RULES OF COURT

ADOPTED BY THE SUPREME COURT OF THE STATE OF WASHINGTON

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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)

GENERAL RULES (GR)

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Rule 1 Classification system for court rules

PART I. RULES OF GENERAL APPLICATION

Title of Rules	Abbreviation
General Rules	GR
Code of Judicial Conduct	CJC
Code of Professional Responsibility	CPR
Admission to Practice Rules	APR
Discipline Rules for Attorneys	DRA

PART II. RULES FOR SUPREME COURT

Supreme Court Administrative Rules	SAR
Supreme Court Rules on Appeal	ROA

PART III. RULES FOR COURT OF APPEALS

Court of Appeals Administrative Rules	CAR
Court of Appeals Rules on Appeal	CAROA

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

Title of Rules	Abbreviation

PART V. RULES FOR COURTS OF LIMITED JURISDICTION

Justice Court Administrative Rules	JAR
Justice Court Civil Rules	JCR
Justice Court Criminal Rules	JCrR
Justice Court Traffic Rules	JTR

[Adopted June 28, 1967, effective July 1, 1967; amended, adopted Jan. 31, 1974, effective July 1, 1974.]

CODE OF JUDICIAL CONDUCT (CJC)

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PREAMBLE

1. Compliance with the Code of Judicial Conduct. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. *Part-time Judge.* A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;

(2) should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. *Judge Pro Tempore.* A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. *Retired Judge.* If a retired appellate court judge engages in the practice of law, he shall be ineligible to serve as a judge pro tempore of an appellate court.

2. Effective Date of Compliance. A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or non-legal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family. [Adopted Oct. 31, 1973, effective Jan. 1, 1974; 1(C), amended, adopted June 19, 1974, effective July 1, 1974; PRIOR Canons of Judicial Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 1
A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. [Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 2
A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Oct. 31, 1950, effective Jan. 2, 1951.]

CANON 3
A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex *parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him, by *amicus curiae* only, if he affords the parties reasonable opportunity to respond.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief *amicus curiae.*

(5) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the *Code of Professional Responsibility.*

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify

himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer–relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer–relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

Commentary: According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify him if a cousin were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary: This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1974.]

CANON 4

A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi–judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund–granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.
Extra–judicial activities are governed by Canon 5.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 5

A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at any organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary: A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

Commentary: The Preamble, section 2, of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6C.

Commentary: This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary: Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

Commentary: The Preamble, section 2, of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary: A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary: Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

[Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court. [Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 7

A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a nonjudicial candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or nonjudicial candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates or candidates for such office, may, attend political gatherings and speak to such gatherings on his own behalf. The judge or candidate shall not identify himself as a member of a political party, and he shall not contribute to a political party or organization.

(3) A judge shall resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers or others. A candidate's committees may solicit funds for his campaign no earlier than 120 days from the date when filing for that office is first permitted and no later than 30 days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Commentary: Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2). [Adopted Oct. 31, 1973, effective Jan. 1, 1974; PRIOR Canons of Judicial Ethics adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CODE OF PROFESSIONAL RESPONSIBILITY (CPR)

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CODE OF PROFESSIONAL RESPONSIBILITY PREAMBLE AND PRELIMINARY STATEMENT

PREAMBLE

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self–government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self–government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this rule requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever–changing relationships of society.

The Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

PRELIMINARY STATEMENT

In furtherance of the principles stated in the Preamble this Code of Professional Responsibility has been promulgated consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules. The Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non–lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also

of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Consideration and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances. An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

CANON 1
A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge or evidence of a violation of DR 1-102 concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

Ethical Considerations

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules. A lawyer should upon request serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 2
A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

DR 2-101 Publicity in General.

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public

communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2–103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when his professional status in germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(C) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

DR 2–102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2–105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2–105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2–105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2–105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located; but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR 2–105 are permitted.

(6) A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2–105(A)(4); date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public of quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language

ability; names and addresses of references, and, with their consent, names of clients regularly represented.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2–103 Recommendation of Professional Employment.

(A) A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non–lawyer who has not sought his advice regarding employment of a lawyer.

(B) Except as permitted under DR 2–103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide nonprofit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(4) A bar association representative of the general bar of the geographical area in which the association exists.

(5) Any other organization that recommends, furnishes or pays for legal services to its members or beneficiaries, but only when and if the following conditions are met:

(a) The lawyer shall not have solicited the use of his services by the organization or its members in violation of any Disciplinary Rule in this Code of Professional Responsibility.

(b) The organization shall not derive a profit or commercial benefit from the rendition of legal services by the lawyer.

(c) A written agreement between the lawyer and the organization is in force containing provisions insuring that:

(i) Any member of the organization may obtain legal services independently of the arrangement from any attorney of his choice;

(ii) No unlicensed person will provide legal services under the arrangement;

(iii) Neither the organization nor any member thereof shall interfere or attempt to interfere with the lawyer's independent exercise of his professional judgment;

(iv) The member to whom the legal services are rendered, and not the organization, is the client of the lawyer;

(v) All parties agree that in providing legal services the lawyer must comply with all the Disciplinary Rules contained in this Code;

(vi) The nature and extent of the legal services to be rendered to the members of the group are fully disclosed;

(vii) Any publicity given by the organization to its members will not describe the lawyer beyond giving his name, address and telephone number and such other information as may be required to facilitate the access

of a member to the services of the lawyer; and any publicity disseminated by the organization to non-members will not identify the lawyer; and

(viii) The agreement will be terminated in the event of any substantial violation of the foregoing provisions.

(d) Such written agreement has been filed with the regulatory agency having authority to discipline the lawyer.

(e) The lawyer shall advise the State Bar, on forms provided by it, of the following matters: The name of the group, its address, whether it is incorporated, its primary purposes and activities, the number of its members and a general description of the types of legal services offered pursuant to the written agreement. Annually on January 31, he shall report to the State Bar, on forms provided by it, any changes in such matters, and the number of members of the group to whom legal services were rendered during the calendar year. Each report filed pursuant hereto and the information contained therein, except the name and address of the group, the fact that it has a written agreement for the provision of legal services and the names of members of the State Bar providing such services shall be confidential.

(f) In the case of such an organization created or operated solely or primarily for the purpose of providing legal services, the lawyer shall not render any legal services until there has been obtained from the regulatory agency having authority to discipline the lawyer a certificate stating that the operation of the legal services program complies with all applicable laws and court rules and with these Disciplinary Rules. The certificate shall provide that it will be revoked and the lawyer will terminate his services in the event of any substantial breach of these rules or of the agreement provided for herein.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2–104 Suggestion of Need of Legal Services.

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services, if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2–103(D)(1) through (5), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2–103(D)(1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not understand to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

DR 2–105 Limitation of Practice.

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as permitted under DR 2–102(A)(6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation Patent Attorney, Patent Lawyer, Trademark Attorney, or Trademark Lawyer, or any combination of those terms, on his letterhead and office sign, and a lawyer actively engaged in the admiralty practice may use the designation Admiralty or Admiralty Lawyer on his letterhead and office sign.

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in local legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in local legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.

DR 2–106 Fees for Legal Services.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant is a criminal case.

DR 2–107 Division of Fees Among Lawyers.

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2–108 Agreements Restricting the Practice of a Lawyer.

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

DR 2–109 Acceptance of Employment.

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2–110 Withdrawal From Employment.

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2–110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co–counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

ETHICAL CONSIDERATIONS

EC 2–1 The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

Recognition of Legal Problems

EC 2–2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.

EC 2–3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2–4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2–5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer: Generally

EC 2–6 Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2–7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.

EC 2–8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties——relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.

Selection of a Lawyer: Professional Notices and Listings

EC 2–9 The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

EC 2–10 Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate.

EC 2–11 The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2–12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2–13 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.

EC 2–14 In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.

EC 2–15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

EC 2–16 The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2–17 The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.

EC 2–18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. Suggested fee schedules and economic reports of state and local bar associations provide some guidance on the subject of reasonable fees. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family.

EC 2–19 As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2–20 Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid. Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2–21 A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.

EC 2–22 Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

EC 2–23 A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2–24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

EC 2–25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Acceptance and Retention of Employment

EC 2–26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.

EC 2–27 History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

EC 2–28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2–29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case.

EC 2–30 Employment should not be accepted by a lawyer when he is unable to render competent service or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

EC 2–31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawn is permitted by the appropriate court.

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 3

A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

DR 3-101 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-102 Dividing Legal Fees With a Non-Lawyer.

(A) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103 Forming a Partnership With a Non-Lawyer.

(A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

Ethical Considerations

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2 The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3 A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards. The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4 A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5 It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6 A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

EC 3-7 The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 4
A Lawyer Should Preserve the Confidences and Secrets of a Client

DR 4–101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney–client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4–101(C) and (D), a lawyer shall not knowingly during or after termination of the professional relationship to his client:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4–101(C) through an employee.

Ethical Considerations

EC 4–1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4–2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure, when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non–lawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in this professional relationship. Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4–3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4–4 The attorney–client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney–client privilege and timely to assert the privilege unless it is waived by the client.

EC 4–5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

EC 4–6 The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment. Thus an attorney, as successor to another practice, must preserve inviolate the secrets and confidences reflected in the files in the same respect as required by his predecessor. A lawyer should take all reasonable steps, providing safeguards from disclosing the confidences and secrets reflected in the files of his client, following the termination of his practice of the law whether termination is due from disability or retirement. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 5
A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

DR 5–101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5–102 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5–101(B) (1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

DR 5–103 Avoiding Acquisition of Interest in Litigation.

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5–104 Limiting Business Relations With a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

DR 5–105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5–105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5–105(C).

(C) In the situations covered by DR 5–105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interests of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5–105, no partner or associate of his or his firm may accept or continue such employment.

DR 5–106 Settling Similar Claims of Clients.

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5–107 Avoiding Influence by Others Than the Client.

(A) Except with the consent of his client after full disclosure, a lawyer shall not:

(1) Accept compensation for his legal services from one other than his client.

(2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.

(B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non–lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A non–lawyer is a corporate director or officer thereof; or

(3) A non–lawyer has the right to direct or control the professional judgment of a lawyer.

ETHICAL CONSIDERATIONS

EC 5–1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Interests of a Lawyer That May Affect His Judgment

EC 5–2 A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5–3 The self–interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5–4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5–5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or over–reached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.

EC 5–6 A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

EC 5–7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of the litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5–8 A financial interest in the outcome of litigation also results if monetary advances are made by a lawyer to his client. Although this assistance is generally not encouraged, there are instances when it is not improper to advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and the cost of obtaining and presenting evidence, provided that the client remains ultimately liable for such expenses.

EC 5–9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5–10 Problems incident to the lawyer–witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.

EC 5–11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5–12 Inability of co–counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.

EC 5–13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5–14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

EC 5–15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he

must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5–16 In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.

EC 5–17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co–defendants in a criminal case, co–plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5–18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5–19 A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty. Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5–20 A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5–21 The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5–22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5–23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.

EC 5–24 To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a non–lawyer. Although a lawyer may be employed by a business corporation with non–lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 6
A Lawyer Should Represent a Client Competently

DR 6–101 Failing to Act Competently.

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6–102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

ETHICAL CONSIDERATIONS

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.

EC 6-2 A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6-3 While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6-5 A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

EC 6-6 A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; prior Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 7

A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected tribunal and may reveal the fraud to the affected person.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has

no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7–104 Communicating With One of Adverse Interest.

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7–105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7–106 Trial Conduct.

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7–107 Trial Publicity.

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7–107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7–107 also apply to professional disciplinary proceedings and juvenile disciplinary proceeding when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7–107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees, associates and clients from making an extrajudicial statement that he would be prohibited from making under DR 7–107.

DR 7–108 Communication With or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) Dr 7–108(A) and (B) do not prohibit a lawyer from necessary communication with veniremen or jurors solely in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7–108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7–109 Contact With Witnesses.

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR 7–110 Contact With Officials.

(A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal which might be reasonably construed as being for the purpose of influencing his official acts.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) As required in the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law.

ETHICAL CONSIDERATIONS

EC 7–1 The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations. The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

EC 7–2 The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well–settled rules through areas of conflicting authority to areas without precedent.

EC 7–3 Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7–4 The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

EC 7–5 A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision. He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.

EC 7–6 Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7–7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

EC 7–8 A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision–making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision–making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non–legal factors is ultimately for the client and not for himself. In the event that the client in a non–adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

EC 7–9 In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interests of his client. However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.

EC 7–10 The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7–11 The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7–12 Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representatives, his lawyer may be compelled in

court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7–13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice; the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.

EC 7–14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7–15 The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged, and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

EC 7–16 The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of his client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.

EC 7–17 The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7–18 The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself, except that he may advise him to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7–19 Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.

EC 7–20 In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the basis for standards of professional conduct set forth in the Disciplinary Rules.

EC 7–21 The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7–22 Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.

EC 7–23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.

EC 7–24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a

witness, as the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7–25 Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7–26 The law and Disciplinary Rules prohibit the use of fraudulent false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

EC 7–27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

EC 7–28 Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a non–expert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.

EC 7–29 To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

EC 7–30 Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7–31 Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7–32 Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7–33 A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out–of–court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7–34 The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or an employee of a tribunal which might reasonably be construed as being for the purpose of influencing his official actions.

EC 7–35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7–36 Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and aboveboard in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7–37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7–38 A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7–39 In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 8
A Lawyer Should Assist in Improving the Legal System

DR 8–101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8–102 Statements Concerning Judges and Other Adjudicatory Officers.

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

Ethical Considerations

EC 8–1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

EC 8–2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8–3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8–4 Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8–5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8–6 Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8–7 Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8–8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

EC 8–9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

CANON 9
A Lawyer Should Avoid Even the Appearance of Professional Impropriety

DR 9–101 Avoiding Even the Appearance of Impropriety.

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9–102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the

lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. [Adopted Dec. 7, 1971, effective Jan. 1, 1972; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(2) "Law firm" includes a professional legal corporation.

(3) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(4) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(5) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(6) "Tribunal" includes all courts and all other adjudicatory bodies. [Adopted Aug. 26, 1971, effective Nov. 9, 1971; PRIOR Canons of Professional Ethics, adopted Nov. 22, 1950, effective Jan. 2, 1951.]

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

ADMISSION TO PRACTICE RULES (APR)

(Formerly: Rules for Admission to Practice)

RULE 10 Revocation of order admitting to practice

Rules of General Application

TABLE OF DISTRIBUTION OF RULES FOR ADMISSION TO PRACTICE IN EFFECT PRIOR TO FEBRUARY 12, 1965 INTO THE NEW ADMISSION TO PRACTICE RULES IN EFFECT ON AND AFTER FEBRUARY 12, 1965

(For order of adoption, see note following APR Rule 1)

Old RAP Number	New APR Number
Rule 1	Rule 1
Rule 2 A	Rule 2 A
Rule 2 B 1	Rule 2 B 1
Rule 2 B 2	Rule 2 B 2
Rule 2 B 3	None
Rule 2 B 4	Cf.Rule 5 B
Rule 2 B 5	Rule 2 B 3
Rule 2 B 6	Rule 2 B 4
Rule 2 B 7	Rule 2 B 5
	Cf.Rule 2 C 1 and Rule 2 C 2
Rule 2 C	Rule 2 C
Rule 2 D 1	Rule 2 D 1
Rule 2 D 2	Rule 2 D 2
Rule 2 D 3	Rule 2 D 3
Rule 2 D 4	Rule 2 D 4
Rule 2 D 5	None
Rule 2 D 6	Rule 2 D 5
Rule 2 D 7	Cf.Rule 2 C 1—— Rule 2 C 3
Rule 3 A	Rule 3 A
Rule 3 B 1	Rule 3 B 1
Rule 3 B 2	None
Rule 3 B 3	Rule 3 B 2
Rule 3 B 4	Rule 3 B 3
Rule 3 B 5	Rule 3 B 4
Rule 3 B 6	Rule 3 B 5
Rule 3 B 7	Rule 3 B 6
Rule 3 B 8	Rule 3 B 7
Rule 3 B 9	Rule 3 B 8
Rule 3 B 10	Rule 3 B 9
Rule 3 B 11	Rule 3 B 10
Rule 4	Rule 4
Rule 5 A	Rule 5 A
Rule 5 B	Cf.Rule 5 B and Rule 5 C
Rule 5 C	None
Rule 5 D	Cf.Rule 5 D and Rule 5 E (1)
Rule 5 E	Rule 5 E (2)
Rule 6	Rule 6
Rule 7	Rule 7
Rule 8	Rule 8 and Rule 2 D 6
Appendix—— List of Approved Law Schools	Cf.Rule 2 A

[By order of the Supreme Court dated May 5, 1967, and effective July 1, 1967, the Rules for Admission to Practice (RAP) were redesignated "Admission to Practice Rules (APR)".]

Rule 1 Classification of applicants. Every person desiring to be admitted to the bar of the State of Washington must pass a bar examination and satisfy all of the requirements of these Rules applicable to the classification of applicant to which he belongs.

For the purpose of these Rules, applicants for admission to practice in the State of Washington are classified either as "general applicants" or as "attorney applicants." [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Order of Supreme Court adopting rules for admission to practice and abrogating former rules:

"The Supreme Court of the State of Washington, in conformity with its rule-making power, herewith abrogates the existing Rules for Admission to Practice Law in the State of Washington, as the same appear in RCW Vol. 0, as of the effective date of the new Rules for Admission to Practice Law in the State of Washington adopted herewith.

The attached Rules for Admission to Practice Law in the State of Washington (proposed by the Board of Governors of the Washington State Bar Association and modified in minor respects by this court) are herewith adopted effective as of the date of their publication in the Washington Decisions.

Dated at Olympia, Washington, this 29th day of January, 1965."

Reviser's note: "Rules for Admission to Practice" were redesignated as "Admission to Practice Rules," by order of the Supreme Court adopted May 5, 1967, effective July 1, 1967.

Rule 2 General applicants.

A. Definitions

A "general applicant" means either (1) a graduate of an approved law school who does not qualify as an attorney applicant under Rule 3, or (2) a registered law clerk who has satisfactorily completed the course of study prescribed by these Rules.

An "approved law school" means a law school approved by the board of governors. The board of governors shall keep a list of approved law schools on file with the State Bar Association and the Clerk of the Supreme Court.

B. Qualifications

A general applicant, in order to be permitted to take the bar examination, must

(1) present satisfactory proof of either (a) graduation from an approved law school, or (b) satisfactory completion of the course of study prescribed for a registered law clerk by these Rules;

(2) Be either: (a) a citizen of the United States, or (b) an alien permanently residing in the United States in accordance with Federal Immigration and Naturalization Law who has legally declared his intent to become a citizen and is proceeding with due diligence toward naturalization;

(3) be of good moral character;

(4) execute under oath and file with the State Bar Association within the time specified in Section C of this Rule 2, two copies of his application, one of which shall be in his own handwriting, in such form as may be required by the board of governors. Additional proof of any fact stated in the application may be required by the board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatories of the board pertinent to the pending application, the board may deny the application. The form of application shall be provided by the board, and the contents thereof shall be such as the board may direct from time to time;

(5) pay, upon the filing of the application, an examination and admission fee in the amount prescribed in Section C of this Rule 2 and also an investigation fee in the amount prescribed in Section C of this Rule 2. The

investigation shall cover all phases of the applicant's qualifications for admission, as the board may deem necessary. No refund of any examination and admission fee shall be made unless the request to withdraw the application is made at least ten (10) days in advance of the examination date. The investigation fee is not subject to refund.

C. Time for Filing Applications and Fees Payable

(1) A general applicant who has not been admitted to the bar in another state or territory prior to the filing of his application shall pay an examination and admission fee of twenty–five dollars ($25), and all other general applicants shall pay an examination and admission fee of fifty dollars ($50).

(2) A general applicant who has not been admitted to the bar anywhere in the world prior to the filing of his application, must file his application to take each bar examination not less than 30 days prior to the examination date, and pay an investigation fee of one hundred dollars ($100). In the case of late filing the Board of Governors may, for good cause, reduce the time requirement for filing the application to take the bar examination.

(3) A general applicant who has been admitted to the bar anywhere in the world prior to the filing of his application, must file his application to take each bar examination:

(a) ninety days prior to the examination date if he is applying to take the Washington state bar examination for the first time, or

(b) thirty days in advance of the examination date in the case of a repeater.

In the case of late filing the Board of Governors may, for good cause, reduce the time requirement for filing the application to take the bar examination. Said general applicant shall pay at the time of filing his application an investigation fee of one hundred seventy–five dollars ($175).

D. Law Clerks

(1) *Requisites*

Every person who desires subsequently to qualify as a general applicant for admission to practice in the State of Washington, without having been graduated from an approved law school, shall register as a law clerk as hereinafter provided. He must be a bona fide resident of the State of Washington and shall present satisfactory proof that he has been granted a bachelor's degree (other than bachelor of laws) by a college or university offering such degree on the basis of a four–year course of study.

(2) *Registrations——Employment in Law Office——Application——Statement of Employer*

Such applicant shall obtain regular and full–time employment as a law clerk in the office of a judge of a court of record or an attorney or firm of attorneys licensed to practice law in the State of Washington and engaged in the general practice of law. The person by whom he is employed, or if he be employed by a firm, the person under whose direction he is to study, must have been admitted to practice law in this state for at least ten (10) years at the time the application for registration is filed, and be otherwise eligible to act as tutor. Prior to the commencement of the study of law under this Rule 2 D the applicant shall file with the State Bar Association an application to register as a law clerk. Such application shall be made on a form to be provided by the State Bar Association and shall require answers to such interrogatories as the board may determine from time to time to be relevant to a consideration of the application. Proof of any fact stated in the application may be required by the board. If the applicant fails or refuses to furnish any information or proof or answer any interrogatory required by the application, or independently thereof by the Board, in a manner satisfactory to the board, the application may be denied.

Accompanying the application there must be submitted a statement under oath of the person by whom such applicant is employed as a law clerk, or, if he is employed by a firm, of the person under whose direction he is to study, certifying to the fact of such employment, and that such person will act as tutor for the applicant and will faithfully instruct the applicant in the branches of the law prescribed by the course of study adopted by the board of governors. No person shall be eligible to act as tutor while disciplinary proceedings (following the service of a formal complaint) are pending against him, or if he has ever been censured, reprimanded, suspended or disbarred. If a registered law clerk finds it necessary to change his tutor during his period of study, a new application for registration as a law clerk shall be required and such credit given for study under his prior tutor as the board may determine.

(3) *Course of Study——How Pursued*

A law clerk whose registration has been approved by the board must pursue a course of study for four (4) calendar years of at least forty–eight (48) weeks each year, with a minimum each week of thirty (30) hours of study (it being understood that the time actually spent in the performance of the duties of law clerk is to be considered as time spent in the study of law). The tutor must give personal direction regularly and frequently to the clerk, must examine him at least once a month on the work done in the previous month, and must certify monthly as to compliance with the requirements of subsections 3 and 4 of this Rule D.

The examinations shall be written and not oral, and shall be answered by the clerk without research or assistance during the examination. The monthly certificate of compliance submitted by the tutor shall be accompanied by the originals of all written examinations and answers thereto given during the period reported.

If the certificates, together with the required attachments be not filed timely in the office of the State Bar Association, no credit shall be given for any period of such default.

If a registered law clerk does not furnish evidence of completion of his law studies hereunder within a period of six years after registration, the board may cancel such registration.

(4) *Course of Study——Subjects——Books*

The course of study to be pursued by a registered law clerk shall cover subjects, and such text books, case books, and other material, as the board of governors may from time to time require.

(5) *Advanced Standing——Special Students*

A registered law clerk who has attended either an approved or a nonapproved law school, may, in the discretion of the board, receive credit for work done and obtain advanced standing. In no event will credit be given for fractional parts of semesters or terms, or for correspondence school work.

(6) *Change of Rules——Effect*

This latest (1964) revision of these Rules shall not be retroactive as to a law clerk whose registration has been approved by the board of governors prior to the effective date of this revision. Each such person may complete his course of study in accordance with the rules in force at the time of his registration or enrollment and with the same effect as if said rules were still in force. [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Former para. B(3) repealed and succeeding three paragraphs redesignated, adopted June 25, 1965, effective July 9, 1965: Rule 2, subsection D(1) amended by order dated May 9, 1967. Subsections C(2) and (3) amended by order dated June 26, 1968, effective August 1, 1968; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971. Subsections C(2) and (3) amended, adopted Sept. 18, 1968, effective Sept. 27, 1968; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971; Subsection C amended, adopted Nov. 16, 1973, effective Jan. 1, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 3 Attorney applicants.

A. Definition

An "attorney applicant" means an attorney who (1) has been in the active general private practice of law in a state or territory of the United States or a foreign country for a period of five (5) years or more, or (2) has held a judicial position at least equal to a judge of the superior court of the State of Washington for a period of five (5) years or more in a state or territory of the United States or a foreign country, or (3) has held a full-time teaching position in an approved law school for a period of five (5) years or more.

B. Qualifications

To qualify as an attorney applicant for admission to practice law in the State of Washington, a person must

(1) satisfy the requirements of Rule 2B(2);

(2) have been a bona fide resident of the State of Washington for a period beginning at least one hundred and eighty (180) days prior to the date of the examination;

(3) be of good moral character;

(4) execute under oath and file with the executive director of the State Bar Association

(a) not less than ninety (90) days prior to the examination date, if he is applying to take the Washington State Bar examination for the first time, or

(b) thirty (30) days in advance of each examination date, in the case of a repeater

two copies of his application, one of which shall be in his own handwriting, in such form as may be required by the board of governors. Additional proof of any fact stated in the application may be required by the board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatory of the board pertinent to the pending application, the board may deny the application. In the case of late filing, the board may, for good cause, reduce the time requirement for filing the application to take the bar examination;

(5) pay, upon the filing of each application, an examination and admission fee of fifty ($50) dollars plus an investigation fee of one hundred seventy-five ($175) dollars. The investigation shall cover all phases of the applicant's qualifications for admission. No refund of any examination and admission fee shall be made unless the request to withdraw the application is made at least ten (10) days in advance of the examination date. The investigation fee is not subject to refund;

(6) have been admitted to practice in another state, territory of the United States or foreign country, where the common law of England exists as a basis of its jurisprudence, and where the requirements for admission are substantially equivalent to those of this state. The applicant shall submit with his application a certificate from the clerk or other officer of the highest court of record of such state, territory of the United States or foreign country, in which he has previously been admitted, or from the clerk of the court of such state, territory of the United States or foreign country, by which attorneys are admitted, under the seal of the court, showing that the applicant has been admitted to, and is entitled to, practice in such state, territory of the United States or foreign country, and the date of his admission;

(7) submit with his application satisfactory evidence that he has been actively and continuously engaged in the general private practice in such state, territory of the United States or foreign country, or has held a judicial position or full-time law-teaching position therein for a total period of at least five (5) years. Admission to practice and such continuous practice or the holding of a judicial position or full-time law-teaching position in two (2) or more states, territories of the United States or foreign countries for a total period of at least five (5) years, shall be equivalent to such admission and practice in one (1) state. The application of such applicant shall not be approved by the board of governors unless it shall be presented within a period of three (3) years from the termination of the period during which the applicant was actually engaged in such practice or was holding such judicial position or full-time law-teaching position: Provided, however, the board may in its discretion approve such application if a longer period has elapsed, upon a showing to the board that the occupation of the applicant during such intervening period was of such character as to keep the applicant in close relationship to the practice of the law; and provided further that the aforesaid three-year period shall not be deemed to include the time necessarily taken in diligent effort to secure citizenship;

(8) submit with his application a certificate from the chief justice or other member of the court of the state in which he has previously been admitted to practice, under the seal of the court, certifying that the applicant is in good standing at the bar of the court and is an honorable and worthy member of the profession, and if the applicant comes from a place where there is a local bar association, he shall also submit a recommendation from the president and secretary of such association. If either of these certificates cannot be procured on account of lack of acquaintance or lack of existence of a local bar association, then the applicant may present in lieu thereof a certificate of the judge of the highest court of record in the county or counties within which such applicant was so engaged in practice or was holding such judicial or teaching position, and recommendations from at least three (3) members of the local bar of the county where he last practiced. If for sufficient reason the applicant cannot obtain any of the recommendations required, the board of governors may accept other satisfactory proof of his character and reputation. The certificates required by this subsection 8 of this Rule 3 B shall not be conclusive upon the board on the question of the moral or ethical fitness of the applicant, but the board shall in all cases have the right to make such further independent investigation as it may desire upon said questions. If, upon consideration of all the evidence in respect thereto, the board is of the opinion that the applicant does not possess such moral and ethical qualifications, or such character and reputation as is consistent with the standards of the profession, the application shall be rejected;

(9) present himself before the board of governors at such time and place as may be required, for oral examination as to his moral character and as to any other qualifications;

(10) after having satisfied the foregoing requirements, have passed the attorney's examination as prescribed in these Rules, and complied with the provisions concerning enrollment and fees prescribed herein. [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Subsections B (4) and (5) as amended by order dated June 26, 1968, effective August 1, 1968. Subsection B(4) amended, adopted Sept. 18, 1968, effective Sept. 27, 1968; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971; amended, adopted Mar. 5, 1971, effective Mar. 10, 1971. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 4 Examinations.

A. General Applicant's Examination——How Conducted

The general applicant's examination shall be conducted by and under the direction of the board of governors, who shall, for the purpose of conducting such examination, appoint a committee of three (3) or more active members of the state bar, and this committee shall be known as the committee of law examiners. The examination shall consist of such questions as the committee may select on such subjects as may be listed by the committee and approved by the board of governors. The board shall furnish to this committee such clerical or other assistance as in the discretion of the board shall be deemed necessary. The State Bar Association shall certify to this committee, on or prior to the morning of the first day of each examination, the names of those whose applications for examinations have been approved by the board of governors. The committee of law examiners shall have charge of the conduct of such examination and shall, as soon as practicable, after the completion thereof, certify to the board of governors the grades of those who have taken the examination.

Examinations for admission to the bar will be held on the third Monday, Tuesday and Wednesday of January and July of each year, commencing at 9 a.m. or on such other dates and at such times as the board of governors may designate, at such location as the board of governors may designate.

B. Attorney Applicant's Examination

Before being certified for admission, each attorney applicant must pass a written examination, which shall be conducted by the committee of law examiners and which shall be held on the third Monday of January and July of each year, commencing at 9 a.m. or on such other dates and at such times as the board of governors may designate, at such location as the board of governors may designate.

The examination shall consist of such questions as the committee may select on general law and on Washington procedure and Washington substantive, constitutional, and statutory law. The State Bar Association shall certify to the committee, on or prior to the morning of the examination, the names of those whose applications for examination have been approved by the board of governors. As soon as practicable after the completion of the examination, the committee of law examiners shall certify to the board of governors the grades of those who have taken the attorney's examination.

C. Examination——Failure

Any applicant failing to pass an examination which he or she takes may apply to take another examination, but after the third failure, no such applicant shall take any subsequent examination unless 11 months have elapsed since the date upon which the last preceding examination was taken. [Adopted Jan. 29, 1965, effective Feb. 12, 1965; adopted, amended June 19, 1974, effective July 1, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 5 Certificate of results——Admission oath——Payment of membership fee. A. Upon completion of the examination and the receipt of the certificate from the committee of law examiners, the board of governors shall cause each applicant to be notified of the result of the examination and shall recommend to the supreme court of the State of Washington the admission or rejection of each applicant who has passed the examination.

B. No applicant shall be recommended to the Supreme Court for admission nor shall any applicant be permitted to take the oath of attorney unless he is then a resident of and domiciled in the State of Washington.

Applications for permission to take the bar examination must state the residence of the applicant at the time of application. Applicants who are not residents of the State of Washington at the time of taking the examination, shall submit to the Board as a prerequisite to the taking of the oath of attorney and being recommended for admission by the Board of Governors, an affidavit that he is a resident of and domiciled in the State of Washington.

C. In all cases the oath of attorney must be taken within one year from the date of the examination, except for good cause shown.

D. The recommendation of the board of governors to the court shall be accompanied by the successful candidates' applications for examination and any other documents deemed pertinent by the board. Such recommendation and all other documents and papers forwarded shall be kept by the clerk of the supreme court in a separate file and such file shall not be a public record. The supreme court may thereupon examine the recommendation and accompanying papers and make such order in each case as it deems advisable. Upon the request of the court, the board shall forward to the court the examination papers of, and all documents presented in connection with, any registration, whether for "clerkship" or "examination", and all papers in connection with the examination of such applicant.

