraint petition will be filed by the clerk of the appellate court only if the statutory filing fee is paid, unless the appellate court determines that the petitioner is unable to pay the filing fee. The statute requiring payment of a fee for filing a petition for writ of habeas corpus is controlling.

(b) Filing in Court of Appeals. A personal restraint petition filed in the Court of Appeals must be filed in the division which includes the superior court entering the decision on the basis of which petitioner is held in custody or, if petitioner is not being held in custody on the basis of a decision, in the division in which the petitioner is located.

(c) Service of Petition. If petitioner's restraint is imposed by the state or local government, the clerk of the appellate court will reproduce a copy of the petition and serve the petition on the officer or agency under a duty to respond to the petition. If petitioner's restraint is imposed by a person or agency other than the state or local government, the petitioner must prepare and serve a copy of the petition on the proper respondent. [Adopted January 28, 1976, effective July 1, 1976.]

References:
RCW 2.32.070, Fees——Supreme Court Clerk, Clerks of Court of Appeals.

Comment: The statutory filing fee is retained for personal restraint petitions. The filing fee discourages the filing of frivolous petitions by persons in custody. A commissioner or a clerk will accept a personal restraint petition without the payment of the filing fee if the petitioner has insufficient funds to pay that fee. A motion to waive the fee is not necessary. The procedure is designed to be simple so a lay person can make use of it. A section in the standard form of petition gives an indigent petitioner a means to show details about financial circumstances and to request waiver of the filing fee. See Rule 16.7(a)(3).

Rule 16.9 Personal restraint petition——Response to petition. The respondent must, within 20 days after the petition is served, unless the time is extended by the commissioner or clerk for good cause shown, serve and file a response to the petition. The response must answer the allegations in the petition. The response must state the authority for the restraint of petitioner by respondent and, if the authority is in writing, include a conformed copy of the writing. If an allegation in the petition can be answered by reference to a record of another proceeding, the response should so indicate and include a copy of those parts of the record which are relevant. Respondent should also identify in the response all material disputed questions of fact. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: ABA Standard 4.2(a) states as follows:

> Because of the limited pleading capabilities of lay applicants, it is not expedient for courts to undertake to evaluate applications filed pro se by such persons. A routine practice of ruling on such applications for sufficiency of pleadings should be avoided. The court will be better able to understand the nature of the grievance asserted and to determine the proper mode of proceeding after a responsive pleading has been filed and the pertinent record has been brought into focus. It is preferable, therefore, that the courts make it clear that responsive pleadings are expected as of course.

This rule conforms to the ABA Standards. Old CrR 7.7(b) is to the contrary; post–conviction applications under CrR 7.7(b) are screened to determine if they "have any basis in fact or law" without requiring a responsive answer. This has in the past resulted in sending an application for post–conviction relief to the Superior Court for a trial when an answer would have made clear that this procedure was not necessary

Rule 16.10 Personal restraint petition——Briefs.

(a) Briefs Allowed. The following briefs may be, but need not be, filed:

(1) *Petitioner's Opening Brief.* Petitioner's opening brief, which should be filed with the petition.

(2) *Petitioner's Reply Brief.* Petitioner's reply brief, which should be filed within 20 days after the answering brief is served on petitioner. If the brief is mailed, it must be mailed within 17 days after the answering brief is served on petitioner.

(b) Brief Required. Respondent must file an answering brief within the time the response must be filed.

(c) Briefs at Request of Appellate Court. The appellate court may call for additional briefs at any stage of the consideration of the petition.

(d) Content and Style of Briefs. The content and style of briefs is governed by Rules 10.3 and 10.4.

(e) Reproduction and Service of Briefs. Briefs must be filed with the clerk of the appellate court. Briefs will be reproduced and served by the clerk in accordance with Rule 10.5. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 16.11 Personal restraint petition——Consideration of petition.

(a) Generally. The Chief Judge will consider the petition promptly after the time has expired to file petitioner's reply brief. The Chief Judge determines at the initial consideration if the petition will be retained by the appellate court for determination on the merits or transferred to a superior court for determination on the merits or for a reference hearing.

(b) Determination by Appellate Court. The Chief Judge determines at the initial consideration of the petition the steps necessary to properly decide on the merits

the issues raised by the petition. If the issues presented are frivolous, the Chief Judge will dismiss the petition. If the petition is not frivolous and can be determined solely on the record, the Chief Judge will refer the petition to a panel of judges for determination on the merits. If the petition cannot be determined solely on the record, the Chief Judge will transfer the petition to a superior court for a determination on the merits or for a reference hearing. The Chief Judge may enter other orders necessary to obtain a prompt determination of the petition on the merits.

(c) **Oral Argument.** Decisions of the Chief Judge will be made without oral argument. If a petition is to be decided on the merits by a panel of judges, the appellate court clerk will set the petition for consideration by the panel of judges, with or without oral argument. If oral argument is directed, the clerk will notify the parties of the date set for oral argument. [Amended November 9, 1976, effective January 1, 1977; adopted January 28, 1976, effective July 1, 1976.]

Comment: Under old CrR 7.7, the Chief Judge of the Court of Appeals could do one of two things with an application for post-conviction relief. The Chief Judge would dismiss the application if it had no basis in fact or law, or transfer it to a superior court for determination on the merits. The new rules provide for four alternatives. If the petition is frivolous, it is dismissed. If the petition is not frivolous and can be determined on the record in the appellate court, the petition is referred directly to a panel of appellate court judges for determination on the merits. If the petition cannot be determined solely on the record, the petition is sent to the superior court for a reference hearing to determine disputed facts or for a determination on the merits.

Rule 16.12 Personal restraint petition——Reference hearing. If the appellate court transfers the petition to a superior court, the transfer will be to the superior court for the county in which the decision was made resulting in the restraint of petitioner or, if petitioner is not being restrained on the basis of a decision, in the superior court in the county in which petitioner is located. If the respondent is represented by the attorney general, the prosecuting attorney, or a municipal attorney, respondent must take steps to obtain a prompt evidentiary hearing and must serve notice of the date set for hearing on all other parties. The parties, on motion and for good cause shown, will be granted reasonable pretrial discovery. Each party has the right to subpoena witnesses. The hearing shall be held before a judge who was not involved in the challenged proceeding. The petitioner has the right to be present at the hearing and the right to cross-examine adverse witnesses. The rules of evidence apply at the hearing. Upon the conclusion of the hearing, if the case has been transferred for a reference hearing the superior court shall enter findings of fact and have the findings and all appellate court files forwarded to the appellate court. Upon the conclusion of the hearing if the case has been transferred for a determination on the merits, the superior court shall enter findings of fact and conclusions of law and an order deciding the petition. [Amended November 9, 1976, effective January 1, 1977; adopted January 28, 1976, effective July 1, 1976.]

Comment: This rule establishes the procedure in a superior court hearing if the petition is transferred to that court for a reference hearing. The rule is consistent with *ABA Standards Relating to Post-Conviction Remedies.* The petitioner has the right to be present at the hearing. See ABA Standard 4.6(b). Normal rules of evidence apply. See ABA Standard 4.6(c). Reasonable discovery proceedings are available.

Rule 16.13 Personal restraint petition——Procedure after reference hearing. After a reference hearing and the findings of fact and appellate court files have been returned to the appellate court, the Chief Judge will dismiss the petition if the issues presented are frivolous. If the petition is not frivolous, the Chief Judge will refer the petition to a panel of judges for determination on the merits. The appellate court may, on motion of a party, order the preparation of and transmittal to the appellate court of a part or all of the record of the reference proceeding. The appellate court order will define at whose expense the record is prepared. Oral argument is governed by Rule 16.11(c). [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Rule 16.14 Personal restraint petition——Appellate review.

(a) **Decision Whether to Transfer.** A decision to transfer a petition to a superior court for a hearing or to retain the petition for determination by the appellate court is not subject to review by the Supreme Court.

(b) **Decision of Superior Court.** A decision of a superior court in a personal restraint proceeding transferred to that court for a determination on the merits is subject to review in the same manner and under the same procedure as any other trial court decision.

(c) **Other Decisions.** If the petition is dismissed by the Chief Judge or decided by the Court of Appeals on the merits, the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5(a), (b), and (c). [Amended November 9, 1976, effective January 1, 1977; adopted January 28, 1976, effective July 1, 1976.]

Comment: This rule clarifies which decisions are subject to review and the means of obtaining review.

Rule 16.15 Personal restraint petition——Supplemental provisions.

(a) **Motion.** The procedure for and form of a motion is as provided in Title 17, except that a motion by the petitioner must be verified in the same manner as a petition. Motions will ordinarily be considered without oral argument.

(b) **Release by Appellate Court of Person in Custody.** The appellate court may release a petitioner on bail or personal recognizance before deciding the petition, if release prevents further unlawful confinement and it is unjust to delay the petitioner's release until the petition is determined. The appellate court or the superior court in its decision on the merits, or by separate order after a decision on the merits, may release a petitioner on bail or on personal recognizance. The appellate court may direct the release of petitioner with the conditions of release to be determined by a trial court.

(c) **Oral Argument.** Except as otherwise provided in Rule 16.11(c), the procedure for oral argument is governed by Title 11.

(d) **Disposition of Petition.** The petition will be determined by the appellate court by written opinion or order briefly stating the reasons for the determination.

(e) **Costs.** Costs are awarded as provided in Title 14.

(f) **Indigency——Superior Court Determination.** The provisions of CrR 3.1 apply to a personal restraint petition transferred to a superior court. If any of petitioner's expenses incurred in the superior court are to be paid with public funds, the expenses shall be paid with funds appropriated by the county in which the superior court is located.

(g) **Indigency——Appellate Court Proceeding.** If the restraint is imposed by the state or local government, and if the appellate court determines that petitioner is indigent, the court may provide for the appointment of counsel at public expense for services in the appellate court, order waiver of charges for reproducing briefs and motions, provide for the preparation of the record of prior proceedings and provide for the payment of such other expenses as may be necessary to consider the petition in the appellate court. Invoices for expenses of an indigent person in the appellate court must be submitted to the appellate court which decided the petition in the form and manner provided in Rule 15.4, except that a trial court order of indigency is not required and the invoice must be submitted within 45 days after the appellate court decision terminating the proceeding is filed. If a petitioner who claims to be indigent is in the custody of an agency of the Department of Social and Health Services, the clerk of the appellate court will obtain a statement of petitioner's known assets from the superintendent of the institution where petitioner is confined. Statutes providing for payment of expenses with public funds are not superseded. [Amended November 9, 1976, effective January 1, 1977; adopted January 28, 1976, effective July 1, 1976.]

References:
Title 15, Special Provisions Relating to Rights of Indigent Party.

Comment: (b) *Release by Appellate Court of Person in Custody.* See *ABA Standards Relating to Post-Conviction Remedies*, Standard 5.2(b), which states in part:

> The appellate court, or an individual judge or justice, should be authorized to release applicants for post-conviction relief or otherwise to stay execution of their judgments of conviction pending appellate review.

The conditions of release, such as the amount of bail or personal recognizance, may be determined by the trial court.

Rule 16.16 Question certified by federal court.

(a) **Generally.** 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 if the question of state law is one which has not been clearly determined and does not involve a question determined by reference to the United States Constitution. Certificate procedure is the means by which a federal court submits a question of Washington law to the Supreme Court. This rule provides the procedure for implementing chapter 2.60 RCW.

(b) **Caption of Pleadings and Briefs Filed in Supreme Court.** The caption of the case should be:

CERTIFICATION FROM [ORIGINATING UNITED STATES COURT]
IN
[*Title of Action*]

(c) **Filing.** The cause shall be filed, indexed, and numbered in the same manner as an appeal to the Supreme Court.

(d) **Record.** The record shall be certified by the federal court as required by statute.

(e) **Briefs.**
(1) *Procedure.* The federal court shall designate who will file the first brief. The first brief should be filed within 30 days after the record is filed in the Supreme Court. The opposing party should file the opposing brief within 20 days after receipt of the opening brief. A reply brief should be filed within 10 days after the opposing brief is served. The time for filing the record, the supplemental record, or briefs may be extended for cause.
(2) *Form and Reproduction of Briefs.* Briefs should be in the form provided by Rules 10.3 and 10.4. Briefs will be reproduced and served in accordance with Rule 10.5.

(f) **Costs.** The cost provisions of Title 14 are applicable except that both parties must file a cost bill, and that the commissioner or clerk will not award costs but will divide the total costs equally between the parties.

(g) **Finality of Opinion.** The opinion of the Supreme Court is certified to the federal court at the time a mandate would issue as provided in Rule 12.5. The certification by the clerk states that the opinion is in answer to the question of Washington law submitted. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Chapter 2.60 RCW, Federal Court Local Law Certificate Procedure Act.

Comment: The old rule is retained except that briefs are filed with the clerk, who reproduces and serves them in accordance with Rule 10.5.

Rule 16.17 Other rules applicable. Rules 1.1, 1.2, 18.1, 18.3 through 18.10, and 18.21 through 18.24 are applicable to the special proceedings in this Title. [Adop. June 21, 1976, eff. July 2, 1976.]

TITLE 17——MOTIONS

Rule

Rule 17.1 Relief available by motion. A person may seek relief, other than a decision of the case on the merits, by motion as provided in Title 17. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 17.2 Who decides a motion.

(a) Generally. The judges determine (1) a motion in a brief, (2) a motion to modify a ruling by a commissioner or the clerk, (3) a motion for reconsideration of a decision, (4) a motion to recall the mandate, and (5) a motion to extend time under Rule 18.8(b). All other motions may be determined initially by a commissioner or the clerk of the appellate court.

(b) Reference to the Judges. A commissioner or clerk may refer a motion to the judges for determination. If the motion is referred to the judges, the commissioner or clerk will give notice of the reference to all persons entitled to notice of the motion.

(c) Transfer by Supreme Court to Court of Appeals. A commissioner or clerk of the Supreme Court may transfer a motion for discretionary review of a trial court decision to the Court of Appeals for determination. [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Comment: (a) *Generally.* With the exception of designated motions to be heard by the judges, all motions may first be heard and determined by an appellate court commissioner or clerk. A commissioner or clerk may hear motions formerly heard by the Chief Justice, such as a motion for discretionary review, a motion for minor procedural changes, and a motion for a stay or other order to insure effective review. A commissioner or clerk may also hear motions formerly heard by the court, such as a motion for a major procedural change and a motion to dismiss. Each appellate court may restrict the types of motions to be heard by a commissioner or the clerk, and define which types will be heard by a commissioner and which will be heard by the clerk.

This change in procedure is designed to conserve judicial time. It does not deny a hearing by the court. Rule 17.7 gives any party the right to ask for such a hearing.

Division I of the Court of Appeals has both a commissioner and a clerk. The Supreme Court and each division of the Court of Appeals may appoint one or more commissioners to fill the role established by these rules.

(b) *Reference to the Court.* The commissioner or clerk may refrain from ruling on a motion and refer it to the court for decision.

Rule 17.3 Content of motion.

(a) Generally. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Motion for Discretionary Review. A motion for discretionary review should contain under appropriate headings and in the order here indicated:

(1) *Cover.* A title page, which is the cover.

(2) *Identity of Petitioner.* A statement of the name and designation of the person filing the motion.

(3) *Decision Below.* A statement of the decision which petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision.

(4) *Issues Presented for Review.* A concise statement of the issues presented for review.

(5) *Statement of the Case.* A statement of the facts and procedure below relevant to the issues presented for review, with appropriate reference to the record.

(6) *Argument.* A direct and concise statement of the reasons why review should be granted, with supporting argument.

(7) *Conclusion.* A short conclusion stating the precise relief sought.

(8) *Appendix.* An appendix containing a conformed copy of the decision which the party wants reviewed and a conformed copy of any order granting or denying motions made with respect to that decision. In addition, the appendix may include copies of statutes and constitutional provisions relevant to the issues presented for review, a conformed copy of parts of the record relevant to the motion, and other material which would assist the court in determining whether the motion should be granted.

(c) Statement of Grounds for Direct Review. If the motion is for discretionary review of a trial court decision and the party making the motion seeks direct review by the Supreme Court, the party seeking review must also file a separate statement urging grounds for Supreme Court review as provided in Rule 4.2(b). [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 3, Motion for Discretionary Review;
Form 4, Statement of Grounds for Direct Review;
Form 18, Motion;
Form 20, Motion to Modify Ruling;
Rule 6.2, Discretionary Review; Rule 12.4, Motion for Reconsideration of Decision Terminating Review.

Comment: (a) *Generally.* Section (a) sets forth the general requirements for a written motion. No comparable provision is found in the former rules. The rule minimizes paperwork and overlap by eliminating the distinction between the motion and the brief in support of the motion. However, it is permissible to file a separate brief with the motion or after the motion is filed. See Rule 17.4(f).

(b) *Motion for Discretionary Review.* Section (b) defines what the motion for discretionary review must include. See Rule 6.2 and comment 6.2.

Certified copies of parts of the record are not required.

Rule 17.4 Filing and service of motion——Response to motion.

(a) Filing and Service Generally. Except in the special circumstances defined in section (c), a motion must be served on all parties, amicus, and other persons entitled

to notice, and filed in the appellate court. Except in the special circumstances defined in sections (b), (c), and (d), a motion which is to be decided by a commissioner or the clerk must be accompanied by a notice of the time and date set for oral argument of the motion. The movant should contact the clerk of the appellate court to determine the date and time available for argument of the motion. The motion and notice must be served on all parties, amicus, and other persons entitled to notice and filed in the appellate court at least 10 days before the date noted for the hearing on the motion. If service is by mail, the moving party must mail the motion and notice at least 13 days before the date noted for hearing the motion.

(b) Emergency Motion. In an emergency, a person may present a motion to the commissioner or clerk on notice less than that required by section (a) and at any time and place the commissioner or clerk will make available to hear the motion. The movant shall notify all parties, amicus, and other persons entitled to notice of the date, time, and place the motion will be heard. The notice may be written or oral. The person presenting the motion must, at the time the motion is heard, file an affidavit stating the type of notice given and the time and date the notice was given to each person. The commissioner or clerk may decide the motion only if satisfied (1) that adequate relief cannot be given if a decision of the motion is delayed to permit the notice required by section (a), and (2) the movant has taken reasonable steps under the circumstances to give notice to persons who would be affected by the ruling sought.