E. The supreme court shall enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicants

(1) taking, and filing with the clerk of the supreme court, the Oath of Attorney as provided herein, and

(2) paying to the Washington State Bar Association its membership fee for the current year.

Upon the entry of such order, the taking and filing of the oath, and payment of said annual membership fee, an applicant shall be enrolled as a member of the bar and shall be entitled to practice law in the State of Washington.

F. The Oath of Attorney must be taken before a court of record in the State of Washington sitting in open court, provided that in the event a successful applicant is outside the State of Washington and the chief justice is satisfied that it is impossible or impractical for him to take the oath below prescribed before a court of record of this state, the chief justice may, upon proper application setting forth all the circumstances designate the person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

G. The oath which all applicants shall take is as follows:

"OATH OF ATTORNEY

State of Washington, County of _____, ss.

I, _____, do solemnly swear:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same;

2. I will support the constitution of the State of Washington and the constitution of the United States;

3. I will abide by the Code of Professional Responsibility approved by the Supreme Court of the State of Washington;

4. I will maintain the respect due to the courts of justice and judicial officers;

5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.

So help me God.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Judge."

[Adopted Jan. 29, 1965, effective Feb. 12, 1965. Para. B and C added and succeeding paragraphs redesignated, adopted June 25, 1965, effective July 9, 1965; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971; amended, adopted Apr. 26, 1974, effective Apr. 26, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955; Rule 5 B amended Feb. 6, 1964.]

Rule 6 Special investigation. The board of governors may refer any application for admission, examination, or registration as a law clerk to any existing committee of the state bar association or to a special committee thereof for the purpose of investigating and making recommendations on any matter connected with said application. Any applicant for admission, examination, or registration as a law clerk may be required to appear before the board or any committee of the state bar association upon reasonable notice and submit to an examination touching any matter deemed by the board of governors relevant to a proper consideration of the pending application. Failure to appear before the board or any committee as directed shall be sufficient reason for rejection of the application. The board of governors shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents in connection with any such investigation. [Adopted Jan. 29, 1965, effective Feb. 12, 1965. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 7 Practice by members of bar from other jurisdictions prohibited——Exception.

A. In General.

(1) No person shall appear as attorney or counsel in any of the courts of this state, unless he is an active member of the state bar: Provided, that a member in good standing of the bar of any other state who is a resident of and who maintains a practice in such other state may, with permission of the court, appear as counsel in the trial of an action or proceeding in association only with an active member of the state bar, who shall be the attorney of record therein and responsible for the conduct thereof and shall be present at all court proceedings.

(2) Application to appear as such counsel shall be made to the court before whom the action or proceeding in which it is desired to appear as counsel is pending. The application shall be heard by the court after such notice to the adverse parties as the court shall direct; and an order granting or rejecting the application made, and if rejected, the court shall state the reasons therefor.

(3) No member of the state bar shall lend his name for the purpose of, or in any way assist in, avoiding the effect of this rule.

B. Indigent Representation.

(1) A member in good standing of the bar of another state, while rendering service in a Bar Association or governmental or sponsored Legal Services, Public Defender or similar program providing legal assistance to indigents, and solely in one's capacity as a member of that office, may for a period not to exceed one year, upon application and approval, practice law and appear as counsel before the courts of this state in any action or proceeding in association with an active member of the state bar, who shall be the attorney of record therein and be responsible for the conduct thereof.

(2) Application to appear under the rules shall be made to the Supreme Court of the State of Washington and said applicant shall be subject to the Rules for Discipline of Attorneys and the Code of Professional Responsibility. The granting of an application shall be effective for the period of one's service, not to exceed one year or until such time as the individual shall take and fail the Washington State Bar examination, or until such time as the Supreme Court deems it necessary to terminate such privilege. [Adopted Jan. 29, 1965, effective Feb. 12, 1965; amended, adopted Nov. 5, 1973, effective Jan. 1, 1974. Prior: Adopted Dec. 2, 1955, effective Dec. 15, 1955.]

Rule 8 Admission for educational purposes. Notwithstanding any provision of any other rule to the contrary, an attorney who has been regularly admitted to practice in another state or the District of Columbia and who is enrolled and in good standing as a post graduate student or faculty member in a program of an approved law school of this state involving clinical work in the courts or in the practice of law which has been approved by the Board of Governors for the purposes of this rule, may, upon application to the Washington State Bar Association and without payment of fee, be admitted to the limited practice of law in this state for the period such applicant actively participates in said program and complies with the Canons of Professional Ethics. An applicant hereunder shall establish in the manner specified by the Board of Governors that he:

(1) Satisfy the requirements of Rule 2B(2);

(2) Is of good moral character;

(3) Is admitted to practice in another state or the District of Columbia, and is in good standing as an attorney of such bar;

(4) Is enrolled and in good standing in such an approved program.

Upon approval of such application by the Board, the applicant shall take the oath of attorney and the Board shall recommend to the Supreme Court the admission of such applicant for the purposes herein stated; such oath, together with any other documents the Board deems pertinent, shall be sent to the Supreme Court which shall enter an appropriate order upon the limited admission of such applicant.

Practice of an applicant so admitted shall be limited to the clinical work of the particular approved course of study in which he is enrolled; no charge shall be made for any services so rendered. When such applicant ceases to actively participate in such program the dean of the law school shall immediately notify the Washington State Bar Association and the clerk of the court so that the right of the applicant to practice may be terminated of record. [Adopted May 20, 1966, effective May 20, 1966; amended, adopted Dec. 29, 1970, effective Mar. 10, 1971.]

Reviser's note: Former Rule 8 captioned "Change of rules——Effect" adopted December 2, 1955, effective December 15, 1955, was abrogated January 29, 1965, effective February 12, 1965. For later rule on this subject, see APR 2 (D) (6).

Rule 9 Legal interns.

A. Admission to Limited Practice as a Legal Intern.

Notwithstanding any provision of any other rule to the contrary, qualified law students, registered law clerks and graduates of approved law schools, upon application and approval in accordance with the requirements set forth in Rule 9B, may be admitted to the status of "legal intern" and may be granted a limited license to engage in the practice of law in any trial court of this state under the direction and supervision of an active member of the Washington State Bar Association who has been actively engaged in the practice of law in the State of Washington or elsewhere as a full-time occupation for at least three years at the time the application is filed. Such supervising and direction of the practice of a legal intern shall be in accordance with the requirements and limitations set forth in Rule 9D.

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

(1) *Qualifications*——The applicant must:

(a) Be a student duly enrolled and in good academic standing at an approved law school with legal studies completed amounting to not less than two-thirds of a prescribed three-year course of study or five-eighths of

a prescribed four–year course of study, and have the written approval of his law school dean or a person designated by such dean; or

(b) Be a registered law clerk in compliance with the provision APR 2(d) with not less than three–fourths of the prescribed four–year course of study completed and have the written approval of his tutor; or

(c) Be a graduate of an approved law school and submit satisfactory evidence thereof to the Washington State Bar Association.

(2) *Procedure*

(a) The applicant shall make his application on a form provided by the Washington State Bar Association, which shall conform to the requirements set forth in Rule 9B1. There shall be no fee for filing such application.

(b) The application shall give the name of the active member of the Washington State Bar Association who is to be the applicant's supervising attorney, as provided in Rule 9C. The application shall be signed by such active member who, in doing so, shall assume the responsibilities of supervising attorney set forth in Rule 9D if the applicant is granted a limited license as a legal intern. Such active member shall be relieved of such responsibilities upon the termination of such limited license or at such earlier time as he or the applicant shall give written notice to the Washington State Bar Association and the Supreme Court of the State of Washington requesting that such active member be so relieved. In the latter event another active member of the Bar may be substituted as such supervising attorney by giving written notice of such substitution, signed by the applicant and by such other active member, to the Washington State Bar Association and the Supreme Court of the State of Washington.

(c) Upon receipt of the application, the Washington State Bar Association shall endorse thereon its approval or disapproval and forward the same to the Supreme Court of the State of Washington.

(d) The Supreme Court of the State of Washington shall issue or refuse the issuance of a limited license as a legal intern. The Court's decision shall be forwarded to the Washington State Bar Association, and the applicant shall be informed of the Court's decision.

C. Scope of Practice by Legal Intern Under the Limited License.

A legal intern shall be authorized to engage in the practice of law, including appearance in the trial courts of this state in civil and criminal matters, as limited by the provisions of this Rule 9.

D. Supervising Attorneys——Requirements.

(1) The supervising attorney shall maintain direction and supervision over the work of the legal intern and shall assume personal professional responsibility for any work undertaken by the legal intern while under his supervision. All pleadings, motions, briefs, and other documents prepared by the legal intern shall be reviewed by the supervising attorney or an attorney from the same office as the supervising attorney. When a legal intern signs any legal document, his signature shall be followed by the title "legal intern" and, if the document is prepared for presentation to a court or for filing with the clerk thereof, the document shall also be signed by the supervising attorney or an attorney from the same office as the supervising attorney.

(2) Supervision shall not require that the supervising attorney be present in the room while the legal intern is advising or negotiating on behalf of a person referred to him by the supervising attorney, or while the legal intern is preparing the necessary pleadings, motions, briefs, or other documents.

(3) The supervising attorney need not be present in the courtroom during the legal intern's appearance in matters before and cases tried in a trial court from the judgment of which there is a right of trial de novo on appeal, except in the representation of a defendant in preliminary criminal hearings. However, if the supervising attorney or an attorney from the same office as the supervising attorney is present, the legal intern may appear in the representation of a defendant in preliminary criminal hearings.

(4) A legal intern may not appear in any superior court proceeding without the presence of the supervising attorney or an attorney from the same office as the supervising attorney except in ex parte matters and other non–contested cases.

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

(6) No supervising attorney shall have supervision over more than one (1) legal intern at any one time; however, in the case of recognized legal aid, legal assistance, public defender and similar programs furnishing legal assistance to indigents, or of state, county or municipal legal departments, the supervising attorney may have supervision over two (2) legal interns at one time.

(7) No legal intern may receive payment from a client for his services; however, nothing contained herein shall prevent a legal intern from being paid for his services by his employer or to prevent his employer from making such charges for the service of the legal intern as may otherwise be proper.

(8) Without prior approval of the Board of Governors of the Washington State Bar Association, no person shall be eligible to act as a supervising attorney while disciplinary proceedings (following the service of a formal complaint) are pending against him, or if he has ever been censured, reprimanded, suspended or disbarred.

(9) For purposes of the provisions of this Rule 9D which permit an attorney from the same office as the supervising attorney to sign documents or be present with a legal intern during court appearances, the attorney so acting must be one who meets all of the qualifications for becoming a supervising attorney under this Rule 9.

E. Term of Limited License.

(1) A limited license as a legal intern shall not be granted for a period in excess of twelve (12) months, and may be renewed only once.

(2) In no event shall any law school student or graduate be licensed as a legal intern if application is made more than nine (9) months after graduation from law school. In no event shall any registered law clerk be licensed as a legal intern if application is made more than nine (9) months after completion of his law studies under APR 2(d). No legal intern shall be permitted to practice beyond a date twelve (12) months after graduation from law school or completion of law studies under APR 2(d) or beyond a date when the results are announced of the second Washington State Bar exam taken by the legal intern, whichever date first occurs. The time period set forth in this paragraph shall not include periods of active military service following graduation from law school or the completion of law studies under APR 2(d).

(3) The approval given to a law student by his law school dean or his designee may be withdrawn at any time by mailing notice to that effect to the Clerk of the Supreme Court and to the Washington State Bar Association, and shall be withdrawn if the student ceases to be duly enrolled as a student prior to his graduation or ceases to be in good academic standing. The approval given to a registered law clerk by a tutor shall be withdrawn if the law clerk ceases to comply with APR 2(d).

(4) A limited license is granted at the sufferance of the Supreme Court of the State of Washington and may be revoked at any time upon the Court's own motion, or upon the motion of the Board of Governors of the Washington State Bar Association, in either case with or without stated cause.

F. Termination of this Rule. This rule shall expire on December 31, 1976, unless continued by order of the Supreme Court. [Adopted June 4, 1970, effective June 4, 1970; amended, adopted May 21, 1971, effective May 21, 1971; amended, adopted Feb. 29, 1972, effective Feb. 29, 1972; amended, adopted Sept. 26, 1973, effective Dec. 31, 1973.]

Rule 10 Revocation of order admitting to practice. The order admitting to practice an applicant under Rule 2B(2) (b) may be revoked by the Supreme Court, upon the recommendation of the Board of Governors, for failure of the applicant to proceed with due diligence in completing his naturalization process. [Adopted Dec. 29, 1970, effective Mar. 10, 1971.]

DISCIPLINE RULES FOR ATTORNEYS (DRA)

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II. PROCEDURE

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- (b) Term of Office
- (c) Duties
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- (a) Hearing Panel
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- (a) Membership
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RULE 2.5 State Bar Counsel
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- (c) Discovery Prior to Formal Complaint
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TABLE OF DISTRIBUTION OF DISCIPLINE RULES FOR ATTORNEYS IN EFFECT FROM JULY 16, 1965 THROUGH JUNE 30, 1969, INTO THE REVISED DISCIPLINE RULES FOR ATTORNEYS IN EFFECT ON AND AFTER JULY 1, 1969

(For orders of adoption and savings clause, see note following DRA Rule 1.1)

Original DRA Number	Revised DRA Number
Rule I	Rule 9.1
Rule II	Rule 9.2
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

Original DRA Number	Revised DRA Number
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. An attorney at law may be censured, reprimanded, suspended, or disbarred for any of the following causes, hereinafter sometimes referred to as violations of the rules of professional conduct:

(a) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his relations as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence, at the ensuing disciplinary hearing of the guilt of the respondent attorney of the crime described in the indictment or information, and of his violation of the statute upon which it is based. A disciplinary hearing as provided in Rule 3.2 of these rules shall be had to determine, (1) whether moral turpitude was in fact an element of the crime committed by the respondent attorney and, (2) the disciplinary action recommended to result therefrom.

(b) Wilful disobedience or violation of a court order directing him to do or cease doing an act connected with his practice of law, which he ought in good faith to do or forbear.

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

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

(e) Lending his name to be used as attorney by another person who is not an attorney authorized to practice law in the State of Washington.

(f) Misrepresentation or concealment of a material fact made in his application for admission or reinstatement or in support thereof.

(g) Suspension or disbarment by competent authority in any state, federal or foreign jurisdiction.

(h) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney, or with any person not authorized to practice law.

(i) Gross incompetency in the practice of law.

(j) Violation of the Code of Professional Responsibility of the profession adopted by the Supreme Court of the State of Washington.

(k) Membership in any party or organization knowing that it has for its purpose and object the overthrow of the United States Government by force or violence.

(l) Wilful violation of Rule 2.6 or wilful disregard of the subpoena or notice of a local administrative committee, panel, Disciplinary Board, or Board of Governors of the Washington State Bar Association.

(m) A course of conduct demonstrating unfitness to practice law. [Adopted May 12, 1969, effective July 1, 1969; amended Mar. 27, 1972, effective Mar. 27, 1972; amended Dec. 15, 1972, effective Jan 2, 1973.]

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

"WHEREAS, the Board of Governors of the Washington State Bar Association has recommended to the Supreme Court for adoption the attached Discipline Rules for Attorneys, and the Court having considered the proposed Rules; it is hereby

ORDERED that the existing Discipline Rules for Attorneys are superseded by the Discipline Rules for Attorneys attached hereto and by reference made a part hereof; and

It is further ORDERED that the attached rules be published expeditiously in the Washington Decisions with notification that criticism, comment or objection be received in the office of the Clerk of the Supreme Court by June 18, 1969 for the purpose of consideration and evaluation by the Supreme Court; and

It is further ORDERED that the attached rules will become effective on July 1, 1969, subject to such revision or modification as is made by the Supreme Court prior thereto, and

It is further ORDERED that disciplinary proceedings wherein the formal complaint has been served on the respondent prior to July 1, 1969 shall continue to be governed by and disposed of under the presently existing rules.

Dated at Olympia, Washington this 12th May, 1969."

Order of Supreme Court adopting rules for discipline of attorneys and abrogating former rules: "The Supreme Court of the State of Washington in conformity with its rule-making power herewith abrogates the existing Rules for Discipline of Attorneys in the State of Washington as the same appear in RCW Vol. 0 as of the effective date of the new Rules for Discipline of Attorneys in the State of Washington adopted herewith, except as to proceedings then pending before the Board of Governors of the Washington State Bar Association, or before the Supreme Court of the State of Washington.

The attached Rules for Discipline of Attorneys (proposed by the Board of Governors of the Washington State Bar Association and modified in minor respects by this court) are herewith adopted, effective as of the date of their publication in the Washington Decisions.

Dated at Olympia, Washington this 25th day of June, 1965."

Reviser's note: By order of the Supreme Court dated May 5, 1967, and effective July 1, 1967, the Rules for Discipline of Attorneys (RDA) have been redesignated as "Discipline Rules for Attorneys (DRA)."

II. PROCEDURE

Rule 2.1 Local administrative committees.

(a) Appointment. The board of Governors shall appoint a Local Administrative Committee consisting of three or more members in each county or district as herein defined. The Board of Governors may create districts consisting of two or more counties, a portion of one or more counties, or one or more counties and a portion of one or more counties. These Committees shall be known as "Local Administrative Committee of _____ County (or _____ District)." All members of the Local Administrative Committees shall be chosen by the Board of Governors from the active members of the Association whose residences are in the county or district for which they are appointed.

(b) Term of Office. The members of the Local Administrative Committees shall be appointed for terms of three years or until their successors are appointed, and their terms shall be so staggered that one or more shall be appointed each year. The Board of Governors shall designate each year one member of each Local Administrative Committee to serve as chairman thereof for one year or until his successor is appointed. Members heretofore appointed by the Board of Governors shall serve out their regular terms. Members may be removed from office at any time and their successors appointed to serve during the remainder of the unexpired term.

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

(1) *Investigate Complaints.* Investigate promptly all complaints referred to it by the association or received directly by the committee in writing concerning any attorney who has his residence within the county or district of such committee.

(2) *Surveillance.* Take cognizance of any alleged violation of the rules of professional conduct brought to its attention whether or not a complaint be received.

(3) *Reports.*

(i) Case. Make prompt reports to the Disciplinary Board containing complete findings of fact and its opinion as to whether or not reasonable cause exists for further proceedings as hereinafter provided.

(ii) *Quarterly.* Each Local Administrative Committee shall, not later than the 10th day of January, April, July and October of each year, prepare and file with the Disciplinary Board, upon forms prepared by the Disciplinary Board, a list of all matters and proceedings before the Committee, and note thereon the progress, if any, of each of the matters and proceedings since the last report of the Committee.

(iii) *Confidential.* Except as provided in these rules, reports made by the Local Administrative Committees with regard to all matters investigated by them are confidential; provided, if requested in writing by the attorney investigated, that he shall be advised whether or not the Local Administrative Committee found that reasonable cause exists for further proceedings. Such reports shall form a part of the permanent records of the Association and may be used as a basis for disciplinary proceedings.

(4) *General.* Perform such other duties and transact such other business of a local nature for and on behalf of the Association as shall be referred to it from time to time by the Disciplinary Board or the Board of Governors.

(5) *Perpetuation of Testimony.* Where, in the discretion of a Local Administrative Committee, there is reasonable cause to believe that testimony should be perpetuated, the Committee may, upon reasonable notice to the attorney investigated, cause the deposition of any witness to be taken under oath before a notary public or before any other officer authorized by the law of the jurisdiction where the deposition is taken to administer an oath, and have the same transcribed for use in any further proceedings under these rules to which the said attorney may be a party. Save as in this paragraph specifically provided, proceedings before a Local Administrative Committee shall be informal and witnesses shall not be sworn.

(d) Authority.

(1) *Trivial Matters.* The committee shall have power to settle and dispose of complaints of a trivial nature; provided, that a complete report of the disposition of each such complaint shall be made to the Disciplinary Board.

(2) *Settlement, Compromise or Restitution.* Settlement of, compromise of, or restitution in a matter shall not justify the Committee in failing to undertake or complete its investigation and report thereon to the Disciplinary Board.

(e) Special Circumstances. The Board of Governors in lieu of referring a matter to a Local Administrative Committee for investigation, in its discretion, may:

(1) Appoint a special committee composed of Local Administrative Committee members from more than one county or district to conduct an investigation, or

(2) Refer a complaint to bar counsel for investigation, or

(3) Direct the filing of a formal complaint without investigation if in its opinion investigation would be of no value. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.2 Trial committee.

(a) Appointment. The Board of Governors shall appoint a Trial Committee consisting of three or more members in each county or special district as herein defined. The Board of Governors may create special district consisting of two or more counties, a portion of one or more counties, or one or more counties and a portion of one or more counties. Those committees shall be known as "Local Trial Committee of _____ County (or _____ Special District _____)." All members of Local Trial Committees shall be chosen by the Board of Governors from the active members of the Association whose residences are in the county or special district for which they are appointed.

(b) Term of Office. The members of Local Trial Committees shall be appointed for terms of three years or until their successors are appointed, and their terms shall be so staggered that one or more shall be appointed each year. Members heretofore appointed by the Board of Governors shall serve out their regular terms. Members may be removed from office at any time and their successors appointed to serve during the remainder of the unexpired term. Any member designated to serve on a hearing panel, in accordance with these rules, shall continue as a member of the Local Trial Committee until the completion of his duties as a member of the panel to which he was assigned notwithstanding his appointed term as a member of the Local Trial Committee expires after his assignment to the panel. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.3 Hearing panel.

(a) Hearing Panel. Each disciplinary matter referred for hearing shall be heard by a three-member Hearing Panel appointed by the Chairman of the Disciplinary Board. The Panel shall be composed of one member from the Disciplinary Board and two members from the Local Trial Committee of the county or special district where the respondent attorney had his residence at the time of the alleged violation of the rules of professional conduct. The Disciplinary Board may direct a hearing which has been assigned to a Panel in one county or special district to be transferred to another county or special district or to a special Panel appointed by the Chairman, the Local Trial Committee members of which two last mentioned Panels need not have their residences in the same county or special district as that in which the respondent attorney had his residence at the time of the alleged violation.

(b) Duties. It shall be the duty of the Panel to whom a cause has been referred for hearing to conduct the hearing in the manner hereinafter provided. The Panel shall pass on all questions of procedure and admission of evidence, and in case of disagreement a majority of the members of the Panel shall decide each point or objection as the same shall arise. The Panel shall make its findings, conclusions and recommendation, submitting them to the Disciplinary Board together with all pleadings, documents and exhibits promptly after the taking of evidence is concluded.

(c) Disagreement. In the event of disagreement the members shall file independent findings, conclusions and recommendation within the time aforesaid.

(d) Members of the Disciplinary Board on Panels. Each Panel shall have as its chairman a member of the Disciplinary Board, but such member shall not be a resident of the congressional district in which the respondent attorney had his residence at the time of the occurrence of the alleged violation of the rules of professional conduct. Notwithstanding the foregoing provisions and those of Rule 2.3(a), the Panel chairman may be a lawyer not a member of the Disciplinary Board if the Disciplinary Board determines that such action is necessary or desirable to prevent an undue burden upon its members. The Chairman shall settle the necessary pleadings, preside at the hearing, conduct the hearing with the assistance of the other members of the Panel, see that the findings, conclusions and recommendation are submitted to the Disciplinary Board and perform such other duties as shall be required of him by the Disciplinary Board.

(e) Continuity. Notwithstanding the expiration of the term of office of any member or members of a Panel, the Panel as constituted at the time a matter is referred to it shall have jurisdiction to proceed and render its decision and recommendation in such matter. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.4 Disciplinary board.

(a) Membership.

(1) *Composition.* The Board of Governors shall appoint a Disciplinary Board composed of at least seven members, with one, or more, having his residence in each Congressional District.

(2) *Qualification.* No person shall be appointed to the Disciplinary Board who has not been an active member of the State Bar Association for at least fifteen years, and no one shall be eligible to serve two consecutive three-year terms.

(3) *Quorum.* Five members shall constitute a quorum, and concurrence of a majority of the members present shall constitute the action of the Disciplinary Board.

(b) Term of Office. Members of the Disciplinary Board shall serve for terms of three years, or until their successors are appointed. Terms shall be so staggered

that two or more are appointed each year. Two of those first appointed shall serve for one year, two for two years.

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

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

(e) Vacancies. Vacancies in membership on the Disciplinary Board and in the office of chairman and vice chairman shall be filled by the Board of Governors for the unexpired terms.

(f) Responsibilities.

(1) *General.* The Disciplinary Board shall have the powers and duties expressly provided in these rules for Discipline of Attorneys, together with those delegated to it by the Board of Governors. It shall make such reports of its work in statistical or other form to the Board of Governors as may be required by the Board of Governors.

(2) *Review of Local Administrative Committee Reports.* The Disciplinary Board shall review each report of alleged misconduct submitted to it, and in its discretion may refer such complaint for trial, request further investigation, dismiss the complaint, or take other appropriate action.

(3) *Letter of Admonition.* Where it appears to the Disciplinary Board that, if the findings of the Local Administrative Committee are true, the attorney has been guilty of misconduct, but not of sufficient magnitude to warrant a trial, the Disciplinary Board, in its discretion may dismiss the complaint and send the attorney a letter of admonition warning against such conduct in the future. Such a letter shall not constitute a finding of misconduct.

(4) *Division of Authority.* The Board of Governors shall have no right or responsibility to review decisions or recommendations of the Disciplinary Board. It shall, however, have responsibility for the proper functioning of the Local Administrative Committees and bar counsel. Any publicity with reference to pending disciplinary proceedings shall be released only through the Board of Governors.

(5) *Meetings.* The Disciplinary Board shall hold at least six meetings a year at such times and places as it may determine.

(g) Lay Members

(1) *General.* Two (2) lay members shall be appointed to the Disciplinary Board by the Supreme Court.

(2) *Term of Office.* The lay members of the Disciplinary Board shall serve for terms of one year, or until their successors are appointed.

(3) *Duties.* The lay members shall serve as advisory non-voting members of the Disciplinary Board. A lay member shall not serve on a hearing panel.

(4) This paragraph of DRA 2.4 shall expire on December 31, 1974, unless continued by order of the Supreme Court. [Adopted May 12, 1969, effective July 1, 1969; amended, adopted Dec. 15, 1972, effective Jan. 2, 1973; amended, adopted Nov. 14, 1973, effective Jan. 1, 1974.]

Rule 2.5 State bar counsel.

(a) Appointment and Duties. The Board of Governors shall employ a suitable person or persons from among the members of the Association to act as counsel for the Association with respect to matters of discipline and reinstatement of members, including the investigations, hearings and appeals incident thereto, and to perform such duties as shall be required by such Board.

(b) Not a Prosecutor. The general function of the State Bar Counsel in all investigations and hearings shall be to present all the material facts to the appropriate Panel, Board or Court. His function is not that of a prosecutor.

(c) Discovery Prior to Formal Complaint. Where Bar Counsel deems it essential to take the discovery deposition of the attorney being investigated or of a witness prior to the filing of a formal complaint, the Disciplinary Board, in its discretion, may authorize the taking of such deposition upon such terms and with such limitations as it deems proper.

(1) *Procedure.* Such depositions may be taken within or without the state and either orally or upon written interrogatories, before any officer authorized to administer an oath by law in the jurisdiction where the deposition is taken. The manner of taking such depositions shall conform as nearly as practical to that prescribed for the taking of depositions in the Superior Court of the State of Washington except as otherwise provided in these rules.

(2) *Notice.* If it is a witness who is to be deposed, the deposition may be taken with or without notice to the attorney being investigated, but if such attorney is not given reasonable prior notice thereof the deposition shall not be introduced in evidence at any hearing without his consent.

(3) *Subpoenas.* Each member of the Disciplinary Board shall have the power to issue subpoenas to compel the attendance of the attorney being investigated or of a witness, or the production of books or documents at the taking of such depositions. Subpoenas shall be served in the same manner as in civil cases in the Superior Court of the State of Washington. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 2.6 Respondent Attorney.

(a) Responsibility. It shall be the duty and the obligation of an attorney against whom a complaint has been

made and who is being investigated by the Local Administrative Committee to cooperate with Committee as requested by it by:

(1) furnishing any papers or documents,

(2) furnishing in writing a full and complete explanation covering the matter contained in such complaint,

(3) appearing before the Committee at the time and place designated.

(b) Dereliction. Should such attorney fail so to cooperate with the Committee in the manner herein provided, the Committee shall report the same to the Disciplinary Board, and such failure may constitute a violation of the rules of professional conduct. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 2.7 Complainant.

Duties of Complainant. Upon request, the person complaining shall furnish to the Local Administrative Committee or State Bar Counsel documentary and other evidence in his possession and the names and addresses of witnesses, and assist in securing evidence in relation to the facts charged. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

III. DISCIPLINARY PROCEEDINGS

Rule 3.1 Pleadings.

(a) Pleadings. The only pleadings permissable upon proceedings before a Panel are a formal complaint, a notice to answer, answer to complaint, and motions to make more definite and certain or in the alternative for a bill of particulars, and, if directed, a bill of particulars. Informality in the complaint or answer shall be disregarded.

(1) *Formal Complaint.* If the Disciplinary Board finds a hearing should be had to determine whether a violation of the rules of professional conduct has occurred, a formal complaint shall be prepared and filed in the office of the Association and proceedings shall be had thereon as hereinafter provided. The formal complaint, which need not be verified, shall set forth the particular acts or omissions of the respondent attorney in such detail as to enable him to know the charge against him and shall be signed by the President and State Bar Counsel.

(i) *Prior record a separate count.* Prior disciplinary proceedings and complaints against the respondent attorney, excluding dismissals after a hearing before a hearing panel, shall be made a separate count of the complaint if they indicate a course of conduct demonstrating unfitness to practice law or gross incompetency in the practice of law.

(ii) *Prior record as professional history.* If a prior record of the respondent attorney is not made a separate count of the complaint, any prior record of censure, reprimand, suspension or disbarment, or any absence of such record, shall be included in the complaint as an allegation of the professional history of respondent.

(iii) *Joinder of charges.* The Disciplinary Board in its discretion may consolidate for hearing two or more charges as to the same attorney, or may join the charges as to two or more attorneys in one formal complaint.

(iv) *Commencement of proceeding.* A disciplinary proceeding shall be deemed commenced when the formal complaint has been filed in the office of the Association as provided by these rules.

(v) *Procedural irregularity.* No procedural irregularity which occurs prior to the filing of a formal complaint shall affect the validity of such complaint or of any proceeding subsequent thereto.

(2) *Form of Notice to Answer.* The notice to answer shall be substantially in the following form:

STATE OF WASHINGTON BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSOCIATION

In re _____, An Attorney at Law: Notice to Answer To the above named attorney at law:

You are notified that a formal complaint has been filed against you, a copy of which is hereto attached and herewith served upon you.

You are notified that you may answer said complaint by filing the original and four copies of your answer in the office of the Washington State Bar Association, at the address below stated. If the complaint was served upon you personally in the State of Washington you may have twenty days, exclusive of the date of service, in which to file such answer. If the complaint was served upon you in any other manner, or outside the State of Washington, or mailed to you, then you may have thirty days from the date of service, or the date of the mailing of the complaint to you, in which to answer.

Upon the filing of your answer a hearing will be had upon the allegations of the complaint, and such further proceedings will be had as the facts and the law shall warrant.

In case of your failure to answer, further proceedings will be had in accordance with the rules of discipline.

Washington State Bar Association
By _____
State Bar Counsel
Address: _____
_____, Washington
Date of Mailing: The _____ day of _____ 19__.

(3) *Form of Answer and Verification.* The answer must contain:

(i) *Denials.* A general or specific denial of each material allegation of the complaint that is controverted by the respondent attorney, or of any knwoledge or information thereof sufficient to form a belief.

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

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

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

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

(5) *Amendments.* A complaint may be amended at any time to set forth additional facts, whether occurring before or after commencement of the hearing, either in amplification of the original charge or to add new charges. In case of such amendment, the respondent attorney shall be given a reasonable time, to be fixed by the chairman of the Panel, to answer the amendment, to procure evidence, and to defend against the charges set forth therein. The chairman of the Panel may at any time allow or require other amendments to the complaint or to the answer.

(6) *Time Within Which to Answer.* If personal service is made upon the respondent attorney in the State of Washington, he shall be allowed twenty (20) days from the date of service, exclusive of the date of service, in which to answer; if service is made in any other manner or place, the respondent attorney shall be allowed thirty (30) days from the date of service, or the date of mailing, exclusive of the date of service or mailing, in which to answer.