(c) Summary Determination. The commissioner or clerk may summarily determine without oral argument a motion which, in the judgment of the commissioner or clerk, does not affect a substantial right of a party. The commissioner or clerk may also hear and decide verbal ex parte motions which, in the judgment of the commissioner or clerk, involve minor matters and seek relief which would be routinely granted without sanctions.

(d) Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits.

(e) Response to Motion. A person with a recognized interest in the subject matter of the motion may submit a written response to the motion. A response to a motion must be served and filed at least 2 days preceding the day of hearing. If service is by mail, the responding party must mail the response at least 5 days before the day noted for hearing the motion. The response to a motion within a brief may be made within the brief of the responding party.

(f) Supporting Papers. A person should serve and file with the motion all affidavits and other papers submitted in support of the motion. A person must, in any event, serve and file affidavits and other papers submitted in support of the motion not less than 5 days before the date designated for hearing the motion. If the affidavits and other papers are mailed, the person must, in any event, mail them at least 8 days before the day noted for hearing the motion. Affidavits and other papers submitted in support of a response must be served and filed with the response.

(g) Form of Papers and Number of Copies. All papers relating to motions or responses should be filed in duplicate in the form provided for briefs in Rule 10.4(a). The appellate court commissioner or clerk will reproduce additional copies that may be necessary for the appellate court and charge the appropriate party as provided in Rule 10.5(a). [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:

Form 19, Notice of Motion;

Rule 12.4, Motion for Reconsideration of Decision, (d) Answer and reply, (f) Oral argument.

Comment: Sections (a), and (d) through (g), reorganize and modify the relevant portions of ROA I–53 and I–54. The present practice of permitting certain motions to be made within a brief is retained.

Section (b), Emergency Motions, has no counterpart in the current rules but it is consistent with practice in the Supreme Court and Court of Appeals.

Section (c) provides that minor matters, typically requests for short extensions of time, may be handled by the clerk without the formalities otherwise required by Rule 17.4.

Rule 17.5 Oral argument of motion.

(a) Oral Argument to Commissioner or Clerk. Unless the motion is determined without oral argument, as provided in Rule 17.4(c) for a motion determined summarily, the movant, and any person entitled to notice of the motion who has filed a response to the motion, may present oral argument on a motion to be decided by a commissioner or the clerk.

(b) Oral Argument to Judges. A motion to be decided by the judges will be decided without oral argument, unless the appellate court directs otherwise.

(c) Date and Time of Argument. Oral argument on a motion to be determined by the clerk or a commissioner will be held on the date and time noted for hearing the motion, unless otherwise directed by the appellate court.

(d) Time Allowed, Order, and Conduct of Oral Argument. If oral argument is held, each side is allowed 10 minutes for argument of a motion. The moving party is entitled to open and conclude oral argument. Rule 11.5 applies to the conduct of argument of motions.

(e) Telephone Argument. The appellate court may direct the parties to conduct oral argument of a motion to the commissioner or clerk or to the court by means of a conference telephone call. The expense of the call will be shared equally by the parties, unless the appellate court directs otherwise in the ruling or decision on the motion. A party may request telephone conference argument by letter to the appellate court clerk. [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:

Rule 10.4 Preparation of Brief by Party, (d) Motion in Brief

Comment: The motion days listed in ROA I–53 and CAROA 53 are not set forth. Under these rules, the moving party arranges with the clerk for a hearing on a day acceptable to the court. See Rule 17.4(a).

Rule 17.5(e), Telephone Argument, is suggested by current practice in one division of the Court of Appeals.

Rule 17.6 Motion decided by ruling or order.

(a) Motion Decided by Commissioner or Clerk. A commissioner or clerk decides a motion by a written ruling which includes a statement of the reason for the decision. The commissioner or clerk will file the ruling and serve a copy on the movant and all persons entitled to notice of the original motion.

(b) Motion Decided by Judges. Ordinarily the judges decide a motion by an order. The judges may decide a motion by an opinion. The clerk will notify the movant and all persons entitled to notice of the motion of the order made or opinion rendered by the court. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 17.7 Objection to ruling——Review of decision on motion. An aggrieved person may object to a ruling of a commissioner or clerk, including transfer of the case to the Court of Appeals under Rule 17.2(c), only by a motion to modify the ruling directed to the judges of the court served by the commissioner or clerk. The motion to modify the ruling must be served on all persons entitled to notice of the original motion and filed in the appellate court not later than 10 days after the ruling is filed. A motion to the justices in the Supreme Court will be decided by a panel of five justices unless the court directs a hearing by the court en banc. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Form 20, Motion to Modify Ruling.

Comment: A person adversely affected by the ruling of the commissioner or clerk may have the ruling reviewed by the judges. The motion to modify the ruling is decided by the court as an original proposition. The movant does not have to claim an abuse of discretion by the commissioner or clerk.

Rule 17.8 Accelerated disposition of review by motion. RESCINDED. [Rescinded June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

TITLE 18——SUPPLEMENTAL PROVISIONS

Rule

Rule 18.1 Attorneys' fees and expenses.

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney's fees or expenses on review, the party should request the fees or expenses as provided in this rule.

(b) Argument in Brief. The party should devote a section of the brief to the request for the fee or expenses. The request should not be made in the cost bill.

(c) Affidavit. Seven days prior to oral argument, the party should serve and file an affidavit in the appellate court detailing the expenses incurred and the services performed by counsel.

(d) Oral Argument. A party should include in oral argument a request for the fee or expenses and a reference to the affidavit on file.

(e) Fees and Expenses Determined After Remand. The appellate court may direct that the amount of fees and expenses be determined by the trial court after remand. [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Comment: The rule does not apply to statutory attorney's fees. See RCW 4.84.080. It applies to particular cases in which reasonable attorney's fees are allowed by law or contract. See, e.g., RCW 4.84.250; RCW 60.04.130, 60.76.040, 74.08.080; *Corinthian Corp. v. White & Bollard*, 74 Wn.2d 50, 442 P.2d 950 (1968).

Rule 18.2 Voluntary withdrawal of review. The appellate court on motion may, in its discretion, dismiss review of a case on stipulation of all parties and, in criminal cases, the written consent of the defendant, if the motion is made before oral argument on the merits. The appellate court may, in its discretion, dismiss review of a case on the motion of a party who has filed a notice of appeal, a notice for discretionary review, or a motion for discretionary review by the Supreme Court. Costs will be awarded in a case dismissed on a motion for voluntary withdrawal of review only if the appellate court so directs at the time the motion is granted. [Adopted January 28, 1976, effective July 1, 1976.]

Comment: The rule shifts the authority to permit withdrawal of a case on review from the superior court to the appellate court. The appellate court should retain control over proceedings on review.

The rule does not give the appellant or petitioner the right to withdraw the case *ex parte*. See *State v. Wells*, 7 Wn. App. 553, 500 P.2d 1012 (1972).

Rule 18.3 Withdrawal by counsel in criminal case. Except for indigent appointments and withdrawals as provided in Rule 15.2(f), counsel for a defendant in a criminal case may withdraw only with the permission of the appellate court on a showing of good cause. The appellate court will not ordinarily grant permission to counsel to withdraw after the opening brief has been filed. A motion to withdraw must be served on all parties and on the defendant personally. An affidavit of service must be filed with the motion to withdraw. [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

References:
Rule 15.2, Determination of Indigency and Rights of Indigent Party, (f) Appointment and Withdrawal of Counsel in Trial Court.

Comment: Rule 18.3 is consistent with CrR 3.1(b) and (e), which requires permission of the court to withdraw as counsel at any stage of a criminal proceeding. See Rule 15.2(f) for withdrawal of counsel for an indigent party.

Rule 18.4 Disposition of exhibits.

(a) If Further Proceedings Ordered. If a case is returned to the trial court for further proceedings, exhibits in the custody of the appellate court will be returned to the trial court.

(b) Exhibits Requested by Interested Person. If a case is not returned to the trial court for further proceedings, the clerk of the appellate court will dispose of exhibits in a civil case as stipulated by the parties, at the expense of the parties designated in the stipulation. In all other circumstances where an interested person requests an exhibit in a civil or criminal case, the exhibit will be returned to the trial court for disposition.

(c) Exhibits Not Requested by Interested Person. Exhibits which are not requested by an interested person will be disposed of in the following manner:

(1) *Cumbersome Exhibits.* If an exhibit cannot reasonably be retained in the appellate court case pouch, the clerk will notify the parties that the exhibit will be disposed of in accordance with section (d) unless requested by an interested person in accordance with section (b) within six months of the date of the clerk's notice.

(2) *Other Exhibits.* Exhibits will be retained in the appellate court case pouch for 30 years after a case is final if it is reasonably practical to do so. After that time if the exhibit appears to the clerk to have material or sentimental value, the clerk will make a reasonable attempt to notify the parties that the exhibit will be disposed of in accordance with section (d) unless the exhibit is requested by an interested person in accordance with section (b) within three months of the date of the clerk's notice.

(d) Disposition of Exhibits by Clerk. Exhibits not requested by an interested person within the time provided in section (c) will be destroyed by the clerk unless: (1) the exhibit is of historical value, in which case it will be transferred to the custody of the Washington State Museum; or (2) the exhibit is of material value, in which case it will be transferred to the Surplus Property Section of the Washington State Department of General Administration for sale; or (3) the transfer or destruction of the exhibit is regulated, in which case the exhibit will be disposed of in accordance with applicable law. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 18.5 Service and filing of papers.

(a) Service. Except when a rule requires the appellate court commissioner or clerk or the trial court clerk to serve a particular paper, and except as provided in Rule 9.5, a person filing a paper must, at or before the time of filing, serve a copy of the paper on all parties, amicus, and other persons who may be entitled to notice. If a person does not have an attorney of record, service should be made upon the person. Service must be made as provided in CR 5(b), (f), (g), and (h).

(b) Proof of Service. Proof of service should be made by an acknowledgement of service, or by an affidavit, or, if service is by mail, as provided in CR 5(b). Proof of service may appear on or be attached to the papers filed.

(c) Filing. Papers required or permitted to be filed in the appellate court must be filed with the clerk, except that an appellate court judge may permit papers to be filed with the judge, in which event the judge will note the filing date on the papers and promptly transmit them to the appellate court clerk. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 9.5, Filing and Service of Report of Proceedings——Objections.

Rule 18.6 Computation of time.

(a) Generally. In computing any period of time prescribed by these rules, the day of the event from which the time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or day when the appellate court is not open, in which case the period extends to the end of the next day which is not a Saturday, Sunday, or day when the court is not open.

(b) Service by Mail. Except as otherwise provided in Rule 17.4, if the time period in question applies to a party serving a paper by mail, the paper is timely served if mailed within the time permitted for service. If the time period in question applies to the party upon whom service is made, the time begins to run 3 days after the paper is mailed to the party.

(c) Filing by Mail. A brief authorized by Title 10 is timely filed if mailed to the appellate court within the time permitted for filing. Except as provided in Rule 17.4, any other paper is timely filed only if it is received by the appellate court within the time permitted for filing. [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 3.2, Substitution of Parties, (e) Time Limits.
Rule 17.4, Filing and Service of Motion——Response to Motion.
RCW 1.16.050, Legal holidays;
RCW 2.28.100, No court on legal holidays——Exception.

Comment: Note that *service* by mail, section (b), is treated differently from *filing* by mail, section (c).

Rule 18.7 Signing and dating papers. Each paper filed pursuant to these rules should be dated and signed by an attorney or party as provided in CR 11, except papers prepared by a judge, commissioner or clerk of court, bonds, papers comprising a record on review, papers which are verified on oath or by certificate, and exhibits. [Adopted January 28, 1976, effective July 1, 1976.]

References:
CR 11, Signing of Pleadings.

Rule 18.8 Waiver of rules and extension and reduction of time.

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in sections (b) and (c).

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

(c) Restriction on Changing Decision. The appellate court will not enlarge the time provided in Rule 12.7 within which the appellate court may change or modify its decision.

(d) Terms. The remedy for violation of these rules is set forth in Rule 18.9. The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in Rule 18.9. [Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Comment: (a) *Generally.* See comment 1.2.

(b) *Restriction on Extension of Time.* The appellate court will almost always hold that the desirability of finality of decisions outweighs the right of an individual party to obtain an extension. Thus, the court will rarely grant the extension permitted by this paragraph. This is to be contrasted with the federal rule which permits a 30–day extension without the showing of "extraordinary circumstances" required by this rule. This paragraph represents only a slight departure from the old rigid 30–day rule. Section (b) is designed to accommodate those limited cases where extraordinary circumstances prevent the filing of a timely document. A rigid rule can produce harsh results.

(c) *Restriction on Changing Decision.* Section (d) should be contrasted with Rule 12.9, which permits a recall of the mandate and provides that the motion to recall must be made within a reasonable time.

(d) *Terms.* See comment 18.9.

Rule 18.9 Violation of rules.

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel who uses these rules for the purpose of delay or who fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 30 days notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2) except as provided in Rule 18.8(b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in Rule 17.7.

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in Rule 18.8(b), for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

(d) Objection to Ruling. A counsel upon whom sanctions have been imposed or a party may object to the ruling of a commissioner or the clerk only as provided in Rule 7.7 [Adopted January 28, 1976, effective July 1, 1976.]

References:
Rule 10.7, Brief Which Fails to Comply with Rules.

Comment: The old rules provided that a case might be dismissed for the failure of counsel to observe the rules relating to bonds, briefs, and the record. ROA I–51, CAROA 51. The new rules for the most part substitute monetary sanctions for the harsher sanction of dismissal. Sanctions will also be imposed to assure compliance with the rules under circumstances where dismissal was not available under the old rules. The sanction will typically be a fine or a compensatory award paid by the offending person to the opposing party. The rule permits the court to fashion other remedies when appropriate. A dismissal would ordinarily not be granted except as provided in sections (b) and (c).

The rule is suggested by *Neal v. Green*, 68 Wn.2d 415, 413 P.2d 339 (1966). There, appellant failed to comply with the time requirements for bonds and the record. Respondent moved to dismiss the appeal. The court, however, said that it was hesitant to punish litigants for neglect of their counsel, and instead required the offending attorney to pay $150 attorney's fees to opposing counsel.

The rule does not limit the contempt powers of the appellate court.

Rule 18.10 Forms. A person may use any form which substantially complies with these rules. The forms in the Appendix are only illustrative. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 18.11 Civil appeal statement and settlement conference in court of appeals. [Rescinded February 28,

1977, effective February 28, 1977; adopted January 28, 1976, effective July 1, 1976.]

Rule 18.12 Accelerated review generally. The appellate court may set any review proceeding for accelerated disposition on the judges' motion calendar. The appellate court clerk will notify the parties of the setting and any orders entered to promote the accelerated disposition under Rules 1.2(c) and 18.8(a). [Adop. June 21, 1976; eff. July 2, 1976.]

Rule 18.13 Accelerated review of dispositions in juvenile offense proceedings.

(a) Generally. A disposition in a juvenile offense proceeding which is beyond the standard range for that offense may be reviewed in the manner provided in the rules for other decisions or by accelerated review as provided in this rule.

(b) Accelerated Review by Motion. A party seeking accelerated review of the disposition shall do so by motion. The motion must include (1) the name of the party filing the motion; (2) the offense; (3) the disposition of the trial court; (4) the standard range for the offense; (5) a statement of the disposition urged by the moving party; (6) copies of the clerk's papers and a written verbatim report of those portions of the disposition proceeding which are material to the motion; (7) an argument for the relief the party seeks; and (8) a statement of any other issues to be decided in the review proceeding.

(c) Motion Procedure Controls. The motion procedure, including a party's response, is governed by Title 17.

(d) Accelerated Review of Other Issues. The decision of issues other than those relating to the juvenile offense disposition may be accelerated only pursuant to Rules 18.8 and 18.12. [Adop. July 18, 1978, eff. July 1, 1978.]

Rule 18.14 through 18.20 [Reserved].

Rule 18.21 Title and citation of rules. These rules are called the Rules of Appellate Procedure and may be cited as RAP. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 18.22 Statutes and rules superseded.

(a) Generally. Rule 1.1(g) provides that these rules supersede all statutes and rules covering procedure in the appellate courts, unless a particular rule indicates that statutes control. The statutes and rules superseded by these rules continue to apply to any case pending before the Supreme Court or the Court of Appeals on July 1, 1976.

(b) List of Statutes and Rules. Some, but not necessarily all, of the statutes and rules which are superseded by these rules are listed below. If a listed statute relates to appellate procedure and to some other subject, it is superseded only as it relates to appellate procedure. If a listed statute relates in part to one of these rules which specifies that statutes control, and in part to other rules, the listed statute is superseded only as it relates to the other rules. The rules listed are superseded and no longer effective.

Statutes and Rules Superseded

SAR 15
ROA I–1 through I–67
ROA II–1 through II–4
CAR 15 and 24
RCW 1.12.040
2.04.010
2.04.160
2.04.170
2.06.030
4.20.050
4.32.190
4.32.250
4.36.240
4.80.050
4.84.180
4.88.260
5.48.050
6.24.110
7.36.040
8.04.070
8.04.150
10.77.130
10.77.230
19.10.110
24.32.360
26.32.120
26.32.130
29.79.170
CAROA 1 through 66
CR 62(c), (d), (e), and (g)
CrR 7.4(d)(2)
CrR 7.7
RCW 29.79.210
29.82.160
30.30.090
31.12.050
33.40.120
35.44.260
36.18.020(7)
36.94.290
43.24.120
48.28.030
49.32.080
49.60.260
50.32.130
51.52.110
52.34.090
56.20.080
57.16.090
84.64.120
85.05.130
85.06.130
85.08.440
91.04.325
91.08.580

[Adopted January 28, 1976, effective July 1, 1976.]

References

Court Rules

SAR 15, Hearings, quorum, finality of opinion, costs
ROA I–1 through I–67, and ROA II–1 through II–4 (all Supreme Court Rules on Appeal)
CAR 15, Finality of decision
CAR 24, Procedure
CAROA 1 through 66 (all Court of Appeals Rules on Appeal)
CR 62, Stay of proceedings to enforce a judgment, (c) injunction pending an appeal, (d) stay upon appeal, (e) stay in favor of State, (g) power of Supreme Court not limited
CrR 7.4(d)(2), Rulings on Alternative Motions in Arrest of Judgment or for a New Trial in Supreme Court or Court of Appeals
CrR 7.7, Post–conviction relief

Statutes

RCW 1. General Provisions
.12. Rules of construction
.040. Computation of time;
RCW 2. Courts of Record
.04. Supreme Court
.110. Jurisdiction;
.160. Finality of departmental decision——Rehearings;
.170. En banc hearings——Quorum——Finality of decision;
.06. Court of Appeals
.030. General powers and authority——Transfer of cases——Appellate jurisdiction, exceptions——Appeals;
.32. Court clerks, reporters and bailiffs;

RCW 4. Civil Procedure
.20. Survival of actions
.050. Action not abated by death or disability if it survives——Substitution;
.32. Pleadings
.190. Objections not taken deemed waived——Exceptions;
.250. Effect of minor defects in pleading;
.36. General rules of pleading
.240. Harmless error disregarded;
.80. Exceptions
.050. Review on appeal;
.84. Costs
.180. Costs in review proceedings;
.88. Appeals
.260. Costs on appeal;

RCW 5. Evidence
.48. Proof–replacement of lost records
.050. Time for appeal extended;

RCW 6. Enforcement of Judgments
.24. Sales under execution and redemption
.110. Effect of execution on reversal of judgment;

RCW 7. Special Proceedings
.36. Habeas corpus
.040. Who may grant writ;

RCW 8. Eminent Domain
.04. Eminent domain by State
.070. Hearing——Order adjudicating public use;
.150. Appeal;

RCW 10. Criminal Procedure
.77. Criminally insane——Procedures
.130. Statement of facts or bill of exceptions as part of record;
.230. Appeals;

RCW 19. Business Regulations——Miscellaneous
.10. Charitable trusts
.110. Order to appear——Effect——Enforcement——Court review;

RCW 24. Corporations and Associations (nonprofit)
.32. Agricultural cooperative associations
.360. Appeals from action of director of agriculture;

RCW 26. Domestic Relations
.32. Adoption
.120. Decree——Contents;
.130. Vacation of decree;

RCW 29. Elections
.79. Initiative and referendum
.170. Petitions——Review——Appeal from superior court's refusal to issue mandate;
.210. Petitions to legislature——Count of signatures——Review;
.82. The Recall
.160. Enforcement provisions——Mandamus——Appeals;

RCW 30. Banks and Trust Companies
.30. Trustees' accounting act
.090. Appeal from decree;

RCW 31. Miscellaneous Loan Agencies
.12. Credit unions
.050. Manner of organizing——Articles, approval, filing——Appeal——Forms;

RCW 33. Savings and Loan Associations
.40. Insolvency, liquidation, merger
.120. Removal of liquidator——Appeal;

RCW 35. Cities and Towns
.44. Local improvements——Assessments and reassessments
.260. Procedure on appeal——Appeal to Supreme Court or Court of Appeals;

RCW 36. Counties
.18. Fees of county officers
.020. Clerk's fees, (7) (for preparing, copying, or certifying papers, and for authenticating papers);
.94. Sewerage, water and drainage systems
.290. Review (of decision by board of county commissioners on objections to assessment roll);

RCW 43. State Government——Executive
.24. Department of Motor Vehicles
.120. Appeal;

RCW 48. Insurance
.28. Surety Insurance
.030. Judicial Bonds——Premium as part of recoverable costs;

RCW 49. Labor Regulations
.32. Injunctions in labor disputes
.080. Appellate review;
.60. Law against discrimination
.260. Court may enforce orders of tribunal——Appeal from court order;

RCW 50. Unemployment Compensation
.32. Review, hearings and appeals
.130. Undertakings on appeals to the courts;

RCW 51. Industrial Insurance
.52. Appeals
.110. Court appeal——Taking the;

RCW 52. Fire Districts
.34. Validation procedure
.090. Appeal;

RCW 56. Sewer Districts
.20. Utility local improvement districts
.080. Review;

RCW 57. Water Districts
.16. Comprehensive plan——Local improvement districts
.090. Review;

RCW 84. Property Taxes
.64. Certificates of Delinquency
.120. Appeal to Supreme Court or Court of Appeals——Deposit;

RCW 85. Diking and Drainage
.05. Diking districts
.130. Assessment of benefited lands formerly omitted——Procedure——Appeals;
.06. Part I——Drainage districts
.130. Assessment of benefited lands formerly omitted——Procedure——Appeals;
.08. Diking and Drainage
.440. Appeal from apportionment——Procedure;

RCW 91. Waterways
.04. Commercial waterway districts——Generally
.325. Appeal;
.08. Public waterways
.580. Appeal.

Comment: Rule 18.22 identifies statutes and rules in force on July 1, 1975, which are superseded by these rules. There may be other statutes the Task Force did not find, and statutes enacted since July 1, 1975, in conflict with these rules. If a statute or rule has been overlooked, the question whether or not it is superseded is governed by Rule 1.1.

A statute may be superseded in part and retained in part. Statutes are superseded only as they relate to appellate procedure. Further, a portion of a procedural statute may be retained if a particular rule expressly states that statutes control. For example, RCW 8.04.070 is superseded as to the appropriate method of review but is retained insofar as it specifies the time allowed to seek review. Compare Rules 2.2(a)(4) and 5.2(d).

The intended relationship between these rules and the statutes next discussed deserves clarification.

RCW 24.32.360 is superseded except for that portion which restricts relief available under Rules 8.1 and 8.3.

RCW 46.20.270, staying execution of sentence pending an appeal, is retained.

RCW 48.31.190 restricts relief available under Rules 8.1 and 8.3, and is retained.

RCW 50.32.130 and RCW 51.52.110 affect relief available under Rules 8.1 and 8.3 and are retained except to the extent that the statutory requirements purport to be jurisdictional.

RCW 59.12.200 affects relief available under Rules 8.1 and 8.3, and is retained.

RCW 84.64.120 is superseded as it relates to notice of appeal, but is retained as it affects relief available under Rules 8.1 and 8.3, except to the extent the statutory requirements purport to be jurisdictional.

RCW 85.05.130 is superseded except for the 30–day time limit for seeking review (which, in any event, corresponds to the rules). No position is taken with respect to the statement, "No bonds shall be allowed on such appeals," because the Task Force is unable to determine the meaning of this statement.

RCW 85.06.130 is superseded except for the 30–day time limit for seeking review, (which, in any event, corresponds to the rules). No position is taken with respect to the statement, "No bonds shall be required on such appeals," because the Task Force is unable to determine the meaning of this statement.

RCW 90.03.210 affects relief available under Rules 8.1 and 8.3, and is retained.

RCW 91.04.325 is superseded except for the 30–day time limit for seeking review (which, in any event, corresponds to the rules). No position is taken with respect to the statement "Upon such appeal, no bonds shall be required and no stay shall be allowed," because the Task Force is unable to determine the meaning of this statement.

RCW 10.77.130 relates to the record on review and is superseded.

RCW 10.77.230 relates to appealable orders and judgments, and is superseded.

Rule 18.23 Mail addressed to appellate courts. All briefs and other papers sent to the Supreme Court and the Court of Appeals to be filed in a case should be addressed to the clerk of the appropriate court. [Adopted January 28, 1976, effective July 1, 1976.]

Rule 18.24 Status of comments, references and index. The comments, references and index to these rules have not been adopted by the Supreme Court. The comments, references and index are solely those of the advisory task force on appellate rules. [Adopted January 28, 1976, effective July 1, 1976.]

APPENDIX OF FORMS

1. Notice of Appeal (Trial Court Decision)
2. Notice for Discretionary Review
3. Motion for Discretionary Review
4. Statement of Grounds for Direct Review
5. Title Page for All Briefs and Petition for Review
6. Brief of Appellant
7. Notice of Intent To File Pro Se Supplemental Brief
8. Notice of Appeal From Court of Appeals Decision
9. Petition for Review
10. Cost Bill
11. Objections to Cost Bill
12. Order of Indigency
13. Invoice of Counsel for Indigent Party
14. Invoice of Court Reporter——Indigent Case
15. Statement of Arrangements
16. Petition against State Officer
17. Personal Restraint Petition for Person Confined by State or Local Government
18. Motion
19. Notice of Motion
20. Motion to Modify Ruling
21. Civil Appeal Statement

Form 1. Notice of appeal (trial court decision).

[Rule 5.3(a)]

SUPERIOR COURT OF WASHINGTON
FOR [----------] COUNTY

[*Name of plaintiff*], Plaintiff,	No. [*Trial court docket number*]
v.	NOTICE OF APPEAL TO [COURT OF APPEALS *or* SUPREME COURT]
[*Name of defendant*], Defendant.	

[*Name of party seeking review*], [Plaintiff *or* Defendant], seeks review by the designated appellate court of the [*Describe the decision or part of decision which the party wants reviewed: for example, "Judgment", "Paragraph 4 of the Marriage Dissolution Decree"*] entered on [*date of entry*].

[*Date*]

Signature

Attorney for [*Plaintiff* or *Defendant*]

[*Name, address, and phone number of attorney for appellant and the name and address of counsel for each other party should be listed here. In a criminal case, the name and address of the defendant should also be listed here. See Rule 5.3(c).*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 2. Notice for discretionary review.

[Rule 5.3(b)]

SUPERIOR COURT OF WASHINGTON
FOR [----------] COUNTY

[*NAME OF PLAINTIFF*], PLAINTIFF,	NO. [*TRIAL COURT DOCKET NUMBER*]
v.	NOTICE FOR DISCRETIONARY REVIEW TO [COURT OF APPEALS *or* SUPREME COURT]
[*Name of defendant*], Defendant.	

[*Name of party seeking review*], [Plaintiff *or* Defendant], seeks review by the designated appellate court of the [*Describe the decision or part of decision which the party wants reviewed: for example, "Order Denying Discovery", "Paragraph 4 of the Restraining Order"*] entered on [*date of entry*].

[*Date*]

Signature

Attorney for [*Plaintiff* or *Defendant*]

[*Name, address, and phone number of attorney for petitioner and the*

name and address of counsel for each other party should be listed here. In a criminal case, the name and address of the defendant should also be listed here. See Rule 5.3(c).]

[Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Form 3. Motion for discretionary review.

(Rule 6.2 [review of trial court decision]; Rule 13.5 [review of court of appeals interlocutory decision]; Rule 17.3(b) [content of motion])

No. [*Appellate Court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION ----------]
OF THE STATE OF WASHINGTON

[*Title of trial court proceedings with parties designated as in Rule 3.4, for example:*

JOHN DOE, *Respondent*,
v.
MARY DOE, *Petitioner*,
and
HENRY JONES, *Defendant*]

MOTION FOR DISCRETIONARY REVIEW

[*Name of petitioner's attorney*]
Attorney for [*Petitioner*]

[*Address and phone number of petitioner's attorney*]

A. IDENTITY OF PETITIONER

[*Name*] asks this court to accept review of the decision or parts of decision designated in Part B of this motion.

B. DECISION

[*Identify the decision or parts of decision which the party wants reviewed by the type of decision, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration. The substance of the decision may also be described: for example, "The decision restrained defendant from using any of her assets for any purpose other than living expenses. Defendant is thus restrained from using her assets to pay fees and costs to defend against plaintiff's suit for a claimed conversion of funds from a joint bank account."*] A copy of the decision [*and the trial court memorandum opinion*] is in the Appendix at pages A----- through -----.

C. ISSUES PRESENTED FOR REVIEW

[*Define the issues which the Court is asked to decide if review is granted. See Part A of Form 6 for suggestions for framing issues presented for review.*]

D. STATEMENT OF THE CASE

[*Write a statement of the procedure below and the facts. The statement should be brief and contain only material relevant to the motion. If the motion is directed to a Court of Appeals decision, the statement should contain appropriate references to the record on review. See Part B of Form 6. If the motion is directed to a trial court decision, reference should be made to portions of the trial court record. Portions of the trial court record may be placed in the Appendix. Certified copies are not necessary. If portions of the trial court record are placed in the Appendix, the portions should be identified here with reference to the pages in the Appendix where the portions of the record appear.*]

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

[*The argument should be short and concise and supported by authority. The argument should be directed to the considerations for accepting review set out in Rule 2.3(b) for review of a trial court decision and Rule 13.5(b) for review of a decision of the Court of Appeals.*]

F. CONCLUSION

[*State the relief sought if review is granted. For example: "This Court should accept review for the reasons indicated in Part E and modify the restraining order to permit defendant to use her assets to pay fees and costs incurred in defending plaintiff's suit for conversion."*]

[*Date*]

Respectfully submitted,
Signature

[*Name of petitioner's attorney*]

APPENDIX

[See Rule 17.3(b)(8) for materials to include within the Appendix.]

[Adop. Jan. 28, 1976, eff. July 1, 1976.]

Form 4. Statement of grounds for direct review.

[Rule 4.2(b)]

No. [*Supreme Court docket number*]

SUPREME COURT OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	STATEMENT OF GROUNDS FOR DIRECT REVIEW BY THE SUPREME COURT

[*Name of party*] seeks direct review of the [*Describe the decision or part of decision which the party wants reviewed.*] entered by the [*name of court*] on [*date of entry*]. The issues presented in the review are:

[*State issues presented for review. See Part A of Form 6 for suggestions for framing issues presented for review.*]

The reasons for granting direct review are:

[*Briefly indicate and argue grounds for direct review. State and argue briefly whether the case is*

one which the Supreme Court would probably review if decided by the Court of Appeals in the first instance. See Rule 4.2.]

[*Date*]

Respectfully submitted,
Signature

[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 5. Title page for all briefs and petition for review.

(Rule 10.3 [Briefs]; Rule 13.4(d) [Petition for review])

No. [*Appellate Court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION ----------]
OF THE STATE OF WASHINGTON

[*Title of trial court proceedings with parties designated as in Rule 3.4, for example:*

JOHN DOE, *Respondent*,
v.
MARY DOE, *(Appellant or Petitioner)*,
and
HENRY JONES, *Defendant.*]

[PETITION FOR REVIEW or title of brief, for example: BRIEF OF PETITIONER, REPLY BRIEF OF APPELLANT]

[*Name of attorney for party filing brief*]
Attorney for [*Identity of party, as Appellant.*]

[*Address and phone number of attorney for party filing brief or petition*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 6. Brief of appellant.

[Rule 10.3(a)]
[See Form 5 for form of cover and title page.]

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Table of Cases

[*Here list cases, alphabetically arranged, with citations complying with Rule 10.4(g), and page numbers where each case appears in the brief. Washington cases may be first listed alphabetically with other cases following and listed alphabetically.*]

Constitutional Provisions

[*Here list constitutional provisions in order in which the provisions appear in the constitution with page numbers where each is referred to in the brief.*]

Statutes

[*Here list statutes in order in which they appear in RCW, U.S.C., etc., with page numbers where each is referred to in the brief. Common names of statutes may be used in addition to code numbers.*]

Regulations and Rules

[*Here list regulations and court rules grouped in appropriate categories and listed in numerical order in each category with page numbers where each is referred to in the brief.*]

Other Authorities

[*Here list other authorities with page numbers where each is referred to in the brief.*]

Note: For form of citations generally, see Sections 71 through 76 of *F. Wiener, Briefing and Arguing Federal Appeals (1967).*

A. ASSIGNMENTS OF ERROR

Assignments of Error

[*Here separately state and number each assignment of error as required by Rule 10.3(a) and (g). For example:*

"*1. The trial court erred in entering the order of May 12, 1975, denying defendant's motion to vacate the judgment entered on May 1, 1975.*

OR

"*2. The trial court erred in denying the defendant's motion to suppress evidence by order entered on March 10, 1975.*"]

Issues Pertaining to Assignments of Error

[*Concisely define the legal issues in question form which the appellate court is asked to decide and number each issue. List after each issue the Assignments of Error which pertain to the issue. Proper phrasing of the issues is important. Each issue should be phrased in the terms and circumstances of the case, but without unnecessary*

detail. The court should be able to determine what the case is about and what specific issues the court will be called upon to decide by merely reading the issues presented for review. For an excellent discussion of how to properly phrase issues, see Sections 31 through 33 of F. Wiener, Briefing and Arguing Federal Appeals (1967).]

[*Examples of issues presented for review are:*
"*Does an attorney, without express authority from his client, have implied authority to stipulate to the entry of judgment against his client as a part of a settlement which limits the satisfaction of the judgment to specific property of the client? (Assignment of Error 1.)*"

OR

"*Defendant was arrested for a traffic offense and held in jail for two days because of outstanding traffic warrants. The police impounded defendant's car and conducted a warrantless 'inventory' search of defendant's car and seized stolen property in the trunk. The impound was not authorized by any ordinance. Did the search and seizure violate defendant's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States and under Article I, Section 7 of the Constitution of the State of Washington? (Assignment of Error 2.)*"]

B. STATEMENT OF THE CASE
[*Write a statement of the procedure below and the facts relevant to the issues presented for review. The statement should not be argumentative. Every factual statement should be supported by a reference to the record. See Rule 10.4(f) for proper abbreviations for the record. For a good discussion of this aspect of brief writing, see Wiener, supra, Sections 23 through 28 and 42 through 45.*]

C. SUMMARY OF ARGUMENT
[*This is optional. For suggestions for preparing a summary of argument, see Wiener, supra, Section 65.*]

D. ARGUMENT
[*The argument should ordinarily be separately stated under appropriate headings for each issue presented for review. Long arguments should be divided into subheadings. The argument should include citations to legal authority and references to relevant parts of the record. See Wiener, supra, Sections 34 through 36, 38, and 46 through 64.*]

E. CONCLUSION
[*Here state the precise relief sought.*]

[*Date*]

Respectfully submitted,
Signature

[*Name of Attorney*]
Attorney for [*Appellant, Respondent, or Petitioner*]

APPENDIX

[Optional. See Rule 10.3(a)(7).]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 7. Notice of intent to file pro se supplemental brief.