(7) *Extension of Time to Answer.* For good cause shown the chairman of the Panel may extend time for answer.

(b) Service.

(1) *Formal Complaint and Notice to Answer.* A copy of the formal complaint with notice to answer shall be served on the respondent attorney in the following manner:

(i) *Personal service in Washington.* If the respondent attorney is found in the State of Washington, by personal service upon him in the manner as is required for personal service of summons in civil actions in the Superior Court in the State of Washington on the effective date of these rules.

(ii) *Service if not found in Washington.* If the respondent attorney cannot be found, either by leaving a copy at his place of usual abode, if in the State of Washington, with some person of suitable age and discretion then resident therein, or by mailing by registered or certified mail, postage prepaid, a copy addressed to him at his last known (a) place of abode, (b) office address maintained by him for the practice of law, or (c) post office address.

(iii) *Service outside Washington.* If the respondent attorney is found outside of the State of Washington, then by personal service.

(iv) *Service on guardian.* If the respondent attorney has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, service shall also be had on his guardian or guardian ad litem.

(2) *Other Pleadings, Notices or Other Documents.* Service upon the respondent attorney of any pleadings, notices or other documents required by these rules to be served, other than the formal complaint and notice to answer, may be made by mailing the same, postage prepaid, to or leaving the same at the address set forth in his answer, or in the absence of an answer, by mailing the same, postage prepaid, to or leaving the same at the address of the respondent attorney on file in the office of the Association.

(3) *Service Upon the Association.* Service upon the Association of any pleadings, notices, or documents may be made by filing the same in the office of the Association.

(4) *Mailing.* When such other pleadings, notices, or documents are to be served by mail they shall be sent by registered or certified mail with postage prepaid.

(5) *Proof of Service.* An affidavit of service, sheriff's return of service, or a signed acknowledgement of service, upon being filed in the office of the Association, shall be proof of such service. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 3.2 Hearings.

(a) Where Held. All disciplinary hearings shall be held in the county where the attorney complained against had his residence at the time of the alleged violation of the rules of professional conduct, unless otherwise directed by the Disciplinary Board or the Panel.

(b) Date of Hearing. The chairman of the Panel shall fix the time and place for hearing and shall cause notice thereof to be given to respondent attorney at least twenty (20) days prior thereto. The hearing shall occur not earlier than thirty (30) days or later than sixty (60) days after service of the complaint, unless delayed for good cause.

(c) Postponements. At the time and place appointed for the hearing the Panel shall proceed with the hearing, unless for good cause the Panel shall grant a postponement, but no postponement shall be longer than thirty (30) days and the total period of time of all postponements shall not exceed sixty (60) days unless approved by the Disciplinary Board.

(d) Representation. The Association shall be represented at hearings before the Panels by State Bar Counsel. The respondent attorney may be represented by counsel if he so desires.

(e) Disqualification. The names and office addresses of the Panel who will conduct the hearing shall be served upon respondent attorney at the same time that the formal complaint is served or within a reasonable time thereafter. If the respondent attorney desires to challenge for cause any such member or members he shall do so in writing stating his reasons for such challenge or challenges at least ten (10) days prior to the hearing. The unchallenged members or member of the Panel shall rule upon the challenge or challenges. If a challenge is sustained, the chairman of the Disciplinary Board shall forthwith appoint some person or persons of the stated qualifications to fill the vacancy or vacancies on the Panel. In the event challenges are directed against all the members of the Panel, the chairman of the Disciplinary Board shall rule upon the challenges. The respondent attorney shall have the right to challenge any appointee to fill the vacancy on the Panel in the same manner and within such period as shall be provided in the order sustaining the prior challenge.

(f) Default. In no event shall a default be entered against the respondent attorney. If he fails to answer the complaint within the time allowed by these rules the Panel shall proceed to a determination of the matter in the same manner as though the respondent attorney were present and had answered by a general denial. No notice of the date of hearing or the names of the Panel members or of the taking of depositions of witnesses to be used at the hearing shall be required to be given to such respondent attorney failing to answer. If the respondent attorney has answered but fails to attend the hearing at the time set, the Panel shall proceed to a determination of the matter in the same manner as though the respondent attorney were present.

(g) Public Excluded from Hearing. Unless a public hearing is requested in writing by the respondent attorney, the hearing of a disciplinary matter before a Panel shall not be public.

(h) Procedure. Each member of the Disciplinary Board shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents at such hearings. The respondent attorney shall have the opportunity to make his defense and may have issued such subpoenas as he may desire and as any member of the Disciplinary Board deems necessary. Subpoenas shall be served in the same manner as in civil cases in the Superior Court of the State of Washington. Witnesses shall testify under oath administered by the chairman of the Panel. Testimony shall be taken in writing and may be taken by deposition in accordance with these rules.

(i) Depositions. Depositions for use at the hearing may be taken either within or without the state, upon either written or oral interrogatories before any member of the Panel or before any other officer authorized to administer an oath by the law of the jurisdiction where the deposition is taken. The manner of taking such depositions shall conform as nearly as practicable to that prescribed for the taking of depositions in the Superior Court of the State of Washington except as otherwise provided in these rules.

(1) *Authority for Taking.*

(i) *Within State.* The chairman of the Disciplinary Board or chairman of the Panel shall have the power to order the taking of depositions and to make such further orders relative thereto, including provision for the expense thereof, as will insure a fair and impartial hearing to the respondent attorney.

(ii) *Outside State.* Where depositions are taken without the State a commission need not issue, but a copy of the order so made certified to be such by the chairman of the Disciplinary Board or the chairman of the Panel shall be sufficient authority to authorize the taking of such depositions.

(2) *Filing.* All depositions when taken shall be filed in the office of the Association.

(j) Discovery, Admissions, Inspection of Documents. After the filing of a complaint against an attorney by direction of the Disciplinary Board, the respondent attorney and the Bar Association shall have the rights afforded to Superior Court litigants under Rules 33, 34 and 36 of the Civil Rules for the Superior Court, limited and prescribed as follows: Such rights shall be available only upon such terms, and with such limitations, as the Panel chairman deems just. The Panel chairman shall have discretion to decide whether to permit such limited discovery and the terms or limitations thereon. In exercising such discretion the chairman shall consider whether undue delay or expense in bringing the matter to hearing will result, and whether the interests of justice will be promoted. Any determinations or orders required under said Rules to be made by a Superior Court judge shall be made by the chairman.

(k) Cooperation. It shall be the duty of an attorney who has been served with a formal complaint to respond to all lawful orders made by the chairman of the Panel as provided in the preceding paragraph. Should such attorney fail so to do, the chairman of the Panel shall report the same to the Disciplinary Board, and such failure may constitute a violation of the rules of professional conduct.

(l) Findings, Conclusions and Recommendations. Promptly after the hearing, the chairman of the Panel shall cause findings, conclusions and recommendations to be filed with the Disciplinary Board. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 3.3 Stipulation. Any disciplinary matter or proceeding may be disposed of by a stipulation for discipline entered into at any time, the stipulation to be signed by the respondent attorney and by the State Bar Counsel. No such stipulation shall be effective unless approved by the Supreme Court. The stipulation may be presented to the Disciplinary Board and the Supreme Court for approval without notice.

(a) Form. A stipulation for discipline shall

(1) set forth the material facts relating to the particular acts or omissions of the respondent attorney in such detail as to enable the Disciplinary Board and the Supreme Court to form an opinion as to the propriety of the discipline being agreed upon, and to make the stipulation useful in any subsequent disciplinary proceedings against the respondent attorney;

(2) set forth the respondent attorney's prior record of censure, reprimand, suspension or disbarment, or any absence of such records;

(3) state that the stipulation is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent attorney, but that any additional existing facts may be proven in any subsequent disciplinary proceedings; and

(4) fix the amount of the costs and expenses to be paid by the respondent attorney.

(b) Stipulation Approved. If the stipulation is approved by the Disciplinary Board and the Supreme Court it shall be followed by the disciplinary action agreed to in the stipulation. If it is stipulated that the

respondent attorney be censured or reprimanded, the stipulation shall be retained in the office of the Association, with notice thereof sent to the Supreme Court, which notice shall remain confidential.

(c) Stipulation Not Approved. If the stipulation is not approved by the Disciplinary Board or the Supreme Court, as the case may be, then the stipulation shall be of no force and effect and neither it nor the fact of its execution shall be admissable in evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action. [Adopted May 12, 1969, effective July 1, 1969.]

IV. MENTAL ILLNESS AS A DEFENSE

Rule 4.1 Notice.

(a) Where Guardian Appointed. If the respondent attorney has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and a guardian of his person has been appointed in this state, all pleadings, notices or other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian.

(b) Where No Guardian Appointed. If a guardian of his person has not been appointed in this state, the Chief Justice of the Supreme Court shall, on application of the Association, appoint a member of the Washington State Bar Association as guardian ad litem for the respondent attorney. The file in such proceedings shall be kept sealed. All pleadings, notices or other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian ad litem and the guardian of the person of the respondent attorney, if any, appointed in another state, and all proceedings on the complaint as to the respondent attorney shall be determined as hereinafter provided. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 4.2 Hearing.

(a) Where No Judicial Determination of Incompetency. If the respondent attorney has not been judicially declared to be of unsound mind, or incapable of conducting his own affairs, but it shall appear to the chairman of the Panel that there is reasonable cause to believe that the respondent attorney is of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him, the chairman of the Panel shall fix a time and place for a hearing before the Panel on the sole issue of the respondent attorney's mental capacity to defend the formal complaint against him. It shall be the duty of the chairman of the Panel to appoint counsel to act for and on behalf of the respondent attorney in the proceeding in this subsection provided, should the respondent attorney not have counsel of his own choosing.

(b) Procedure after Determination by Panel. If it shall be determined by the Panel that said respondent attorney is mentally capable of conducting a proper defense, the proceeding shall continue. If, however, it shall be determined by the Panel that the respondent attorney is not mentally capable of conducting a proper defense, the Chief Justice of the Supreme Court, on application of the Association, shall appoint a member of the Washington State Bar Association as guardian ad litem for the respondent attorney. The file in such proceeding shall be kept sealed. All pleadings, notices and other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian ad litem and all proceedings on the complaint made as to the respondent attorney shall be determined as hereinafter provided.

(c) Hearing Held in Abeyance. Should the respondent attorney have been judicially declared to be of unsound mind, or incapable of conducting his own affairs, or, upon the hearing as provided in this rule, have been found to be of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him, all proceedings based upon the formal complaint for alleged violation of the rules of professional conduct shall be held in abeyance until such time as it shall appear that the respondent attorney is mentally capable of conducting a proper defense thereto.

(d) Submission of Mental Illness Record to Supreme Court. If the respondent attorney has been judicially declared to be of unsound mind or incapable of conducting his own affairs a certified copy of the judgment or order of the court so declaring shall be forthwith filed with the Disciplinary Board which shall transmit such record to the Supreme Court with its recommendation.

(e) Consideration of Record by Disciplinary Board. If the decision of the Panel after the hearing provided herein, is that the respondent attorney is of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him the evidence relating thereto shall be filed with the Disciplinary Board. If such Board concurs in the decision of the Panel, the Disciplinary Board shall transmit the record to the Supreme Court with its recommendation; if the Disciplinary Board does not concur, the Panel shall continue in accordance with the Rules.

(f) Action by Supreme Court. After the receipt of the record relating to the judicial proceedings or to the decision of the Panel the Supreme Court, in its discretion, after a hearing following twenty (20) days' notice to the respondent attorney, and to his guardian or counsel if such there be, may strike the name of the respondent attorney from the roll of active members of the Association and place his name upon the roll of inactive members. If the attorney's name is so stricken the court shall direct all further proceedings on the formal complaint be held in abeyance until such time as it shall appear to the Disciplinary Board, upon application made by or on behalf of the respondent attorney, that he is mentally capable of conducting a proper defense to the formal complaint in question. Thereafter a hearing on the formal complaint and proceedings thereunder shall be had as is provided by these rules in other

cases. If the Disciplinary Board concludes the charge or charges in the formal complaint have not been sustained or, having been sustained, do not warrant suspension or disbarment, the respondent attorney shall thereupon be restored to the roll of active members of the Association. [Adopted May 12, 1969, effective July 1, 1969.]

V. REVIEW BY THE DISCIPLINARY BOARD

Rule 5.1 Notices. When the findings, conclusions and recommendation of a Panel are filed in the office of the Association, a copy thereof and a notice of filing with a copy of DRA 5 shall be served upon the respondent attorney or his counsel. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 5.2 Statement in support or opposition. At any time within twenty days after the service of the above-mentioned notice the State Bar Counsel and the respondent attorney shall have the right to file with the Disciplinary Board a typewritten statement in support of or in opposition to the findings, conclusions and recommendations of the Panel, setting forth facts, alleged errors of law or any other matter in support of such statement. A copy of such statement, when filed, shall be served on the respondent attorney or his counsel, or State Bar Counsel, as the case may be. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.3 Additional hearing. In making the above statement in support of or in opposition to the findings, conclusions and recommendation of the Panel, State Bar Counsel or the respondent attorney may request an additional hearing before the Panel based on the ground of additional evidence; provided, however, that such statement shall contain a complete outline of such additional evidence and shall set forth the reasons why the same was not presented at the hearing, all supported by affidavit or affidavits. Such request may be granted or denied in the discretion of the Disciplinary Board. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.4 Disciplinary board of review. Each proceeding in which a hearing has occurred shall be reviewed by the Disciplinary Board upon the record made and filed in the office of the Association, together with the statements in support of or in opposition to such findings, conclusions and recommendation as provided by these rules. Neither State Bar Counsel nor the respondent attorney shall be entitled to be heard orally in such review, unless otherwise ordered by the Disciplinary Board. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.5 Transcript of the record. The Disciplinary Board or the chairman of the Panel may have all of the testimony transcribed. If a transcript of the testimony is made, a copy thereof shall be served upon the respondent attorney or his counsel and State Bar Counsel, each of whom shall have ten days from the date of service of the transcript to file objections to the contents thereof with the chairman of the Panel. The objections shall clearly state the errors alleged to exist in the transcript and shall be deemed filed at the time the same are delivered to the office of the Association or are deposited in the United States mail, properly addressed to the said chairman, in care of the office of the Association, at its address, with postage prepaid. The Panel shall thereupon settle the transcript either upon the written objections of the respondent attorney or his counsel and State Bar Counsel or after argument, if argument is deemed necessary by the chairman of the Panel. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 5.6 Disciplinary board action.

(a) Decision of Disciplinary Board. Prompt decision of the Disciplinary Board upon such review shall be made. The Disciplinary Board shall adopt, modify or reverse the findings, conclusions and recommendation of the Panel by written order, a copy of which shall be served upon the respondent attorney or his counsel.

(b) Transcript Required for Suspension or Disbarment. No suspension or disbarment shall be recommended by the Disciplinary Board unless and until a transcript of the testimony before the Panel shall have been reduced to writing and settled as in this rule provided.

(c) Dissent. If any member or members of the Disciplinary Board shall dissent from the findings, conclusions or recommendation of the majority of the Disciplinary Board in a matter in which the majority recommends suspension or disbarment, he or they shall state briefly his or their reasons therefor, and a copy shall be served upon the respondent attorney or his counsel. Such dissent or dissents shall be a part of the record.

(d) Disposition not Requiring Supreme Court Action. If the formal complaint is dismissed or if there is no recommendation of discipline by the Disciplinary Board or if the recommendation is that the respondent attorney be censured or reprimanded and the censure or reprimand is accepted by the respondent attorney, the record of the proceeding shall be retained in the office of the Association.

(e) Acceptance or Refusal of Censure or Reprimand. If the Disciplinary Board determines that the respondent attorney should be censured or reprimanded, a formal order signed by the Chairman of the Disciplinary Board shall be entered, which shall provide that if the respondent attorney or his counsel does not file in the office of the Association a written refusal to accept such censure or reprimand within fifteen (15) days of the date such order is served, the censure or reprimand shall be deemed accepted. Within twenty (20) days after the respondent attorney has filed his written refusal to accept a censure or reprimand, he shall order a transcript of the testimony taken before the hearing panel and make arrangements with the court reporter for the payment of the cost thereof. When the proposed transcript is received by the respondent attorney, he shall file the original with the office of the Association. Thereafter,

the transcript shall be settled as provided for in Rule 5.5 herein. Should the respondent attorney prevail on appeal, the cost of the transcript shall be paid for by the Association. If a determination is made that the respondent attorney is insolvent, the Association shall pay for the cost of the transcript on appeal.

(f) Letter of Censure. A censure shall be administered to the respondent attorney by letter, signed by the President of the Association. Notice of the censure shall be sent to the Supreme Court where such information shall remain confidential unless the Court determines that further action shall be taken.

(g) Giving of Reprimand. If the respondent attorney has accepted the reprimand or, on appeal, the Supreme Court has ordered the same, the respondent attorney shall appear in person before the Board of Governors at a time and place directed by the Board and receive the reprimand. The reprimand shall be given privately by the Board of Governors and no other proceedings shall be had at the administration thereof, nor shall any statements in support of or in opposition thereto or in mitigation thereof be made. A copy of the reprimand shall be sent to the Supreme Court where the same shall remain confidential unless the Court determines that further action shall be taken.

(h) Record to Supreme Court. If a censure or reprimand is not accepted, or if the recommendation of the Disciplinary Board is that respondent attorney be suspended or disbarred, the record shall be transmitted to the Supreme Court.

(i) Chairmen not Disqualified. Neither the chairman of the Disciplinary Board nor the chairman of the Panel shall be disqualified from participating in the discussion of, or voting upon, any matter.

(j) Information to Local Administrative Committee. Upon referral to a Panel, final disposition of a complaint by the Disciplinary Board, or upon recommendation to the Supreme Court by the Disciplinary Board of disbarment or suspension, notice of the action taken shall be given by the Disciplinary Board to the chairman of the Local Administrative Committee which investigated the complaint.

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

(l) Information to Members of Panel. Notice of the action taken by the Disciplinary Board on matters considered by a Panel shall be given to the members of the Panel, other than the Disciplinary Board member who acted as a Panel member. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973; amended, adopted Nov. 1, 1973, effective Jan. 1, 1974.]

VI. REVIEW BY THE SUPREME COURT

Rule 6.1 Notification of filing. Upon the filing of the record with the Supreme Court, the clerk of the court shall mail written notice of such filing to State Bar Counsel and the respondent attorney or his counsel. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 6.2 Objections by respondent attorney. The respondent attorney may file objections to the findings, conclusions and recommendations of the Disciplinary Board.

(a) Form. Objections shall be in the form of a brief containing arguments and citations of authority in support thereof.

(b) Time for Filing. The respondent attorney shall be allowed thirty (30) days after the filing of the record in which to file with the Disciplinary Board three copies and to file with the Supreme Court 25 copies of his objections. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 6.3 Answer of the bar association.

(a) If Objections Filed. The Association shall have thirty (30) days from the day of the service of the objections on the Association in which to serve upon the respondent attorney or his counsel and file with the Supreme Court a corresponding number of answering briefs.

(b) If Objections Not Filed. If the respondent attorney fails to file objections within the thirty-day period above provided, the Association shall have thirty (30) days from the expiration of such period in which to mail respondent attorney one copy and file with the Clerk of the Supreme Court fifteen (15) copies of the Association's brief. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 6.4 Reply of respondent attorney. The respondent attorney shall have twenty (20) days from the day of service of the answering brief in which to file with the Disciplinary Board and the Supreme Court a like number of reply briefs. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 6.5 Hearing.

(a) Setting. Disciplinary proceedings shall have priority and be set when they are ready.

(b) Readiness. A disciplinary proceeding becomes ready for hearing:

(1) If objections have been filed, ten (10) days after respondent attorney's reply was filed or was due to be filed.

(2) If no objections are filed, upon the filing of the Association's brief.

(c) Argument. The Association must file a brief and present oral argument. Respondent attorney may submit the cause on the record, but he may not present oral argument unless a brief has been filed in his behalf.

[Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 6.6 Rehearing.

(a) Finality. An opinion in a disciplinary proceeding is final when filed unless the court specifically provides otherwise.

(b) Petition for rehearing. A petition for rehearing may be filed as provided in ROA I–50, but the petition will not stay the judgment unless a stay is entered by the court. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

VII. COSTS

Rule 7.1 Costs and expenses. In all cases resulting in the administration of censure, reprimand, suspension or disbarment, counsel for the Association shall serve upon the respondent attorney and file in the office of the Association his verified statement of costs and expenses for the disciplinary proceedings to the time the Disciplinary Board makes its recommendation.

(a) Costs and Expenses Defined. The term "costs" is defined to be all sums so taxable in a civil proceeding. The term "expenses" is defined as all other obligations in money necessarily incurred by the Association in the complete performance of its duties under these rules. Expenses shall include, by way of illustration and not of limitation, necessary expenses of Panel members, bar counsel, charges of expert witnesses, charges of court reporters, as well as all other direct provable expenses of the office of the Association.

(b) Statement of Costs and Expenses. In all cases in which the Disciplinary Board determines that a censure or reprimand should be administered, the said statement of costs and expenses shall be served on the respondent attorney at the time he is notified of the proposed censure or reprimand, and if he accepts the censure or reprimand, the amount thereof shall be paid at the time the censure or reprimand is delivered. If the respondent attorney refuses to accept the censure or reprimand, the statement of costs and expenses shall be made a part of the record sent to the Supreme Court, together with any exceptions thereto by the respondent attorney, which exceptions shall be filed within ten (10) days after the service of the statement of costs and expenses upon the respondent attorney. A verified statement of any additional costs and expenses to the Association occasioned by the proceedings in the Supreme Court shall be served upon the respondent attorney and filed with the Clerk of the Supreme Court within ten (10) days after the hearing in that court, and the respondent attorney shall have ten (10) days after such service within which to file exceptions thereto.

(c) Assessment by Supreme Court. If the Supreme Court directs such censure or reprimand, it shall, in its judgment, fix the amount of the costs and expenses to be paid by the respondent attorney as it shall deem just, together with the terms and conditions of the payment thereof.

(d) Assessment Upon Suspension or Disbarment. In all cases in which the Disciplinary Board recommends suspension or disbarment, the said statement of costs and expenses shall be served on the respondent attorney at the time he is notified of the recommendation of the Disciplinary Board, and it shall be made a part of the record sent to the Clerk of the Supreme Court, together with any exceptions thereto by the respondent attorney, which exceptions shall be filed within ten (10) days after the service of the statement of costs and expenses upon the respondent attorney. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 7.2 Supreme court expenses.

(a) Cost Bill. A verified statement of any additional expenses to the Association occasioned by the proceedings in the Supreme Court, shall be served upon the respondent attorney and filed with the Clerk of the Supreme Court within ten (10) days after the hearing in that court.

(b) Exceptions. The respondent attorney shall have ten (10) days after such service within which to file exceptions thereto.

(c) Determination of Costs. The judgment of the Supreme Court, in any such disciplinary proceeding, shall fix the amount of the costs and expenses to be paid by the respondent attorney as it shall deem just. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 7.3 Termination of suspension.

(a) Condition Precedent. No suspended attorney shall resume practice until the amount of the costs and expenses fixed pursuant to these rules has been fully paid. [Adopted May 12, 1969, effective July 1, 1969.]

VIII. REINSTATEMENT AFTER DISBARMENT

Rule 8.1 Restrictions against petitioning.

(a) Time of Petition. No petition for reinstatement shall be filed within a period of one year next after disbarment or within a period of one year next after an adverse decision of the Supreme Court upon a former petition filed by or on behalf of the same person.

(b) Costs. No disbarred attorney may file a petition for reinstatement until the amount of the costs and expenses fixed pursuant to these rules has been fully paid. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.2 Form of petition. A petition for reinstatement as a member of the Association after disbarment therefrom shall be in writing and verified by the petitioner and filed with the Board of Governors. The petition shall set forth the age, residence and address of the petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.3 Fees. The petition shall be accompanied by the application and the total fees required of an attorney applicant under the Rules for Admission to Practice. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.4 Investigation. In its discretion the Board of Governors may refer the petition for reinstatement for investigation and report to the Proper Local Administrative Committee, Disciplinary Board, State Bar Counsel, or to such other person or persons as may be determined by the Board of Governors. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.5 Hearing before the board of governors.

(a) Notice. The board of Governors shall fix a time and place for hearing of the petition and serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such persons as may be ordered by the Board of Governors. Notice of the hearing shall also be published at least once in the Washington State Bar News or such other periodical as the Board of Governors may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and the time fixed for the hearing of the petition for reinstatement.

(b) Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Board of Governors written statements for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Rule 8.6. Except by its leave no person other than the petitioner shall be heard orally by the Board. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.6 Action by the board of governors.

(a) Requirement for favorable recommendations. Reinstatement may be recommended by the Board of Governors only upon affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth in the Rules for Admission to Practice for attorney applicants, and that his reinstatement will not be detrimental to the integrity and standing of the Bar and the administration of justice, or be contrary to the public interest.

(b) Disposition of Recommendation. The recommendation of the Board of Governors shall be served upon the petitioner, and, together with the record in connection therewith, shall be transmitted to the Supreme Court for disposition. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 8.7 Action on Supreme Court's Determination.

(a) Petition Approved. If the petition for reinstatement is granted by the Supreme Court, the action shall be subject to the petitioner's taking and passing the attorney applicant's examination as prescribed by the Rules for Admission to Practice.

(b) Petition Denied. If the petition for reinstatement is denied, the examination and admission fee shall be refunded to the petitioner. [Adopted May 12, 1969, effective July 1, 1969.]

IX. SUSPENSION FOR CONVICTION OF FELONY

Rule 9.1 Suspension.

(a) Suspension Automatic. An attorney shall be automatically suspended from the practice of law upon his conviction of a felony under either state or federal law, whether such conviction be after a plea of guilty, nolo contendere, not guilty, or otherwise, and regardless of the pendency of an appeal; provided, however, that the Disciplinary Board may recommend to the Supreme Court for final disposition the prevention or termination of the suspension if such Board affirmatively finds that moral turpitude was not in fact an element of the crime of which the attorney was convicted, or if the Disciplinary Board affirmatively finds that there is other good cause for preventing or terminating such suspension. Suspension in this manner shall not be a substitute or alternative for disciplinary proceedings against said attorney, but such proceedings shall be commenced by the Disciplinary Board upon said conviction, or prior thereto if reasonable cause therefor exists, and shall proceed without regard to said suspension.

(b) Duration of Suspension. When an attorney is suspended upon conviction of a felony as provided in this rule the duration of such suspension shall not exceed final disposition of the disciplinary proceedings commenced against said attorney. When the disciplinary proceedings are fully completed, after appeal or otherwise, the suspension occuring in this manner shall end and such disciplinary action as then occurs shall commence.

(c) Petition for Reinstatement. A petition for reinstatement after automatic suspension for conviction of a felony pending completion of disciplinary proceedings shall be in writing and verified by the petitioner and filed with the Disciplinary Board. The petition shall set forth the age, residence and address of the petitioner, the date of the conviction, and a concise statement of facts claimed to justify reinstatement pending completion of the disciplinary proceedings. The petition shall be accompanied by the application for admission and the total fees required of an attorney applicant under the Rules for Admission to Practice.

(d) Investigation. In its discretion the Disciplinary Board may refer the petition for reinstatement for investigation and report to the proper Local Administrative Committee, State Bar Counsel, or to such other person or persons as may be determined by the Disciplinary Board.

(e) Notice of Hearing. The Disciplinary Board shall fix a time and place for hearing of the petition by the Disciplinary Board and shall service notice thereof ten (10) days prior to the hearing upon the petitioner and upon such persons as may be ordered by such Board.

(f) Requirements and Procedures. Such petition for reinstatement shall be recommended to the Supreme Court only upon affirmative showing to the satisfaction of the Disciplinary Board that the petitioner possesses the qualifications and meets the requirements as set forth in Rule 3B of the Rules for Admission to Practice, excepting subsections 6, 7, 8 and 9 thereof, and that his reinstatement will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest.

(g) Granting or Denial of the Petition by the Supreme Court. The Disciplinary Board shall keep a record of the hearing upon the petition for reinstatement and shall make and file its findings, conclusions and recommendation thereon with the Supreme Court for final disposition. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 9.2 Reinstatement after suspension for conviction of felony.

(a) Court May Suspend. At any time after institution of a disciplinary proceeding under Rule 3.1, where it appears that a continuation of the practice of law by the attorney during the pendency of the disciplinary proceedings will result in substantial risk of serious injury to the public, the Association, on recommendation of the Disciplinary Board (with no more than one member dissenting), may petition the Supreme Court for an order suspending the respondent attorney during the pendency of the disciplinary proceedings. If the court, after an en banc hearing, finds a continuation of practice by the attorney will result in substantial risk of serious injury to the public, it may enter an order suspending such attorney from the practice of law. Such suspension shall not continue beyond the conclusion of the disciplinary proceedings.

(b) Petition and Notice to Answer. The petition to the Supreme Court under this rule shall set forth the facts or omissions of the respondent attorney contained in the pending complaint, together with such other facts as may constitute grounds for suspension pending disciplinary proceedings. The petition may be supported by documents or affidavits. The petition shall be accompanied by a notice to answer in substantially similar form as provided in Rule 3.1(a)(2), but shall refer to a petition for suspension pending disciplinary proceedings in lieu of formal complaint and shall require the answer to be filed with the Clerk of the Supreme Court.

(c) Service. Service of the petition and notice to answer shall be by copy thereof served in the manner provided in Rule 3.1(b)(1).

(d) Answer to Petition. The answer may contain additional facts relating only to the issue of substantial risk of serious injury to the public, shall be verified by respondent or his counsel, and may be supported by documents or affidavits. The answer shall be filed within the time specified in Rule 3.1(a)(6). For good cause shown, the Chief Justice may extend the time for answer.

(e) Service of Answer. Two copies of the answer shall be served on the Washington State Bar Association within the time specified in subsection (d) hereof by filing in the office of the Association.

(f) Hearing. Upon the filing of an answer or expiration of the time for filing an answer, a hearing will be held in accordance with the provision of Rule 6.5.

(g) Costs. No costs shall be taxed. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

X. INCOMPETENCY TO PRACTICE LAW

Rule 10.1 Transfer to inactive status.

(a) Automatic Transfer. In the event that an active member is determined by a court of competent jurisdiction to be mentally incompetent or mentally ill, such member shall automatically be transferred from active to inactive membership status upon the entry of such judgment, regardless of the pendency of an appeal.

(b) Discretionary Action. If it appears to the Board of Governors that there is reasonable cause to believe that an active member who has not been judicially determined to be mentally incompetent or mentally ill is unable to adequately conduct his practice because of mental or physical disability, a complaint in the name of the Association shall be served upon such attorney and shall be referred to a Panel for a hearing on the sole issue of the capacity of the member to adequately conduct his practice. The Panel, at the conclusion of its hearing, shall prepare findings, conclusions, and a recommendation as to whether or not the respondent attorney should be placed on the inactive roll. The record of such proceeding shall thereafter be reviewed by the Board of Governors, which shall make findings and conclusions based thereon and shall enter an appropriate order.

(c) Applicable Rules. The rules of procedure pertaining to disciplinary proceedings shall apply to a proceeding instituted pursuant to the preceding section, but such a proceeding shall not constitute a disciplinary proceeding, nor shall it in any manner reflect discredit upon the respondent member as an attorney. In the event that the respondent attorney does not appear by an attorney within the time prescribed by such rules for the filing of an answer, the Board of Governors shall appoint a member of the Bar to represent the member in such proceeding.

(d) Transfer to Inactive Status. An order of the Board of Governors transferring a member to inactive status shall become effective fifteen (15) days after the service of a copy of such order upon the respondent member or his attorney unless within said fifteen–day period a request for review by the Supreme Court is filed with the Association. Upon service of such a request, the Association shall file the record of the proceeding with the Supreme Court and the rules of procedure applicable to disciplinary proceedings before the Supreme Court shall apply. The order of the Board of Governors shall be

ineffective pending the review. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 10.2 Reinstatement.

(a) Reinstatement After Court Adjudication. Any member who has been placed on the inactive roll as herein provided by reason of having been judicially determined to be mentally incompetent or mentally ill, shall be reinstated to active membership by the Board of Governors (1) upon being determined by a court of competent jurisdiction to be restored to competency, and (2) upon compliance with any applicable requirement for transfer from inactive to active status.

(b) Reinstatement Where No Court Adjudication. Any member who has been placed on the inactive roll as herein provided without having been judicially determined to be mentally incompetent or mentally ill, may petition for reinstatement to active membership as hereinafter provided.