[Rule 10.1(d)]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION NO. ----------]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	NOTICE OF INTENT TO FILE PRO SE SUPPLEMENTAL BRIEF

I intend to file a brief of my own in this case. I have received a copy of the brief prepared by my attorney. I must send my brief to the address below on or before [*Clerk inserts appropriate date*] if I want my brief to be considered by the Court.

I am sending this notice to the Court on [*today's date*].

Signature

Send Brief to:
[*Name and address of appellate court*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 8. Notice of appeal from court of appeals decision.

[Rule 13.2(b)]

No. [*Court of Appeals docket number*]

COURT OF APPEALS, DIVISION----------OF THE
STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Court of Appeals.*]	NOTICE OF APPEAL TO THE SUPREME COURT

[*Name of party seeking review*], [*designation of party in Court of Appeals, as "Respondent in the Court of Appeals"*], appeals to the Supreme Court of the State of Washington from the decision filed in the Court of Appeals on [*date filed*]. A motion for reconsideration was filed on [*date*] and denied on [*date*].

Signature

[*Name, address, and telephone number of attorney*]

[Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Form 9. Petition for review.

[Rule 13.4(d)]

[See Form 5 for form of cover which is the title page.]

TABLE OF CONTENTS

[*See Form 6, except modify names of parts of brief to correspond to names of parts of Petition for Review.*]

TABLE OF AUTHORITIES

[*See Form 6.*]

A. IDENTITY OF PETITIONER

[*Name*] asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

[*Identify the decision or parts of the decision of the Court of Appeals which the party wants reviewed, the date filed, and the date of any order granting or denying a motion for reconsideration.*]

A copy of the decision is in the Appendix at pages A-_____ through _____. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at pages A-_____ through _____.

C. ISSUES PRESENTED FOR REVIEW

[*Define the issues which the Supreme Court is asked to decide if review is granted. See the second portion of Part A of Form 6 for suggestions for framing issues presented for review.*]

D. STATEMENT OF THE CASE

[*See Part B of Form 6*]

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

[*The argument should be short and concise and directed to the considerations for accepting review set out in Rule 13.4(b). For argument generally, see Part D of Form 6. The argument may be preceded by a summary.*]

F. CONCLUSION

[*State the relief sought if review is granted. See Part F of Form 3.*]

[*Date*]

Respectfully submitted,
Signature

[*Name of Attorney*]
Attorney for [*Petitioner or Respondent*]

APPENDIX

[*See Rule 13.4(c)(9) for materials to include within Appendix.*]

[Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Form 10. Cost bill.

[Rule 14.4]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION _____]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	COST BILL

[*Name of party asking for costs*], [*appellant, petitioner, or respondent*], asks that the following costs be awarded:

1. Statutory attorney's fees	$
2. Preparation of original and one copy of report of proceedings	$
3. Copies of clerk's papers	$
4. Transmittal of record on review	$
5. Bonds given in connection with the review [*Identify*]	$
6. Charges of appellate court clerk for reproduction of briefs, petitions, and motions [*Identify and separately state the charge for each.*]	$
7. Preparing 50 pages of original documents	$
Total	$

The above items are expenses allowed as costs by Rule 14.3, reasonable expenses actually incurred, and reasonably necessary for review. [*Name of party*] should pay the costs.

[*Date*]

Signature

Attorney for [*Appellant, Respondent, or Petitioner*]
[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 11. Objections to cost bill.

[Rule 14.5]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION _____]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	OBJECTIONS TO COST BILL

[*Name of party objecting*], [*Appellant, Petitioner or Respondent*], objects to the award of any costs to [*Name of party*] because:

[*Here state reasons. See Rule 14.2.*]

Alternate Form

[*Name of party objecting*], [*Appellant, Petitioner, or Respondent*], objects to the following expenses listed on the Cost Bill of [*name of party*]:

[*List the items on the cost bill which are objectionable, by number of item on the cost bill with a description of the item and the amount claimed. State the objection after each item.*
For example:

2. Report of Proceedings *$320.00*
Objection: *The amount claimed is unreasonable.* See RAP 14.3
(a). The report of proceedings is double spaced and is _____pages. The usual charge per page is $_____. Computed on the usual basis, the total charge should be $220.00.
5. Bond *$10.00*
Objection: *The charge is for the premium on a cost bond. A cost bond is not required under the new rules. The charge was not reasonably necessary for review. See RAP 14.3(a).*]

[*Date*]

Signature

Attorney for [*Appellant, Respondent, or Petitioner*]
[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 12. Order of indigency.

[Rule 15.2]

SUPERIOR COURT OF WASHINGTON
FOR [_____] COUNTY

[*Name of plaintiff*], Plaintiff,	No. [*Trial court docket number*]
v.	ORDER OF INDIGENCY
[*Name of defendant*], Defendant,	

[*Set forth finding of indigency and state that applicable law grants review wholly or partially at public expense. For example, "The Court finds that the defendant lacks sufficient funds to prosecute an appeal and applicable law grants defendant a right to review at public expense to the extent defined in this order."*] The Court orders as follows:

1. [*Name of indigent*] is entitled to counsel for review wholly at public expense.

2. [*Name of appointed attorney*] is appointed as counsel for review. Appointed counsel may be assisted by counsel in the same firm as appointed counsel. [*If applicable: "Trial counsel must assist appointed counsel for review in preparing the record."*]

3. [*Name of indigent*] is entitled to the following at public expense:

(a) Those portions of the verbatim report of proceedings reasonably necessary for review as follows:
[*Designate parts of report.*]

(b) A copy of the following clerk's papers:
[*Designate papers by name and trial court clerk's sub-number.*]

(c) Preparation of original documents to be reproduced by the clerk as provided in Rule 14.3(b).

(d) Reproduction of briefs and other papers on review which are reproduced by the clerk of the appellate court.

(e) The cost of transmitting the following cumbersome exhibits:
[*Designate cumbersome exhibits needed for review. See Rule 9.8(b).*]

(f) Other items:
[*Designate items.*]

[*Date*]

Signature

[*Name of judge*]
Judge of the Superior Court

Presented by:
[*Name of party and attorney for party presenting order*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 13. Invoice of counsel for indigent party.

[Rule 15.4(c)]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION _____]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	INVOICE OF COUNSEL FOR INDIGENT PARTY

[*Name of claimant counsel*] submits this invoice to be paid from public funds. An order authorizing the expenses claimed by this invoice was entered in [*Name of court*] on [*date of entry*]. ["*A copy of the order is attached.*" *or* "*The order of indigency is located at CP page_____.*"] My Social Security number [or, my firm's IRS employer identification number] is_____.

1. I claim $_____ for attorney fees. I spent_____ hours on the review and a reasonable hourly charge is $_____. I performed the following services:
[*List services; for example: "Reviewed record, prepared brief of appellant and reply brief of appellant, oral argument in Court of Appeals, and prepared cost bill."*]

2. The following expenses were incurred for the review:
[*List each item of expense including preparing reproducible originals at the rate per page set pursuant to Rule 14.3(b), the amount, and the total of all items listed.*]

3. I have not filed another invoice in this cause.

4. The total amount of this invoice is [*the totals from par. 1 and par. 2*]. $_____

I swear or affirm that the items listed are correct charges for necessary services rendered and expenses incurred for proper consideration of the review and I have not been promised compensation for the review from the indigent party or from any other source except as has been approved by the court.

Signature

_____

[*Name, address, and telephone number of claimant*]

SUBSCRIBED AND SWORN to before me this_____day of _____, 19__.

_____

Notary Public in and for the State of Washington, residing at _____.

[Adopted January 28, 1976, effective July 1, 1976.]

Form 14. Invoice of court reporter——Indigent case.

[Rule 15.4(d)]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION _____]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	INVOICE OF COURT REPORTER——INDIGENT CASE

[*Name of claimant court reporter*] submits this invoice to be paid from public funds. An order authorizing the expenses claimed by this invoice was entered in [*name of court*] on [*date of entry*]. My Social Security number [or, my firm's IRS employer identification number] is: _____.

I swear or affirm that I transcribed or caused to be transcribed the original and one copy of a verbatim report of proceedings in this case. The report was prepared in compliance with RAP 9.2(e) and (g). I transcribed_____pages. The rate per page set by the Supreme Court is $_____. The total amount of this invoice is $_____.

Signature

_____

[*Name, address, and telephone number of claimant*]

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19__.

_____

Notary Public in and for the State of Washington, residing at _____.

I hereby certify that the amount claimed in this invoice is for that portion of the verbatim report of proceedings ordered by the trial court; that the typing of the report is in accordance with Rule 9.2(e) and (g); and that the bill is computed at the current rate per page set by the Supreme Court for the original and one copy, namely, $_____ per page.

Signature

[*Date*] _____

[*Name of Superior Court Clerk*]
Clerk of the Superior Court of Washington for [_____]
County

[Adopted January 28, 1976, effective July 1, 1976.]

Form 15. Statement of arrangements.

[Rule 9.2(a)]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION _____]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	STATEMENT OF ARRANGEMENTS

[*Name of attorney*], Attorney for [*appellant, or petitioner*], states that on_____, 19__, [*appellant* or *petitioner*] ordered transcription of the original and one copy of the verbatim report of proceedings in this case from [*name and address of person doing the transcribing*], and arranged to pay the cost of transcription as follows: [*describe arrangements for paying*].

[*Date*]

Signature

_____

Attorney for [*Appellant or Petitioner*]
[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 16. Petition against state officer.

[Rule 16.2(b)]

No. [*Appellate court docket number*]

SUPREME COURT OF THE
STATE OF WASHINGTON

[*Name of petitioner*],	Petitioner,	PETITION AGAINST STATE OFFICER
v.		
[*Name of respondent*],	Respondent.	

Petitioner alleges:

[*Set forth in numbered, descriptively titled paragraphs, as in a complaint in a civil action, a short and plain statement of the claim showing that petitioner is entitled to relief. Conclude with a demand for judgment for the relief sought. See CR 10.*]

[*Date*]

Signature

Attorney for Petitioner
[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 17. Personal restraint petition for person confined by state or local government.

[Rule 16.7]

No. [*Appellate court docket number*]

[*Put name of appellate court that you want to hear your case*]
OF THE STATE OF WASHINGTON

[*Put your name here*], Petitioner.	PERSONAL RESTRAINT PETITION

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of this form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, (full name and address), apply for relief from confinement. I am ☐ am not ☐ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: ------

---

(Identify type of order)

1. The court in which I was sentenced is ---
2. I was convicted of the crime(s) of ---
3. I was sentenced after trial ☐, after plea of guilty ☐ on (date of sentence), 19--. The judge who imposed sentence was (Name of trial court judge)
4. My lawyer at trial court was (Name and address if known; if none, write "none")
5. I did ☐ did not ☐ appeal from the decision of the trial court. (If the answer is that I did), I appealed to (Name of court or courts to which appeal taken)
   My lawyer on appeal was (Name and address if known; if none, write "none")
   The decision of the appellate court was ☐ was not ☐ published. (If the answer is that it was published, and I have this information), the decision is published in (Volume number, Washington Appellate Reports or Washington Reports, and page number)
6. Since my conviction I have ☐ have not ☐ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked), the court I asked was (Name of court or courts in which relief was sought)
   Relief was denied on (Date of decision or, if more than once, dates of all decisions)
7. (If I have answered in question 6 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 6 was (Name and address if known; if none, write "none")
8. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: ---

B. GROUNDS FOR RELIEF

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc.). I claim that I have (number) reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

(First, Second, etc.) Ground

1. I should be given a new trial or released from confinement because [*here state legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement*]: ---
2. The following facts are important when considering my case [*After each fact statement, put the name of the person or persons who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that, also.*]: ---
3. The following reported court decisions [*include citations if possible*] in cases similar to mine show the error I believe happened in my case [*If none are known, state "None known".*]: ---
4. The following statutes and constitutional provisions should be considered by the Court [*If none are known, state "None known".*]: ---
5. This petition is the best way I know to get the relief I want, and no other way will work as well because

---

C. STATEMENT OF FINANCES

If you cannot afford to pay the $25 filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do ☐ do not ☐ ask the court to file this without making me pay the $25 filing fee because I am so poor I cannot pay the fee.
2. I have $_____ in my prison or institution account.
3. I do ☐ do not ☐ ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.
4. I am ☐ am not ☐ employed. My salary or wages amount to $_____ a month. My employer is (Name and address)
5. During the past 12 months I did ☐ did not ☐ get any money from a business, profession or other form of self-employment. (If I did, it was (kind of self-employment) and the total income I got was $_____.
6. During the past 12 months, I

did	did not	
☐	☐	get any rent payments. If so, the total amount I got was $_____.
☐	☐	get any interest. If so, the total amount I got was $_____.
☐	☐	get any dividends. If so, the total amount I got was $_____.
☐	☐	get any other money. If so, the amount of money I got was $_____.
7. ☐	☐	have any cash except as said in answer 2. If so, the total amount of cash I have is $_____.
☐	☐	have any savings accounts or checking accounts. If so, the amount in all accounts is $_____.
☐	☐	own stocks, bonds, or notes. If so, their total value is $_____.

8. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value

9. I am ☐ am not ☐ married. If I am married, my wife or husband's name and address is _____
---
10. All of the persons who need me to support them are listed here.

Name and Address	Relationship	Age

11. All the bills I owe are listed here.

Name of creditor you owe money to	Address	Amount

D. REQUEST FOR RELIEF

I want this Court to:

☐ vacate my conviction and give me a new trial.

☐ vacate my conviction and dismiss the criminal charges against me without a new trial.

☐ other: (Specify) _____

E. OATH OF PETITIONER

STATE OF WASHINGTON }
COUNTY OF _____ } ss.

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

_____
[*Sign here*]

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19__.

_____
Notary Public in and for the State of Washington, residing at _____

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary:

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

DATED this _____ day of _____, 19__.

_____
[*Sign here*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 18. Motion.

[Rule 17.3(a)]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION ----------]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	MOTION FOR [*Identify relief sought*]

1. Identity of Moving Party
[*Name*], [*Designation of moving party, for example: "Appellant" or "Assignee of Respondent's interest in the judgment being reviewed"*] asks for the relief designated in Part 2.
2. Statement of Relief Sought
[*State the relief sought, for example: "Substitution of John Doe as respondent in place of Alvin Jones"*.]
3. Facts Relevant to Motion
[*Here state facts relevant to motion with reference to or copies of parts of the record relevant to the motion. For example, "Alvin Jones, plaintiff, obtained a judgment against defendant, Henry Hope (Judgment, CP 17). Alvin Jones assigned the judgment to John Doe after defendant filed his Notice of Appeal. A true copy of the assignment is attached. Defendant did not assert a counterclaim against plaintiff in the trial court"*.]
4. Grounds for Relief and Argument
[*Here state the grounds for the relief sought with authority and supporting argument. For example, "RAP 3.2(a) authorizes substitution of parties when the interest of a party in the subject matter of the review has been transferred. Substitution should be granted here as defendant has no claim against plaintiff–respondent and respondent no longer has an interest in the judgment which is the subject matter of this appeal"*.]

[*Date*]

Respectfully submitted,
Signature

Attorney for [*Appellant, Respondent, or Petitioner*]
[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 19. Notice of motion.

[Rule 17.4(a)]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION ----------]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	NOTICE OF MOTION

TO: [*Names of persons entitled to notice and their attorneys. See Rule 17.4(a)(2).*]
[*Name of moving party*], [*appellant, petitioner, or respondent*], will bring on for hearing the [*name of motion, for example: "Motion to Substitute Appellant"*] on [*date*]. The motion will be heard by the [*Judges, Commissioner, or Clerk*] at [*hour*], or as soon thereafter as the motion can be heard. The address of the place of hearing is [*room number and address*].

[*Date*]

Signature

[*Name of counsel*]
Attorney for [*Appellant, Respondent, or Petitioner*]

(THE NOTICE MAY BE MADE A PART OF THE MOTION)

[Amd. June 21, 1976, eff. July 2, 1976; adop. Jan. 28, 1976, eff. July 1, 1976.]

Form 20. Motion to modify ruling.

[Rule 17.7]

No. [*Appellate court docket number*]

[SUPREME COURT *or* COURT OF APPEALS,
DIVISION ----------]
OF THE STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	MOTION TO MODIFY RULING

1. Identity of Moving Party
[*Name of moving party*], [*Designation of moving party*] asks for the relief designated in Part 2.
2. Statement of Relief Sought
Modify ruling of the [*Clerk or Commissioner*] filed on [*date*]. The ruling [*state substance of ruling, for example: "denied the motion to be substituted as respondent in place of Alvin Jones."*] This Court should [*state relief requested, for example: "authorize the requested substitution."*]
3. Facts Relevant to Motion
[*Here state facts relevant to original motion, with reference to or copies of parts of the record relevant to that motion. The facts set forth in the original motion may be incorporated by reference. For example, "The facts are set out in Part 3 of the original motion to the Commissioner."*]
4. Grounds For Relief and Argument
[*Here state the grounds for relief sought with authority and supporting argument. The grounds for relief set forth in the original motion may be incorporated by reference.*]

[*Date*]

Respectfully submitted,
Signature

Attorney for [*Appellant, Respondent, or Petitioner*]
[*Name, address, and telephone number of attorney*]

[Adopted January 28, 1976, effective July 1, 1976.]

Form 21. Civil appeal statement.