(1) *Petition.* The petition for reinstatement shall be in writing, verified by the petitioner, and shall be filed with the Board of Governors.

(2) *Investigation.* The Board of Governors in its discretion may refer the petition to the proper Local Administrative Committee, State Bar Counsel, or to such other person or persons as it may determine, for investigation and report.

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

(4) *Reinstatement.* The petition shall be approved by the Board of Governors upon an affirmative showing by the petitioner that he is again able to adequately engage in the practice of law; upon approval of the petition, the petitioner shall be reinstated to active membership upon compliance with any applicable requirement for transfer from inactive to active status.

(5) *Review by the Supreme Court.* If the petition is not granted, petitioner shall be entitled to request a review by the Supreme Court. Such request shall be filed with the Association within thirty (30) days after service upon the petitioner of a copy of the order of the Board of Governors denying the petition. Upon receipt of such request, the Association shall file the record of the proceedings with the Supreme Court and the rules of procedure applicable to disciplinary proceedings before the Supreme Court shall apply. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 10.3 Transfer by court.

(a) Court May Place on Inactive Status. At any time after the filing of a complaint pursuant to the provisions of Rule 10.1(b), where it appears that a continuation of the practice of law by the attorney during the pendency of such proceedings will result in substantial risk of serious injury to the public, the Association, on recommendation of the Board of Governors (with no more than one member dissenting) may petition the Supreme Court for an order transferring the respondent attorney to inactive membership status during the pendency of the proceedings. If the court, after an en banc hearing, finds that a continuation of the practice of law by the attorney will result in substantial risk of serious injury to the public, it may enter an order transferring such attorney to inactive status during, but not beyond the conclusion of, the proceedings commenced under Rule 10.1(b) and any review thereof.

(b) Petition and Notice to Answer. The petition to the Supreme Court under the provisions of this rule shall set forth the pertinent allegations contained in the pending complaint, together with such other facts as may constitute grounds for transfer to inactive status. The petition may be supported by documents or affidavits. The petition shall be accompanied by a notice to answer in substantially similar form as provided in Rule 3.1(a)(2), but shall refer to a petition for transfer to inactive status, in lieu of formal complaint, and shall require the answer to be filed with the Clerk of the Supreme Court.

(c) Service. Service of the petition and notice to answer shall be by copy thereof served in the manner provided in Rule 3.1(b)(1).

(d) Answer to Petition. The answer may contain additional facts relating only to the issue of substantial risk of serious injury to the public, shall be verified by respondent or his counsel, and may be supported by documents or affidavits. The answer shall be filed within the time specified in Rule 3.1(a)(6). For good cause shown, the Chief Justice may extend the time for answer.

(e) Service of Answer. Two copies of the answer shall be served on the Association within the time specified in subsection (c) hereof by filing in the office of the Association.

(f) Hearing. Upon the filing of an answer or expiration of the time for filing an answer, a hearing will be held in accordance with the provisions of Rule 6.5.

(g) Costs. No costs shall be taxed. [Adopted Dec. 15, 1972, effective Jan. 2, 1973.]

XI. SUSPENSION FOR CUMULATIVE DISCIPLINE

RULE 11.1 Criteria. (a) An attorney disciplined after the effective date of this rule who has a prior record of:

(1) Three or more censures or reprimands; or

(2) Any combination of a suspension or disbarment plus one or more censures or reprimands, shall be subject to suspension from the practice of law.

RULE 11.2 Procedure. (a) Upon an attorney's accumulation of discipline as provided in Rule 11.1, the Disciplinary Board may recommend to the Supreme Court suspension of said attorney.

(b) The Association shall file with the Supreme Court the respondent attorney's prior record of discipline and its recommendation for suspension. The respondent attorney shall be served with a copy of the record filed with the Supreme Court.

(c) The Supreme Court shall allow the Association and the respondent attorney the opportunity to submit written briefs or oral argument under such conditions and within such time as the court directs. [Adopted June 19, 1974, effective July 1, 1974.]

XII. GENERAL PROVISIONS

Rule 12.1 Definitions.

(a) Residence. For the purpose of these rules, a member of the Association is a resident of that county, district and congressional district in which he maintains, or last maintained, his principal office for the practice of law whether that county, district or congressional district is his place of abode or not; provided, notwithstanding and foregoing, that the term "residence" as used in Rules 2.3(d) and 2.4(a)(1) shall instead mean place of abode.

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

(c) Association. The word "Association" wherever it appears in these rules refers to the Washington State Bar Association.

(d) Board. The word "Board" when used alone in these rules refers to the Board of Governors of the Association, unless a contrary intention is indicated.

(e) Panel. The word "Panel" when used alone in these rules refers to a Hearing Panel. [Adopted May 12, 1969, effective July 1, 1969; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 12.2 Papers. All pleadings, briefs, documents or notices in these rules provided for must be typewritten or printed. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 12.3 Filing. Whenever in these rules it is required that any document shall be filed with the Disciplinary Board or the Board of Governors, such document shall be served on the Association at its office. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 12.4 Expenses.

(a) Local Administrative Committee, Trial Committee, Disciplinary Board and Panels. The members of the Local Administrative Committees, Local Trial Committees, Panels, and the Disciplinary Board shall receive no compensation for their services, but their expenses, if any, incurred in connection with their duties, subject to the limitations established by resolution of the Board of Governors and except as otherwise provided in these rules, shall be paid from the funds of the Association; provided, that the Board of Governors shall have discretionary authority to provide compensation to members of Panels in cases which become unusually time consuming or where some other especially burdensome circumstance is involved.

(b) Guardian Ad Litem and Counsel. Except as otherwise provided by these rules, the fees for services rendered and costs expended and incurred by a guardian ad litem or counsel appointed under authority of these rules shall be paid by the Association. [Adopted May 12, 1969, effective July 1, 1969; amended, adopted and effective Jan. 27, 1971.]

Rule 12.5 Representation of Respondent. A former president of the Association, a former member of the Board of Governors or Disciplinary Board, shall not represent a respondent attorney in proceedings under these rules until after the lapse of two years following expiration of his term of office. [Adopted May 12, 1969, effective July 1, 1969.]

Rule 12.6 Disclosure.

(a) Disciplinary Files and Records Confidential. Except as otherwise provided in these rules, the file in a disciplinary proceeding and a disciplinary record shall be open only to the Board of Governors, Disciplinary Board, State Bar Counsel, and the Supreme Court if filed for review or requested by a member of the Supreme Court, provided, however:

(1) The respondent attorney or his counsel may have access to the file consisting of the formal complaint, and all other pleadings, documents and instruments filed in the proceeding subsequent thereto.

(2) When requested by the official disciplinary body of another state in connection with a pending disciplinary action in that state, the Clerk of the Supreme Court will certify and transmit to the official disciplinary body of that state the record of the attorney involved.

(b) Advice to Media. Nothing in these rules shall make it improper for the Board of Governors to advise the news media of the pendency of disciplinary proceedings against an attorney when in such Board's judgment it is in the public interest to do so.

(c) Notice of Disciplinary Action Taken. (1) If an attorney is permitted to resign during the pendency of disciplinary hearings, or upon suspension or disbarment, the fact of such resignation, suspension or disbarment with the attorney's name shall be published in the Washington State Bar News.

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

(d) Disciplinary Record. The disciplinary record of any attorney shall consist of a brief summary of any

complaint made against him and the disposition thereof. Information with reference thereto may be released by the Association:

(1) When specifically authorized by these rules; or

(2) When requested in writing by the attorney; or

(3) When requested by the chairman of a Local Administrative Committee who is investigating a complaint against the attorney; or

(4) When directed by the Board of Governors in the public interest; or

(5) When directed by the Supreme Court.

(e) Contempt. Disclosure, except as herein provided, of any matter made confidential by these rules by any person whomsoever, shall subject such person to a proceeding as for contempt. [Adopted May 12, 1969, effective July 1, 1969; amended July 21, 1972, effective July 21, 1972; amended Dec. 15, 1972, effective Jan. 2, 1973.]

Rule 12.7 Service at Pleasure of Board of Governors. Notwithstanding anything to the contrary in these rules provided, members of Local Administrative Committees, Trial Committees and the Disciplinary Board shall serve at the pleasure of the Board of Governors. [Adopted Dec. 15, 1972, effective Jan. 2, 1973.]

Part II
RULES FOR SUPREME COURT

SUPREME COURT ADMINISTRATIVE RULES (SAR)

Rule 1 Seal. The seal of the supreme court shall be the vignette of General George Washington, with the words, "SEAL OF the supreme court——STATE OF WASHINGTON," surrounding the vignette. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Seal of court: RCW 2.04.060.

Rule 2 Style of Process. Process of the supreme court shall run in the name of the "state of Washington," bear attest in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to such rules or orders as are prescribed by the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Style of process: RCW 2.04.050.

Rule 3 Judgments. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Effect of supreme court judgments: RCW 2.04.220.

Rule 4 Sessions of the supreme court. The regular sessions of the supreme court shall be held in the supreme court, the Temple of Justice, at the capital, beginning on the second Monday of January, the second Monday of May, and the second Monday of September each year. The court will not sit for the regular hearing of cases in July and August.

Sessions of the court shall commence at 9:00 a.m. or at such other time as the court may order.

Hearings en banc, rehearings, and special hearings may be set by the court in its discretion at such other times as the court may order. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; last sentence of first paragraph added, adopted Aug. 2, 1955, effective Aug. 1, 1955.]

Sessions of court: RCW 2.04.030.

Rule 5 Adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court sitting at any time. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Adjournments, effect of: RCW 2.04.040.

Rule 6 Two departments——Assignment of justices. The court may be divided into two departments for the hearing of motions and such other matters as the chief justice may designate. The chief justice shall assign four of the associate justices to each department, and such assignment may be changed by him from time to time, provided that the associate justices shall be competent to sit in either department and may interchange with one another by agreement among themselves, or, if no such agreement is made, as ordered by the chief justice.

The chief justice shall sit in both departments and shall preside when so sitting. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Departments of court: State Constitution Art. 4 § 2.

Two departments, quorum: RCW 2.04.120.

Rule 7 Reserved.

Rule 8 Chief justice, choice of——Duty. The justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two justices having in like manner the same short term, the other justices of the supreme court shall determine which of them shall be chief justice.

The chief justice shall be the executive officer of the court and shall do and perform those duties required of him by the constitution and laws of the state of Washington and the rules of this court, and shall serve as coordinator between the two departments. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Acting chief justice: RCW 2.04.140.

Chief justice, selection: RCW 2.04.130.

Rule 9 Acting chief justice. The court shall elect from time to time an acting chief justice. The acting chief justice may be any member of the court not holding his office by appointment or election to fill a vacancy. The acting chief justice shall perform the duties, and exercise the powers of the chief justice during the absence or inability of the chief justice to act. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Acting chief justice: RCW 2.04.140.

Chief justice, selection, absence: RCW 2.04.130.

Rule 10 Right of senior justice to act. In the absence or inability of both the chief justice and the acting chief justice, the senior justice present at the capital shall act as chief justice. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 3, 1951.]

Rule 11 Seniority of justices. Seniority among the justices of the supreme court shall be determined by length of continuous service. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule 12 Acts in contempt of court. It shall be contempt of this court for anyone to divulge to others than the justices and employees of this court working upon an opinion, the results of any appeal prior to the time the opinion is filed by the clerk of the supreme court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Mar. 6, 1962.]

Rule 13 Minutes——Court business meetings. The court will cause to be recorded in a book kept for that purpose minutes of all business meetings. The justice junior in length of service shall act as secretary. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule 14 Opinions——When filed. All opinions filed with the clerk of this court shall be signed except per curiams. All opinions in any case shall be filed at the same time, and the time of filing shall be determined by the chief justice. Original opinions shall not be taken from the clerk's office. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Apr. 9, 1953, effective Apr. 9, 1953.]

Rule 15 Hearings, quorum, finality of opinion, costs. (a) Hearings.

(1) On the Merits. Argument on the merits of a cause shall be set for hearing by the en banc court.

(2) Motions. Argument on motions may be set for hearing by a department of the court.

(b) Quorum. A majority of the justices hearing argument in a cause shall be necessary for a pronouncement of decision.

(c) Finality.

(1) Orders. An order shall be final when entered.

(2) Decisions. A decision shall be final:

(i) Upon stipulation that no petition for rehearing will be filed and the cause may be remitted, or

(ii) When a majority of the justices so direct, or

(iii) Thirty days after the opinion is filed unless a petition for rehearing is filed.

(iv) If a timely petition for rehearing is filed, upon a denial of the petition. If a petition for rehearing is granted, the decision of the court filed after the rehearing shall become final in accordance with the above rules.

(d) Costs. If a cause is remitted prior to the taxing of costs and a cost bill is timely filed, jurisdiction solely for the taxing of costs on appeal is retained by the supreme court. Costs as finally taxed will be determined by a supplemental judgment. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; proviso added, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Apportionment of business, en banc hearings: RCW 2.04.150.

En banc hearings, quorum, finality of decision: RCW 2.04.170.

Finality of departmental decisions, rehearings: RCW 2.04.160.

Rule 16 Clerk of the supreme court——Appointment——Powers——Duties. (1) The justices of the supreme court shall appoint a clerk of that court, who may be removed at their pleasure. The clerk shall receive such compensation by salary only as shall be fixed by the court.

(2) The clerk of the supreme court may have one or more deputies, to be appointed by him in writing, to serve during his pleasure. The deputies shall have the power to perform any act or duty relating to the clerk's office that their principal has, and their principal is responsible for their conduct.

(3) The clerk and his deputies are prohibited, during their continuance in office, from acting or having a partner who acts as an attorney.

(4) Before entering upon the duties of his office, the clerk and each deputy clerk shall take an oath of office,

and give bond in such a sum, with surety and condition, as the court shall require, which oath and bond shall be deposited with the secretary of state.

(5) The clerk shall keep his office at the seat of government open at such hours as the court shall require, and shall keep such records and books as are prescribed by the court.

(6) The clerk of the supreme court is given the power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law. It is the duty of the clerk——

(a) To keep the seal of the court and affix it in all cases where he is required by law;

(b) To record the proceedings of the court;

(c) To keep the records, files and other books and papers appertaining to the court;

(d) To file all papers delivered to him for that purpose, in any action or proceeding in that court, except when by the rules of court he is directed to refuse to file papers under the conditions set out by the rules.

(7) The clerk of the supreme court shall keep the following books and records:

(1) Journal in which he shall record
(a) all judgments,
(b) orders of the court except those of a temporary nature which do not affect the final result of the case,
(c) original bonds,
(d) citations to supreme court of United States,
(e) mandates from the supreme court of the United States and certified copies of its orders;

(2) Appearance docket in which he shall show
(a) the substantial title of the case, the number in the superior court, the trial judge, the county whence comes the appeal, and names of attorneys;
(b) appearance fees and money paid into the clerk's trust fund;
(c) the date of filing each paper and part of the record;
(d) all minute entries directed by the court or chief justice;
(e) the date for hearing on the calendar and any continuance;
(f) the disposition of motions and petitions;
(g) the entry of judgment and where recorded;
(h) date remitted;
(i) citation of opinion in Washington Reports.

(3) General Index of Cases

(4) Motion docket, which shall show the number and title of the case, the attorneys, the nature of the motion and sufficient space for the chief justice to show the disposition;

(5) Cash Book, in which shall be shown all monies received and disbursed by the clerk;

(6) Trust Fund Journal, in which shall be shown all receipts and disbursements in clerk's trust fund;

(7) Appropriation Expenditure Ledger, showing all expenditures from appropriations for salaries and operations.

(8) Withholding Tax Ledger, showing withholdings from salaries of each employee and officer of the court for Federal income taxes and disbursement of the same.

(9) Court Room Docket, which shall show the title and number of each case argued, the department, names of the judges sitting, the attorneys arguing each side of the case, and the time used by each, together with the nature of the matter heard. The bailiff, at the direction of the clerk, will prepare and make entries.

(10) Clerk's Docket of Admission and Discipline of Attorneys, which shall show all papers covering the admission and discipline of attorneys.

(8) The clerk shall do and perform any and all other duties as may be prescribed by the supreme court.

(9) In all cases that are remanded for a new trial or for further proceedings, at the time the remittitur goes down, the clerk, at the expense of appellant, shall return the statement of facts and the exhibits to the clerk of the superior court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 2, 1950, effective Jan. 2, 1951; subdivision (9) added, adopted Dec. 2, 1954, effective Jan. 3, 1955.]

Supreme court clerk: Chapter 2.32 RCW; state Constitution Art. 4 § 22.

Rule 17 Reporter——Appointment——Duties. (1) The justices of the supreme court shall appoint a reporter for the decisions of the court, who shall be removable at their pleasure. He shall receive such annual salary as shall be fixed and determined by the supreme court.

(2) The reporter shall prepare the decisions of the supreme court for publication in the weekly advance sheets and in the permanent volumes of the Washington Reports. The decisions shall be published chronologically, unless otherwise directed by the court.

(3) When in any case, a petition for rehearing has been made and denied, he shall make a notation thereof at the conclusion of the decision as reported in the permanent volume.

(4) He shall prepare the decisions for publication in the weekly advance sheets by giving the title of each case, the classification of the points decided, and the names of counsel, and shall prepare a subject index to each book and prefix a table of cases reported. When the decisions published in a volume of advance sheets

approximately equal those to be published in the corresponding permanent volume, the volume of advance sheets shall be closed, and the reporter shall prepare a cumulative subject index covering such volume, to be published in the last book thereof.

(5) He shall prepare the decisions for publication in the permanent volumes by giving the title of each case, a syllabus of the points decided, and the names of counsel, and shall prepare a full and comprehensive index of each volume, and prefix a table of cases reported.

(6) He shall furnish to each of the justices proof sheets of the decisions written by such justice, as the same are to appear in the bound volume, and, after examination, the justice will return them to the reporter. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subd. (3) amended, adopted Nov. 2, 1960, effective Jan. 2, 1961; rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961.]

Supreme court reporter: Chapter 2.32 RCW; state Constitution Art. 4 § 18.

Rule 18 Law librarian——Selection and duties. The court will appoint a law librarian who may be removed at its pleasure. The law librarian shall——

(a) maintain as complete and up–to–date law library as possible;

(b) keep the entire library orderly and clean, and the material therein well arranged;

(c) do legal research for any supreme court justice when he requests it;

(d) maintain in the main reading room of the library a chronological listing of legal text books under appropriate classifications;

(e) maintain in the main reading room of the library a system whereby Shepard's Washington Citator will be kept up to date so far as affected by this court's printed opinions;

(f) maintain in the main reading room of the library a system whereby the current Washington Digest is kept up to date. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Duties of state law librarian relative to session laws, legislative journals and supreme court reports: Chapter 40.04 RCW.

State law librarian member of commission to supervise publication of decisions of supreme court: RCW 2.32.160.

State law library: Chapter 27.20 RCW.

Rule 19 Bailiff——Appointment——Duties. The court will appoint a bailiff whose duties shall be to attend the sessions of the court, circulate opinions and petitions, act as clerk to the chief justice, and do and perform such other duties as may be required by the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Supreme court bailiffs, compensation: RCW 2.32.340, 2.32.350.

Rule 20 Memorial exercises. During the week before the beginning of the May term of each year, the court will conduct suitable memorial exercises for members or former members of the supreme court who have died within the preceding year. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule 21 Justices pro tempore. (1) Selection and Use. When a member of the court is disqualified or unable to function on a case for good cause, a majority of the regular remaining members of the court may, by written order, designate a justice pro tempore to sit with the court en banc to hear and determine the cause. The designating order shall set forth the period of service. In no event shall more than two justices pro tempore sit with the court en banc.

(2) Qualification. A justice pro tempore shall take the oath of office required by Article 4, § 28 of the state Constitution. The oath of office, together with the original order of appointment, shall be filed forthwith in the office of the secretary of state. A copy of the oath and order of appointment shall be filed in the office of the clerk of the supreme court.

(3) Duties of the Justice Pro Tempore.

(a) A justice, while serving pro tempore, shall have the same power and authority as a justice of the supreme court, and he shall perform such duties as the court may direct.

(b) A justice pro tempore will function promptly on opinions and petitions for rehearing on which he is qualified to function. When such opinions are received by him after the period of his appointment has expired, his original period of office as a justice pro tempore shall be deemed to exist in order for him to function and to accomplish the ministerial act of filing the opinion.

(4) Publication of Opinions.

(a) Dissents and Concurrences. Dissents or concurrences written by a justice pro tempore shall be published in regular form, except that a reference symbol shall be placed after his name, directing attention to a footnote which shall read:

"Justice _____ is serving as a justice pro tempore of the supreme court pursuant to Const. Art. 4 § 2(a) (amendment 38)."

(b) Opinions signed by a justice pro tempore shall be published in the regular form, except that the name of the justice pro tempore shall follow the names of the justices of the supreme court signing such opinion, with the designation "Pro Tem." after his signature.

(c) There shall appear, in each bound volume of the Washington Reports, on the page following the page listing the justices of the supreme court, the names and terms of office of the justices pro tempore who served during the period covered by the published volume. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted March 13, 1963, effective March 13, 1963; amendment adopted April 29, 1963, effective April 29, 1963; Subsec. (2) amended, effective Mar. 19, 1964.]

Judges pro tempore of the supreme court, compensation and expenses: RCW 2.04.240, 2.04.250.

Rule 22 Reporting of criminal cases. On any criminal appeal taken to the Supreme Court from a determination made by a court of lesser jurisdiction, the court clerk shall, within five court days of the filing of a final decision on the merits in the matter, forward to the Washington State Patrol Section on Identification on a form approved by the Administrator for the Courts its disposition of the particular case. In the event that original or collateral proceedings are brought in the Supreme Court and the result of those original or collateral proceedings changes, or otherwise makes inaccurate, the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974, effective March 1, 1974.]

SUPREME COURT RULES ON APPEAL (ROA)

PART I RULES FOR ORIGINAL APPEALS TO THE SUPREME COURT FROM THE SUPERIOR COURT

PART II RULES FOR THE REVIEW BY PETITION OR APPEAL OF ORDERS OR JUDGMENTS OF THE COURT OF APPEALS

PART I
RULES FOR ORIGINAL APPEALS TO THE SUPREME COURT FROM THE SUPERIOR COURT

Rule I–1 Method herein provided exclusive. The mode provided by these rules for appealing cases to the supreme court, and for securing a review of the same therein, shall be exclusive and shall supersede all other methods heretofore provided. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 6, 1955, effective Jan. 3, 1956.]

Rule I–2 Definitions. In these rules, unless the context or subject matter otherwise requires:

(a) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) The words "superior court" mean the court from which an appeal is taken pursuant to these rules.

(c) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(d) The words "shall" and "must" are mandatory, and the word "may" is permissive.

(e) The terms "party," "appellant," "respondent," "petitioner" or other designation of a party include such party's attorney of record.

(f) "Judgment" means any judgment, order or decree from which an appeal lies.

(g) The term "remittitur" means a certified copy of the judgment of the supreme court which is authenticated to the court from whence the appeal is taken, or over which or whom its controlling jurisdiction is exercised. In case the judgment or order appealed from is reversed or modified, a certified copy of the opinion of the supreme court shall be attached to the remittitur.

(h) The terms "written," "writing," "typewriting" and "typewritten" include other methods of duplication equivalent in legibility to typewriting.

(i) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 2, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 6, 1955, effective Jan. 3, 1956.]

Judgment, order, motion defined: RCW 4.56.010, 4.56.020, 7.16.020.

Rule I–3 Service of papers. (1) Service of papers must, in all cases, be made upon the attorney of record of a party, if he has one, unless the place of business or residence of such attorney is unknown, when it may be made upon the party.

(2) Service upon an attorney shall be made by delivering to him personally, or at his office by delivery to his clerk or to the person having charge thereof; or, if his office be not open, or there be no one in charge thereof, at his residence by delivery to some person of suitable age and discretion residing therein; or, if neither of the foregoing methods can be followed, by deposit in the post office to his address with postage prepaid. In capital causes, a motion to dismiss an appeal shall be served upon the defendant personally, as well as upon the attorney of record.

(3) Service upon a party shall be made by delivery to him personally, or at his residence, to some person of suitable age and discretion residing therein, between the hours of nine o'clock in the forenoon and nine o'clock in the evening.

(4) Where the residence of a party and that of his attorney of record, if he have one, are not known, and proof of such fact be shown by affidavit, the service may be made upon the clerk of the superior court in which the cause was tried, for the party or attorney.

(5) Service may be made by mail when the party making the service and the person on whom such service is to be made reside in different places; postage must in such cases be prepaid. Time shall begin to run from the date of deposit in the post office. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Commencement of actions: Chapter 4.28 RCW.

Certiorari, mandamus, prohibition: Chapter 7.16 RCW.

Rule I–4 Order of filing and serving immaterial. Whenever any rule or statute heretofore or hereafter enacted requires a motion for a new trial, statement of facts, notice of appeal or other documents concerning appeals or constituting a part of the record of appeals to the supreme court to be filed and served or served and filed, the serving and filing shall be equally valid and effective whether the document shall be filed or served first and no appeal shall be dismissed because of the order of the filing and serving. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–5 Personal appearance not necessary. Personal appearance of any party in the supreme court shall not be necessary. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 2, 1950, effective Jan. 2, 1951.]

Rule I–6 Submission on failure to appear. Where a party does not appear personally or by attorney when the cause is called for hearing, the cause, as to such party, shall be deemed submitted. This rule shall not preclude oral argument by the opposite party. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–7 Violation of rules. The court may impose terms and penalties for the violation of or failure to observe rules other than those relating to jurisdiction. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–8 Appeals——When dismissed. The supreme court will dismiss any civil or criminal appeal in which the jurisdictional requirement is not complied with. The court may at any time upon the giving of thirty days' notice dismiss any appeal for want of prosecution.

[Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–9 Computation of time. The time within which acts are to be done, as provided in these rules, shall be computed by excluding the first and including the last day. If the last day is a Saturday or Sunday or a holiday the act must be completed on the next business day. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]
Computation of time: RCW 1.12.040, 4.28.005.

Rule I–10 Docket fees. (a) Requirement. The clerk shall not file any paper on the part of a party to a proceeding until the statutory docket fee, chargeable against such party, has been paid or the party has been authorized to proceed without the payment of fee.

(1) *Waiver in Civil Cases.*

(i) Habeas Corpus. In habeas corpus proceedings filed originally in the Supreme Court, the Chief Justice may waive the requirement of payment of a filing fee pursuant to ROA I–56.

(ii) Certiorari. A determination pursuant to ROA I–46(c) (2)(i) that an appellant is authorized to appeal without the payment of a docket fee is authority for the appellant to petition for review of an order which allegedly denies him the means of perfecting his appeal without payment of a docket fee.

(iii) Indigent Cases. Upon a petition to proceed without the payment of a docket fee supported by an affidavit showing to the satisfaction of the Chief Justice that petitioner does not have the means to pay the docket fee and that the appeal is in good faith and not frivolous, the Chief Justice may waive the requirement of a docket fee.

(2) *Waiver in Criminal Cases.* Waiver of the requirement of docket fees in criminal cases is governed by ROA I–46. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Dec. 30, 1969, effective Jan. 16, 1970. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–11 Assignment of causes. (1) For the purpose of hearings in this court, causes from the several counties will be set by the clerk at the direction of the chief justice.

(2) Two weeks before the beginning of each term of the court, the clerk shall set for hearing such causes on the docket ready for hearing as the chief justice may direct. Also, twenty days before the date of the hearing on the last cause thus set, the clerk shall, in the same manner, set for hearing at the foot of the calendar all criminal causes ready for hearing. A cause on the docket of the court shall be deemed ready for hearing when it appears that the transcript is on file; and

(a) That the appellant's brief and respondent's brief are on file; or

(b) That the appellant's brief is on file, and has been served upon the respondent for a period of thirty days or more; or

(c) That the appellant's brief is on file, and all parties to the appeal have stipulated that the cause may be set for hearing at such term. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Apr. 15, 1955, effective April 15, 1955.]

Rule I–12 Calendar. As soon as the causes shall have been set for a regular term of the court, the clerk shall print a calendar thereof and shall mail a copy of the calendar to each attorney or firm of attorneys having any cause thereon. Causes becoming ready for hearing after the making up of the printed calendar may be set at the foot of the calendar, or at such other time as the court may fix; and counsel shall be notified thereof in such manner as the court may order. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Apr. 15, 1955, effective April 15, 1955.]

Rule I–13 Taking papers from clerk's office. No paper filed with the clerk of this court shall be taken from the court room or clerk's office except by permission of the court or one of the judges, and when so taken a receipt in writing therefor must be left with the clerk. Before the cause is finally determined in this court, permission to take papers will not be granted except to a party or his attorney who shall have entered an appearance in this court in the cause in which such papers are filed. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–14 Appeal to the supreme court——When allowed. (1) Appeal to the Supreme Court——When Allowed. Any party aggrieved by a final order or judgment or order for a new trial by the superior court in a case set forth below may appeal to the supreme court:

(a) Cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) Criminal cases where the death penalty has been decreed;

(c) Cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) Cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decision of the supreme court; and

(e) Cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination. [Adopted July 12, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Comment by the Court. Complete revision of ROA 14 setting forth cases which can be appealed directly from the superior court to the supreme court.

Exceptions: RCW 4.80.010–4.80.050.

Rule I–15 Jurisdiction. The supreme court shall acquire jurisdiction of a cause or proceeding when a petition for review is granted, a writ is issued, or upon the filing of a proper notice of appeal to the supreme court. Upon acquiring jurisdiction of a cause, the supreme court shall have control of the superior court and court of appeals and of all inferior officers in all matters pertaining thereto and may enforce such control by a mandate or otherwise and, if necessary, by fine and imprisonment, which imprisonment may be continued until obedience shall be rendered to the mandate of the supreme court. The superior court shall retain jurisdiction for the purpose of all proceedings by these rules provided to be had in such court, for the purpose of settlement and certification of the statement of facts, and for all other purposes as might be directed by order of the supreme court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Rule I–16 Powers of supreme court. Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the supreme court will affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and will direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and, if the appeal is from a part of a judgment or order, will affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing, and no cause shall be deemed decided until the decision in writing is filed with the clerk. In giving its decision, if a new trial is granted, the court may pass upon and determine all the questions of law involved in the cause presented upon such appeal and necessary to the final determination of the cause. Without the necessity of taking a cross–appeal, the respondent may present and urge in the supreme court any claimed errors by the trial court in instructions given or refused and other rulings which, if repeated upon a new trial, could constitute error prejudicial to the respondent. An appeal to the supreme court from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross–appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the supreme court shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; last sentence amended, adopted Dec. 2, 1954, effective Jan. 3, 1955; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Rule I–17 What may be reviewed. In a case reviewed by the supreme court, the court will review any intermediate order or determination of the superior court or the court of appeals which involves the merits and materially affects the judgment, appearing upon the record. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Exceptions: RCW 4.80.010–4.80.050.

Rule I–18 Designation of parties. The party appealing shall be known as the appellant, and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served; but the title of the cause shall in other respects remain unchanged. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–19 Voluntary withdrawal of appeal. After a notice of appeal has been filed but before oral arguments on the merits, the superior court from which the appeal was taken shall have jurisdiction to dismiss the appeal, upon the filing of a stipulation by all the parties to the cause asking that the appeal be dismissed. When any such order dismissing the appeal is entered by the superior court, the clerk thereof shall forthwith file in the supreme court a certified copy of such order and upon the filing thereof, the order shall be effective, the appeal shall be considered as never having been taken, the sureties discharged from all liability on the appeal bond if one has been filed, and the supreme court shall no longer have jurisdiction. Dismissals requested after oral argument on the merits shall be granted only by the supreme court in its discretion. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Dec. 17, 1970, effective April 16, 1971. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Apr. 16, 1957.]