[Rule 5.5(c)]

COURT OF APPEALS DIVISION [----------]
STATE OF WASHINGTON

[*Title of trial court proceeding with parties designated as in Rule 3.4*]	CIVIL APPEAL STATEMENT

1. Nature of the Case and Decision
[*State the substance of the case below and the basis for the trial court decision. For example, "Defendant was driving his automobile when struck from the rear by a truck driven by Jones. An automobile coming from the opposite direction driven by an uninsured motorist crossed the center line into the lane occupied by defendant and collided with the defendant's car. Defendant settled his claim against Jones and executed a release without the consent of plaintiff insurance company. The policy issued by plaintiff contained a provision which excluded coverage under the uninsured motorist provisions for bodily injury to an insured who has made any settlement with any person without the written consent of the company. The trial court held that this exclusion violated public policy by restricting the uninsured motorist coverage required by RCW 48.22.030 and declared the exclusion void."*]
2. Issues Presented for Review
[*State the issues the party intends to present for review by the Court of Appeals. For example, "Whether a provision which excludes coverage when the insured does not secure the insurer's consent before settling with any person responsible for any injury violates public policy by restricting the uninsured motorist coverage required by RCW 48.22.030?" List under each issue the legal authority relevant to that issue.*]
3. Relief Sought in Court of Appeals
[*State the relief the party seeks in the Court of Appeals. For example, "Reversal of trial court decision with directions to enter judgment declaring that defendant is not covered by the uninsured motorist provisions of the liability policy issued by plaintiff."*]
4. Trial Court
[*Name of County*] County Superior Court
5. Judge
[*Name of Trial Court Judge*]
6. Date of Decision
[*The date the decision was entered in the trial court*]
7. Post Decision Motions
[*State each post decision motion made in the trial court including the nature of the motion, the date the motion was made, the decision on the motion, and the date the decision was entered.*]
8. Notice of Appeal
The notice of appeal was filed on [*date*]. A copy of the notice of appeal is attached to this statement.
9. Counsel
Counsel for appellant [*name of appellant*] is [*name, address and telephone number of attorney*].
Counsel for respondent [*name of respondent*] is [*name, address and telephone number of attorney*].
10. Method of Disposition in Trial Court
[*State the method used to decide the case in the trial court. For example, "summary judgment, order of dismissal, judgment after trial to the court, judgment after jury trial."*]
11. Relief Granted by Trial Court
[*State the relief granted by the trial court. For example, "The trial court entered a judgment declaring that defendant has coverage under the uninsured motorist provisions of the automobile liability policy issued by plaintiff."*]
12. Relief Denied by Trial Court
[*State the relief sought by the party making the statement which was denied by the trial court. For example, "Plaintiff sought a judgment declaring that the uninsured motorist provision of the automobile liability policy no longer provided coverage to defendant."*]
13. Certificate of Counsel
I, attorney for appellant [*name of appellant*], certify that this appeal is taken in good faith and not for purposes of delay. I further certify that my client [*is or is not*] prepared to immediately take all steps to complete the appeal. [*If the statement indicates the party is not prepared to immediately take all steps to complete the appeal, state here why the party is not prepared to immediately complete the appeal.*]

[*Date*]

Signature

Attorney for Appellant
[*Name, address, and telephone number of attorney*]

[Amended February 28, 1977, effective February 28, 1977; adopted January 28, 1976, effective July 1, 1976.]

Reference:
Relocated as RAP 5.5.

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)	————
Appendix to Part IV: Court Orders and Tables		

SUPERIOR COURT ADMINISTRATIVE RULES (AR)

(Formerly: Administrative Rules for Superior Court)

Table of Rules

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.]

SUPERIOR COURT CIVIL RULES (CR)

(Formerly: Civil Rules for Superior Court (CR); Rules of Pleading, Practice and Procedure, RPPP.)

Table of Contents

I. INTRODUCTORY

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

Rule 3 Commencement of action.

(a) Methods. Except as provided in Rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in Rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint within 14 days after service of the demand or the service shall be void. An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in 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.] [Amd. July 20, 1978, eff. Sept. 1, 1978; amd. Feb. 24, 1972, eff. July 1, 1972; adop. May 5, 1967, eff. July 1, 1967.]

Rule 4 Process.

(a) Summons; Issuance.

(1) The summons must be signed and dated by the plaintiff or his attorney, and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of his defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or his attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) 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:

(i) 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.

(ii) A direction to the defendant summoning him to serve a copy of his defense within a time stated in the summons.

(iii) A notice that, in case of failure so to do, judgment will be rendered against him by default. It shall be signed and dated 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.* Except in condemnation cases the summons for personal service in the state shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON
FOR [----------] COUNTY

----------, Plaintiff, v. ----------, Defendant.	No._____ SUMMONS (20 days)

A lawsuit has been started against you in the above entitled court by ----------, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

[signed] ----------
Plaintiff's Attorney

P. O. Address ----------

Dated ----------Telephone Number ----------

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.

[Amended November 29, 1971, effective January 1, 1972; adopted May 5, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (c) follows and supersedes RCW 4.28.070.

(d) Service.

(1) *Of Summons and Complaint.* The summons and complaint shall be served together.

(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) *Alternative to Service by Publication.* In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at his last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(5) *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) If served as provided in subsection (d)(4), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed.

(5) The written acceptance or admission of the defendant, his agent or attorney;

(6) 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.

(7) 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.

(j) Other Process. These rules do not exclude the use of other forms of process authorized by law. [Amd. July 20, 1978, eff. Sept. 1, 1978; amd. June 13, 1977, eff. July 1, 1977; amd. Nov. 29, 1971, eff. Jan. 1, 1972; adop. May 5, 1967, eff. July 1, 1967.]

Comment by the Court: Subdivision (i) follows FRCP 4(i).

Rule 4.1 Process——Domestic relations actions.

(a) Summons——General. Actions authorized by RCW 26.09 shall be commenced by filing a petition. Service of the summons and a copy of the petition shall be made on respondent as provided in Rule 4.

(b) Summons——Content, Form.

(1) *Content.* The summons shall contain the title of the action, the name of the county and the court in which the action is brought, the names of the parties, as petitioner and respondent, a direction to the respondent to serve a copy of his response on the person who has signed the summons, the time limit within which the copy of the response must be served, notice that failure to serve a copy of the response within the stated time may result in a judgment by default, the signature and address of the petitioner or his attorney, and the date.

(2) *Form.* The summons in an action for dissolution of marriage shall be substantially in the following form. The summons in any other action authorized by RCW 26.09 should be adapted from this form.

SUPERIOR COURT OF WASHINGTON
FOR [----------] COUNTY

In the Matter of the Marriage of ----------, Petitioner, and ----------, Respondent.	No._____ SUMMONS FOR DISSOLUTION OF MARRIAGE

TO THE RESPONDENT: The petitioner has filed with the clerk of the above court a petition requesting that your marriage be dissolved. Additional requests, if any, are stated in the petition, a copy of which is attached to this summons.

You may respond to this summons and petition by serving a written answer on the person signing this summons. If you do not serve your written answer within 20 days after the date this summons was served on you, exclusive of the day of service, or within 60 days if this summons was served outside the state of Washington, or within 60 days after the date of the first publication of this summons, the court may enter an order of default against you, and at the end of 90 days after service, the court may, without further notice to you, enter a decree dissolving your marriage and approving or providing for other relief requested in the petition.

Signature

Dated ----------

Address

[Adop. July 20, 1978, eff. Sept. 1, 1978.]

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.* Complaints shall be filed as provided in Rule 3(a). 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.

(2) *Sanctions.* The effect of failing to file a complaint is governed by Rule 3. If a party 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 attorney 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 pleading or paper other than the complaint is filed and the moving attorney is notified of the 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. [Amd. July 20, 1978, eff. Sept. 1, 1978; amd. May 26, 1972, eff. July 1, 1972; adop. May 5, 1967, eff. July 1, 1967.]

Comment by the Court. Subdivision (h) follows and supersedes RCW 4.28.300. For Statutes relating to Telegraphic Communications, see chapter 5.52 RCW.

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

Rule

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

Rule

25 Substitution of parties.
(a) Death.
(b) Incompetency.
(c) Transfer of interest.
(d) Public offices, death or separation from office.

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

Rule

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 as for the party served, it is sufficient answer to such 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

Rule

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. [Amendment effective Jan. 1, 1977.] 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 32(a)(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. [Amendment effective Jan. 1, 1977.] 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 used as the report of proceedings upon review, 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 report of proceedings 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 report of proceedings for further cross-examination. [Amd. Aug. 9, 1976, eff. Jan. 1, 1977; adop. 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.

(a) Pleading. A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice.

(b) United States Jurisdiction. See chapter 5.24 RCW.

(c) Other Jurisdictions. The court, in determining the law of any jurisdiction other than a state, territory, or other jurisdiction of the United States, may consider any relevant written material or other source, including testimony, having due regard for their trustworthiness, whether or not submitted by a party and whether or not admissible under the rules of evidence. If the court considers any material or source not received in open court, prior to its determination the court shall:

(1) Identify in the record such material or source;

(2) Summarize in the record any unwritten information received; and

(3) Afford the parties an opportunity to respond thereto. The court's determination shall be treated as a ruling on a question of law. [Adopted June 13, 1977, effective July 1, 1977.]

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. [Amendment effective Jan. 1, 1977.] 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 or Court of Appeals 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 appellate 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. [Amd. Aug. 9, 1976, eff. Jan. 1, 1977; adop. May 5, 1967, amd. June 28, 1967, eff. 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 Review.* **[Amendment effective Jan. 1, 1977.]** Where the refusal to give a requested instruction is an asserted error on review, a copy of the requested instruction shall be placed in the record on review.

(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. [Amd. Aug. 9, 1976, eff. Jan. 1, 1977; amd. Mar. 12, 1968, eff. Mar. 29, 1968; amd. Oct. 12, 1967, eff. Nov. 3, 1967; readop. May 5, 1967, amd. June 28, 1967, eff. July 1, 1967; adop. Mar. 31, 1967, eff. Apr. 7, 1967.]

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

Rule

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).

(4) *Venue.* A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county.

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, or by mail under Rule 4(d)(4), the plaintiff, upon the expiration of the time for answering, may upon proof of service

by publication, apply for judgment. 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. [Amd. July 20, 1978, eff. Sept. 1, 1978; amd. June 13, 1977, eff. July 1, 1977; adopted May 5, 1967, eff. 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; Defense Required. 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, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(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. [Amd. July 20, 1978, eff. Sept. 1, 1978; adop. May 5, 1967, eff. 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. [Amendment effective Jan. 1, 1977.] 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. Such mistakes may also be corrected before review is accepted by an appellate court, and thereafter corrected pursuant to RAP 7.2(e).

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 tbe 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. [Amd. Aug. 9, 1976, eff. Jan. 1, 1977; amd. Sept. 26, 1972, eff. Sept. 26, 1972; adop. May 5, 1967, eff. July 1, 1967.]

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. [Amendment effective Jan. 1, 1977.] 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 appellate review is accepted or during the pendency of appellate review.

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. RESCINDED.

(d) Stay Upon Appeal. RESCINDED.

(e) Stay in Favor of State. RESCINDED.

(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. RESCINDED.

(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. [Amd. Aug. 9, 1976, eff. Jan. 1, 1977; subds. (c), (d), (e), and (g) rescinded Jan. 28, 1976, eff. July 1, 1976; adop. May 5, 1967, eff. 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

Rule

64 Seizure of person or property.
65 Injunctions.
- (a) Preliminary injunction.
- (b) Temporary restraining order; notice; hearing; duration.
- (c) Security.
- (d) Form and scope.
- (e) Statutes.

65.1 Security: Proceedings against sureties.

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 Withdrawal by attorneys.

(a) Withdrawal by Attorney. Service on an attorney who has appeared for a party in a civil proceeding shall be valid to the extent permitted by statute and Rule 5(b) only until the attorney has withdrawn in the manner provided in sections (b), (c) and (d). Nothing in this rule defines the circumstances under which a withdrawal might be denied by the court.

(b) Withdrawal by Order. A court-appointed attorney may not withdraw without an order of the court. The client of the withdrawing attorney must be given notice of the motion to withdraw and the date and place the motion will be heard.

(c) Withdrawal by Notice. Except as provided in sections (b) and (d), an attorney may withdraw by notice in the manner provided in this section.

(1) Notice of Intent to Withdraw. The attorney shall file and serve a Notice of Intent to Withdraw on all other parties in the proceeding. The notice shall specify a date when the attorney intends to withdraw, which date shall be at least 10 days after the service of the Notice of Intent to Withdraw. The notice shall include a statement that the withdrawal shall be effective without order of court unless an objection to the withdrawal is served upon the withdrawing attorney prior to the date set forth in the notice. If notice is given before trial, the notice shall include the date set for trial. The notice shall include the names and last known addresses of the persons represented by the withdrawing attorney, unless disclosure of the address would violate the Code of Professional Responsibility, in which case the address may be omitted. If the address is omitted, the notice must contain a statement that after the attorney withdraws, and so long as the address of the withdrawing attorney's client remains undisclosed and no new attorney is substituted, the client may be served by leaving papers with the clerk of the court pursuant to Rule 5(b)(1).

(2) Service on Client. Prior to service on other parties, the Notice of Intent to Withdraw shall be served on the persons represented by the withdrawing attorney or sent to them by certified mail, postage prepaid, to their last known mailing addresses. Proof of service or mailing shall be filed, except that the address of the withdrawing attorney's client may be omitted under circumstances defined by subsection (c)(1) of this rule.

(3) Withdrawal Without Objection. The withdrawal shall be effective, without order of court and without the service and filing of any additional papers, on the date designated in the Notice of Intent to Withdraw, unless a written objection to the withdrawal is served by a party on the withdrawing attorney prior to the date specified as the day of withdrawal in the Notice of Intent to Withdraw.

(4) Effect of Objection. If a timely written objection is served, withdrawal may be obtained only by order of the court.

(d) Withdrawal and Substitution. Except as provided in section (b), an attorney may withdraw if a new attorney is substituted by filing and serving a Notice of Withdrawal and Substitution. The notice shall include a statement of the date on which the withdrawal and substitution are effective and shall include the name, address, and signature of the withdrawing attorney and the substituted attorney. [Adop. June 4, 1976, eff. July 1, 1976.]

IX. APPEALS
[RESERVED]

X. SUPERIOR COURTS AND CLERKS

Rule

(l) Submission on briefs.
(m) Stipulations.
(n) Seal of court.
78 Clerks.
(a) Powers and duties of clerks.
(b) Office hours.
(c) Orders by clerk.
(d) Receipt and publication of depositions.
(e) Entry of judgments and costs.
(f) Bonds.
79 Books and records kept by the clerk.
(a) Civil docket.
(b) Civil judgments and orders.
(c) Indices; calendars.
(d) Other books and records of clerk.
(e) Destruction of records.
(f) List of pending decisions.
80 Court reporters.
(a) [Reserved.]
(b) Electronic recording.

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 nonjudicial 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

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) Nonresident. An action against a nonresident 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) Default.

(1) 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, requests that the trial be held in the proper county and files an affidavit of merits.

(2) No order of default shall be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county.

(c) Change of Venue——Fees. Any fees or costs required to be paid by a party pursuant to RCW 4.12.090 shall be paid to the clerk of the county from which the case is being transferred by check or money order made payable to the clerk of the county to which the case is being transferred. [Amd. July 20, 1978, eff. Sept. 1, 1978; amd. Mar. 4, 1975, eff. July 1, 1975; adop. May 5, 1967, eff. 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) Filing with Administrator for the Courts. Local rules and amendments become effective only after they are filed with the administrator for the courts in such quantities as he shall require. [Amd. Nov. 26, 1975, eff. Jan. 1, 1976; adop. May 5, 1967, eff. 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.]

SUPERIOR COURT SPECIAL PROCEEDINGS RULES (SPR)

(Formerly: Special Proceedings Rules for Superior Court)

(94.04W Divorce actions. RESCINDED.)
(94.05 Continuation of actions——Chapter 26.08 RCW. RESCINDED.)
(98.04W Estates——Probate——Notices to heirs, etc. Abrogated).
(98.06W Probate proceedings——Inventory. Abrogated).
98.08W Estates——Settlement of claims by executors, administrators and receivers.
98.10W Estates——Receivership——Reports.
98.12W Estates generally——Fees.
98.16W Estates——Guardianship——Settlement of claims of minors.
(a) Representation.
(b) Hearing.
(c) Deposit in court and disbursements.
(d) Control of remaining funds.
(e) Deposit of minor's funds.
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 7.33. [Amd. June 4, 1976, eff. July 1, 1976; adop. May 5, 1967, amd. June 28, 1967, eff. 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. [Adop. May 5, 1967, eff. July 1, 1967. Rescinded Nov. 6, 1974, eff. Jan. 1, 1975.]

Rule 94.05 Continuation of actions——Chapter 26-.08 RCW. [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 the court is requested to approve a settlement involving the 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 savings and loan association 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 be the clerk jointly to the depository bank and 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 bank receipt to that effect must be forthwith filed with the court by the attorney. [Adopted May 5, 1967, amended May 26, 1972, effective July 1, 1972.]

Comment by the Court. Except for addition of headings and subheadings and editorial changes the rule is identical to RPPP 93.04W.

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)

CHAPTER 1——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 April 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 April 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 of application of the procedures of these rules. [Adopted April 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 April 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 [be] 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 April 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 April 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 April 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.79.010, 10.79.030.

CHAPTER 3—RIGHTS OF DEFENDANTS

Rule

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 April 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 or Plea of Guilty. A defendant (1) who is charged with a capital offense, or (2) who has entered a plea of guilty to a felony, or 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. [Amd. Feb. 4, 1976, eff. July 1, 1976; adop. Apr. 18, 1973, eff. 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) 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) Absence of Defendant. If and in event the defendant is absent and thereby unavailable for trial or for any pretrial proceeding at which his presence is required, the

time period specified in (b) or (c) shall start to accrue anew upon defendant's being actually present in the county wherein the criminal charge is pending, and his presence appearing upon the record of the court.

(g) Dismissal With Prejudice. A criminal charge not brought to trial as required by this rule shall be dismissed with prejudice. [Amd. May 3, 1976, eff. May 21, 1976; adop. Apr. 18, 1973, eff. 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 April 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 admissible. 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 April 18, 1973, effective July 1, 1973.]

Rule 3.6 Suppression hearings——Duty of court.

At the conclusion of a hearing, upon a motion to suppress physical, oral or identification evidence the trial court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) the court's findings as to the disputed facts; and (4) the court's reason for the admissibility or inadmissibility of the evidence sought to be suppressed. [Adop. Apr. 25, 1978, eff. May 15, 1978.]

CHAPTER 4—PROCEDURES PRIOR TO TRIAL

Rule

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 April 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 April 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 April 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 April 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 April 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 April 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 defendants' 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 April 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 April 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 April 18, 1973, effective July 1, 1973.]

CHAPTER 5—VENUE

Rule

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 April 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 April 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

Rule

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 April 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 April 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 April 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 April 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 April 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 April 18, 1973, effective July 1, 1973.]

Comment: Supersedes RCW 10.49.100.

Rule 6.7 Custody of jury. The jury may be allowed to separate if the court finds that good reason exists to believe that such would not jeopardize a fair trial. Any motions or proceedings concerning the separation of the jury shall be made out of the presence of the jury. [Amd. June 25, 1976, eff. Sept. 20, 1976; adop. April 18, 1973, eff. 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 April 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 April 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 April 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 April 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.

(e) 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 if it appears to the court, after an offer of proof by the moving party, that the testimony of such witness would tend to incriminate him, or it appears that counsel is required to otherwise fully protect the rights of such witness. [Amd. Dec. 10, 1974, eff. Jan. 1, 1975; adop. Apr. 18, 1973, eff. July 1, 1973.]

Comment: (See RCW 10.01.130).

Rule 6.13 Testimony in lieu of witnesses.

(a) Deposition. Upon a determination that the testimony of a witness is material, and that it appears probable that the witness will not voluntarily appear at the trial, the court may order the taking of his deposition. Pending the taking of the deposition the provisions of Rule 3.2 shall apply.

(b) Test Report by Expert.

(1) *Certification Required.* Subject to subsection (b)(3) of this rule, the official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears or has attached a certification stating that the certifier has performed a test on the substance or object in question, the name of the person from whom the substance or object was received, the certificate is attached to a true and complete copy of the certifier's official report, the report was made by the certifier, and the qualifications of the certifier to make such tests. The certificate shall be signed by the certifier with the title of his office and his business address and telephone number.

(2) *Form.* The certificate shall be in substantially the following form:

The undersigned certifies under penalty of perjury that:

1. He performed a test on the (substance) (object) in question,

2. The person from whom he received the (substance) (object) in question is _____,

3. The document on which this certificate appears or to which it is attached is a true and complete copy of my official report, and

4. Such document is a report of the results of a test which report and test were made by the undersigned who has the following qualifications and experience:

_____.

_____
Signature

_____
Title

_____
Business Address & Phone

(3) *Notice Requirements.* The court shall exclude such report if:

(i) A copy of the report and certificate has not been served on the defendant or the defendant's attorney at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(ii) In the case of an unrepresented defendant, a copy of this rule in addition to a copy of the report and certificate has not been served on the defendant at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(iii) At least 7 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served a written demand upon the prosecutor to produce the expert witness at the trial. [Amd. June 4, 1975, eff. July 1, 1976; adop. Aug. 26, 1975, eff. Jan. 1, 1976; amd. Dec. 10, 1974, eff. Jan. 1, 1975; adop. Apr. 18, 1973, eff. 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 April 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 April 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 April 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 April 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 April 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 April 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 April 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 April 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 April 18, 1973, effective July 1, 1973.]

Comment: Probably supersedes the entirety of chapter 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 April 18, 1973, effective July 1, 1973.]

CHAPTER 8—MISCELLANEOUS

Rule

Rule 8.1 Time. Time shall be computed and enlarged in accordance with Civil Rule 6. [Adopted April 18, 1973, effective July 1, 1973.]

Rule 8.2 Motions. Civil Rule 7(b) shall govern motions in criminal cases. [Adopted April 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 April 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 April 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 April 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 April 18, 1973, effective July 1, 1973.]

Rule 8.7 Objections. Objections in criminal causes shall be taken as in civil causes. [Adopted April 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 April 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.]

Superior Court Mental Proceedings Rules (MPR)

Table of Rules

I. General.

Rule

II. Proceedings for initial detention.

Rule

III. Proceedings for ninety or one hundred eighty day commitment.

Rule

IV. Proceedings for conditional release and revocation or modification.

Rule

I. GENERAL

Rule 1.1 Notice——General. Whenever any notice or document pursuant to the provisions of chapter 71.05 RCW 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 chapter 71.05 RCW, for involuntary commitment or detention, the prosecuting attorney for the county in which the proceeding is initiated 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 chapter 71.05 RCW, 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. [Amended March 11, 1975, effective July 1, 1975; adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.2 Continuance or postponement. In any judicial proceeding held pursuant to chapter 71.05 RCW for involuntary commitment or detention the court may continue or postpone such proceeding for a reasonable time, subject to RCW 71.05.210 and 71.05.240, 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. [Amended, adopted March 11, 1975, effective July 1, 1975; adopted Dec. 17, 1973, effective Jan. 1, 1974.]

Rule 1.3 Confidentiality of proceedings. Proceedings had pursuant to chapter 71.05 RCW 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.]

II. 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 and whether the required seventy–two hour evaluation and treatment may be on an outpatient or inpatient status.

(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: ----------

[Amd. Oct. 28, 1975, eff. Jan. 1, 1976; adop. Dec. 17, 1973, eff. 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.]

III. PROCEEDINGS FOR NINETY OR ONE HUNDRED EIGHTY DAY COMMITMENT

Rule

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.]

IV. PROCEEDINGS FOR CONDITIONAL RELEASE AND REVOCATION OR MODIFICATION

Rule

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.]

V. VENUE

Rule

Rule 5.1 General. Proceedings pursuant to chapter 71.05 RCW, 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.]

VI. PETITIONS

Rule

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 chapter 71.05 RCW.

(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 chapter 71.05 RCW 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 chapter 71.05 RCW 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 voluntary treatment and that the professional staff of the facility has evidence that he has not in good faith volunteered.

(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: ----------

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(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) ----------

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(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)

[Amd. Oct. 28, 1975, eff. Jan. 1, 1976; amd. June 21, 1974, eff. July 1, 1974; adop. Dec. 17, 1973, eff. Jan. 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 of the treatment facility in which the respondent is detained pursuant to court order or his professional designee, or the county mental health professional of (name) county.

(d) The name of the court ordering fourteen day involuntary treatment or finding the respondent incompetent pursuant to RCW 10.77.090(3) and the date on which such order or finding 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)

[Amd. Oct. 28, 1975, eff. Jan. 1, 1976; amd. June 21, 1974, eff. July 1, 1974; adop. Dec. 17, 1973, eff. Jan. 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 the petitioner is the superintendent or professional person in charge of the facility in which the person who is alleged, as a result of a mental disorder, to present a likelihood of serious harm to others, is detained, or in the event that the defendent has received involuntary treatment but has not been committed to a treatment facility or has been conditionally released from such a facility, a statement that the petitioner is the county mental health professional of (name) county.

(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)

[Amd. Oct. 28, 1975, eff. Jan. 1, 1976; amd. June 21, 1974, eff. July 1, 1974; adop. Dec. 17, 1973, eff. Jan. 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.]

JUVENILE COURT RULES (JuCR)

Table of Contents

TITLE 1. SCOPE AND APPLICATION OF RULES

Rule 1.1 Scope of rules. These rules relate to procedure in the juvenile court. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 1.2 Jurisdiction of juvenile court. The jurisdiction of the juvenile court is defined by RCW 13.04.030. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 1.3 Definitions. The definitions in RCW 13.04.011, RCW 13.34.030, RCW 9A.76.010 and RCW 13.40.020 shall apply to these rules. For the purposes of these rules:

(a) Guardian. "Guardian" means a person appointed by court order under RCW 11.88, but does not mean a person appointed a guardian ad litem under RCW 11.88.090.

(b) Custodian. "Custodian" or "legal custodian" means a person (other than a parent or a guardian) or an agency to whom legal custody of a child has been given by a court having jurisdiction over the child.

(c) Legal Custody. "Legal custody" means a status created by court order. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 1.4 Applicability of other rules. (a) Civil Rules. The Superior Court Civil Rules shall apply in proceedings other than those involving a juvenile offense when not inconsistent with these rules and applicable statutes.

(b) Criminal Rules. The Superior Court Criminal Rules shall apply in juvenile offense proceedings when not inconsistent with these rules and applicable statutes.

(c) Local Rules. The local rules of a juvenile court shall apply when not inconsistent with these rules and applicable statutes. Local rules for juvenile court proceedings must be adopted in accordance with CR 83. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 1.5 Continuation of actions. (a) Dependency and Termination Proceedings.

(1) Actions filed on or after May 1, 1978 alleging dependency or seeking the termination of the parent–child relationship, in which the court has not entered a final order of dependency or termination prior to July 1, 1978 shall, after July 1, 1978, be governed by RCW 13.34 and these rules.

(2) The status of all juveniles found to be dependent prior to July 1, 1978 shall be reviewed as provided in RCW 13.34.130(3).

(3) Any proceeding to modify a disposition order in a case involving a juvenile found, prior to July 1, 1978, to be dependent, shall be governed by RCW 13.34 and these rules.

(4) The court may modify the application of this section to a particular case when, in the opinion of the court, that application would work injustice.

(b) Juvenile Offense Proceedings. Juvenile offense proceedings shall be governed by the law in effect on the date the offense is found to have taken place. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 2. SHELTER CARE PROCEEDINGS

Rule 2.1 Placement of juvenile in shelter care generally. (a) Without Court Order. A juvenile may be placed in shelter care without court order if the juvenile has been taken into custody pursuant to RCW 26.44.050.

(b) With Court Order. A juvenile may be placed in shelter care with a court order if:

(1) a dependency petition has been filed pursuant to Rule 3.2 and a motion has been made pursuant to section (c); or

(2) the juvenile has previously been found to be dependent, is the subject of a disposition order still in effect, and a motion has been made pursuant to section (c).

(c) Obtaining Shelter Care Order. A request for an order pursuant to RCW 13.34.050 shall be by motion supported by a sworn statement filed with the court or by testimony given in open court, setting forth the facts which form the basis for the motion. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 2.2 Release of juvenile from shelter care without hearing. (a) If Shelter Care Is Without Court Order. If a juvenile is taken into shelter care without a court order pursuant to RCW 26.44.050, the juvenile shall be released unless a petition alleging dependency is filed within 72 hours (excluding Sundays and holidays) after taking the juvenile into custody.

(b) If Shelter Care Is With Court Order. If a juvenile is taken into shelter care pursuant to a court order, the juvenile shall be released unless an order authorizing continued shelter care is entered within 72 hours (excluding Sundays and holidays) after the juvenile is taken into custody. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 2.3 Right to and notice of shelter care hearing. (a) Shelter Care Hearing Defined. The term "shelter care hearing" means any hearing under RCW 13.34.060.

(b) Notice of Right to Shelter Care Hearing. The notice of the right to request a shelter care hearing required by RCW 13.34.060 shall be given to the juvenile, his or her parents, guardian, or custodian within 72 hours of the taking into custody of the juvenile, and in accordance with Rule 11.2.

(c) Shelter Care Hearing Requested. If a shelter care hearing has been requested the court shall hold the hearing within 72 hours (excluding Sundays and holidays) of the request for a shelter care hearing.

(d) Notice of Shelter Care Hearing. The notice required by RCW 13.34.060(2) shall be given in accordance with Rule 11.2. The notice shall inform the parents, guardian, or custodian of their right to a lawyer as provided in Title 9 of these rules. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 2.4 Procedure at shelter care hearing. (a) Inform Parties of Rights. The court shall inform the parties of their rights as set forth in RCW 13.34.090 and in Titles 2, 3, and 9 of these rules. The court may continue the hearing if the parties have been unable to retain a lawyer or have been unable to have a lawyer appointed for them.

(b) Hearing and Decision. The court shall hold the hearing on the question of shelter care in accordance with RCW 13.34.060(4) and RCW 13.34.090. The court shall make its decision in accordance with RCW 13.34.060(6).

(c) Release of Juvenile on Conditions. The court may release the juvenile on those conditions it deems appropriate. As provided in RCW 13.34.060(7), the conditions may be modified upon notice to the parties given in accordance with Rule 11.2 and after a hearing. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 2.5 Amendment of shelter care order. The court may amend a shelter care order as provided in RCW 13.34.060(8) at a hearing held after notice to the parties given in accordance with Rule 11.2. Any party may move to amend a shelter care order. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 3. DEPENDENCY PROCEEDINGS

Rule 3.1 Invoking jurisdiction of juvenile court. Juvenile court jurisdiction is invoked over dependency proceedings by filing a petition. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.2 Who may file petition——Venue. (a) **Who May File.** Any person may file a petition alleging dependency.

(b) **Venue.** The petition shall be filed in the county where the juvenile is located or where the juvenile resides. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.3 Content of dependency petition. A dependency petition shall contain:

(a) **Identification of the Juvenile.** The name, age, sex, and residence of the juvenile so far as known to the petitioner.

(b) **Identification of Parent, Guardian, or Custodian.** The name, marital status, and residence of the parent, guardian, or custodian, or person with whom the juvenile is residing, so far as known to the petitioner. If not known, the petition shall so state.

(c) **Jurisdictional Statement.** A statement of the statutory provisions which give the court jurisdiction over the proceeding.

(d) **Statement of Facts.** A statement of the facts which give the court jurisdiction over the juvenile and over the subject matter of the proceedings, stated in plain language and with reasonable definiteness and particularity.

(e) **Request for Inquiry.** A request that the court inquire into the matter and enter an order that the court shall find to be in the best interests of the juvenile and justice.

(f) **Other.** Any other information required by court rule or statute. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.4 Notice and summons——Scheduling of fact-finding hearing. (a) **Notice and Summons.** After the petition has been filed, notice and summons shall be issued and served pursuant to RCW 13.34.070 or published pursuant to RCW 13.34.080.

(b) **Advice To Be Contained in Notice.** A notice directed to the juvenile or the juvenile's parent, custodian, or guardian shall contain the following advisement:

Right to Lawyer

(1) You have the right to talk to a lawyer if you desire and if you cannot afford a lawyer one will be appointed for you.

(2) A lawyer can look at the social and legal files in your case, talk to the caseworker, tell you about the law, help you understand your rights, and help you at trial.

(c) **Notice of Possible Termination Proceedings.** If the petition alleges dependency pursuant to RCW 13.34.030(2)(a) or (b), or has been amended to include that allegation, the notice shall state that the petition begins a process which, if the juvenile is found dependent, may result in permanent termination of the parent–child relationship.

(d) **Scheduling Fact-Finding Hearing.** The court shall schedule a fact–finding hearing with reasonable speed, giving preference to those cases where the juvenile is held in shelter care or detention. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.5 Amendment of petition. 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. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.6 Answer to petition. Any party may file a written answer to a petition. An answer is not required unless ordered by the court or required by local rule. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.7 Fact-finding hearing. (a) **Procedure at Hearing.** The court shall hold a fact–finding hearing on the petition in accordance with RCW 13.34.110.

(b) **Evidence.** The rules of evidence shall apply to the hearing. No social file or social study shall be considered by the court in connection with the fact–finding hearing or prior to factual determination.

(c) **Burden of Proof.** In a fact–finding hearing on a petition alleging dependency pursuant to RCW 13.34.030(2)(a), (b), or (c), the facts alleged in the petition must be proven by a preponderance of the evidence. In a fact–finding hearing on a petition alleging dependency pursuant to RCW 13.34.030(2)(d), the facts alleged in the petition must be proven beyond a reasonable doubt. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.8 Disposition hearing. (a) **Time.** If a juvenile has been found to be dependent, the court shall hold a disposition hearing. If the disposition hearing does not immediately follow the fact–finding hearing, notice of the continued hearing shall be given to all parties in accordance with RCW 13.34.110.

(b) **Informing Parties of Purpose of Hearing.** The court shall inform the parties of the purpose of the hearing. The court shall inform the parties of the new status of the juvenile as a result of the finding of dependency.

(c) **Evidence.** The court shall consider the social file, social study and other appropriate pre–disposition studies, in addition to information produced at the fact–finding and disposition hearings. Any party shall have the right to be heard at the disposition hearing. Any social file, social study, or pre–disposition study shall be made available for inspection by a party or his or her lawyer for a reasonable time prior to the disposition hearing.

(d) **Submission of Agency Plan.** If the agency plan referred to in RCW 13.34.130(2) is not submitted to the court at the time of the disposition hearing, it shall be filed with the court and distributed to all parties within 30 days after the disposition hearing.

(e) **Transferring Legal Custody.** A disposition which orders removal of the juvenile from his or her home shall have the effect of transferring legal custody to the agency or custodian charged with the juvenile's care. The transfer of legal custody shall give the legal custodian the following rights and duties:

(1) to maintain the physical custody of the juvenile;

(2) to protect, train, and discipline the juvenile;

(3) to provide food, clothing, shelter, education as required by law, and routine medical care for a juvenile; and

(4) to consent to emergency medical and surgical care and to sign a release of medical information to appropriate authorities, pursuant to law.

The court may, in its disposition order, modify the rights and duties granted to the legal custodian as a result of the transfer of legal custody. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.9 Review hearing. The status of all juveniles found to be dependent shall be reviewed by the court at least every six months, in accordance with RCW 13.34.130(3). The parties shall be given notice of the review hearing in accordance with Rule 11.2. All parties shall have the right to be present at the review hearing and to be heard. Notice of a review hearing concerning a juvenile who has been found dependent under RCW 13.34.030(2)(a) or (b) and who has been removed from the parental home shall include an advisement that a petition to terminate the parent–child relationship may be filed six months after the juvenile has been removed from the parental home. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 3.10 Modification of order. Any party may move to change, modify, or set aside an order pursuant to RCW 13.34.150. The motion shall be in writing and must state the basis for the motion and the relief requested. No order shall be changed, modified, or set aside except after notice to all parties and a hearing, unless the court waives the hearing on its own motion or upon motion of one of the parties, for good cause shown. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 4. PROCEEDINGS TO TERMINATE PARENT–CHILD RELATIONSHIP

Rule

Rule 4.1 Invoking jurisdiction of juvenile court. Juvenile court jurisdiction is invoked over a proceeding to terminate a parent–child relationship by filing a petition. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 4.2 Pleadings. (a) Petition. A petition requesting the termination of a parent–child relationship may be filed in the juvenile court. The petition shall conform to the requirements of Rule 3.3, shall be verified, and shall state the facts which underlie each of the allegations required by RCW 13.34.180.