Rule I–20 Second appeal. No withdrawal of an appeal, and no dismissal which does not go to the substance of or the right to the appeal, shall preclude any party from taking another appeal in the same cause, within the time limited by these rules. [Adopted July 2, 1969, effective July 8, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–21 Death of party not to affect appeal. The death of a party in a civil action after the rendition of a final judgment in the superior court shall not affect any appeal taken, or the right to take an appeal; but the proper representatives in personalty or realty of the deceased party, according to the nature of the case, may voluntarily appear and be admitted parties to the cause, or may be made parties at the instance of another party, as may be proper, as in the case of death of a party pending in action in the superior court, and thereupon the appeal may proceed or be taken as in other cases; and the time necessary to enable such representatives to be admitted or brought in as parties shall not be computed as part of the time in these rules limited for taking an appeal, or for taking any step in the progress thereof. [Adopted July 2, 1969, effective July 8, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–22 Bond for costs. (1) Bond for costs on appeal. A bond for costs on appeal shall be filed with the clerk of the superior court when the notice of appeal is given or within ten days thereafter, which bond shall be executed in behalf of the appellant by one or more sufficient sureties and shall be in a penalty of not less than three hundred dollars, conditioned to save the respondent harmless from costs and damages occasioned by the appeal; or money in an amount not less than three hundred dollars may be deposited with the clerk in lieu thereof. At the time the bond for cost on appeal is filed or a deposit in lieu thereof is made, a copy of the bond for costs on appeal or written notice of the deposit shall be served on the adverse party. No bond or deposit shall be required:

(a) When the appeal is taken by the state, or by a county, city, town or school district or by a defendant in a criminal action;

(b) When the appeal is taken from an order of the superior court denying an application for any writ applied for by or on behalf of any person confined and restrained of his liberty by any judgment or order of any court of the state of Washington, or by order of any state, county, or city authority within this state, or so restrained of his liberty by any state, county, or city official;

(c) When the appeal is from an order of the superior court denying the application of any person confined as aforesaid to vacate the judgment by virtue of which he is so confined, regardless of whether the application be by way of motion or petition.

(2) Superior court discretion in fixing amount of bond. The superior court may, upon application of the respondent and for good cause shown, increase the bond on appeal over the amount of three hundred dollars. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 20, 1950, effective Jan. 2, 1951; rule amended, adopted Sept. 25, 1951; rule amended, adopted Dec. 14, 1953, effective Mar. 1, 1954; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–23 Supersedeas bond. (1) Supersedeas bond. Whenever an appellant entitled thereto desires a stay of proceedings on appeal, he may present to the superior court for its approval a supersedeas bond executed by one or more sufficient sureties, which bond may, if desired, contain the terms and conditions contained in the bond for costs on appeal referred to in Rule I–22. The supersedeas bond, whether or not combined with the bond for costs on appeal, shall be conditioned for the satisfaction of the judgment in full, together with interest thereon, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, together with interest thereon, unless the court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy, as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff, or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property and the costs of the action, together with interest thereon.

If the supersedeas bond is intended to stay proceedings on only a part of the order, judgment, or decree appealed from, it shall be varied as circumstances may require to accomplish the purpose desired.

(2) Effect of supersedeas. When a supersedeas bond conditioned as above required has been filed, it shall operate, so long as it remains effectual, to stay proceedings upon the order, judgment or decree appealed from; but in case of an appeal from an order other than an order granting a new trial, no appeal or appeal bond shall operate to stay proceedings in the cause except proceedings upon the order appealed from; and no appeal or stay shall vacate or affect any part of a judgment or order not appealed from and where an appeal is taken from an order vacating a temporary injunction, the appellant cannot proceed further in the cause in the superior court during the pendency of the appeal except so far as may be rendered necessary by proceedings of an adverse party.

(3) Superior court discretion in fixing bond. In approving a supersedeas bond, the superior court shall exercise care to require adequate though not excessive security in every instance. Money in the amount of the penalty which would be designated in a bond may be deposited with the clerk of the superior court in lieu of bond. Money so deposited shall be subject to the conditions set out in these rules and subject particularly to the conditions of Rule I–25.

After a supersedeas bond has been approved and filed, the superior court may upon application of the respondent or on its own motion and for good cause shown, increase the amount of the bond, require additional security, or require a new bond. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–24 Temporary injunction to remain in force, when. In all cases where a final judgment shall be rendered by any superior court of this state in a cause wherein a temporary injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment, such injunction shall remain in force during the pendency of such appeal, if, within five days after service on him of notice of the entry of the final judgment, such appellant shall file with the clerk of the superior court a bond, with one or more sufficient sureties, in a penalty to be fixed by the court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason

of the injunction remaining in force. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–25 Obligees in bonds. Instead of the respondent or other party, the state of Washington for the benefit of whom it may concern, may be named as obligee in any bond for costs on appeal or supersedeas referred to in Rules I–22 and I–23 or required in any proceeding in the supreme court. Anyone who would have any right upon or concerning said bond had he been named as obligee therein, shall have the same right as if so named. Anyone having any interest in any such bond may sue thereon separately or jointly with anyone else also interested. It shall not be necessary to sue in the name of, or to join, the State of Washington in any suit upon such bond. The procedure provided by this rule is not exclusive but is optional and in addition to that otherwise provided. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; first sentence amended, adopted Dec. 14, 1953, effective Mar. 1, 1954; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–26 Justification of sureties. An appeal bond, whether conditioned to effect a stay of proceedings or not, signed as surety by any person, persons or corporation other than a surety company authorized to transact such business in this state as provided by law, shall be of no force unless accompanied by the affidavit of the surety or sureties therein attached thereto, in which each surety shall state that he is a resident of this state and is worth a certain sum mentioned in such affidavit, over and above all debts and liabilities, in property within this state, exclusive of property exempt from execution, and which sums so sworn to by the surety or sureties, shall be at least equal to the penalty named in the bond if there be but one surety, or shall amount in all to at least twice such penalty if there be more than one surety. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–27 Objection to surety——Certificate——New bond. Any respondent may object to the sufficiency of the surety or sureties in an appeal bond, other than a surety company authorized to transact business in this state as provided by law, within ten days after the service on him of the notice of appeal, or within five days after the service on him of the bond or written notice of the filing thereof, by serving on the appellant a notice stating that he so objects, and specifying a time, not less than three nor more than ten days distant, at which the surety or sureties are required to attend before the superior court in which the judgment or order appealed from was rendered or made, or before a judge thereof, and to justify their sufficiency as sureties. At the time and place named in such notice, or to which the proceeding may be thence adjourned by the court or judge, the surety or sureties must attend before the court or judge, and may be then and there examined in detail, under oath, as to their property and other qualifications as sureties, by any respondent or by the judge, or by both. If the judge upon such examination is satisfied that the surety or sureties are qualified as such, to the extent to which they are required by Rule I–26 to make affidavit, then he shall make a certificate to that effect indorsed upon or attached to the bond, which shall thereupon stand as a sufficient appeal bond to the effect expressed in the condition thereof; but if he is not so satisfied, or if the sureties fail to attend and justify, then the judge shall in like manner certify to that effect, and thereupon the bond shall become void: Provided, that in such case the appellant may, within five days after the making of such certificate, file a new appeal bond in conformity with the requirements of Rules I–22 and I–23, and subject to the requirement of justification of the sureties provided in Rule 26; but in case such new appeal bond be found insufficient, no new bond can thereafter be filed in lieu thereof. In case the original or new appeal bond be not conditioned to effect a stay of proceedings, however, an additional appeal bond may be filed at any time thereafter when the appellant desires to effect a stay as provided in Rule I–23, during the pendency of the appeal. The examination of the sureties taken upon their justification shall be reduced to writing and subscribed by the sureties, if either party so requires, and attached to the certificate made thereon. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Rule I–28 Defects in appeal bond——New bond. No appeal shall be dismissed because of any defect in the appeal bond, nor because an appeal bond which is given both as a cost bond and as a bond on supersedeas shall be insufficient by reason of the amount, but the appellant shall in all cases be allowed to give a new bond within such time and upon such terms as the court may order. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 1, 1951; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–29 Application for new bond. If any respondent shall have cause to believe, after any appeal bond shall have been filed and the sureties therein have justified or the time for requiring their justification has expired, that the sureties have since become disqualified as such, so that the bond is no longer an adequate security, he may apply by motion to the supreme court to require a new or additional bond. Upon the hearing of such motion the court may require the trial court to examine into the merits of the motion and the adequacy of the bond and certify the facts and his conclusions to this court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–30 Execution countermanded, when. When an appeal bond is conditioned so as to effect a stay of proceedings if execution has issued the clerk shall on demand of the appellant, issue to the sheriff a certificate that proceedings have been stayed, which shall countermand the execution; and thereupon the sheriff shall release any property levied on and not already sold, and return the execution into court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–31 Judgment against appellant and sureties. (a) If the judgment of the trial court is superseded and the judgment is affirmed on final review, the trial court shall, when the cause is remitted, enter the judgment also against the supersedeas bond, bondsman or sureties for the amount of the judgment and for damages and costs awarded on final review according to the conditions of the bond.

(b) If costs are taxed against an appellant, the trial court shall, when the cause is remitted, enter judgment for costs on appeal against the appellant and against the cost bond, bondsman or sureties according to the condition of the bond. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Comment by the Court. Complete revision of former ROA 31, providing new procedures.

Rule I–32 Jurisdictional requirement in civil cases. In order that the supreme court may secure jurisdiction of an appeal in a civil cause pursuant to ROA I–14, the appellant need only give timely notice of appeal (see Rule I–15, I–33).

Failure of the appellant to take any further steps to secure the review of the order, judgment, or decree appealed from does not affect the validity of the appeal, but is ground for such remedies as are specified in these rules or, when no remedy is specified, for such action as the supreme court deems appropriate, which may include contempt, assessment of terms, costs or damages, and dismissal of the appeal. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended; adopted Sept. 25, 1951; adopted Nov. 17, 1952, effective Jan. 2, 1953; adopted Dec. 14, 1953, effective Mar. 1, 1954; adopted Dec. 12, 1956, effective Mar. 1, 1957.]

Rule I–33 Notice of appeal and cross–appeal in civil cases——Ordering statement of facts and transcript. (1) In civil actions appealable directly to the supreme court, in order for the supreme court to obtain jurisdiction of the cause, a written notice of appeal, together with a copy of the same, must be filed with, and filing fees paid to, the clerk of the superior court within thirty days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the supreme court, and transmit therewith the filing fee as above provided. Failure of the superior court clerk to file the copy with, and forward the filing fee to, the clerk of the supreme court, will not affect the validity of the appeal.

(2) Any coparty who did not join in the notice of appeal but who desires to join as an appellant shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice that he joins in the appeal. The requirements as to the giving of a bond for costs on appeal shall be as applicable to such coparty as to the original appellant. Any such party who does not so join shall not derive any benefit from the appeal, unless from the necessity of the case. All parties who so join in an appeal after the notice is given or served shall be liable for the expense thereof, and for costs and damages, to the same extent and upon the same conditions as if they had originally joined in the notice.

(3) Also to obtain jurisdiction, each respondent who desires to prosecute a cross–appeal from all or any part of the order, judgment, or decree appealed from shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice of cross–appeal, together with a copy of the same. The clerk of the superior court shall forthwith file the copy of the notice of cross–appeal with the clerk of the supreme court. The cross–appeal shall bring up for review only matters affecting appellant and such cross–appellant. The requirements as to the giving of a bond for costs on appeal shall be as applicable to cross–appellant as to the original appellant.

(4) No reference to the right of coparty to join in an appeal, or to the right of a respondent to cross–appeal, shall abridge or restrict the right of any party to take a general appeal as to any matters or parties involved in the litigation, provided notice of such appeal shall be given in the manner and within the time required by this rule.

(5) Unless the chief justice shall previously order otherwise, the appellant must, within forty–five days after filing notice of appeal, make arrangements with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and also make arrangements with the clerk of the superior court for the transcript which is to be filed with the supreme court pursuant to ROA I–44. Evidence that these arrangements have been made shall be in the form of a statement signed by the attorney for appellant or by the court reporter if there be no counsel of record. The above statement shall be filed with the clerk of the supreme court within fifty–five days after the filing of the notice of appeal. Failure to comply with provisions of this paragraph may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk.

(6) A notice of appeal shall be in substantially the following form:

(Caption)

NOTICE IS HEREBY GIVEN TO (other parties of record), represented by (names and addresses of counsel) that (name of appellant) appeals to the Supreme

Court from the (order, judgment, or decree) entered by the Superior Court in the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

Date _____

_____
(Address and telephone number of counsel for appellant, or of appellant if pro se)

(7) A statement that the statement of facts and transcript have been ordered and arrangement for payment made shall be in substantially the following form:

Appellant hereby states that the court reporter, (name and address), has been ordered to transcribe the statement of facts necessary for the appeal, and that arrangements accepted by the court reporter have been made for the payment of the cost. He further states that arrangements have been made with the clerk of the superior court for what he wishes to be included in the transcript.

Date _____

_____
(Address and telephone number of counsel for appellant or of court reporter if appellant is pro se)

(8) A party filing a notice of appeal, cross-appeal, or a coparty joining in an appeal shall notify all other parties in the case. The notification shall be given by mailing a copy of the notice of appeal, cross-appeal, or joinder in appeal, to the party's attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal, cross-appeal or joinder in appeal is filed and shall be sufficient notwithstanding the death of the party, or of his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; portion of subd. (4) amended, adopted Sept. 25, 1951; subd. (1) amended, adopted Dec. 6, 1955, effective Jan. 3, 1956; subd. (3) amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; rule amended, adopted June 28, 1967, effective July 1, 1967.]

Comment by the Court. There is no provision in ROA I-33 for appeals for other than final orders since such appeals will be taken to the court of appeals.

Exceptions: RCW 4.80.010-4.80.050.

Rule I-34 Statement of facts——Time for ordering, serving, and filing——Certification. (1) Within forty-five days after filing notice of appeal, unless the chief justice shall have previously ordered otherwise, for good cause shown, the appellant shall order the statement of facts and make arrangements with the court reporter for the payment of the cost thereof.

(2) When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the clerk of the supreme court. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the chief justice in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety days, plus any additional time allowed by the chief justice, after the notice of appeal was filed with the clerk of the superior court, the clerk of the supreme court shall order counsel for the appellant or court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) The certifying of a statement of facts and the filing and service of the proposed statement, the notice of application for the settlement thereof, and all steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause.

(4) (Appeal on short record.) On any appeal or other proceeding for review, in any criminal cause, or in any civil cause whether cognizable at law or in equity, so much of the evidence as bears upon the question or questions sought to be reviewed may be brought before this court by a statement of facts without bringing up the evidence bearing on rulings on which no error is assigned. If the appellant does not include in his statement of facts the complete record and all the proceedings and evidence in the cause, he shall serve and file with such proposed statement of facts, a concise statement of the points on which he intends to rely on the appeal.

(5) (Appeal on agreed statement of facts.) When the question or questions presented by an appeal in any cause can be determined without an examination of all the pleadings, evidence, and proceedings in the superior court, the parties may prepare and sign a statement of the case showing how the question or questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the question or questions by this court. The statement shall include a copy of the judgment from which the appeal is taken, a copy of the notice of appeal and of the appeal bond, together with their respective filing dates, and a concise statement of the points to be relied on by the appellant, and shall be filed with the clerk of the superior court within the time provided for the filing of a statement of facts. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the question or questions raised by the appeal shall be approved in writing by the trial judge and, when so aprpoved, shall constitute the record on appeal, and be transmitted to this court in the same manner as a statement of facts.

(6) Every statement of facts shall comply in form with the rule with reference to transcripts. The index thereto shall specify the page on which the testimony of each witness commences, the page on which exhibits are offered or introduced, the page on which depositions or affidavits are offered or introduced, the page on which motions made during the course of the trial are recorded, and the page of the ruling of the court thereon. At the bottom of each page there shall appear the name of the witness or witnesses testifying, and whether the examination be direct, cross, redirect, or recross.

(7) All exhibits shall be lettered or numbered in consecutive order, and, where practicable, shall be attached to the statement of facts. Each exhibit shall be identified by endorsing on the face thereof, in a conspicuous place, its letter or number, an abbreviated title of the cause, and the superior court number of the cause. Where, from the nature of the exhibit, it is not practicable to make such an endorsement, the exhibit may be identified by a tag, securely fastened thereto, on which is written or printed its letter or number, the title of the cause, and its superior court number.

(8) In all cases where the judge of the superior court has filed a written memorandum giving his reasons for his decision, the same shall be included as part of the statement of facts.

(9) In all cases whenever any error is predicted upon a ruling relative to an instruction given or proposed, it will be necessary to include in the statement of facts all of the instructions given by the court and those proposed instructions concerning which error is assigned. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subd. (5) amended, adopted Dec. 6, 1955, effective Jan. 3, 1956.]

Additional jury instructions: RCW 4.44.320.

Rule I–35 Statement of facts, what constitutes. Any party may after the entry of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and any objections or exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already a part of the record, made a part of the record in the cause by the certifying of a statement of facts, as in these rules provided. The certifying of a statement of facts shall not prevent the subsequent certifying of other statements of facts, comprising other matters in the cause, at the instance of the same or another party; but only one statement of facts can be settled or certified after the rendition of the final judgment in the cause. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended June 28, 1967, effective July 1, 1967.]

Exceptions: RCW 4.80.010–4.80.050.

Rule I–36 Statement of facts——Amendments——Notice to settle. A party desiring to have a statement of facts certified must prepare the same as proposed by him, file it in the cause and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any party may file and serve on the proposing party any amendments which he may propose to the statement: Provided, That the superior court may extend the time not to exceed an additional twenty days for filing and serving proposed amendments to the proposed statement of facts, if good cause be shown and the application for extension of time be made within the ten day period, and after notice to opposing counsel. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the statement. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. If no amendment shall be served within the time aforesaid, the proposed statement shall be deemed agreed to and may be certified by the judge at the instance of either party, at any time, without notice to any other party on proof being filed of its service, and that no amendments have been proposed; and if amendments be proposed and accepted, the statement as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 12, 1956, effective March 1, 1957.]

Rule I–37 Certificate, what to contain——How signed. The judge shall certify that the matters and proceedings embodied in the statement are matters and proceedings occurring in the cause and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein, or such thereof as the parties have agreed, to be all that are material therein. The certificate shall be signed by the judge, but need not be sealed; and thereupon all the matters and proceedings embodied in the statement of facts shall become and thenceforth remain a part of the record in the cause, for all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuses to settle or certify the statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the supreme court, either pending an appeal or prior thereto. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–38 Statement of facts——How certified upon change or death of judge. If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge or shall die, or shall be absent from the state or shall, by reason of disability, be unable to perform the duties of his office, which death, absence or disability may be shown by affidavit of any attorney in the cause served upon the attorney for the adverse party and filed in the cause, within the time within which a statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of Rule I–37, and before having certified such statement, such statement may be settled by stipulation of the parties with the same effect as if duly settled and certified by such judge while still in office. But if the parties cannot agree, the successor in office of the judge before whom the cause was pending or tried, or in case there be no successor, any judge of, or assigned to, the county where the cause was pending or tried, if such death, absence or disability shall appear to his satisfaction, shall settle and certify such statement in the manner in Rule I–37 provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by the judge before whom the cause was pending or tried, or by the reporter, if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, or any of them. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–39 How certified when cases consolidated. When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all of the original causes, to embody in a statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the statement shall be certified as in these rules prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–40 Statement of facts. (a) Notice of filing. When the proposed statement of facts is received by the clerk of the superior court, the clerk shall promptly notify the supreme court of the filing.

(b) Use by Counsel. The copy of a proposed statement of facts which is served as in these rules prescribed, shall be returned to the party serving the same upon the statement being certified, for his use in preparing his brief on appeal; and when he serves his brief he shall at that time return such copy to the party on whom it was originally served, and his brief shall not be deemed served until such copy is so returned by him. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Feb. 24, 1972, deleting subdivision (c), effective July 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended adding subdivisions (a) and (c) adopted June 28, 1967, effective July 1, 1967.]

Comment by the Court. Subdivision (c) follows and supersedes RPPP 77.16 W (4).

Rule I–41 Serving and filing of briefs on appeal. (1) Within forty–five days after the proposed statement of facts shall be filed, as provided in Rule I–34, or in those cases in which a statement of facts is not necessary in order to review a cause, within thirty days after the giving or service of notice of appeal, the appellant shall serve on the respondent three copies of a printed brief on the appeal upon his part, and shall file with the clerk of the supreme court twenty–five copies thereof, together with proof or written admission of service, as aforesaid. Appellant's brief shall clearly point out each error relied upon by him for a reversal, and shall conform to such regulations of its contents in other respects, and its form and size, as prescribed by Rule I–42. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the supreme court, with like proof of service, a like number of copies of a printed brief on the appeal upon his part, which shall likewise conform to the rules of the supreme court. Not less than twelve days prior to the hearing, the appellant may also serve and file with the clerk of the supreme court a like number of copies of a printed brief, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this rule prescribed, may be extended by order of the chief justice of the supreme court for good cause shown, or by stipulation of the parties concerned. Either party may, after the filing of his briefs, and not less than one day prior to the hearing of the appeal, submit to the supreme court and to the adverse party, in accordance with Rule I–42, a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief.

(2) The clerk of the supreme court, on the Wednesday of the week preceding the hearing, shall deliver to each of the justices a copy of each brief that has been filed in the cause. The respondent's brief must be on file with the clerk of the supreme court not less than twelve days prior to the Wednesday of the week preceding the week of the hearing. Reply brief in any cause must be filed with the clerk of the supreme court not later than Wednesday of the week preceding the date on which the cause is assigned for hearing. Costs for briefs filed later than such dates will not be allowed by the clerk, unless the failure of either party to file his brief within such time has been occasioned by the other party's failure to comply with this rule.

(3) The serving and filing of briefs in criminal causes shall be in accordance with Rule I–46.

(4) If the appellant fail to file a brief, an affirmance will be directed. If the respondent files no brief, the cause will be deemed submitted upon its merits as to

him. A respondent who has not filed a brief shall not be permitted to argue the cause orally without permission of the court given before the cause is called for argument.

(5) Any attorney authorized to practice in this state may file a brief amicus curiae in any case pending in the supreme court, after obtaining permission from the chief justice so to do. Such briefs shall conform in all respects to the requirements of Rule I–42, and shall be served on all parties and filed with the clerk of the supreme court not less than ten days prior to the hearing. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 20, 1950, effective Jan. 2, 1951; subd. (1) amended, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Rule I–42 Production, style and content of briefs for cases set for hearing on the appeal docket. (a) Production.

Briefs for cases set for hearing on the regular appeal docket shall be printed by either the letter–press or photo–offset method. If the photo–offset method is employed, the copy may be either linotyped or typed.

(1) Paper Stock.

If both sides of pages are to be used, the text shall be on 60–pound substance paper; if only one side is to be used, the text shall be on 20–pound or heavier substance paper. The paper shall be white opaque unglazed paper. The cover shall be book or cover stock of a weight heavier than the text and sufficient to prevent the brief from sagging when stood on end. The color of the cover shall be light so that the print will clearly show and shall be: Gray for appellant's or petitioner's opening brief; green for respondent's answering brief; blue for appellant's or petitioner's reply brief; and yellow for other types of briefs. When completed the pages of the brief shall measure 11 inches from top to bottom and 8 1/2 inches from side to side (letter size).

(2) Ink.

Black ink shall be used for both cover and text.

(3) Format.

Pages shall be numbered as follows: The index, table of cases, and table of authorities with small Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/4 includes. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition.

(i) Linotyped copy.

Type shall not be smaller than 12 point, double leaded, 30 picas wide. Quotations shall be in 12 point type, single leaded and indented two picas. Footnotes shall be in type not smaller than 9 point and unleaded. Headings shall be in bold face type. Left and right margins shall be justified.

(ii) Typed copy.

Typewritten text shall not be smaller than pica type equivalent to 11 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced. Heading shall be in capital letters, underlined. Left–hand margins shall be justified.

(5) Binding.

Briefs shall be bound along the folded edge or left side. Three saddle staples, machine sewing, or any permanent flush binding may be used. Ring plastic fasteners are not acceptable.

(b) Typed Briefs.

Briefs for cases set for hearing on the regular appeal docket may be typed and filed on behalf of any party authorized to proceed in forma pauperis or by the state or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

(1) Paper Stock.

The text of the brief shall be on 20–pound substance opaque white unglazed paper. The cover shall be of heavier book or cover stock and of a light color which will clearly show the typing.

(2) Ink.

Black typewriter ribbons shall be used for both cover and text.

(3) Format.

Pages shall be numbered as follows: The index, table of cases, and table of authorities with small Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text, or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/2 inches. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition.

Typewritten text shall not be smaller than pica type equivalent to 10 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Footnotes shall be single spaced. Headings shall be in capital letters, underlined. Left–hand margins shall be justified.

(5) Binding.

Typed briefs shall be stapled with 3 staples along the left side.

(6) Method of Production.

One side of the paper shall be used. Copies shall be produced by some method more legible and permanent than carbon except carbon copies may be filed by an indigent appealing a criminal conviction or a denial of a petition for writ of habeas corpus pro se, or by an indigent appellant filing a supplemental brief. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(c) Cover and Title Sheets.

The cover and title sheets shall be as follows and appropriately spaced to fill the sheet of paper within the margin requirements except the cause number shall be printed as close as possible to the top, right–hand corner of the page:

No. _____
(Supreme Court No.)

In the SUPREME COURT of the
State of Washington
(Superior court title except parties shall be designated "Appellant" or "Respondent," or, if not parties on appeal, "Plaintiff" or "Defendant.")

APPEAL FROM THE SUPERIOR COURT
FOR _____ COUNTY
THE HONORABLE _____ JUDGE,

BRIEF OF _____

Firm Name,
Counsel Responsible,
Address and Phone Number
of counsel filing brief.

(d) Citations.

Citations shall be in conformity with the form used in current volumes of Washington Reports. Decisions of the Supreme Court and of the Court of Appeals shall be cited to the official report thereof.

(e) Reference to the Record.

"St." shall be used for "Statement of Facts," "Tr." for "Transcript," and "Ex." for "Exhibits." A reference to the record shall clearly identify the portion of the record by one of the above abbreviations and in the case of the statement of facts or transcript, the page number. A reference to an exhibit shall include the identifying letter or number assigned. A reference to opposing counsel's brief shall set forth the page number.

(f) Length of Brief.

Except when authorized by the chief justice, briefs in excess of the number of pages indicated below, including the appendix, will not be accepted by the clerk for filing:

Opening and answering briefs
Printed _____ 50
Multilithed or typed _____ 62
Reply briefs
Printed _____ 8
Multilithed or typed _____ 10

Costs shall not be recovered for pages in excess of those set forth above even if authority for the filing of a brief with more pages has been granted.

(g) Contents.

In addition to the title and/or cover pages, briefs for the regular appeal calendar shall consist of the following subdivisions, titled with distinctive type and in the order indicated:

(1) Appellant's or Petitioner's Opening Brief.

(i) Tables of authority.

Authority cited shall be subdivided under: Table of cases, constitutional provisions, statutes, texts, and other authority. Cases shall be listed alphabetically with dates and citations. The dates and editions shall be indicated for texts. The page reference where cited in the brief shall be indicated opposite each authority.

(ii) Statement of the case.

Under this heading the following shall be included: A brief statement of the nature of the case; a short resume of the pleadings and proceedings; the nature of the judgment or appropriate ruling or order from which the appeal is taken; a clear and concise statement of the facts appropriate to an understanding of the nature of the controversy, with page references to the record.

(iii) Assignments of error.

Each error relied upon shall be clearly pointed out and discussed under appropriately designed headings. Where there are several errors relied on which present the same general questions, they may be discussed together. Whenever there is involved in any appeal a ruling or decision on the inclusion, omission, sufficiency or insufficiency of an instruction or instructions, as the case may be, the instruction or instructions shall be set out in the brief in full and reference made thereto by number in the "assignments of error." Whenever error is assigned to any finding or findings of fact, so much of the finding or findings made or refused as is claimed to be erroneous, shall be set out verbatim in the brief and reference made thereto by number the "assignments of error." No assignment of error is required when a petitioner is seeking a writ involving the original jurisdiction of this court.

(iv) Argument of counsel.

(2) Respondent's Brief.

The brief of respondent, in answer to a brief provided for in paragraph (1) above, shall consist of the following:

(i) Tables of authority.

(See paragraph (g)(1)(i) above.)

(ii) Statement of the case.

If the respondent does not accept appellant's or petitioner's statement of the case, he shall point out under the title "Counter-statement of the Case," such insufficiencies or inaccuracies as he believes exist. He may also set forth relevant facts he believes material to the cause, with supporting references to the pages of the record, but without unnecessary repetition of matters in appellant's or petitioner's statement.

(iii) Argument of counsel.

Argument shall be arranged and captioned under the following captions in the order listed:

Argument in support of judgment;

Argument in answer to appellant.

(h) Additional Authorities.

Additional authorities submitted in accordance with Rule 41 shall be produced in accordance with paragraphs (a) or (b) above except the cover page shall be white. Twelve copies shall be filed with the court and not less than one copy served on the adverse party. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. (b) amended, adopted May 1, 1970, effective July 1, 1970; subd. (b) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; amended, adopted May 8, 1972, effective July 1, 1972. Prior: Adopted Nov. 22, 1950,

effective Jan. 2, 1951; subd. (a)(7) amended, adopted Nov. 17, 1952, effective Jan. 2, 1953; subd. (c) amended, adopted Dec. 2, 1958, effective Jan. 12, 1959; subd. (g) added, adopted Nov. 12, 1959, effective May 1, 1960; subd. (a)(1), (a)(2), (a)(3), and (a)(4) amended, adopted Nov. 2, 1960, effective June 2, 1961; rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961; rule revised June 28, 1965; Item (g)(1)(iv) added Dec. 6, 1965, effective Jan. 2, 1966.]

Rule I–43 Errors considered. No alleged error of the superior court will be considered by this court unless the same be definitely pointed out in the "assignments of error" in appellant's brief. In appeals from all actions at law or in equity tried to the court without a jury, the findings of fact made by the court will be accepted as the established facts in the case unless error is assigned thereto. No error assigned to any finding or findings of fact made or refused will be considered unless so much of the finding or findings as is claimed to be erroneous shall be set out verbatim in the brief. No error assigned to the inclusion, omission, sufficiency, or insufficiency of an instruction or instructions, given or not given, will be considered unless such instruction or instructions, as the case may be, shall be set out in the brief in full. Provided, that the objection that the superior court had no jurisdiction of the cause or that the complaint does not state sufficient facts to constitute a cause of action, or that the supreme court has no jurisdiction of the appeal, may be taken at any time. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Nov. 17, 1952, effective Jan. 2, 1953.]

Exceptions: RCW 4.80.010–4.80.050.

Rule I–44 Transcript on appeal. (1) Within fifty–five days after an appeal shall have been taken by notice, as provided in Rule 33, the clerk of the superior court shall prepare, certify, and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal. This rule shall not apply to appeals on agreed statements of facts as provided in Rule 34(4). Within sixty days after the appeal shall have been taken by notice, as aforesaid, the clerk of the superior court shall, at the expense of appellant, send the transcript to the supreme court. The papers and copies so sent up, together with any thereafter delivered, as hereinafter provided, shall constitute the record on appeal. Any statement of facts on file when the record is so sent up shall be sent as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such statement. In the event any statement of facts shall be filed or certified, or any other addition to the records or files shall be made, after the record on appeal shall have been sent up, a supplementary record on appeal, embracing so much thereof as the appellant deems material or a copy thereof, may be prepared, certified, and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify, and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the supreme court prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the superior court or a judge thereof may order the clerk of the superior court to transmit the same to the clerk of the supreme court and the same shall be transmitted accordingly, and shall be under the control of the supreme court.

(2) Transcripts may be printed or typewritten, or may be prepared by photostatic copies of the original records in the office of the clerk of the superior court. If typewritten, the paper shall be of good quality of the size of legal cap, and only a black record ribbon shall be used. If printed, there shall be a compliance with the rule with reference to printed briefs as to size, spacing, and print. The transcript shall be free from interlineations and erasures, and shall be paged and prefixed with an alphabetical index of its contents, specifying the page of each separate paper, order, or proceeding.

(3) Transcripts must be certified by the clerk of the superior court in substantially the following form:

STATE OF WASHINGTON, COUNTY OF _____, ss.

I, _____, Clerk of the _____ Superior Court, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record and files in the above entitled cause as I have been directed by _____ to transmit to the Supreme Court.

In testimony whereof, I have hereunto set my hand and the seal of said Superior Court this _____ day of _____, 19__.

(SEAL)

_____ Clerk

By _____ Deputy.

(4) At the time the transcript is completed and certified, the appellant shall mail to each of the prevailing parties in the trial court, or his counsel, a copy of the clerk's index to the transcript. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. (1) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951, subd. (4) added, adopted Dec. 2, 1954, effective Jan. 3, 1955.]

Exceptions: RCW 4.80.010–4.80.050.

Rule I–45 Omissions from the record. If any paper, exhibit, or other part of the record directed to be sent up, has been omitted, such omission may be supplied

by any party, without leave, at any time before the cause is submitted to the court; notice of which shall be given all other parties. After a cause has been submitted, such omission may be supplied only by leave of court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–46 Appeals in criminal cases. (a) Superior Court Procedure at Time of Sentencing. The superior court shall, at the time of sentencing, unless the judgment and sentence are based on a plea of guilty, advise the defendant

(1) of his right to appeal,

(2) that unless a written notice of appeal is filed in accordance with subparagraph (b)(1) of this rule, the right of appeal is irrevocably waived,

(3) that the superior court clerk will, if requested by defendant appearing without counsel, file a notice of appeal in his behalf, and

(4) of his right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal.

These proceedings shall be made part of the record.

(b) Notice of Appeal.

(1) Filing. In order for the Supreme Court to obtain jurisdiction of an appeal in a criminal cause the original and a copy of a written notice of appeal must be filed with and the filing fee paid to the clerk of the superior court unless the appellant is authorized to proceed in forma pauperis, within thirty (30) days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty (30) days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the Clerk of the Supreme Court and transmit therewith the filing fee, if any. Failure of the superior court clerk to file the copy with, and forward the filing fee, if any, to the Clerk of the Supreme Court, will not affect the validity of the appeal.

(2) Contents. A notice of appeal shall be in substantially the following form:

(Caption——same as in Superior Court)

NOTICE IS HEREBY GIVEN TO: (Other parties of record) represented by (names and addresses of counsel) that (name of appellant) appeals to the Supreme Court from the (order, judgment, or decree) entered by the Superior Court of the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

The defendant is presently in confinement at _____. (or) The defendant has been released on bail and his address is _____.

DATED this _____ day of _____, _____.

(Signature)

_____

Address and telephone number of counsel for appellant or appellant if pro se, or clerk if notice prepared in accordance with (a)(3) above.

(3) Service. A party filing a notice of appeal shall notify all other parties in the case by mailing a copy of the notice of appeal to the party's attorney of record, or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal is filed and shall be sufficient notwithstanding the oath of the party, or his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged.

(c) Notice of Co–Party or Cross–Appeal. A co–party who did not join in the notice of appeal but who desires to join the appellant or a respondent who desires to prosecute a cross–appeal shall give notice in accordance with ROA I–33.

(d) Responsibility after Notice of Appeal.

(1) Superior Court Clerk. Immediately after the giving of a notice of appeal, the clerk of the superior court, at the expense of the public prosecution, shall prepare and transmit to the Clerk of the Supreme Court a certified copy of the judgment or order appealed from, together with a certified copy of the written notice of appeal. The clerk of the superior court shall notify the Clerk of the Supreme Court as soon as the proposed statement of facts is filed. Either appellant or respondent may have transmitted to the Supreme Court such additional portions of the record and files in the cause as they may believe have a bearing upon the issues involved.

(2) Superior Court.

(i) Determination of Resources and Costs. If the defendant files a timely notice of appeal or is a respondent and petitions the superior court for the expenditure of public funds for his costs on appeal, the superior court shall make findings as to the defendant's ability to pay and enter an order authorizing the expenditure of public funds for those costs allowable under ROA I–47 which the defendant cannot pay. If the defendant is found unable to pay the filing fee, the order shall also include authority to proceed in forma pauperis. Public funds for the payment of the statement of facts shall be limited to portions of the record necessary for review of assignments of error. Assignments of error so patently frivolous that reasonable minds could not differ as to their frivolity shall not be considered. If the defendant desires, but is unable to pay counsel, the superior court shall appoint counsel, preferably trial counsel. If, in the discretion of the trial court, other than trial counsel should be appointed, trial counsel shall be retained as co–counsel. No counsel shall withdraw without written authority of the trial court.

(ii) Denial of Costs. If a petition for the expenditure of public funds is denied in whole or in part, the defendant shall be advised of his right to have the order of denial reviewed by petitioning for a writ of certiorari and shall be advised of the limitations of time for filing such a petition.

(iii) Jurisdiction for Perfecting Appeal. The superior court shall retain jurisdiction for the purposes of fixing of bail, certification of the statement of facts, and appointment or withdrawal of counsel except a motion to withdraw as counsel for appellant on the ground that counsel can find no grounds on which he can in good faith base an appeal.

(3) Reports by Counsel. Counsel for defendant on appeal shall keep the Supreme Court currently advised of his appearance or withdrawal and the address of the appellant. Court appointed counsel shall serve the defendant with a copy of the brief prepared in his behalf and file proof of service with the Supreme Court.

(4) Supplemental Appellant's Brief. The Chief Justice may authorize the defendant to file a brief supplementing the brief of his counsel if good cause is shown and the motion for authority to file the brief is received within fifteen (15) days after the brief of his counsel is filed.

(e) Procedure to Perfect Appeal.

(1) Statement of Action. Within fifty–five (55) days after the filing of the notice of appeal, unless the Chief Justice shall previously order otherwise, the appellant or his counsel must file a statement that:

(i) Arrangements have been made with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and with the clerk of the superior court for the transcript which is to be filed pursuant to ROA I–44, or

(ii) A motion has been made in the superior court for a determination pursuant to (d)(2)(i) above.

Failure to comply with provisions of this subsection may be grounds for imposition of terms or dismissal upon the motion of the parties or the Clerk of the Supreme Court.

(2) Statement of Facts.

(i) When Transcribed. When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the Clerk of the Supreme Court. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the Chief Justice in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety (90) days, plus any additional time allowed by the Chief Justice, after the notice of appeal was filed with the clerk of the superior court, the Clerk of the Supreme Court shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard, unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(ii) Time Requirements. The statement of facts must be filed within ninety (90) days after the entry of the judgment or order from which the appeal is taken unless the time is extended for good cause by the Chief Justice. If the statement of facts is not timely filed, the Clerk of the Supreme Court shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) Appellant's Opening Brief. Within thirty (30) days after the date the proposed statement of facts is filed, the appellant shall serve on the respondent two copies and file with the Clerk of the Supreme Court 16 copies of his opening brief on appeal.

(4) Supplemental Brief. If an indigent defendant is authorized by the Chief Justice to supplement the brief of his appointed counsel, his appointed counsel shall have the copy of the statement of facts served on the defendant within ten (10) days after service of the appellant's opening brief. Proof of service will be promptly filed with the Supreme Court. The defendant will provide appointed counsel a copy of his supplemental brief for reproduction within sixty (60) days after the statement of facts was served upon him. The copy of the statement of facts will be returned to his appointed counsel with the supplement brief. If the copy of the statement of facts is not returned the supplemental brief will not be reproduced and the appeal will proceed as if a supplemental brief had not been authorized.

(5) Respondent's Answering Brief. Respondent shall, within thirty (30) days after service by appellant of his opening brief or, if a supplemental brief is authorized, within thirty (30) days after service by appellant of his supplemental brief, serve on the appellant not less than two copies and file with the Clerk of the Supreme Court 16 copies of his answering brief.

(6) Appellant's Reply Brief. Not less than five (5) court days prior to the hearing, appellant may also serve on the respondent two copies and file with the Clerk of the Supreme Court 16 copies of a reply brief.

(7) Transcript and Statement of Facts. Not later than one (1) week after service of respondent's brief, appellant will cause the transcript and statement of facts to be filed with the Clerk of the Supreme Court.

(8) Extensions of Time. Time limitations as set forth in this paragraph may be extended by order of the Chief Justice, for good cause shown by affidavit, provided the motion for extension is made before the time has expired. Stipulation of counsel does not constitute good cause.

(f) Reproduction of Briefs in Indigent Cases. When public funds have been authorized for the costs of briefs filed on behalf of a defendant, the briefs shall be reproduced by the Supreme Court. Within the time allowed, an original copy of such briefs ready and suitable for photocopying shall be filed with the Clerk of the Supreme Court. The clerk shall reproduce the briefs and make the following distribution:

To Whom Sent	Number of Copies
Defendant	1
Counsel for Defendant	2
Opposing Counsel	2
State Law Library	5
Supreme Court	As required

(g) Dismissal for Want of Prosecution. When time requirements set forth in section (e) are not met by the appellant, the Clerk of the Supreme Court shall note the cause on the next motion docket for dismissal for want of prosecution and give notice of the hearing date of the motion.

(h) Applicability of Civil Rules. The practice and procedure, except as in these rules otherwise provided, shall be, as nearly as possible, the same as in civil cases. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Mar. 7, 1973, effective July 1, 1973. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subd. (2) amended, adopted Nov. 17, 1952, effective Jan. 2, 1953; subd. (11) amended, adopted Dec. 14, 1953, effective Mar. 1, 1954; rule amended, adopted Dec. 12, 1956, effective Mar. 1, 1957; subd. (2) amended, adopted June 18, 1957, effective June 18, 1957; adopted May 4, 1966, effective June 1, 1966; subd. (a) amended, adopted July 19, 1966; subd. (c)(1) amended, adopted July 19, 1966; subd. (d)(1) and (2) amended, effective Dec. 13, 1968.]

Rule 1–47 Reimbursement of costs——Indigent criminal appeals. (a) Authorized Claims.

(1) Superior Court Clerk. The superior court clerk may submit a bill for the statutory allowance for preparation of a transcript and for the actual amounts incurred for transmittal of the record, briefs and exhibits to the supreme court.

(2) Court Reporter. The reporter may submit a bill at the rate of $1.50 per page for the original and one copy of that portion of the statement of facts ordered by the superior court. The statement of facts shall be on 8 1/2" by 13" paper; margins shall be lined 1 3/8" from the left and 5/8" from the right side of the page; indentations from the left lined margin shall be not more than one space for "Q" and "A", three spaces for the body of the testimony, eight spaces for commencement of a paragraph, and ten spaces for quoted authority; space between lined margins shall be used in so far as practicable; typing shall be double spaced thirty lines to a page except comments by the reporter shall be single spaced. Type shall be ten–point pica type or its equivalent. Additional copies when ordered shall be produced by the most economical method.

(3) Counsel. Counsel for defendant may submit a bill for:

(i) the actual expenses not including ordinary overhead incurred by counsel for perfecting the appeal including travel accomplished or to be accomplished not to exceed amounts allowable to state employees for travel by private vehicle, and

(ii) professional services.

(b) Conditions Precedent to Recovery.

(1) Order of Indigency. No costs shall be recovered unless there is on file in the supreme court a certified copy of an order of the superior court authorizing the expenditure of public funds for the purpose for which costs are claimed.

(2) Appointment of Counsel. No fees or costs of counsel shall be recoverable unless there is on file in the supreme court a certified copy of an order of the superior court appointing the counsel who is claiming recovery of fees or costs incident to review.

(c) Form.

(1) Copies. Each cost bill shall be filed with the clerk of the supreme court in an original and three duplicate copies.

(2) Social Security Number. Each claimant, except the superior court clerk, shall set forth his social security number under his signature.

(3) Court Reporter and Clerk. A cost bill submitted by the court reporter or clerk shall be identified by the supreme court case caption and entitled "Criminal Appeal Invoice Voucher." It shall itemize the number of pages, number of lines per page, and billing rate per page. It shall be signed by the claimant. It shall be certified in the following form:

(i) Clerk's Cost Bill. The clerk shall certify his cost bill as follows: "I hereby certify that the items and totals listed herein are correct charges for the preparation or actual costs of transmittal of portions of the record and files ordered by counsel or the trial court in the above–entitled appeal."

(ii) Reporter's Cost Bill. The superior court clerk shall certify the reporter's cost bill as follows: "I hereby certify that the amount claimed in this bill is for that portion of the statement of facts ordered by the trial court and the typing of the statement of facts and computing of the bill are in accordance with ROA I–47(a)(2)."

(4) Counsel. A cost bill submitted by counsel for the defendant shall be in the following form:

(i) identified by the supreme court case caption,

(ii) entitled "Cost Bill of Counsel for Defendant,"

(iii) itemized as to actual hours expended by counsel in preparation of the appeal and amount of compensation claimed therefor, expenses paid by counsel incident to appeal, actual travel expenses of counsel incurred or to be incurred for argument in the supreme court, and

(iv) subscribed with the affidavit of counsel that the items and totals listed therein are correct charges for actual labor or costs necessarily incident to the proper consideration of the appeal by the supreme court.

(d) Time of Filing Cost Bills.

(1) By Court Reporter and Clerk. The reporter and clerk may file a cost bill as soon as the services for which the claim is submitted have been performed, but not later than ten days after the filing of the opinion.

(2) By Counsel. Counsel for defendant shall file his cost bill not later than ten days after the opinion in the case becomes final as provided in SAR 15. Only one cost bill shall be filed by counsel.

(e) Disallowance of Costs.

(1) Waiver of Costs. When a cost bill has not been filed within the time allowed, such claim will be deemed to have been waived.

(2) Improper Brief. When, in the opinion of the supreme court, a brief by counsel is improper in substance, or unnecessarily long, the court may, in its discretion, disallow all or a portion of the costs thereof claimed by counsel.

(3) Unnecessary Delay. When, in the opinion of the supreme court, the court reporter or counsel has been dilatory, the court may, in its discretion, disallow all or a portion of the cost bill.

(f) Allowance of Costs.

(1) Court Reporter and Superior Court Clerk. Within ten days after a cost bill of the court reporter or superior court clerk has been filed in the supreme court, the clerk of the supreme court shall either approve it for payment or notify the claimant of his objections to its allowance by a Clerk's Ruling. Unless the Claimant notes exceptions to the Clerk's Ruling within ten days for hearing on a regular motion day, the amount will be deemed approved in accordance with the Clerk's Ruling.

(2) Counsel. The supreme court clerk shall present counsel's cost bill to the supreme court on the day of argument. The supreme court, in its discretion, will make such allowance as it determines is fair and equitable, consistent with funds available and projected budgetary requirements. Allowances shall be made by order of the chief justice. If all or a portion of the counsel's claim be disallowed by the order, notice of such disallowance shall be transmitted to the claimant by the supreme court clerk. Unless exceptions to the order are noted by the claimant within ten days after the date of the letter of notification for hearing on a regular motion day, exceptions will be deemed to have been waived. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Aug. 5, 1970, effective July 1, 1969; amended Aug. 24, 1972, effective Sept. 1, 1972; amended, adopted Nov. 1, 1973, effective Jan. 1, 1974. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951, 2nd para. amended, adopted Dec. 6, 1960, effective Jan. 2, 1961; adopted May 4, 1966, effective June 1, 1966; subd. (a)(3) amended, adopted July 19, 1966; subd. (b)(4)(iii) amended, adopted July 19, 1966.]

Defendant's fee, forma pauperis: RCW 2.32.080.

Habeas corpus, proceeding in forma pauperis: RCW 7.36.250.

Rule I–48 Proceedings in case of reversal in criminal cases. When in a criminal action the judgment against the defendant is reversed and it appears that no offense whatever has been committed, the supreme court will direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense although defectively charged in the indictment or information, the supreme court, if the defendant is in prison, will direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–49 Arguments. No more than two counsel on a side will be heard upon the argument, unless the court shall direct otherwise: Provided, That each party who has appeared separately and by different counsel in the superior court shall, if he so desire, be heard through his own counsel. The counsel for the appellant shall be entitled to open and close the argument upon the merits in all cases. In argument of motions, except motions heard with the merits of the cause and all preliminary or collateral matters, the counsel for the party having the affirmative of the issue shall open and close. Unless extended upon application, arguments in causes appearing on the regular calendar shall be limited to one-half hour on a side: Provided, That in causes where two or more appellants or two or more respondents appear separately in this court and file separate briefs, each may be heard as the court may permit, but in no case will more than two hours be allowed for arguments. Arguments upon motions shall be limited to one-quarter of an hour on a side. Applications for an extension of time for argument shall be made to the chief justice in writing not less than ten days prior to the date of the hearing.

The time allowed for argument in cases wherein the death penalty has been imposed is not limited. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Rule I–50 Petitions for rehearing. Any party to an appealed case may, after an opinion has been filed, present to the court, in the manner and time as hereinafter provided, a petition for rehearing.

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.

When a rehearing is granted, the clerk shall notify counsel for the respective parties thereof.

When an answer to a petition for rehearing is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the original petition, with a request that he file an answer thereto within fifteen days and serve a copy thereof on opposing counsel.

Three copies each of the petition for rehearing and of the answer thereto, if called for, shall be filed with the clerk.

Petitions for rehearing and answers thereto may be printed, mimeographed, or typewritten. If a petition for rehearing be granted, the court may require additional copies of the petition, answer and briefs to be supplied in the manner indicated by the court. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Nov. 17, 1952, effective Jan. 2, 1953.]

Rule I-51 Motion to dismiss. Any respondent may move the supreme court to dismiss an appeal either on the ground that the court has no jurisdiction of an appeal from the judgment or order from which the appeal was taken or that the notice of appeal was not served or filed within the time limited by rule, or is insufficient, or that the appeal bond was not filed within the time limited by rule, or is not in form or substance such as to render the appeal effectual, or that the appellant's brief has not been served or filed, or that the record on appeal has not been sent up, or that the appeal has not been diligently prosecuted or on any ground going to the merits of the further prosecution of the appeal or on any two or more of the grounds hereinabove mentioned; and there may be combined with a motion to dismiss, a motion to affirm the judgment or order appealed from, or a motion for damages on the ground that the appeal was taken merely for delay, or was manifestly unauthorized by rule, or both such motions. A general appearance in the supreme court shall not be a waiver of the right to make any motion herein authorized. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I-52 Hearing and disposition of motion to dismiss. If the supreme court on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same, to be well taken and true in effect, except lack of jurisdiction, the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the ground of any such motion (except a failure to take the appeal within the time limited by these rules) the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service or filing of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the supreme court, perfect the appeal. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I-53 Motions——How made and heard. (a) Motion Days. The first and third Fridays of each month the court sits for hearing of cases on the regular appeal calendar during a session are designated as motion days.

(b) Alternative Presentation. Motions to strike any portion of the transcript or the statement of facts, or to dismiss or affirm upon the record, and all technical motions tending to prevent the hearing of the cause upon its merits, may be made in writing and noticed for some motion day, or the same may be made and plainly stated in the brief of the moving party and heard at the time the cause is assigned upon the calendar.

(c) Notice Motions. All other motions in appealed causes must be made in writing and noticed for some motion day. The motions referred to in this and the first clause of the preceding paragraph will be known as "noticed motions."

(d) Filings and Calendars. At least ten days before the day fixed for the hearing of such a motion, the motion and notice, with proof of service, and briefs in support thereof, must be filed with the clerk. The clerk will prepare a calendar of noticed motions for each motion day.

(e) Briefs. Briefs in support of any motion are required in all cases. One copy of the brief of the moving party shall be served upon counsel for the opposing party, and the original and five copies thereof in a departmental hearing, and the original and nine copies thereof in a hearing en banc, shall be filed with the clerk at least ten days before the time the motion is to be heard. The opposing party, if he appears, shall serve a copy of his brief on the moving party, and file with the clerk a like number of copies at least on or before the Wednesday preceding the day of hearing. Briefs may be printed or typewritten and shall comply with Rule on Appeal 42, insofar as applicable. If typewritten, the copies must be clearly legible. Failure to comply with the provisions of this rule relating to briefs may result in striking the motion, hearing it without oral argument by the opposing party, if he has failed to comply herewith, or continuing it until a later motion day. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; subds. (a), (d) and (e) amended, adopted Nov. 2, 1960, effective Jan. 2, 1961; rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961.]

Rule I-54 Notices of motions. All notices of motions not given in the briefs must be in writing; and the necessary time of notice shall be not less than ten days, unless a different time is fixed by special order of this court. But where the service of a notice is made by mail between different places, the time of notice above mentioned shall be thirteen days. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I-55 Costs on appeal and cost bills. (a) Costs.

(1) Allowance. In cases disposed of by an opinion of the supreme court, costs on appeal will be taxed by the clerk in accordance with this rule. In cases disposed of by order, the court has discretion to award costs.

(2) Items. The costs which may be recovered are: The fee of the clerk of the supreme court; the fee of the clerk of the superior court for preparing, certifying, and transmitting to the supreme court the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; statutory attorney's fees; the actual amount incurred in the printing of forty briefs; the actual amount incurred, by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedeas bond.

(3) Disallowance of Printing. When, in the opinion of the supreme court, a brief is improper in substance or when a statement of facts is improper in substance or unnecessarily long, with regard to the issues raised on the appeal, the court may, in its discretion, order the disallowance as costs of any part or the whole of the disbursements for printing or preparing the same. Reference is also made to Rule I–41 on disallowance of costs on briefs filed late.

(b) Party Entitled.

(1) Prevailing Party——Discretion. When the judgment of the superior court is affirmed or reversed, the prevailing party shall recover his costs. When the judgment of the superior court is reversed and remanded for a new trial, the awarding of costs shall abide the final determination of the cause. When the judgment is affirmed in part, reversed in part, modified, or remanded for further proceedings, the supreme court shall, in its discretion, award all or partial costs to either party or may order that the awarding of costs shall abide the final result of the further proceedings.

(2) Nominal Party. When a party on an appeal is a nominal party only, costs shall not be recovered against such party in any event.

(c) Cost Bill.

(1) Filing and Exceptions after Opinion. The prevailing party shall, within ten days after the filing of the opinion in a cause, file with the clerk and serve upon the adverse party a cost bill. If any adverse party excepts to any item therein, he shall, within ten days after service of the cost bill upon him, file with the clerk and serve upon the prevailing party his exceptions to such cost bill together with affidavits in support of his exceptions. When the decision of this court becomes final, as provided in Rule 15 of Supreme Court Administrative Rules, the clerk shall tax the costs of which the prevailing party is entitled and, in the event that exceptions have been filed, shall grant or deny said exceptions and shall notify the parties of his rulings thereon.

(2) Filing and Exceptions after Judgment. When the costs on appeal are to abide the final result of an action, the ultimate prevailing party shall, within ten days after the judgment becomes final, file with the clerk a certified copy of said judgment and his cost bill of the prior appeal and shall serve a copy of said cost bill upon the adverse party. If any adverse party excepts to any item of said cost bill, said exceptions shall be handled in the same manner as provided in subsection (c) (1) of this rule. When the time for taking an appeal from the judgment entered upon a remand of the cause has expired and no notice of appeal has been given, the prevailing party shall, within ten days, file with the clerk a certificate of the clerk of the superior court certifying that no notice of appeal has been given. Whereupon the clerk shall include the costs of the prior appeal, as finally taxed, in a supplemental judgment and remit the same to the clerk of the superior court.

(3) Supplemental. In the event that additional premium on an appeal and/or supersedeas bond shall accrue prior to the final taxing of costs, the prevailing party may, within ten days after such accrual, file with the clerk and serve upon the adverse party a supplemental cost bill limited to this item only; said supplemental cost bill to be handled in the same manner as provided in subsection (c) (1) of this rule.

(d) Filing and Hearing Exceptions. If any party excepts to the costs as taxed by the clerk, he shall, within ten days of said taxing, file with the clerk and serve upon the adverse party his exceptions and said exceptions shall be heard by this court in the same manner as that provided by Rules I–53 and I–54 for the hearing of motions.

(e) Waiver of Objections. When a cost bill has been served and filed in time and no exceptions have been filed, objection thereto will be deemed to have been waived.

(f) Waiver of Costs. When a cost bill has not been filed within the time allowed by this rule, any claim to costs will be deemed to have been waived. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended; adopted Nov. 17, 1952, effective Jan. 2, 1953; adopted Dec. 14, 1953, effective Mar. 1, 1954; adopted May 8, 1956, effective June 15, 1956; adopted Nov. 12, 1959, effective May 1, 1960; adopted Nov. 2, 1960, effective Jan. 2, 1961, rule form approved, adopted Dec. 6, 1960, effective Jan. 2, 1961; subdivision (g) implementing 1965 C 133 § 2 (RCW 10.01.112), added effective July 1, 1965; subdivision (g) deleted May 4, 1966, effective June 1, 1966.]

Costs, review, etc.: RCW 4.84.180, 4.84.190, 4.88.260.

Counsel——Right to——Fees: RCW 10.01.110.

Indigent defendants——State to pay costs and fees incident to supreme court review: RCW 10.01.112.

Schedule of attorneys' fees: RCW 4.84.080.

Transcript of testimony——Fee——Forma pauperis: RCW 2.32.240.

Rule I–56 Habeas corpus. (a) Jurisdiction. The supreme court shall have original jurisdiction in habeas corpus proceedings.

(b) Parties.

(1) Petitioner. A petition for writ of habeas corpus shall be brought in the name of the person in custody or by his guardian or parent as petitioners.

(2) Respondent. The person or agency exercising physical custody, restraints or conditions upon the petitioner's liberty shall be named respondent. The proper respondent of a person in the custody of an institution under the control of the State Department of Institutions is the director of that department.

(3) Transfer of Custody. If petitioner after serving and filing his petition is transferred from the custody of one agency to another, petitioner will forthwith advise the court and respondent's counsel. The court on its own motion will substitute the proper respondent, and the clerk of the court shall so notify substituted respondent or counsel for respondent.

(c) Petition. Under the titles indicated the petition shall set forth:

(1) Place of Custody. The place where petitioner is held in custody if confined.

(2) Basis of Custody. If held in custody pursuant to a judgment or sentence or other decree, the basis of the

custody, including date, county and cause number, if available.

(3) Statement of Facts. A statement of the facts upon which the allegation of illegal custody is based (the grounds for allegations that the imprisonment or custody is illegal).

(4) Legal Principles. The reason why the custody is unlawful or violates a constitutional right. Legal argument, citations, and authorities are not required, but, if submitted, shall be set forth in a brief separate from the petition, which shall be served and filed with the petition.

(5) Previous Petitions. Identify other applications or petitions filed with regard to the same allegedly unlawful custody by setting forth the court in which filed, date and disposition made by such court.

(6) Prayer. The relief being sought.

(7) Oath.

(i) If a notary is available. The petition shall be subscribed by the petitioner and verified as follows:

"_____ being first duly sworn, on oath, deposes and says that he is the petitioner in the above–entitled proceeding, that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public in and for the State of Washington, residing at _____."

(ii) If a notary is not available. The petition shall be verified by the petitioner as follows:

"Under penalties of perjury, I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

_____ _____"
(date)

(d) Proceeding in Forma Pauperis.

(1) Motion. A petitioner, unable to pay the filing fee, may move to proceed in forma pauperis. The motion shall contain a statement of the petitioner's total assets.

(2) Clerk. When the petitioner is in the custody of an agency of the State Department of Social and Health Services, the clerk shall obtain a statement of petitioner's known assets from the superintendent of the institution exercising custody over the petitioner.

(3) Determination. If the chief justice finds the petitioner is unable to pay the filing fee, the petitioner will be authorized by notation order to proceed in forma pauperis. If the application to proceed in forma pauperis is denied, the petitioner shall be notified of the reason.

(4) Provision of Counsel and/or Transcript. Upon a finding that the petitioner is unable by reason of poverty to procure counsel or to pay for a transcript, and that the petition raises significant issues which by their nature and character indicate for proper review and determination the necessity of professional legal assistance or the availability of a transcript, the Supreme Court may enter an order:

(i) Appointing counsel or directing a superior court to appoint counsel to represent the petitioner in the Supreme Court or on an order of reference,

(ii) Directing a superior court to have a prior superior court proceeding or a reference proceeding transcribed,

(iii) Authorize payment of the costs of the above from public funds.

The procedure for obtaining reimbursement for such costs from public funds is governed by ROA I–47 (except paragraph (b) thereof)

(e) Filing Petition. A petition for writ of habeas corpus will not be filed by the clerk of the supreme court until the filing fee has been paid or the petitioner has been authorized to proceed in forma pauperis.

(f) Return and Answer. The respondent shall within twenty days after the petition is served and filed, unless the time be extended by the chief justice for good cause shown, file a return and answer setting forth:

(1) The authority or cause of the restraint of the party in his custody and if the authority be in writing, a certified copy thereof.

(2) Whether in the opinion of respondent or counsel for respondent a disposition of the petition requires a determination of fact.

(g) Briefs.

(1) Petitioner's Opening Brief. If petitioner files a brief with his petition, it shall contain the following designated sections:

(i) Facts. A succinct statement of the alleged facts upon which the argument that the custody is illegal is based.

(ii) Argument. Legal citations and authorities supporting the position of the petitioner.

(iii) Prayer. The relief being sought.

(2) Answering Brief. Respondent's answering brief shall be served and filed within twenty days after respondent's answer and return have been served and filed, unless the time is extended by the chief justice for good cause shown.

(3) Reply Brief. Petitioner's reply brief, if any, shall be served and filed at least three court days preceding the hearing.

(4) Form and Number of Briefs.

(i) Form. Briefs will be on letter size paper and printed or typed unless such facilities are not available. Only one side of the paper shall be used. Typewritten text shall not be smaller than pica or 10 point type, double spaced with lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Headings shall be in capital letters, underlined. Briefs shall be stapled along the left margin of the page.

(ii) Copies. An original and 5 copies of briefs will be filed with the clerk. Copies shall be produced, if means are available, by some method more legible and permanent than carbon. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(h) Transfer for determination. Petitions for writs of habeas corpus originally filed in the supreme court may be transferred to the court of appeals for determination.

(i) Hearing.

(1) Setting. The clerk shall promptly set the cause on the motion calendar and notify the parties of the date.

(2) Oral Argument. The cause shall be submitted without oral argument unless otherwise directed by the court.

(j) Motions.

(1) Form. Motions shall be verified in the same manner required for a petition. Proof of service setting forth the persons on whom the motion is served shall be subjoined to the motion. A copy of the motion must be served on the opposing party or his counsel.

(2) Disposition. Petitions or motions which do not relate to the merits of the petition for the writ and motions to dismiss the cause on grounds of frivolity or repetitiousness may be determined by the chief justice.

(k) Referral for Hearing. Petitions which require for disposition the resolution of an issue of fact which cannot be determined from the record will be referred to the superior court entering the judgment or order upon which petitioner's retention is based. The reference court shall hold an evidentiary hearing to resolve the disputed questions of fact. Such hearing shall be held before a judge who was not involved in the challenged proceedings.

(1) Order of Referral. The order of referral shall contain provision for:

(i) Appointment of counsel at public expense if petitioner is found to be indigent.

(ii) Right to summon witnesses.

(2) Note for Hearing. When the respondent is represented by the attorney general or a prosecuting attorney, such attorney shall be responsible for promptly noting the hearing and serving notice on other parties. In all other cases petitioner or his counsel shall have such responsibility.

(3) Procedure. Upon the conclusion of the hearing, the trial judge shall cause findings of fact to be made and a certified copy thereof to be filed with the supreme court, and all supreme court files forwarded in connection with the reference hearing to be returned to the supreme court.

(l) Disposition on Merits. If, after a hearing by the court, it appears from the face of the record or from admitted facts that the petitioner is entitled to relief of some nature, the chief justice shall assign the cause for an opinion. In all other cases, except referrals, the petition may be denied by order.

(m) If Relief Granted. If any relief be granted, upon motion of the respondent, the relief shall be stayed during the pendency of a petition for review. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 13, 1970, effective Jan. 2, 1971; amended, adopted Mar. 27, 1972, effective Mar. 27, 1972. Prior: adopted Nov. 22, 1950, effective Jan. 2, 1951; rule amended, adopted Dec. 14, 1953, effective Mar. 1, 1954.]

Comment by the Court. Complete revision of former ROA 56.

Defendants' fee, forma pauperis: RCW 2.32.080.

Proceedings in forma pauperis: RCW 7.36.250.

Superior court clerk's fee: RCW 36.18.020.

Rule I–57 Procedure for petitions for extraordinary writs, certiorari, mandamus and prohibition. (a) Scope of Rule. Petitions for all writs authorized by the state constitution or necessary and proper for the complete exercise of the supreme court's appellate and advisory jurisdiction, including orders of the court of appeals which terminate an action, shall be entitled and processed and determined under the provisions of this rule except: (1) petitions for writs of habeas corpus which shall be governed by ROA I–56 and (2) writs directed to state officers, which shall be governed by ROA I–58.

(b) Reserved.

(c) Stay of Proceedings.

(1) The chief justice may stay proceedings and condition the stay on petitioner posting a bond deemed sufficient to protect respondent from all damages that may be suffered by reason of the stay of proceedings.

(2) Jurisdiction. Jurisdiction of the supreme court shall attach when:

(i) the chief justice stays proceedings or grants the writ; and

(ii) petitioner has filed a bond for costs as provided by (g)(2) of this rule, and a bond, if required by (c)(1).

(d) Contents and Format of Petition, Response, and Briefs.