(b) Amendment of Petition. A petition may be amended as provided in Rule 3.5.

(c) Answer. A party may answer a petition as provided in Rule 3.6. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 4.3 Notice of termination hearing. Notice of the termination hearing and a copy of the petition shall be served on all parties in the manner defined by RCW 13.34.070(6) and (7) or published in the manner defined by RCW 13.34.080. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 5. PROCEEDINGS FOR ALTERNATIVE RESIDENTIAL PLACEMENT

Rule

Rule 5.1 Invoking jurisdiction of juvenile court. Juvenile court jurisdiction is invoked over a proceeding for alternative residential placement by filing a petition. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 5.2 Pleadings——Release of Juvenile in detention. (a) Petition. A petition requesting an alternative residential placement, conforming to the requirements of Rule 3.3, may be filed by a juvenile or a juvenile's parent or custodian pursuant to RCW 74.13.031(4)(f).

(b) Venue. The petition shall be filed in the county where a custodial parent or custodian resides.

(c) Amendment of Petition. A petition may be amended as provided in Rule 3.5.

(d) Answer. A party may answer a petition as provided in Rule 3.6.

(e) Release of Juvenile in Detention. If a juvenile is held in detention pursuant to RCW 74.13.031(4)(g), the juvenile shall be released unless a petition is filed within 48 hours after the initial detention of the juvenile. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 5.3 Scheduling of placement hearing. (a) Time. If the petition has been filed by a juvenile, or a juvenile's parent or guardian, the court shall schedule a hearing upon the question of alternative residential placement with reasonable speed. The hearing shall be held within 14 days after the filing of the petition, unless the time is extended for good cause shown.

(b) Hearing When Juvenile Is Held in Detention. If a petition has been filed pursuant to RCW 74.13-.031(4)(g), a hearing on the petition shall be held within 72 hours (excluding Sundays and holidays) of the initial detention of the juvenile or the juvenile shall be released. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 5.4 Notice of placement hearing. The notice required by RCW 13.32.030 shall be given in accordance with Rule 11.2. The notice shall also include the following:

(1) *Right to Lawyer.* A statement advising the parents or the custodian of their right to be represented by a retained lawyer at the hearing;

(2) *Consequences of Petition Approval.* A statement advising the parties that if the court approves the petition, the juvenile will have the right to live in the placement approved by the court, subject to the terms of the court order, and that the parents will not be relieved of financial responsibility for the juvenile; and

(3) *Alternative Placement.* A statement advising the parties that the court may, instead of approving the requested placement, order the juvenile placed in an appropriate nonsecure facility. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 5.5 Placement hearing. The hearing to consider the juvenile's placement shall be held in accordance with RCW 13.32.040. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 5.6 Review hearing. (a) Time. The court shall schedule a review of any alternative residential placement within six months of the placement. The notice of the review hearing required to be given by RCW 13.32-.050 may be given to the parties at the placement hearing, or they may be notified in accordance with Rule 11.2. The hearing shall be conducted in accordance with RCW 13.32.050.

(b) Additional Review Hearings. If the court approves continuation of alternative placement, it shall hold another review hearing within six months of that approval. If the court does not continue alternative placement, it may hold another review hearing within six months.

(c) Notice. The parties shall be notified of a subsequent review hearing in accordance with Rule 11.2. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 6. JUVENILE OFFENSE PROCEEDINGS——DIVERSION AGREEMENTS

Rule

Rule 6.1 Eligibility for diversion. A juvenile's eligibility for diversion shall be determined pursuant to RCW 13.40.070 and .080. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 6.2 Right to consult with a lawyer. (a) Advice of Right to Representation by Lawyer. A juvenile found eligible for diversion shall, prior to the initial interview with the diversion unit, be advised of his or her right to consult with a lawyer concerning the juvenile's decision to enter into a diversion agreement or to appear in juvenile court.

(b) Appointment of Lawyer. The court shall appoint a lawyer for any juvenile who is financially unable to obtain a lawyer for the consultation if the juvenile does not waive that right pursuant to Rule 6.3.

(c) Retained Lawyer During Diversion Process. A juvenile may be represented by a retained lawyer during the diversion process in accordance with RCW 13.40.080(6). [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 6.3 Waiver of right to lawyer. A waiver containing the following statements and in substantially the following form shall be read by, signed by, and a copy given to a juvenile who waives the right to consult with a lawyer before an initial interview with a diversion unit:

Waiver of Lawyer

1. I know that I can talk to a lawyer about whether I should enter into a diversion process and will not have to pay for one if I cannot afford it.

2. I know that a lawyer can look at my police reports, tell me about the law, help me understand my rights, and help me decide whether I should enter into a diversion process or go to juvenile court.

3. I have decided not to talk to a lawyer at this time.

Dated ---------- Dated ----------

---------- ----------

Parent or Guardian (optional) Juvenile

The above statement was read to the juvenile and signed by the juvenile on the date indicated.

Representative of Diverson Unit

[Adop. June 28, 1978, eff. July 1, 1978.]

Rule 6.4 Advice about diversion process. A statement in substantially the following form shall be read to, signed by, and a copy given to a juvenile before an initial interview with the diversion unit:

Advice About Diversion

1. Diversion is a different way of dealing with juveniles who are charged with a crime. You do not go to court and there is no trial before a judge.

2. A diversion agreement is a contract between you and the diversion unit. A diversion agreement may require you to do certain things, such as community service or make restitution, but you cannot be sent to jail.

3. The diversion agreement will be part of your criminal record.

4. You have the right to talk to a lawyer about whether you should participate in diversion or whether

you should go to court. You will not have to pay for a lawyer if you cannot afford it.

5. When you agree to participate in the diversion process, you do not have the right to have a free lawyer appointed for you to help you work out a diversion agreement, but you do have the right to have a lawyer help you work out a diversion agreement if you can afford to pay for it.

6. Even if you talk to the diversion unit, you can decide not to sign the diversion agreement; then your case would go to court if charges are filed by the prosecutor.

Dated ---------- Dated ----------

---------- ----------

Parent or Guardian (optional) Juvenile

The above statement was read to, signed by, and a copy given to the juvenile on the date indicated.

Representative of Diversion Unit

[Adop. June 28, 1978, eff. July 1, 1978.]

Rule 6.5 Advice of rights and effect of diversion. (a) Advice to Juvenile Entering Into a Diversion Agreement. A statement in substantially the following form shall be read to, signed by, and a copy given to a juvenile who enters into a diversion agreement before the agreement is signed:

Effect of Diversion Agreement

1. I understand that the crime I am charged with will be part of my criminal record.

2. I understand that the diversion agreement will be part of my criminal record.

3. I understand that I might not be able to make a diversion agreement for another crime because I have signed this diversion agreement.

4. I understand that I may be given a longer sentence for another crime because I have signed this diversion agreement.

5. I understand that my criminal record will show how well I follow the diversion agreement.

6. I understand that if I do not follow the diversion agreement the prosecutor can bring me to trial for the crime I am charged with.

7 I understand that my criminal record will be available to the police, the prosecutor, and the court if I am charged with another crime.

8. I understand that when I am 23 years old I may ask the court to remove this crime and the diversion agreement from my record if I have not been charged with or been convicted of another crime.

9. I understand that I do not have to sign this agreement. If I do not sign, I understand that my case will go to court if charges are filed by the prosecutor.

10. I understand that if my case goes to court, I can talk to a lawyer and will not have to pay for it if I cannot afford it.

11. I have read or someone has read to me everything printed above and I understand it. I have been given a copy of this statement.

Dated ---------- Dated ----------

---------- ----------

Parent or Guardian (optional) Juvenile

The above statement was read to the juvenile and signed by the juvenile on the date indicated.

Representative of Diversion Unit

(b) Advice to Juvenile Released Without Entering Into a Diversion Agreement. A statement in substantially the following form shall be read to, signed by, and a copy given to a juvenile who is released by a diversion unit pursuant to RCW 13.40.080(9):

Effect of Nondiversion Argument

1. I understand that the crime I am charged with will be part of my criminal record.

2. I understand that I might not be able to make a diversion agreement for another crime because I have agreed not to go to trial.

3. I understand that I may be given a longer sentence for another crime because I have agreed not to go to trial.

4. I understand that my criminal record will be available to the police, the prosecutor, and the court if I am charged with another crime.

5. I understand that when I am 23 years old I may ask the court to remove this crime from my record if I have not been charged with or convicted of another crime.

6. I understand that I do not have to sign this statement. If I do not sign, I understand that my case will go to court if charges are filed by the prosecutor.

7. I understand that if my case goes to court I can talk to a lawyer and will not have to pay for it if I cannot afford it.

8. I have read or someone has read to me everything printed above and I understand it. I have been given a copy of this statement.

Dated ---------- Dated ----------

---------- ----------

Parent or Guardian (optional) Juvenile

The above statement was read to the juvenile and signed by the juvenile on the date indicated.

Representative of Diversion Unit

[Adop. June 28, 1978, eff. July 1, 1978.]

Rule 6.6 Termination of diversion agreement. (a) Motion. The procedure to seek termination of a diversion agreement is to file a motion in juvenile court alleging that the juvenile has substantially violated the

terms of the diversion agreement. The motion shall include a statement of:

(1) the offense which the juvenile was alleged to have committed;

(2) the terms of the diversion agreement; and

(3) the alleged violation of the diversion agreement.

(b) Scheduling and Notice of Hearing. The court shall schedule a hearing on the allegations in the motion with reasonable speed. A copy of the motion and the written notice of the hearing required by RCW 13.40.080(4) shall be given the juvenile in accordance with Rule 11.2. The notice shall also state that an information may be filed on the original offense.

(c) Disclosure of Evidence. All evidence to be offered against the juvenile shall be disclosed to the juvenile a reasonable time prior to the hearing.

(d) Procedure at Hearing. The court shall hold a hearing on the allegations made in the motion. At the hearing the juvenile shall have the opportunity to be heard in person, to present evidence, and to confront and cross-examine all adverse witnesses.

(e) Burden of Proof and Order Terminating Diversion Agreement. The moving party must prove by a preponderance of the evidence that the allegations in the motion are true and that they are a substantial violation of the diversion agreement. If the court finds that the moving party has met this burden of proof, it may order the termination of the diversion agreement. An order terminating a diversion agreement shall include a written statement of the evidence relied upon by the court and the reasons for the termination.

(f) Consolidation of Termination Hearing With Adjudication of Offense. When the diversion unit has referred the case to the prosecuting attorney, and the prosecutor has filed an information, the court may schedule the hearing on the allegations in the motion to terminate the diversion agreement for the same time and place as the adjudicatory hearing on the allegations in the information. In that case, the court shall hold a hearing in accordance with this rule and make a finding with respect to the allegations in the motion before conducting the adjudicatory hearing on the allegations in the information. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 7. JUVENILE OFFENSE PROCEEDINGS IN JUVENILE COURT

Rule

Rule 7.1 Invoking juvenile court jurisdiction. Juvenile court jurisdiction is invoked over a juvenile offense proceeding by filing an information. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.2 Information. (a) Content. [Reserved. See RCW 13.40.070.]

(b) Amendment. An information 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 the amended information. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.3 Detention and release without hearing. (a) If No Information Filed Before Custody. If a juvenile alleged to have committed a juvenile offense is taken into custody before an information is filed, the juvenile shall be released unless an information is filed within 72 hours (excluding Saturdays, Sundays, and holidays) after taking the juvenile into custody. A juvenile held in detention after the filing of an information shall be given a hearing to determine whether continued detention is necessary, and in the absence of any prior determination, whether there is probable cause to believe that the detained juvenile committed the offense. The juvenile shall be released unless these determinations are made within 72 hours (excluding Saturdays, Sundays, and holidays) after the information has been filed.

(b) If Information Filed Before Custody. If a juvenile alleged to have committed a juvenile offense is taken into custody after an information has been filed and is held in detention, the juvenile shall be given a hearing to determine whether continued detention is necessary and in the absence of any prior determination, whether there is probable cause to believe that the detained juvenile committed the offense. The juvenile shall be released unless these determinations are made within 72 hours (excluding Saturdays, Sundays, and holidays) after the juvenile is taken into custody. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.4 Detention hearing. (a) Procedure at Hearing. The detention hearing shall be held in accordance with RCW 13.40.050(3) and (4). All parties shall have

an opportunity to present evidence and to be heard on the issue of continued detention.

(b) Determination by Court Generally. At the hearing the court shall determine whether continued detention is necessary under RCW 13.40.040.

(c) Determination That Detention Necessary. If the court finds that continued detention is necessary, the court shall enter written findings setting forth the specific statutory provision and the facts on which the court based its order for continued detention. The juvenile may nevertheless be released upon posting of a bond and the imposition of conditions upon such release pursuant to RCW 13.40.040(4).

(d) Determination That Detention Not Necessary. If the court at the detention hearing determines that continued detention is not necessary, the juvenile shall be ordered released on personal recognizance. The court may impose conditions on the release pursuant to RCW 13.40.050(6). [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.5 Summons. (a) Issuance. After an information has been filed, a summons shall issue and be served pursuant to RCW 13.40.100.

(b) Additional Contents of Summons. The summons shall advise the parties of the right to be represented by a retained lawyer and to have a lawyer appointed in certain cases, as provided in Title 9 of these rules and RCW 13.40.140. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.6 Arraignment and pleas. (a) Arraignment. The arraignment of an alleged juvenile offender is governed by CrR 4.1.

(b) Plea. The taking of a plea of an alleged juvenile offender is governed by CrR 4.2. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.7 Statement of juvenile on plea of guilty. A written statement of a juvenile on a plea of guilty shall be filed in substantially the following form.

Guilty Plea Statement

1. My name is _____.
2. My age is _____.
3. I know that I have the right to a lawyer, and that if I cannot afford to pay for a lawyer, the court will provide me with one at no cost.
4. My lawyer is _____.
5. The court has told me that I am charged with the crime of _____, and I have been given a copy of the charge.
6. The court has told me that:

(a) I have the right to hear and question witnesses who might testify against me.

(b) I have the right to have witnesses testify for me. These witnesses may be required to appear at no cost to me.

(c) I have the right to testify on my own behalf.

(d) The crime I am charged with must be proven beyond a reasonable doubt.

(e) I have a right to appeal a conviction after a trial.

(f) If I plead guilty I give up these rights, and I cannot change my plea.

7. The court has told me that the standard sentence for this crime is at least _____ and no more than _____.
8. I have been told that the prosecuting attorney will take the following action and make the following recommendation to the court: _____.
9. I have been told that the court does not have to follow the prosecuting attorney's recommendation for my sentence.
10. The court has asked me to state in my own words what I did that resulted in my being charged with the crime. This is my statement: _____.
11. I plead guilty to the charge.
12. I make this plea freely. No one has threatened to harm me or anyone else in order to have me plead guilty.
13. No one has made any promises to make me plead guilty, except as written in this statement.
14. I have read or someone has read to me everything printed above and I have been given a copy of this statement. I have no more questions to ask the court.

Dated _____

_____

Juvenile

The above statement was read by or read to the alleged offender and signed by the juvenile ---------- in the presence of his or her attorney ----------, prosecuting attorney, ----------, and the undersigned judge in open court.

Dated ----------

---------- Judge

[Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.8 Time for adjudicatory hearing. (a) Responsibility of Court. It shall be the responsibility of the court to insure to each person charged with a juvenile offense an adjudicatory hearing in accordance with the provisions of this rule.

(b) Time Limits. The adjudicatory hearing on a juvenile offense shall begin within 60 days following the juvenile's arraignment in juvenile court on the charges contained in the information. If the alleged juvenile offender is held in detention pending the adjudicatory hearing, the hearing shall begin within 30 days following the juvenile's arraignment in juvenile court on the charges contained in the information.

(c) Excluded Periods. The following periods shall be excluded in computing the time for the adjudicatory hearing:

(1) All proceedings related to the competency of the alleged juvenile offender to participate in the hearing.

(2) Preliminary proceedings and an adjudicatory hearing on another charge.

(3) Delay granted by the court pursuant to paragraph (d).

(4) The time between the dismissal and the refiling of the same charge.

(d) Continuances. Continuances or other delays may be granted as follows:

(1) On motion of the alleged juvenile offender on a showing of good cause.

(2) On motion of the prosecuting attorney if:

(i) the alleged juvenile offender 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 alleged juvenile offender will not be substantially prejudiced in the presentation of his or her defense.

(3) The court on its own motion may continue the case when required in the due administration of justice and the alleged juvenile offender will not be substantially prejudiced in the presentation of his or her defense.

(e) Absence of Alleged Juvenile Offender. In the event the alleged juvenile offender is absent from the court and thereby unavailable for the adjudicatory hearing or for any preliminary proceeding at which his or her presence is required, the time period specified in section (b) shall start to accrue anew when the alleged juvenile offender is actually present in the county where the charge is pending, and his presence appears upon the record of the court.

(f) Dismissal With Prejudice. If the adjudicatory hearing on a juvenile offense is not held within the time limits in this rule, the information shall be dismissed with prejudice. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.9 Joinder of offenses and consolidation of adjudicatory hearings. (a) Joinder of Offenses. The joinder of offenses in an information is governed by CrR 4.3(a) and (c), where applicable.

(b) Consolidation of Adjudicatory Hearing. On motion of the prosecutor or the alleged juvenile offender, or on its own motion, the court may, for purposes of conducting the adjudicatory hearing, order that two or more informations naming different juveniles be consolidated and heard at the same time when two or more defendants could be joined in the same charge pursuant to CrR 4.3(b). [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.10 Severance of offenses and consolidated hearings. The severance of offenses and severance of consolidated hearings is governed by CrR 4.4, where applicable. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.11 Adjudicatory hearing. (a) Burden of Proof. The court shall hold an adjudicatory hearing on the allegations in the information. The prosecution must prove the allegations in the information beyond a reasonable doubt.