(1) Contents of Petition. The petition for a writ shall be verified by the petitioner or his counsel and shall contain a brief statement of the essential facts constituting the ground for review and issuance of the writ by the supreme court. The petition shall be supported by a memorandum of authorities, and, if necessary, further supporting documents or affidavits.

(2) Response to Petition. A respondent may serve upon the petitioner or his counsel and file with the supreme court a response to the petition. The response may contain additional facts verified by respondent or his counsel, a memorandum of authorities or other supporting documents or affidavits.

(3) Format and Size. The caption of a petition for a writ shall appear as it does in the court from which the case arose, except that the aggrieved party shall be designated as the petitioner and all other parties as respondents. If the petition is for a writ of prohibition or mandamus directed to the superior court or division of the court of appeals, the appropriate court shall be named as a respondent. The petition and response shall be typewritten, printed, mimeographed, or produced by multilith or offset processes on letter–size paper (8 1/2 x 11 inches) and stapled on the left–hand side. Briefs may be typewritten and shall comply in style and content with Rule I–42; the number thereof shall be governed by (g)(3) of this rule.

(e) Time of Filing and Service.

(1) Filing. A petition for a writ must be filed in the office of the clerk of the supreme court within fifteen (15) days after the determination in question has been made by the court from which the case arose, except as otherwise provided by RCW 8.04.070 for the review of a certificate of public use and necessity. Unless petitioner proceeds forthwith to present the petition to the chief justice ex parte or notes it for presentment within

a reasonable time after filing, the court may dismiss the petition for want of prosecution.

(2) Service. When a petition for a writ is presented ex parte to the chief justice, and an order to show cause is issued pursuant thereto, a copy of the petition and a copy of the order to show cause shall be served forthwith by the petitioner upon all respondents or their counsel.

A copy of the petition for a writ and notice of presentment thereof to the chief justice upon a day certain may be served by petitioner upon all respondents or their counsel prior to filing the petition.

All services shall be made in the manner prescribed in Rule I–3. Proof of service shall be filed with the clerk of the supreme court.

(f) Preliminary Hearing on Petition.

(1) If the petition is presented ex parte, the chief justice may

(i) determine that the writ does not lie and deny the petition; or

(ii) he may issue an order to show cause why the writ should not issue. If an order to show cause is issued, the chief justice shall fix a time (1) for hearing thereon either before him or before the court and (2) for filing briefs in support of, and in opposition to, the issuance of the writ.

(iii) Transfer the writ to the court of appeals for determination unless the petition is to obtain a review of an order of a panel of the court of appeals denying a petition for an extraordinary writ.

(2) Unless a shorter time, or another day and time, is fixed by the chief justice, the preliminary hearing before him on a petition for a writ shall be noted by petitioner for hearing on a THURSDAY at 1:30 p.m. not less than five nor more than fifteen days after service of a copy of the petition and notice of hearing upon respondent or his counsel. Immediately upon notice of hearing having been given, petitioner shall file with the clerk of the supreme court the petition, notice of hearing, proof of service thereof, memorandum of authorities, and supporting documents.

(3) If the petition is presented to the chief justice after notice given as in these rules provided, the chief justice may

(i) determine that the writ does not lie and deny the petition; or

(ii) cause the hearing on the petition to be continued and heard by the court; or

(iii) issue the writ;

(iv) provided, however, if the petition is for a writ of prohibition or mandamus the chief justice may only determine that the writ does not lie or cause the hearing on the petition to be continued and heard by the court.

(v) transfer the writ to the court of appeals for determination unless the petition is to obtain a review of an order of a panel of the court of appeals denying a petition for an extraordinary writ.

(4) If the chief justice continues the hearing on the petition to be heard by the court, or directs that the writ issue, he may

(i) stay proceedings in the cause as in this rule provided; and

(ii) determine whether or not the matter is emergent. If emergent, the petition or writ shall be set for argument before the court on a motion day. If not emergent, the cause shall be set on the court's calendar by the clerk of the supreme court.

(5) Time for Hearing and for Briefs. The order of the chief justice (i) directing the issuance of a show cause order, (ii) continuing the petition to be heard by the court, or (iii) directing that the writ issue, shall fix the date and time for hearing thereon and the time for service and filing of briefs of all parties.

(g) Procedure After Preliminary Hearing.

(1) Filing Copies. If the chief justice issues an order to show cause, continues the hearing on the petition, or issues the writ, petitioner shall file with the clerk nine additional copies of the petition.

(2) Bond. When the petitioner files the appropriate order issued by the chief justice with the clerk of the supreme court he shall also file a bond in the amount of three hundred dollars, conditioned that the petitioner will pay all costs that be assessed against him in the proceedings, or on the dismissal thereof, not exceeding three hundred dollars, or, in lieu thereof the petitioner shall deposit with the clerk, cash in the sum of three hundred dollars for such purpose; provided, however, that no bond or filing fee is required if the petition is filed by an indigent criminal defendant seeking review of the superior court's denial, in whole or in part, of a statement of facts at county expense.

(3) Submission of Briefs. Briefs in support of, and in opposition to, any petition, are required in all cases. One copy of the brief of petitioner shall be served upon each respondent or his counsel. The original and nine copies shall be filed. Any respondent who appears shall serve a copy of his brief on petitioner or his counsel, and file with the clerk the appropriate number of copies.

(4) Filing Record and Proceedings. Within the time allowed for the service and filing of his opening brief, the petitioner shall file with the clerk of the supreme court such portion of the record and proceedings in the superior court as is needed for the purpose of reviewing the application or the determination. The record shall be certified or authenticated as in causes on appeal.

(5) Additional Record. Any respondent, within the time allowed for service and filing his brief, may file certified or authenticated portions of the record and proceedings additional to those filed by the petitioner.

(6) Response and Cross–Review. If the chief justice directs the clerk of the supreme court to issue the writ, respondents may continue to urge at the hearing thereon that the writ was improvidently issued and should be quashed; and may, without the necessity of a cross–petition, present and urge in the supreme court any claimed errors by the court from which the case arose which, if repeated upon a new trial, would constitute error prejudicial to respondents.

(h) Denial of Petition or Quashing Writ. The court may deny a petition for a writ, or quash a writ already issued, by journal entry.

(i) Attorney's Fees Awarded. In addition to statutory attorney's fees and court costs, reasonable attorney's

fees may be assessed against petitioner if it is determined that a petition for a writ is not made in good faith.

(j) Notice of Appeal. If a timely petition for a writ of certiorari is denied, the petition shall be considered to be a notice of appeal timely and properly filed. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 10, 1969, effective Nov. 21, 1969; amended, adopted Feb. 24, 1972, effective July 1, 1972. Prior: Adopted Jan. 31, 1963, effective Mar. 18, 1963.]

Comment of the court. Jurisdiction limited to cases in which the supreme court would have original statutory appellate jurisdiction.

Rule I–58 Original writs directed to state officers. (a) Commencement of Action. Original proceedings in the supreme court for petitions for writs of mandamus, prohibition and quo warranto directed to state officer shall be initiated in the same manner as for the commencement of an ordinary civil action.

(b) Referral for Hearing. Petitions for writs directed to state officers will be referred to the superior court for Thurston County for determination of the facts unless an agreed and adequate statement of facts accompanies the petition.

(c) Cost of Filing. At the time of filing the petition for any writ, the petitioner, if a private party, shall deposit with the clerk of the supreme court, the sum of twenty–six dollars. If the petition is granted, and the petitioner finally prevails on the merits, thereof, or if the respondent fails to resist the application, the sum of twenty–six dollars shall be returned to the petitioner; otherwise, it shall be paid to the respondent.

(d) Issuance of Writ. An alternative writ, order to show cause, or writ directed to the respondents shall be issued by the clerk and under the seal of the court. A copy of the order, and opinion of the court, when one is written or required, duly certified by the clerk of the court, shall be attached thereto, and shall be served as prescribed in Rule I–3.

(e) Cost of Preparing the Record. The writ shall be conditioned upon the payment by the petitioner of all costs of preparing the record for hearing in this court.

(f) Filing of Briefs. Whenever an alternative writ or an order to show cause is issued under this rule involving the constitutionality of a statute, an executive order or an administrative regulation, the chief justice may designate the party who shall file the opening brief, which shall set forth with particularity in what manner the statute, executive order, or administrative regulation is unconstitutional; and he shall fix the time within which each party shall file his brief.

(g) Denial of Petitions. The denial of petitions for writs of mandamus and prohibition may be made by journal entry. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Jan. 30, 1963, effective Mar. 18, 1963.]

Rule I–59 Transcript of judgment, effect of. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–60 Effect of judgment——Execution under. If this court affirms or modifies any judgment or order appealed from, it may remand the cause to the superior court with directions to carry the same into effect, or it may itself issue the necessary process for that purpose to the sheriff of the proper county, as it may deem advisable. If the cause is remanded to the superior court to have such judgment or order carried into effect, the decision of the supreme court, and its order entered thereon, upon being certified to the superior court and entered on its records, shall have the same force and effect therein as if made and entered by the superior court. Executions issued from the supreme court shall be similar to those from the superior court, and of like force and effect, and returnable in the same time. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–61 Effect of reversal——Writ of restitution. If by a decision of the supreme court the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of the judgment or order appealed from, either the supreme court or the superior court may direct an execution or writ of restitution to issue for the purpose of restoring to the appellant his property, or the value thereof. But property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–62 Damages may be awarded, when. Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been stayed by a supersedeas bond, as in these rules provided, the court may award to the respondent damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, the court may award such damages as will effectually tend to prevent the taking of appeals for delay only. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–63 Appeals to be heard on merits. The supreme court will hear and determine all causes removed thereto in the manner hereinbefore provided, upon the merits thereof, disregarding technicalities, and will upon the hearing consider as made all amendments which could have been made. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Nov. 22, 1950, effective Jan. 2, 1951.]

Rule I–64 Reserved.

Rule I–65 Reserved.

Rule I–66 Disposition of material exhibits. (a) Transfer of Custody. Physical exhibits which, because of their bulk or weight, cannot be attached to the statement of facts, and which are only material to an issue of fact not before the supreme court on review shall be retained in the custody of the trial court subject to being obtained on request by the supreme court while the supreme court has jurisdiction of the cause.

(b) Disposition. When a cause is remanded for further proceedings, the exhibits in the custody of the supreme court shall be returned to the court having jurisdiction. When a cause is not remanded for further proceedings, counsel shall be notified, except in criminal cases, that the exhibits which cannot be retained in the supreme court file will be destroyed or disposed of six months after the date of the remittitur unless:

(1) A stipulation is filed by counsel or the parties of record providing for disposition and costs of transfer of such exhibits. The clerk shall dispose of the exhibits in accordance with the stipulation.

(2) A party or counsel of record notifies the court of a desire for such an exhibit. The exhibit shall be returned to the clerk of the court having jurisdiction of cause for such disposition as that court shall determine proper.

(c) Destruction and Disposal. Six months after notification, except in criminal cases, the clerk shall destroy physical exhibits which cannot be retained in the supreme court file and which have not been requested by counsel or parties of record unless:

(1) The exhibits are of historical value, in which case they will be transferred to the custody of the Washington State Museum.

(2) The exhibits are of material value, in which case they will be transferred to the state's central purchasing office for sale.

In criminal cases, exhibits may be destroyed on proof of death of the defendant. [Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Feb. 16, 1962, effective Feb. 23, 1962.]

Comment by the court. Complete revision of former ROA 66, providing new procedures.

Rule I–67 Certificate procedure. (a) Definition. "Certificate procedure" is the means, authorized by Laws of 1965, ch. 99 (RCW 2.60), by which a federal court, in disposing of a cause pending before it, submits a question of Washington Law to the Supreme Court for answer. This rule provides procedures for implementing the statutory authorization.

(b) Caption. The caption of the case shall be as set forth below:

CERTIFICATION FROM FEDERAL COURT
IN
(Title of Federal Court Case)

(c) Jurisdiction. The supreme court may entertain a petition to determine a question of law certified to it under the federal court local law certificate procedure act (Laws of 1965, ch. 99, p. 1302, RCW 2.60), provided that the question of state law is one which has not been clearly determined and does not involve a question of the United States Constitution.

(d) Filing. No filing fees shall be required and the cause shall be filed, indexed and numbered in the same manner as an appeal to this court.

(e) Record. The record shall be certified by the federal court as required by statute.

(f) Briefs.

(1) Procedure. The federal court shall designate who shall file the first brief. It shall be filed and served upon his adversary within 30 days after the filing of the record in the supreme court. The opposing party in the federal court shall file and serve upon his adversary his brief within twenty days after receipt of the opening brief, and a reply brief shall be filed within ten days. Time for filing the record, supplemental record or briefs may be extended for cause.

(2) Production. Briefs may be produced in accordance with ROA I–42(b).

(g) Costs. Procedures promulgated by ROA I–55 shall be applicable except both parties shall file a cost bill, and the clerk will not tax costs but shall indicate a division of the total costs between the parties involved.

(h) Finality of Decision. The opinion of the supreme court shall become final in the same manner it becomes final in an appealed case. An opinion that has become final will be certified by the clerk of the supreme court to the federal court originating the question. The certification shall state that the opinion is an answer to the question of Washington law submitted. The certificate shall be as follows:

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

CERTIFICATION
From Federal Court
in
---------- CERTIFICATION

---------- No. _____
---------- (Federal)
---------- Court No. _____

The State of Washington to:

This is to certify that the attached opinion of the Supreme Court of the State of Washington has filed in the above–entitled case on _____, 19__.

Costs of each party on certification are:

Plaintiff _____

Defendant _____

TOTAL Divided Equally is _____ to each.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court of Olympia, this _____ day of _____, A.D. 19__.

_____

Clerk of the Supreme Court
of the State of Washington.

[Adopted July 2, 1969, effective July 18, 1969. Prior: Adopted Dec. 19, 1968, effective Jan. 3, 1969.]

PART II
RULES FOR THE REVIEW BY PETITION OR APPEAL OF ORDERS OR JUDGMENTS OF THE COURT OF APPEALS

Comment by the court. New procedures for obtaining review of decisions of the court of appeals.

Rule II–1 Review by petition. When the supreme court grants a petition for review of an opinion of the court of appeals, the cause will be set for hearing. No additional briefs shall be filed unless requested by the supreme court. [Adopted July 2, 1969, effective July 18, 1969.]

Rule II–2 Review by appeal. (a) When Allowed. When the court of appeals reverses a judgment or order of the superior court by less than a unanimous decision, the aggrieved party may appeal or cross appeal to the supreme court.

(b) Procedure. The original of the notice of appeal or cross–appeal shall be filed in the supreme court and a copy thereof in the court of appeals within ten days after the denial of a petition for rehearing. Upon the filing of the copy of the notice, the clerk of the court of appeals shall forward to the supreme court the entire record in the cause. No briefs other than those filed in the court of appeals shall be filed unless requested by the supreme court. [Adopted July 2, 1969, effective July 18, 1969.]

Rule II–3 Part I Rules Applicable to Part II. The following rules set forth in Part I are applicable to review by the supreme court under Part II: ROA I–6, ROA I–31, ROA I–49, ROA I–50, ROA I–53, and ROA I–55. [Adopted July 2, 1969, effective July 18, 1969.]

Rule II–4 Petition for extraordinary writs to review determination of court of appeals. Scope of Rule. Petitions for all writs authorized by the state constitution or necessary and proper to the complete exercise of the supreme court's revisory jurisdiction of the determinations of the court of appeals shall be entitled, processed, and determined under the provisions of ROA I–57. [Adopted July 2, 1969, effective July 18, 1969.]

Part III
RULES FOR COURT OF APPEALS

Title of Rules	Abbreviation
Court of Appeals Administrative Rules	CAR
Court of Appeals Rules on Appeal	CAROA

COURT OF APPEALS ADMINISTRATIVE RULES (CAR)

Court of Appeals: State Constitution Art. 4 § 30; Chapter 2.06 RCW.

Rule 1 Seal. The seal of the Court of Appeals shall be in the vignette of George Washington, with the words "SEAL OF THE COURT OF APPEALS—— STATE OF WASHINGTON" surrounding the vignette. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 2 Style of process. Processes of the Court of Appeals shall run in the name of the "State of Washington," bear attest in the name of the chief judge, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to such rules or orders as are prescribed by the court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 3 Judgments. The judgments and decrees of the court of appeals shall be final and conclusive upon all parties except when the supreme court has assumed jurisdiction of the cause. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 4 Sessions. The regular sessions of the court of appeals shall be held in accordance with SAR 4, at the headquarters, and by order of the supreme court at such other locations as authorized by statute. Pursuant to Ch. 221 of the Laws of 1969, First Extraordinary Session, the first division shall have its headquarters in Seattle; the second division shall have its headquarters in Tacoma; and the third division shall have its headquarters in Spokane. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 5 Adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court sitting at any time. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 6 Authority. The presence of three judges and a concurrence of at least a majority thereof shall be required to dispose of a case, except for dismissal on stipulation of counsel of record. The chief judge may function on all procedural matters not affecting the content of the record or argument. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 7 Apportionment of business. The chief judge shall apportion cases fairly among all judges of the division. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 8 Chief judge. Initially the judges of each division will select the chief judge. After the first election, the judge of the division having the shortest term to serve not holding his office by appointment or election to fill a vacancy shall be the chief judge and in case there shall be two judges having the same short term, the other judges of the division shall determine which of them shall be chief judge. In a division having more than one panel, the chief judge shall assign the judges to panels. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 9 Acting chief judge. Each division shall elect from time to time an acting chief judge. The acting chief judge shall perform the duties and exercise the

powers of the chief judge during the absence or inability of the chief judge to act. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 10 Right of senior judge to act. In the absence or inability of both the chief judge and the acting chief judge, the senior judge present, of the division, shall act as chief judge. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 11 Seniority of judges. Seniority among the judges of the court of appeals shall be determined by length of continuous service on the court of appeals. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 12 Acts in contempt of court. It shall be contempt of this court for anyone to divulge to others than the judges or employees of this court any information relative to a case, except that which is of public record. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 13 Minutes——Court business meetings. The court will cause to be recorded in a book kept for the purpose minutes of all business meetings. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 14 Opinions——When filed. All opinions filed with a clerk of a division shall be signed, except per curiams. All opinions in any one case shall be filed at the same time, and the time of filing shall be determined by the chief judge. Original opinions shall not be taken from the clerk's office. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 15 Finality of decision. A decision of a panel shall become the final decision of the court of appeals:

a. Upon stipulation of counsel to a date prior to thirty days after the decision is filed;

b. If counsel do not stipulate to an earlier date, thirty days after the decision is filed unless a petition for rehearing is pending. When a petition for rehearing is denied, the opinion will become final twenty days thereafter unless a petition for review or an appeal is pending. An opinion will become final upon denial by the Supreme Court of a petition for review. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. b. amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 16 Court personnel. The court of appeals shall have such personnel as are authorized by supreme court rule. The personnel will be appointed by and serve at the pleasure of the division of the court to which they report.

a. Clerk's Office. Each division shall have a clerk and such other personnel for the operation of the office as are authorized by the Supreme Court. Before undertaking his duties, the clerk shall file with the secretary of state an oath of office. For coordination control, the clerks of the court of appeals shall be under the supervision of the clerk of the supreme court.

The clerk of each division of the court of appeals shall submit to the clerk of the supreme court, on the first day of each month, a list of all cases argued and assigned for opinion, the date the assignment was made, and such other reports as may be requested by the supreme court clerk.

b. Law Clerks and Secretaries. Each judge and chief judge is entitled to one law clerk and one secretary. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 17 Reporter. The opinions of the court of appeals shall be published by the reporter of decisions of the supreme court, under the supervision of the commission on supreme court reports. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 18 Law librarian. The state law librarian shall counsel and advise in the selection of books, periodicals, and all other legal research materials for the use of the court of appeals. Acquisition of all such material shall be made through the state law library. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 19 Bailiff. The clerk of each division may serve as bailiff. The chief judge may designate a law clerk to serve as temporary bailiff. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 20 Memorial exercises. At the beginning of the May term of each year, the court will conduct suitable memorial exercises for members or former members of the court of appeals who have died during the preceding year. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 21 Transfer of judges and causes. Judges of the respective divisions may sit in other divisions and causes may be transferred between divisions, as directed by written order of the chief justice of the supreme court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 22 Supreme court clerk. The clerk of the supreme court shall be responsible for the training and coordination control of the clerks of the court of appeals. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 23 Administrator for the courts. a. Fiscal Services. The legislature having appropriated to the court administrator funds for the court of appeals, fiscal services shall be provided by the court administrator.

b. Budgetary Planning. Each division shall submit to the court administrator a proposed budget at such time and in such form as the court administrator shall request. The court administrator shall prepare a proposed budget for the court of appeals.

c. Statistics. The administrator for the courts, under the supervision of the supreme court and the chief justice, shall collect and compile statistical and other data reflecting the state of the dockets and any need for judicial assistance, and shall make reports of the business transacted by the court of appeals. The clerks of the court of appeals and all other officers and employees of that court shall comply with all requests made by the court administrator, after approval by the chief justice, for information and statistical data bearing upon the

business transacted and the judicial accomplishments of that court.

d. Bond. The administrator for the courts shall obtain public employee faithful performance bond coverage for all court employees. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 24 Procedure. a. Briefs. Three copies of briefs filed on the merits shall be forwarded upon filing by the clerk of the court of appeals to the state law library.

b. Decisions.

1. Form. All decisions of the court shall be in writing and the grounds therefor stated. In matters of form and style, the written opinion shall conform to the standards prescribed for supreme court opinions.

2. Transmittal of Information. When an opinion of the court in a cause is filed, the clerk of that division shall transmit on the same day a certified copy of the opinion to the reporter of decisions, with such information pertaining to the cause as may be required by the reporter of decisions. The clerk shall also transmit forthwith copies of any orders or other matters required by the reporter of decisions for the publication of the opinions of the court.

c. Record. If a petition for a review is granted, or notice of appeal as authorized by statute is filed, the clerk of the court of appeals shall transfer the entire record and file of the case to the clerk of the supreme court.

d. Costs on Appeal.

1. Determination by Court of Appeals. When a decision of the court of appeals becomes final and the issue of costs determined, the clerk of the division in which the opinion is filed shall tax costs in accordance with ROA 55 in the remittitur. If the cause is remitted prior to the taxing of costs, costs will be taxed by the clerk in a supplemental judgment.

2. Determination by Supreme Court. If the supreme court assumes jurisdiction of the cause, costs on appeal in the court of appeals will be determined by the clerk of the supreme court in accordance with ROA 1–55.

e. Indigent Cost Bills. The legislature having appropriated funds to the supreme court for indigent appeals, bills filed in accordance with ROA *47 will be forwarded by the clerk of the division to the clerk of the supreme court, supported as follows:

1. Statement. A statement that a certified copy of the trial court authorizing the expenditure of public funds for the purpose for which the costs are claimed is on file.

2. Counsel Fees. When bills for counsel fees are forwarded, there will be attached thereto: (i) an evaluation by the panel hearing the cause as to whether the case required average, less than average, or above average services of counsel; (ii) a statement as to whether there is on file a certified copy of an order of the superior court appointing the claimant counsel on appeal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 25 Reporting of criminal cases. On any criminal appeal taken to the Court of Appeals from a determination made by a court of lesser jurisdiction, the court clerk shall, within five court days of the filing of a final decision on the merits in the matter, forward to the Washington State Patrol Section on Identification on a form approved by the Administrator for the Courts its disposition of the particular case. In the event that collateral proceedings are brought in the Court of Appeals and the result of those collateral proceedings changes, or otherwise makes inaccurate, the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section. [Adopted Jan. 17, 1974, effective March 1, 1974.]

COURT OF APPEALS RULES ON APPEAL (CAROA)

Rule 1 Method herein provided exclusive. The mode provided by these rules for appealing cases to the court of appeals, and for securing a review of the same therein, shall be exclusive. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 2 Definitions. In these rules, unless the context or subject matter otherwise requires:

(a) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) The words "superior court" mean the court from which an appeal is taken pursuant to these rules.

(c) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(d) The words "shall" and "must" are mandatory, and the word "may" is permissive.

(e) The terms "party," "appellant," "respondent," "petitioner" or other designation of a party include such party's attorney of record.

(f) "Judgment" means any judgment, order or decree from which an appeal lies.

(g) The term "remittitur" means a copy of the judgment of the court of appeals which is authenticated to the court from whence the appeal is taken, or over which or whom its controlling jurisdiction is exercised. In case the judgment or order appealed from is reversed or modified, a certified copy of the opinion of the court of appeals shall be attached to the remittitur.

(h) The terms "written," "writing," "typewriting," and "typewritten" include other methods of duplication equivalent in legibility to typewriting.

(i) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.

(j) "Clerk" denotes the clerk of the supreme court or clerk of the division of the court of appeals having jurisdiction of the cause. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 3 Service of papers. (1) Service of papers must, in all cases, be made upon the attorney of record of a party, if he has one, unless the place of business or residence of such attorney is unknown, when it may be made upon the party.

(2) Service upon an attorney shall be made by delivering to him personally, or at his office by delivery to his clerk or to the person having charge thereof; or, if his office be not open, or there be no one in charge thereof at his residence, by delivery to some person of suitable age and discretion residing therein; or, if neither of the foregoing methods can be followed, by deposit in the post office to his address with postage prepaid. In capital causes, a motion to dismiss an appeal shall be served upon the defendant personally, as well as upon the attorney of record.

(3) Service upon a party shall be made by delivery to him personally, or at his residence, to some person of suitable age and discretion residing therein, between the hours of nine o'clock in the forenoon and nine o'clock in the evening.

(4) Where the residence of a party and that of his attorney of record, if he have one, are not known, and proof of such fact be shown by affidavit, the service may be made upon the clerk of the superior court in which the cause was tried, for the party or attorney.

(5) Service may be made by mail when the party making the service and the person on whom such service is to be made reside in different places; postage must in such cases be prepaid. Time shall begin to run from the date of deposit in the post office. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 4 Order of filing and serving immaterial. Whenever any rule or statute heretofore or hereafter enacted requires a motion for a new trial, statement of

facts, notice of appeal or other documents concerning appeals or constituting a part of the record of appeals to the supreme court or court of appeals to be filed and served or served and filed, the serving and filing shall be equally valid and effective whether the document shall be filed or served first and no appeal shall be dismissed because of the order of the filing and serving. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 5 Personal appearance not necessary. Personal appearance of any party in the court of appeals shall not be necessary. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 6 Submission on failure to appear. Where a party does not appear personally or by attorney when the cause is called for hearing, the cause, as to such party, shall be deemed submitted. This rule shall not preclude oral argument by the opposite party. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 7 Violation of rules. The court may impose terms and penalties for the violation of or failure to observe rules other than those relating to jurisdiction. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 8 Appeals——When dismissed. The court of appeals will dismiss any civil or criminal appeal in which the jurisdictional requirement is not complied with. The court may at any time upon the giving of thirty days' notice dismiss any appeal for want of prosecution. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 9 Computation of time. The time within which acts are to be done, as provided in these rules, shall be computed by excluding the first and including the last day. If the last day is a Saturday or Sunday or a holiday the act must be completed on the next business day. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 10 Docket fees.

(a) Requirement. The clerk shall not file any paper on the part of a party to a proceeding until the statutory docket fee, chargeable against such party, has been paid or the party has been authorized to proceed without the payment of fee.

(1) *Waiver in Civil Cases.*

(i) Habeas Corpus. In habeas corpus proceedings filed originally in the Court of Appeals the Chief Judge may waive the requirement of payment of a filing fee pursuant to CAROA 56. In an appeal from a superior court order denying a petition for writ of habeas corpus, the superior court may waive the requirement of the payment of a docket fee pursuant to RCW 7.36.250.

(ii) Certiorari. A determination pursuant to CAROA 46 (c) (2) (i) that an appellant is authorized to appeal without the payment of a docket fee is authority for the appellant to petition for review of an order which allegedly denies him the means of perfecting his appeal without payment of a docket fee.

(iii) Indigent Cases. Upon a petition to proceed without the payment of a docket fee supported by an affidavit showing to the satisfaction of the Chief Judge that petitioner does not have the means to pay the docket fee and that the appeal is in good faith and not frivolous, the Chief Judge may waive the requirement of a docket fee.

(2) *Waiver in Criminal Cases.* Waiver of the requirement of docket fees in criminal cases is governed by CAROA 46. [Adopted July 2, 1969, effective July 18, 1969; amended, adopted Dec. 30, 1969, effective Jan. 16, 1970.]

Rule 11 Assignment of causes. (1) For the purpose of hearings, causes will be set by the clerk at the direction of the chief judge.

(2) *At least* two weeks before the beginning of each term of court, the clerk shall set for hearing such causes on the docket ready for hearing as the chief judge may direct. Any vacancies in the calendar will be filled with criminal cases ready for hearing. A cause on the docket of the court shall be deemed ready for hearing when it appears that the transcript is on file; and

(a) That the appellant's brief and respondent's brief are on file; or

(b) That the appellant's brief is on file, and has been served upon the respondent for a period of thirty days or more; or

(c) That the appellant's brief is on file, and all parties to the appeal have stipulated that the cause may be set for hearing at such term. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 12 Calendar. As soon as the causes shall have been set for a regular term of the court, the clerk shall prepare a calendar, and shall notify each attorney or firm of attorneys having any cause thereon. Causes becoming ready for hearing after the making up of the calendar may be set at the foot of the calendar, or at such other time as the court may fix; and counsel shall be notified thereof in such manner as the court may order. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 13 Taking papers from clerk's office. No paper filed with the clerk of the court shall be taken from the court room or clerk's office except by permission of the court or one of the judges, and when so taken a receipt in writing therefor must be left with the clerk. Before the cause is finally determined in the court, permission to take papers will not be granted except to a party or his attorney who shall have entered an appearance in the court in the cause in which such papers are filed. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 14 Appeal——When allowed. An aggrieved party may appeal a cause over which the court of appeals has jurisdiction from any and every of following determinations, and no others, made by the superior court, or the judge thereof, in any action or proceeding:

(1) From the final judgment entered in any action or proceeding. An appeal from any such final judgment shall also bring up for review any order made in the

same action or proceeding either before or after the judgment. The record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such order sufficiently for the purposes of a review thereof;

(2) From any order refusing to vacate an order of arrest in a civil action;

(3) From an order granting or denying a motion for a temporary injunction, heard upon notice to the adverse party, and from any order vacating or refusing to vacate a temporary injunction: Provided, that no appeal shall be allowed from any order denying a motion for a temporary injunction, or vacating a temporary injunction unless the judge of the superior court shall have found upon the hearing, that the party against whom the injunction was sought was insolvent;

(4) From any order discharging or refusing to discharge an attachment;

(5) From any order appointing or removing, or refusing to appoint or remove, a receiver;

(6) From any order affecting a substantial right in a civil action or proceeding, which either, (1) in effect determines the action or proceeding and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial; or (4) sets aside or refuses to affirm an award of arbitrators, or refers the causes back to them.

(7) From any final order made after judgment, which affects a substantial right; and an appeal from any such order shall also bring up for review any previous order in the same action or proceeding which involves the merits and necessarily affects the order appealed from, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such previous order sufficiently for the purposes of a review thereof.