(b) Evidence. The rules of evidence shall apply to the hearing, except to the extent modified by RCW 13.40.140(7) and (8). All parties to the hearing shall have the rights enumerated in RCW 13.40.140(7).

(c) Decision on the Record. The juvenile shall be found guilty or not guilty. The court shall record its findings of fact and enter its decision on the record. The findings shall include the evidence relied upon by the court in reaching its decision. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.12 Disposition hearing. (a) Time. A disposition hearing shall be held if the juvenile has pleaded guilty or has been found guilty by the court. The hearing may be held immediately following the juvenile's plea of guilty or immediately following the adjudicatory hearing if found guilty by the court. The disposition hearing may be continued for a period of up to 14 days after the plea or the conclusion of the hearing, unless good cause is shown for a further continuance. Notice of a continued hearing shall be given to all parties in accordance with Rule 11.2.

(b) Conduct of Hearing. The court shall conduct the hearing in accordance with RCW 13.40.150.

(c) Criminal History. In determining the standard range of disposition for a juvenile, the following shall constitute the juvenile's criminal history pursuant to RCW 13.40.020(6):

(1) A finding made by a juvenile court prior to July 1, 1978 that the juvenile committed an offense, if the allegation was required to be proven beyond a reasonable doubt or if the juvenile admitted the allegation.

(2) A conviction by a juvenile court or a plea of guilty made on or after July 1, 1978.

(3) A record of a diversion agreement entered into in

accordance with the provisions of RCW 13.40.080.

(d) Disposition Outside Standard Range. If the court imposes a sentence outside the standard range for the offense, the disposition order shall set forth those portions of the record material to the disposition. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 7.13 Release pending appellate review. If the only error asserted on appellate review is the appropriateness of the disposition, release of the juvenile pending review is governed by RCW 13.40.230(5). If additional or different errors are asserted, the juvenile court shall release the juvenile pending review if the court determines, at a hearing, that detention is not necessary to prevent the juvenile from fleeing the jurisdiction or harming the juvenile or the person or property of others. The court may impose conditions on the release as in RCW 13.40.040(4) and RCW 13.40.050(6). [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 8. DECLINING JUVENILE COURT JURISDICTION OVER AN ALLEGED JUVENILE OFFENDER

Rule

Rule 8.1 Time for decline hearing. (a) Initiating Decline Hearing. If required or requested pursuant to RCW 13.40.110, a decline hearing shall be scheduled and held separate from and prior to the adjudicatory hearing.

(b) Time for Hearing in Felony Cases. In any case where declining jurisdiction would allow criminal prosecution for a felony, the decline hearing shall be held within 14 days after the information is filed unless the time is extended by the court for good cause.

(c) Notice. Notice of the decline hearing and its purpose shall be given in accordance with Rule 11.2. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 8.2 Procedure at decline hearing. The decline hearing shall be conducted in accordance with RCW 13.40.110(2). Any report or study to be presented to the court must be made available to the opposing party for a reasonable period prior to the hearing or reasonable time must be accorded the opposing party to respond. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 9. RIGHT TO LAWYER AND EXPERTS IN ALL JUVENILE COURT PROCEEDINGS

Rule

Rule 9.1 Mandatory appointment of lawyer. The court shall appoint a lawyer for a juvenile when required by RCW 74.13.031, RCW 13.32.030 and .050. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 9.2 Additional right to representation by lawyer. (a) Retained Lawyer. Any party may be represented by a retained lawyer in any proceedings before the juvenile court.

(b) Dependency and Termination Proceedings. The court shall provide a lawyer at public expense in a dependency or termination proceeding as follows:

(1) Upon request of a party or on the court's own initiative, the court shall appoint a lawyer for a juvenile who is financially unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family. The ability to pay part of the cost of a lawyer shall not preclude assignment. A juvenile shall not be deprived of a lawyer because a parent, guardian, or custodian, refuses to pay for a lawyer for the juvenile.

(2) Upon request of the parent or parents, the court shall appoint a lawyer for a parent who is unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family. The ability to pay part of the cost of a lawyer shall not preclude assignment.

(c) Juvenile Offense Proceedings. The court shall provide a lawyer at public expense in a juvenile offense proceeding when required by RCW 13.40.080(6), RCW 13.40.140(2) or Rule 6.2. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 9.3 Right to appointment by experts in juvenile offense proceedings. (a) Appointment. A juvenile who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense may request that these services be provided at public expense by a motion. Upon finding that the services are necessary and that the juvenile is financially unable to obtain them without substantial hardship to himself or herself or the juvenile's family, the court shall authorize counsel to obtain the services on the behalf of the juvenile. The ability to pay part of the cost of the services shall not preclude the provision of those services by the court. A juvenile shall not be deprived of necessary services because a parent, guardian, or custodian refuses to pay for those services. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, may ratify services after they have been obtained.

(b) Compensation. The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them on the filing of a claim for compensation supported by affidavits specifying the time expended and the services, and expenses incurred on behalf of the juvenile, and the compensation received in the same case or for the same services from the juvenile or any other source. [Adop. June 28, 1978, eff. July 1, 1978.]

TITLE 10. JUVENILE COURT RECORDS

Rule 10.1 Scope of Title 10. Rule 10.2 relates to recording of juvenile court proceedings. All rules after Rule 10.2 cover records as defined in RCW 13.04.270. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 10.2 Recording juvenile court proceedings. (a) Proceedings Other Than Juvenile Offense Proceedings. All juvenile court proceedings which do not involve a juvenile offense shall be recorded by any means which accurately records the proceedings in accordance with RCW 2.32.200.

(b) Juvenile Offense Proceedings. All juvenile court proceedings involving a juvenile offense shall be recorded verbatim by means which will provide an accurate record and which can be subsequently reduced to written form. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 10.3 Access of parent to records. As used in RCW 13.04.274, the terms "subject of any juvenile justice or care record" and "subject of a dependency petition" shall, for purposes of making a motion pursuant to Rule 10.4, include a parent of a juvenile if the records involved relate to proceedings prior to termination of the parent-child relationship. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 10.4 Motions concerning juvenile records. Questions raised pursuant to RCW 13.04.272 and .274 shall be determined by motion filed in the juvenile court. The court shall schedule a hearing on the motion, giving notice to the parties including appropriate juvenile justice and care agencies, in accordance with Rule 11.2. After a hearing the court shall determine whether the moving party has established that the party is entitled to the relief requested and enter an appropriate order. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 10.5 Access to official juvenile court files. [Reserved. See RCW 13.04.270 and .272.]

Rule 10.6 Challenging juvenile court records. [Reserved. See RCW 13.04.274(1).]

Rule 10.7 Sealing juvenile court records. [Reserved. See RCW 13.04.274(2) and (3).]

Rule 10.8 Destruction of juvenile court records. [Reserved. See RCW 13.04.274(6).]

Rule 10.9 Only complete information released. [Reserved. See RCW 13.04.272(2)(c).]

TITLE 11. SUPPLEMENTAL PROVISIONS

Rule 11.1 Computing time. Time shall be computed in accordance with CR 6 unless otherwise provided by law or these rules. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 11.2 Notice of proceeding. (a) Applicability. This rule shall apply when notice is required to be given by Rules 2.3(b) and (d), 2.4(c), 2.5, 3.9, 5.4, 5.6(a) and (c), 6.6(b), 7.12(a), 8.1(c), and 10.4. Notice given pursuant to those rules shall conform to the requirements of this rule.

(b) Content of the Notice. The notice shall specify the time, place, and purpose of the proceeding.

(c) Method of Giving Notice. Notice may be given by any means reasonably certain of notifying the party, including, but not limited to, mail, personal service, telephone, and telegraph. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 11.3 through 11.20. [Reserved.]

Rule 11.21 Title and citation of rules. These rules are called the Juvenile Court Rules and may be cited as JuCR. [Adop. June 28, 1978, eff. July 1, 1978.]

Rule 11.22 Rules superseded. Except as provided in Rule 1.5, the Juvenile Court Rules originally effective January 10, 1969 are superseded by these rules. [Adop. June 28, 1978, eff. July 1, 1978.]

LOCAL RULES OF SUPERIOR COURT (LR)

(Not published herein)

APPENDIX TO PART IV: COURT ORDERS AND TABLES

Table of Contents

1. ORDER ADOPTING RULES--MAY 5, 1967.

(Effective July 1, 1967)
SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION of RULES OF COURT	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

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
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

[Rules for Superior Court——page 224]

APPENDIX TO PART IV: COURT ORDERS AND TABLES

RPPP Nos.	*New Rules*
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".
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"

Page in 71 W.D. 2d No 1A	*SPR*	*Line*	*Amendment*
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 — HUGH J. ROSELLIN
CHARLES T. DONWORTH — ROBERT T. HUNTER
MARSHALL A. NEILL — ORRIS L. HAMILTON
FRANK HALE — 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 subsequently repealed by Chapter 50, Laws of 1957)
45	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
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
GR	General Rules
JuCR	Juvenile Court Rules
MPR	Superior Court Mental Proceedings Rules
RAP	Rules of Appellate Procedure
SAR	Supreme Court Administrative Rules
SPR	Superior Court Special Proceedings Rules

--B--

Part V
RULES FOR COURTS OF LIMITED JURISDICTION

JUSTICE COURT ADMINISTRATIVE RULES (JAR)

(Formerly: Administrative Rules for Justice Court; General Rules for Courts of Limited Jurisdiction (J))

Table of Rules

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 February 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 February 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 February 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 February 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. The required entries within the traffic and criminal dockets shall be as required on the "Complaint/Citation Docket Form" prescribed in JTR T2.01. In civil and small claims dockets there 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. [Amd. Oct. 16, 1975, eff. Jan. 1, 1976; adopted February 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 February 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 March 1, 1974.]

JUSTICE COURT CIVIL RULES (JCR)

(**Formerly:** Civil Rules for Justice Court; Civil Rules for Courts of Limited Jurisdiction.)

Table of rules

I. SCOPE OF RULES——ONE FORM OF ACTION

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

Rule

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, in writing, or by attorney on or before the time and at the place stated in the notice, which shall not be less than fifteen days or more than thirty 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 fifteen days nor more than thirty days, provided that the maximum period of any return date shall not be more than ninety days from the date the complaint was filed.

(c) Notice: Form. The notice shall be signed by the judge or clerk and be substantially in the following form:

(NAME AND LOCATION OF COURT)

---------- ,
Plaintiff
vs.
---------- ,
Defendant

No. ____
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 fourteen 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. [Amd. Nov. 26, 1975, eff. Jan. 1, 1976; amd. Feb. 24, 1972, eff. July 1, 1972; adop. Feb. 13, 1963, eff. July 1, 1963.]

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

16 Garnishments.

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 CR 56 and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by CR 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. [Amd. June 4, 1976, eff. July 1, 1976; adop. Feb. 13, 1963, eff. 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 7.33. Provided, that judges or their clerks, may issue writs of garnishment in accordance with the provisions therein. [Amd. June 4, 1976, eff. July 1, 1976; adop. July 14, 1966, eff. August 1, 1966.]

IV. PARTIES

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

Rule

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 Superior Court Civil Rules 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. [Amd. Jan. 5, 1976, eff. Jan. 23, 1976; adop. Feb. 13, 1963, eff. July 1, 1963.]

Rules 27–37 (Reserved).

VI. TRIALS

Rule

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

63 (Reserved).

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 1 hour thereafter, or upon continuance, or for trial, judgment shall be given on motion of the plaintiff, if the motion includes a statement of the basis for venue in the action and it does not clearly appear to the court from the papers on file that venue is improper, 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 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 fee. The court shall notify the defendant of the entry of a default judgment by mailing a copy of the order and judgment to the defendant at his last known address within 5 days after entry of the judgment.

(b) Setting Aside Default.

(1) 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). 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 20 days from entry of the judgment.

(2) 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.

(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. [Amd. July 20, 1978, eff. Sept. 1, 1978; adop. Feb. 13, 1963, eff. 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. (a) 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.

(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) Venue is improper and the judgment or order has been entered by default;

(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;

(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.

(c) The motion shall be made within a reasonable time and for reasons (1), (2), or (3) of section (b) 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 section (b) does not affect the finality of the judgment or suspend its operation. [Amd. July 20, 1978, eff. Sept. 1, 1978; adop. Feb. 13, 1963, eff. 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

Rule 64 Garnishment. RCW 7.33 and SPR 91.04W shall continue in full force and effect and shall be fully applicable to garnishment in courts of limited jurisdiction. [Amd. June 4, 1976, eff. July 1, 1976; adop. June 14, 1963, eff. 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

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

Rule

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).

XI. GENERAL PROVISIONS

Rule

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.]

XII. MISCELLANEOUS PROCEEDINGS RULES

Rule

Rules 86.04 through 99.04 (Reserved).

JUSTICE COURT CRIMINAL RULES (JCrR)

(**Formerly:** Criminal Rules for Justice Court; Criminal Rules for Courts of Limited Jurisdiction (J Crim. R.))

TABLE OF RULES

CHAPTER 1——SCOPE, PURPOSE AND CONSTRUCTION

Rule 1.01 Scope. See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

Rule 1.02 Purpose and construction. 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.

(4) *Approval of Form.* To insure uniformity, the format and use of the complaint, provided herein, shall be subject to approval by the Administrator for the Courts.

(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 be identical to the "Complaint/Citation Docket Form" prescribed in JTR T2.01 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.

(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. [Amd. Oct. 16, 1975, eff. Jan. 1, 1976; amd. Oct. 23, 1969, eff. Nov. 7, 1969; Amd. June 28, 1968, eff. July 5, 1968; amd. June 14, 1963, eff. July 1, 1963; adop. Feb. 13, 1963.]

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 as 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

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

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 Criminalist's report. (a) Subject to subsection (b) of this rule, the official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears the following certification:

The undersigned certifies under oath that:

(1) He performed a test on the (substance) (object) in question,

(2) He received the (substance) (object) in question from _____,

(3) The document on which this certificate appears or to which it is attached is a true and complete copy of an official report of the _____, and

(4) Such document is a report of the results of a test which report and test were made by the undersigned

who has the following qualifications and experience:

Signature

Title

Business Address & Phone

(b) The court shall exclude such report if:

(1) A copy of the report and certificate has not been served on the defendant or the defendant's attorney at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(2) In the case of an unrepresented defendant, a copy of this rule in addition to a copy of the report and certificate has not been served on the defendant at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(3) At least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served a written demand upon the prosecutor to produce the expert witness at the trial.

(c) Test Report by Expert.

(1) Subject to subsection (c)(2), the official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears the following certification:

The undersigned certifies under penalty of perjury that:

1. He performed a test on the (substance) (object) in question,

2. The person from whom he received the (substance) (object) in question is ---,

3. The document on which this certificate appears or to which it is attached is a true and complete copy of my official report, and

4. Such document is a report of the results of a test which report and test were made by the undersigned who has the following qualifications and experience:

Signature

Title

Business Address & Phone

(2) The court shall exclude such report if:

(i) A copy of the report and certificate has not been served on the defendant or the defendant's attorney at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(ii) In the case of an unrepresented defendant, a copy of this rule in addition to a copy of the report and certificate has not been served on the defendant at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(iii) At least 7 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served a written demand upon the prosecutor to produce the expert witness at the trial. [Amd. June 4, 1976, eff. July 1, 1976; amd. Oct. 1, 1975, eff. Oct. 1, 1975; amd. Aug. 26, 1975, eff. Jan. 1, 1976; amd. Dec. 10, 1974, eff. Jan. 1, 1975; adop. Feb. 13, 1963, eff. 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

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

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

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

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.)

TABLE OF RULES

CHAPTER T1——SCOPE, PURPOSE AND CONSTRUCTION

Rule T1.01 Scope. See Rule JAR 2. [Adopted Feb. 13, 1963, effective July 1, 1963.]

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

Rule T2.01 Complaint and citation——Form and use——Defects. (a) Traffic cases shall be filed on a form prescribed by the Administrator for the Courts consisting of four copies known as the "Complaint/Citation Docket Form". The required copies, 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, the original, printed on yellow paper;

(2) The traffic citation, printed on green paper;

(3) The police record, which shall be a copy of the complaint, printed on pink paper; and

(4) The complaint/docket, printed on white ledger paper.

(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. Two 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.

(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 shall be used to record court action, and shall, together with the complaint, constitute the docket of the court of all traffic cases.

(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. [Subd. (a), (b)(3), (c), and (e), amended Oct. 16, 1975, effective Jan. 1, 1976; amended June 23, 1967, effective July 1, 1967; 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; adopted Feb. 13, 1963, effective July 1, 1963.]

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 (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

	Bail	+ TSE*	Total
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. [Adopted Feb. 13, 1963, effective July 1, 1963; amended Oct. 16, 1975, effective Jan. 1, 1976.]

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

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

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

Table of Contents

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

APPENDIX TO PART V

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 OF COURTS OF LIMITED JURISDICTION

INDEX KEY

The following abbreviations are used in this index:

I. Justice Court Administrative Rules ..... JAR
II. Justice Court Civil Rules ..... JCR
III. Justice Court Criminal Rules ..... JCrR
IV. Justice Court Traffic Rules ..... JTR

I. Justice Court Administrative Rules (JAR)

II. Justice Court Civil Rules (JCR)

Index to Part V (Courts of Limited Jurisdisction)

Index to Part V (Courts of Limited Jurisdisction)

II. Justice Court Civil Rules (JCR)—cont.

II. Justice Court Civil Rules (JCR)—cont.

III. Justice Court Criminal Rules (JCrR)

Index to Part V (Courts of Limited Jurisdisction)

Index to Part V (Courts of Limited Jurisdisction)

Index to Part V (Courts of Limited Jurisdisction)

Index to Part V (Courts of Limited Jurisdisction)