(8) In criminal cases the state may appeal, upon giving the same notice as is required of other parties, when the error complained of is based on the following: (1) The setting aside of an indictment or information; (2) The sustaining of a demurrer to an indictment or information; (3) An order arresting judgment on any grounds; (4) An order granting to anyone, convicted by a jury, a new trial on any grounds; (5) Any order which in effect abates or determines the action, or discontinues the same, otherwise than by a verdict or judgment of not guilty. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 15 Jurisdiction. The court of appeals shall acquire jurisdiction of a cause by the filing of a timely notice of appeal to that court or by issuing a writ in the case or proceeding or by transfer of the case by order of the supreme court. Upon acquiring jurisdiction of a cause, the court of appeals shall have control of the superior court and of all inferior officers in all matters pertaining thereto and may enforce such control by a mandate or otherwise and, if necessary, by fine and imprisonment, which imprisonment may be continued until obedience shall be rendered to the mandate of the court of appeals. The superior court shall retain jurisdiction for the purpose of all proceedings by these rules provided to be had in such court, for the purpose of settlement and certification of the statement of facts, and for all other purposes as might be directed by order of the court of appeals. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 16 Powers of court of appeals. Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the court of appeals shall affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and will direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and, if the appeal is from a part of a judgment or order, will affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing, and no cause shall be deemed decided until the decision in writing is filed with the clerk. In giving its decision, if a new trial is granted, the court may pass upon and determine all the questions of law involved in the cause presented upon such appeal and necessary to the final determination of the cause. Without the necessity of taking a cross-appeal, the respondent may present and urge any claimed errors by the trial court in instructions given or refused and other rulings which, if repeated upon a new trial, would constitute error prejudicial to the respondent. An appeal from a judgment granted on a motion for judgment notwithstanding the verdict shall, of itself, without the necessity of a cross-appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the court of appeals shall, if it reverses the judgment entered notwithstanding the verdict, review and determine the validity of the ruling on the motion for a new trial. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 17 What may be reviewed. Upon an appeal from a judgment, the court of appeals will review any intermediate order or determination of the superior court which involves the merits and materially affects the judgment, appearing upon the record sent from the superior court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 18 Designation of parties. The party appealing shall be known as the appellant, and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served; but the title of the cause shall in other respects remain unchanged. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 19 Voluntary withdrawal of appeal. After a notice of appeal has been filed but before oral arguments on the merits, the superior court from which the appeal was taken shall have jurisdiction to dismiss the appeal, upon the filing of a stipulation by all the parties to the cause asking that the appeal be dismissed. When any such order dismissing an appeal is entered by the superior court, the clerk thereof shall forthwith file in the court of appeals a certified copy of such order and upon the filing thereof, the order shall be effective, the appeal

shall be considered as never having been taken, the sureties discharged from all liability on the appeal bond if one has been filed, and the court of appeals shall no longer have jurisdiction. Dismissals requested after oral argument on the merits shall be granted only by the court of appeals in its discretion. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Dec. 17, 1970, effective Apr. 16, 1971.]

Rule 20 Second appeal. No withdrawal of an appeal, and no dismissal which does not go to the substance of or the right to the appeal, shall preclude any party from taking another appeal in the same cause, within the time limited by these rules. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 21 Death of party not to affect appeal. The death of a party in a civil action after the rendition of a final judgment in the superior court, shall not affect any appeal taken, or the right to take an appeal; but the proper representatives in personalty or realty of the deceased party, according to the nature of the case, may voluntarily appear and be admitted parties to the cause, or may be made parties at the instance of another party, as may be proper, as in the case of death of a party pending in action in the superior court, and thereupon the appeal may proceed or be taken as in other cases; and the time necessary to enable such representatives to be admitted or brought in as parties shall not be computed as part of the time in these rules limited for taking an appeal, or for taking any step in the progress thereof. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 22 Bond for costs. (1) Bond for costs on appeal. A bond for costs on appeal shall be filed with the clerk of the superior court when the notice of appeal is given or within ten days thereafter, which bond shall be executed in behalf of the appellant by one or more sufficient sureties and shall be in a penalty of not less than three hundred dollars, conditioned to save the respondent harmless from costs and damages occasioned by the appeal; or money in an amount not less than three hundred dollars may be deposited with the clerk in lieu thereof. At the time the bond for costs on appeal is filed or a deposit in lieu thereof is made, a copy of the bond for costs on appeal or written notice of the deposit shall be served on the adverse party. No bond or deposit *shall be required:*

(a) When the appeal is taken by the state, or by a county, city, town, or school district or by a defendant in a criminal action;

(b) When the appeal is taken from an order of the superior court denying an application for any writ applied for by or on behalf of any person confined and restrained of his liberty by any judgment or order of any court of the state of Washington, or by order of any state, county, or city authority within this state, or so restrained of his liberty by any state, county, or city *official;*

(c) When the appeal is from an order of the superior court denying the application of any person confined as aforesaid to vacate the judgment by virtue of which he is so confined, regardless of whether the application be by way of motion or petition.

(2) Superior court discretion in fixing amount of bond. The superior court may, upon application of the respondent and for good cause shown, increase the bond on appeal over the amount of three hundred dollars. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 23 Supersedeas bond. (1) Supersedeas bond. Whenever an appellant entitled thereto desires a stay of proceedings on appeal, he may present to the superior court for its approval a supersedeas bond executed by one or more sufficient sureties, which bond may, if desired, contain the terms and conditions contained in the bond for costs on appeal referred to in Rule 22. The supersedeas bond, whether or not combined with the bond for costs on appeal, shall be conditioned for the satisfaction of the judgment in full, together with interest thereon, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment as the court of appeals may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, together with interest thereon, unless the court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy, as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff, or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property and the costs of the action, together with interest thereon.

If the supersedeas bond is intended to stay proceedings on only a part of the order, judgment, or decree appealed from, it shall be varied as circumstances may require to accomplish the purpose desired.

(2) Effect of supersedeas. When a supersedeas bond conditioned as above required has been filed, it shall operate, so long as it remains effectual, to stay proceedings upon the order, judgment or decree appealed from; but in case of an appeal from an order other than an order granting a new trial, no appeal or appeal bond shall operate to stay proceedings in the cause except proceedings upon the order appealed from; and no appeal or stay shall vacate or affect any part of a judgment or order not appealed from and where an appeal is taken from an order vacating a temporary injunction, the appellant cannot proceed further in the cause in the superior court during the pendency of the appeal except so far as may be rendered necessary by proceedings of an adverse party.

(3) Superior court discretion in fixing bond. In approving a supersedeas bond, the superior court shall exercise care to require adequate though not excessive security in every instance. Money in the amount of the penalty which would be designated in a bond may be

deposited with the clerk of the superior court in lieu of bond. Money so deposited shall be subject to the conditions set out in these rules and subject particularly to the conditions of Rule 25.

After a supersedeas bond has been approved and filed, the superior court may, upon application of the respondent or on its own motion and for good cause shown, increase the amount of the bond, require additional security, or require a new bond. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 24 Temporary injunction to remain in force, when. In all cases where a final judgment shall be rendered by any superior court of this state in a cause wherein a temporary injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment, such injunction shall remain in force during the pendency of such appeal, if, within five days after service on him of notice of the entry of the final judgment, such appellant shall file with the clerk of the superior court a bond, with one or more sufficient sureties, in a penalty to be fixed by the court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason of the injunction remaining in force. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 25 Obligees in bonds. Instead of the respondent or other party, the state of Washington for the benefit of whom it may concern, may be named as obligee in any bond for costs on appeal or supersedeas referred to in Rules 22 and 23 or required in any proceeding. Anyone who would have any right upon or concerning said bond had he been named as obligee therein, shall have the same right as if so named. Anyone having any interest in any such bond may sue thereon separately or jointly with anyone else also interested. It shall not be necessary to sue in the name of, or to join, the state of Washington in any suit upon such bond. The procedure provided by this rule is not exclusive but is optional and in addition to that otherwise provided. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 26 Justification of sureties. An appeal bond, whether conditioned to effect a stay of proceedings or not, signed as surety by any person, persons or corporation other than a surety company authorized to transact such business in this state as provided by law, shall be of no force unless accompanied by the affidavit of the surety or sureties therein attached thereto, in which each surety shall state that he is a resident of this state and is worth a certain sum mentioned in such affidavit, over and above all debts and liabilities, in property within this state, exclusive of property exempt from execution, and which sums so sworn to by the surety or sureties, shall be at least equal to the penalty named in the bond if there be but one surety, or shall amount in all to at least twice such penalty if there be more than one surety. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 27 Objection to surety——Certificate——New bond. Any respondent may object to the sufficiency of the surety or sureties in an appeal bond, other than a surety company authorized to transact business in this state as provided by law, within ten days after the service on him of the notice of appeal, or within five days after the service on him of the bond or written notice of the filing thereof, by serving on the appellant a notice stating that he is so objecting, and specifying a time, not less than three nor more than ten days distant, at which the surety or sureties are required to attend before the superior court in which the judgment or order appealed from was rendered or made, or before a judge thereof, and to justify their sufficiency as sureties. At the time and place named in such notice, or to which the proceeding may be thence adjourned by the court or judge, the surety or sureties must attend before the court or judge, and may be then and there examined in detail, under oath, as to their property and other qualifications as sureties, by any respondent or by the judge, or by both. If the judge upon such examination is satisfied that the surety or sureties are qualified as such, to the extent to which they are required by Rule 26 to make affidavit, then he shall make a certificate to that effect indorsed upon or attached to the bond, which shall thereupon stand as a sufficient appeal bond to the effect expressed in the condition thereof; but if he is not so satisfied, or if the sureties fail to attend and justify, then the judge shall in like manner certify to that effect, and thereupon the bond shall become void: Provided, that in such case the appellant may, within five days after the making of such certificate, file a new appeal bond in conformity with the requirements of Rules 22 and 23, and subject to the requirement of justification of the sureties provided in Rule 26; but in case such new appeal bond be found insufficient, no new bond can thereafter be filed in lieu thereof. In case the original or new appeal bond be not conditioned to effect a stay of proceedings, however, an additional appeal bond may be filed at any time thereafter when the appellant desires to effect a stay as provided in Rule 23, during the pendency of the appeal. The examination of the sureties taken upon their justification shall be reduced to writing and subscribed by the sureties, if either party so requires, and attached to the certificate made thereon. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 28 Defects in appeal bond——New bond. No appeal shall be dismissed because of any defect in the appeal bond, nor because an appeal bond which is given both as a cost bond and as a bond on supersedeas shall be insufficient by reason of the amount, but the appellant shall in all cases be allowed to give a new bond within such time and upon such terms as the court may order. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 29 Application for new bond. If any respondent shall have cause to believe, after any appeal bond shall have been filed and the sureties therein have justified or the time for requiring their justification has expired, that the sureties have since become disqualified as such, so that the bond is no longer an adequate security, he may apply by motion to the court of appeals to require a new or additional bond. Upon the hearing of such motion, the court may require the trial court to examine into the merits of the motion and the adequacy of the bond and certify the facts and his conclusions to this court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 30 Execution countermanded, when. When an appeal bond is conditioned so as to effect a stay or proceedings if execution has issued the clerk shall on demand of the appellant, issue to the sheriff a certificate that proceedings have been stayed, which shall countermand the execution; and thereupon the sheriff shall release any property levied on and not already sold, and return the execution into court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 31 Judgment against appellant and sureties. (a) If the judgment of the trial court is superseded and the judgment is affirmed on appeal, the trial court shall, when the cause is remitted, enter the judgment also against the supersedeas bond, bondsman or sureties for the amount of the judgment and for damages and costs awarded on appeal according to the conditions of the bond.

(b) If costs are taxed against an appellant, the trial court shall, when the cause is remitted, enter judgment for costs on appeal against the appellant and against the cost bond, bondsman or sureties according to the condition of the bond. [Adopted July 2, 1969, effective July 11, 1969.]

Comment by the court: Complete revision of former ROA 31, providing new procedures.

Rule 32 Jurisdictional requirement in civil causes. The court of appeals acquires jurisdiction of a civil cause by the timely filing of a proper notice of appeal.

Failure of the appellant to take any further steps to secure the review of the order, judgment, or decree appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in these rules or, when no remedy is specified, for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 33 Notice of appeal and cross-appeal in civil cases——Ordering statement of facts and transcript. (1) In civil actions appealable to the court of appeals, in order for the court of appeals to obtain jurisdiction of the cause, a written notice of appeal, together with a copy of the same, must be filed with, and filing fees paid to, the clerk of the superior court within thirty days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the court of appeals, and transmit therewith the filing fee as above provided. Failure of the superior court clerk to file the copy with, and forward the filing fee to, the clerk of the court of appeals, will not affect the validity of the appeal.

(2) Any coparty who did not join in the notice of appeal but who desires to join as an appellant shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice that he joins in the appeal. The requirements as to the giving of a bond for costs on appeal shall be as applicable to such coparty as to the original appellant. Any such party who does not so join shall not derive any benefit from the appeal, unless from the necessity of the case. All parties who so join in an appeal after the notice is given or served shall be liable for the expense thereof, and for costs and damages, to the same extent and upon the same conditions as if they had originally joined in the notice.

(3) Also to obtain jurisdiction, each respondent who desires to prosecute a cross-appeal from all or any part of the order, judgment, or decree appealed from shall, within twenty days after the giving of the original notice of appeal, file with the clerk of the superior court a notice of cross-appeal, together with a copy of the same. The clerk of the superior court shall forthwith file the copy of the notice of cross-appeal with the clerk of the court of appeals. The cross-appeal shall bring up for review only matters affecting appellant and such cross-appellant. The requirements as to the giving of a bond for costs on appeal shall be as applicable to cross-appellant as to the original appellant.

(4) No reference to the right of a coparty to join in an appeal, or to the right of a respondent to cross-appeal, shall abridge or restrict the right of any party to take a general appeal as to any matters or parties involved in the litigation, provided notice of such appeal shall be given in the manner and within the time required by this rule.

(5) Unless the chief judge shall previously order otherwise, the appellant must, within forty-five days after filing notice of appeal, make arrangements with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and also make arrangements with the clerk of the superior court for the transcript which is to be filed with the court of appeals pursuant to CAROA 44. Evidence that these arrangements have been made shall be in the form of a statement signed by the attorney for appellant or by the court reporter if there be no counsel of record. The above statement shall be filed with the clerk of the court of appeals within fifty-five days after the filing of the notice of appeal. Failure to comply with provisions of this paragraph may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk.

(6) A notice of appeal shall be in substantially the following form:

(Caption)

NOTICE IS HEREBY GIVEN TO (Other parties of record), represented by (names and addresses of counsel) that (name of appellant) appeals to Division _____ of the Court of Appeals from the (order, judgment, or decree) entered by the Superior Court in the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

Date _____

_____

(Address and telephone number of counsel for appellant, or of appellant if pro se)

(7) A statement that the statement of facts and transcript have been ordered and arrangement for payment made shall be in substantially the following form:

Appellant hereby states that the court reporter, (name and address), has been ordered to transcribe the statement of facts necessary for the appeal, and that arrangements accepted by the court reporter have been made for the payment of the cost. He further states that arrangements have been made with the clerk of the superior court for what he wishes to be included in the transcript.

Date _____

_____

(Address and telephone number of counsel for appellant, or of court reporter if appellant is pro se)

(8) A party filing a notice of appeal, cross-appeal, or a coparty joining in an appeal shall notify all other parties in the case. The notification shall be given by mailing a copy of the notice of appeal, cross-appeal, or joinder in appeal, to the party's attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal, cross-appeal or joinder in appeal is filed and shall be sufficient notwithstanding the death of the party, or of his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 34 Statement of facts——Time for ordering, serving, and filing——Certification. (1) Within forty-five days after filing notice of appeal, unless the chief judge shall have previously ordered otherwise, for good cause shown, the appellant shall order the statement of facts and make arrangements with the court reporter for the payment of the cost thereof.

(2) When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the clerk of the court of appeals. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the chief judge in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety days, plus any additional time allowed by the chief judge, after the notice of appeal was filed with the clerk of the superior court, the clerk of the court of appeals shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) The certifying of a statement of facts and the filing and service of the proposed statement, the notice of application for the settlement thereof, and all steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause.

(4) (Appeal on short record.) On any appeal or other proceeding for review, in any criminal cause, or in any civil cause whether cognizable at law or in equity, so much of the evidence as bears upon the question or questions sought to be reviewed may be brought before this court by a statement of facts without bringing up the evidence bearing on rulings on which no error is assigned. If the appellant does not include in his statement of facts the complete record and all the proceedings and evidence in the cause, he shall serve and file with such proposed statement of facts a concise statement of the points on which he intends to rely on the appeal.

(5) (Appeal on agreed statement of facts.) When the question or questions presented by an appeal in any cause can be determined without an examination of all the pleadings, evidence, and proceedings in the superior court, the parties may prepare and sign a statement of the case showing how the question or questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the question or questions by this court. The statement shall include a copy of the judgment from which the appeal is taken, a copy of the notice of appeal and of the appeal bond, together with their respective filing dates, and a concise statement of the points to be relied on by the appellant, and shall be filed with the clerk of the superior court within the time provided for the filing of a statement of facts. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the question or questions raised by the appeal shall be approved in writing by the trial judge and,
when so approved, shall constitute the record on appeal, and be transmitted to this court in the same manner as a statement of facts.

(6) Every statement of facts shall comply in form with the rule with reference to transcripts. The index thereto shall specify the page on which the testimony of each witness commences, the page on which exhibits

are offered or introduced, the page on which depositions or affidavits are offered or introduced, the page on which motions made during the course of the trial are recorded, and the page of the ruling of the court thereon. At the bottom of each page there shall appear the name of the witness or witnesses testifying, and whether the examination be direct, cross, redirect, or recross.

(7) All exhibits shall be lettered or numbered in consecutive order, and, where practicable, shall be attached to the statement of facts. Each exhibit shall be identified by endorsing on the face thereof, in a conspicuous place, its letter or number, an abbreviated title of the cause, and the superior court number of the cause. Where, from the nature of the exhibit, it is not practicable to make such an endorsement, the exhibit may be identified by a tag, securely fastened thereto, on which is written or printed its letter or number, the title of the cause, and its superior court number.

(8) In all cases where the judge of the superior court has filed a written memorandum giving his reasons for his decision, the same shall be included as part of the statement of facts.

(9) In all cases whenever any error is predicated upon a ruling relative to an instruction given or proposed, it will be necessary to include in the statement of facts all of the instructions given by the court and those proposed instructions concerning which error is assigned. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 35 Statement of facts, what constitutes. Any party may after the entry of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and any objections or exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already part of the record, made a part of the record in the cause by the certifying of a statement of facts, as in these rules provided. The certifying of a statement of facts shall not prevent the subsequent certifying of other statements of facts, comprising other matters in the cause at the instance of the same or another party; but only one statement of facts can be settled or certified after the rendition of the final judgment in the cause. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 36 Statement of facts——Amendments——Notice to settle. A party desiring to have a statement of facts certified must prepare the same as proposed by him, file it in the cause and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any other party may file and serve on the proposing party any amendments which he may propose to the statement: Provided, That the superior court may extend the time not to exceed an additional twenty days for filing and serving proposed amendments to the proposed statement of facts, if good cause be shown and the application for extension of time be made within the ten day period, and after notice to opposing counsel. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the statement. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. If no amendment shall be served within the time aforesaid, the proposed statement shall be deemed agreed to and may be certified by the judge at the instance of either party, at any time, without notice to any other party on proof being filed of its service, and that no amendments have been proposed; and if amendments be proposed and accepted, the statement as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 37 Certificate, what to contain——How signed. The judge shall certify that the matters and proceedings embodied in the statement, are matters and proceedings occurring in the cause and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein, or such thereof as the parties have agreed, to be all that are material therein. The certificate shall be signed by the judge, but need not be sealed; and thereupon all matters and proceedings embodied in the statement of facts shall become and thenceforth remain a part of the record in the cause, for all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuse to settle or certify the statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the court of appeals, either pending an appeal or prior thereto. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 38 Statement of facts——How certified upon change or death of judge. If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge or shall die, or shall be absent from the state or shall, by reason of disability, be unable to perform the duties of his office, which death, absence or disability may be shown by affidavit of any attorney in the cause served upon the attorney for the adverse party and filed in the cause, within the time within which a statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of Rule 37, and before having certified such statement, such statement may be settled by stipulation of the parties with the same effect as if

duly settled and certified by such judge while still in office. But if the parties cannot agree, the successor in office of the judge before whom the cause was pending or tried, or in case there be no successor, any judge of, or assigned to, the county where the cause was pending or tried, if such death, absence or disability shall appear to his satisfaction, shall settle and certify such statement in the manner in Rule 37 provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by the judge before whom the cause was pending or tried, or by the reporter, if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, of any of them. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 39 How certified when cases consolidated. When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all of the original causes, to embody in a statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the statement shall be certified as in these rules prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 40 Statement of facts. (a) Notice of filing. When the proposed statement of facts is received by the clerk of the superior court, the clerk shall promptly notify the court to which the appeal is taken.

(b) Use by Counsel. The copy of a proposed statement of facts which is served as in these rules prescribed, shall be returned to the party serving the same upon the statement being certified, for his use in preparing his brief on appeal; and when he serves his brief he shall at that time return such copy to the party on whom it was originally served, and his brief shall not be deemed served until such copy is so returned by him. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Feb. 24, 1972, deleting subdivision (c), effective July 1, 1972.]

Rule 41 Serving and filing of briefs on appeal. (1) Within forty–five days after the proposed statement of facts shall be filed, as provided in Rule 34, or in those cases in which a statement of facts is not necessary in order to review a cause, within thirty days after the giving of service of notice of appeal, the appellant shall serve on the respondent three copies of a printed brief on the appeal upon his part, and shall file with the clerk of the court of appeals twenty–five copies thereof, together with proof or written admission of service, as aforesaid. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the court of appeals, with like proof of service, a like number of copies of a printed brief on the appeal upon his part, which shall likewise conform to the rules of the court of appeals. Not less than twelve days prior to the hearing, the appellant may also serve and file with the clerk of the court of appeals a like number of copies of a printed brief, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this rule prescribed, may be extended by order of the chief judge of the court of appeals for good cause shown, or by stipulation of the parties concerned. Either party may, after the filing of his briefs, and not less than one day prior to the hearing of the appeal, submit to the court of appeals and to the adverse party a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief.

(2) The serving and filing of briefs in criminal causes shall be in accordance with Rule 46.

(3) If the appellant fails to file a brief, an affirmance will be directed. If the respondent files no brief, the cause will be deemed submitted upon its merits as to him. A respondent who has not filed a brief shall not be permitted to argue the cause orally without permission of the court given before the cause is called for argument.

(4) The chief judge having jurisdiction of a cause may grant to any attorney authorized to practice in this state authority to file a brief amicus curiae. Ordinarily such authority will not be granted unless the brief of amicus curiae will be served in time to permit the party opposing the position of amicus curiae to respond in his answering or reply brief. Such briefs shall conform to the requirements of CAROA 42 and shall be served on all parties of record. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 42 Production, style and content of briefs for cases set for hearing on the appeal docket. (a) Production. Briefs for cases set for hearing on the regular appeal docket shall be printed by either the letter–press or photo–offset method. If the photo–offset method is employed, the copy may be either linotyped or typed.

(1) Paper Stock. If both sides of pages are to be used, the text shall be on 60–pound substance paper; if only one side is to be used, the text shall be on 20–pound or heavier substance paper. The paper shall be white opaque unglazed paper. The cover shall be book or cover stock of a weight heavier than the text and sufficient to prevent the brief from sagging when stood on end. The color of the cover shall be light so that the print will clearly show and shall be: Gray for appellant's or petitioner's opening brief; green for respondent's answering brief; blue for appellant's or petitioner's reply brief; and yellow for other types of briefs. When completed, the pages of the brief shall measure 11 inches from top to bottom and 8 1/2 inches from side to side (letter size).

(2) Ink. Black ink shall be used for both cover and text.

(3) Format. Pages shall be numbered as follows: The index, table of cases, and table of authorities with small

Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/4 inches. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition.

(i) Linotyped copy. Type shall not be smaller than 12 point, double leaded, 30 picas wide. Quotations shall be in 12 point type, single leaded and indented two picas. Footnotes shall be in type not smaller than 9 point and unleaded. Headings shall be in bold face type. Left and right margins shall be justified.

(ii) Typed copy. Typewritten text shall not be smaller than pica type equivalent to 11 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced. Headings shall be in capital letters, underlined. Left-hand margins shall be justified.

(5) Binding. Briefs shall be bound along the folded edge or left side. Three saddle staples, machine sewing, or any permanent flush binding may be used. Ring plastic fasteners are not acceptable.

(b) Typed Briefs. Briefs for cases set for hearing on the regular appeal docket may be typed and filed on behalf of any party authorized to proceed in forma pauperis or by the state or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

(1) Paper Stock. The text of the brief shall be on 20-pound substance opaque white unglazed paper. The cover shall be of heavier book or cover stock and of a light color which will clearly show the typing.

(2) Ink. Black typewriter ribbons shall be used for both cover and text.

(3) Format. Pages shall be numbered as follows: The index, table of cases, and table of authorities with small Roman numbers; the text and appendix, if any, with Arabic figures. The pages of an appendix may be consecutively numbered after the text, or numbered independently. If numbered independently, the page numbers of the appendix will be preceded by the letter A. Paragraphs shall be indented. Margins shall be: Sides 1 1/2 inches, and top 1 1/2 inches. The text shall not exceed 8 inches top to bottom excluding page numbers.

(4) Type Composition. Typewritten text shall not be smaller than pica type equivalent to 10 point type, double spaced and typed on lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Footnotes shall be single spaced. Headings shall be in capital letters, underlined. Lefthand margins shall be justified.

(5) Binding. Typed briefs shall be stapled with 3 staples along the left side.

(6) Method of Production. One side of the paper shall be used. Copies shall be produced by some method more legible and permanent than carbon except carbon copies may be filed by an indigent appealing a criminal conviction or a denial of a petition for writ of habeas corpus pro se, or by an indigent appellant filing a supplemental brief. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(c) Cover and Title Sheets. The cover and title sheets shall be as follows and appropriately spaced to fill the sheet of paper within the margin requirements except the cause number shall be printed as close as possible to the top, right-hand corner of the page:

No. _____
(Court of Appeals No.)

In the Court of Appeals of the State of Washington
Division No. _____
(Superior court title except parties shall be designated "Appellant" or "Respondent" or, if not parties on appeal, "Plaintiff" or "Defendant.")

APPEAL FROM THE SUPERIOR COURT
FOR _____ COUNTY
THE HONORABLE _____ JUDGE,

BRIEF OF _____

Firm Name,
Counsel Responsible,
Address and Phone Number
of counsel filing brief.

(d) Citations. Citations shall be in conformity with the form used in current volumes of Washington Reports. Decisions of the Supreme Court and of the Court of Appeals shall be cited to the official report thereof.

(e) Reference to the Record. "St." shall be used for "Statement of facts," "Tr." for "Transcript," and "Ex." for "Exhibits." A reference to the record shall clearly identify the portion of the record by one of the above abbreviations and in the case of the statement of facts or transcript, the page number. A reference to an exhibit shall include the identifying letter or number assigned. A reference to opposing counsel's brief shall set forth the page number.

(f) Length of Brief. Except when authorized by the chief judge, briefs in excess of the number of pages indicated below, including the appendix, will not be accepted by the clerk for filing:

Opening and answering briefs	
Printed	50
Multilithed or typed	62
Reply briefs	
Printed	8
Multilithed or typed	10

Costs shall not be recovered for pages in excess of those set forth above even if authority for the filing of a brief with more pages has been granted.

(g) Contents. In addition to the title and/or cover pages, briefs for the regular appeal calendar shall consist of the following subdivisions, titled with distinctive type and in the order indicated:

(1) Appellant's or Petitioner's Opening Brief.

(i) Tables of authority. Authority cited shall be subdivided under: Table of cases, constitutional provisions, statutes, texts, and other authority. Cases shall be listed alphabetically with dates and citations. The dates and editions shall be indicated for texts. The page reference where cited in the brief shall be indicated opposite each authority.

(ii) Statement of the case. Under this heading the following shall be included: A brief statement of the nature of the case; a short resume of the pleadings and proceedings; the nature of the judgment or appropriate ruling or order from which the appeal is taken; a clear and concise statement of the facts appropriate to an understanding of the nature of the controversy, with page references to the record.

(iii) Assignments of error. Each error relied upon shall be clearly pointed out and discussed under appropriately designed headings. Where there are several errors relied on which present the same general questions, they may be discussed together. Whenever there is involved in any appeal a ruling or decision on the inclusion, omission, sufficiency or insufficiency of an instruction or instructions, as the case may be, the instruction or instructions shall be set out in the brief in full and reference made thereto by number in the "assignments of error." Whenever error is assigned to any finding or findings of fact, so much of the finding or findings made or refused as is claimed to be erroneous, shall be set out verbatim in the brief and reference made thereto by number of the "assignments of error." No assignment of error is required when a petitioner is seeking a writ involving the original jurisdiction of this court.

(iv) Argument of counsel.

(2) Respondent's Brief. The brief of respondent, in answer to a brief provided for in paragraph (1) above, shall consist of the following:

(i) Tables of authority. (See paragraph (g)(1)(i) above.)

(ii) Statement of case. If the respondent does not accept appellant's or petitioner's statement of the case, he shall point out under the title "Counter-statement of the Case," such insufficiencies or inaccuracies as he believes exist. He may also set forth relevant facts he believes material to the cause, with supporting references to the pages of the record, but without unnecessary repetition of matters in appellant's or petitioner's statement.

(iii) Argument of counsel. Argument shall be arranged and captioned under the following captions in the order listed:

Argument in support of judgment;

Argument in answer to appellant.

(h) Additional Authorities. Additional authorities submitted in accordance with Rule 41 shall be produced in accordance with paragraphs (a) or (b) above except the cover page shall be white. Twelve copies shall be filed with the court and not less than one copy served on the adverse party. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted May 1, 1970, effective July 1, 1970; subd. (b) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; subd. (c) adopted, amended May 8, 1972, effective July 1, 1972.]

Rule 43 Errors considered. No alleged error of the superior court will be considered, unless the same be definitely pointed out in the "assignments of error" in appellant's brief. In appeals from all actions at law or in equity tried to the court without a jury, the findings of fact made by the court will be accepted as the established facts in the case unless error is assigned thereto. No error assigned to any finding or findings of fact made or refused will be considered unless so much of the finding or findings as is claimed to be erroneous shall be set out verbatim in the brief. No error assigned to the inclusion, omission, sufficiency, or insufficiency of an instruction or instructions, given or not given, will be considered unless such instruction or instructions, as the case may be, shall be set out in the brief in full: Provided, That the objection that the superior court had no jurisdiction of the cause or that the complaint does not state sufficient facts to constitute a cause of action, or that the court of appeals has no jurisdiction of the appeal, may be taken at any time. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 44 Transcript on appeal. (1) Within fifty-five days after an appeal shall have been taken by notice, as provided in Rule 33, the clerk of the superior court shall prepare, certify, and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal. This rule shall not apply to appeals on agreed statements of facts as provided in Rule 34 (4). Within sixty days after the appeal shall have been taken by notice, as aforesaid, the clerk of the superior court shall, at the expense of appellant, send the transcript to the court of appeals. The papers and copies so sent up, together with any thereafter delivered, as hereinafter provided, shall constitute the record on appeal. Any statement of facts on file when the record is so sent up shall be sent as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such statement. In the event any statement of facts shall be filed or certified, or any other addition to the records or files shall be made, after the record on appeal shall have been set up, a supplementary record on appeal, embracing so much thereof as the appellant deems material or a copy thereof, may be prepared, certified, and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify, and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the court of

appeals prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the superior court or a judge thereof may order the clerk of the superior court to transmit the same to the clerk of the court of appeals and the same shall be transmitted accordingly, and shall be under the control of the court of appeals.

(2) Transcripts may be printed or typewritten, or may be prepared by photostatic copies of the original records in the office of the clerk of the superior court. If typewritten, the paper shall be of good quality of the size of legal cap, and only a black record ribbon shall be used. If printed, there shall be a compliance with the rule with reference to printed briefs as to size, spacing, and print. The transcript shall be free from interlineations and erasures, and shall be paged and prefixed with an alphabetical index of its contents, specifying the page of each separate paper, order, or proceeding.

(3) Transcripts must be certified by the clerk of the superior court in substantially the following form:

STATE OF WASHINGTON, COUNTY OF _____, ss.

I, _____, Clerk of the _____ Superior Court, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in the above entitled cause as I have been directed by _____ to transmit to the court of appeals.

In testimony whereof, I have hereunto set my hand and the seal of the Superior Court this _____ day of _____, 19__.

(SEAL) _____ Clerk

By _____ Deputy

(4) At the time the transcript is completed and certified, the appellant shall mail to each of the prevailing parties in the trial court, or his counsel, a copy of the clerk's index to the transcript. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; subd. (1) amended, adopted Nov. 29, 1971, effective Jan. 1, 1972.]

Rule 45 Omissions from the record. If any paper, exhibit, or other part of the record directed to be sent up, has been omitted, such omission may be supplied by any party, without leave, at any time before the cause is submitted to the court; notice of which shall be given all other parties. After a cause has been submitted such omission may be supplied only by leave of the court. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 46 Appeals in criminal cases. (a) Superior Court Procedure at Time of Sentencing. The superior court shall, at the time of sentencing, unless the judgment and sentence are based on a plea of guilty, advise the defendant

(1) of his right to appeal,

(2) that unless a written notice of appeal is filed in accordance with subparagraph (b)(1) of this rule, the right of appeal is irrevocably waived,

(3) that the superior court clerk will, if requested by defendant appearing without counsel, file a notice of appeal in his behalf, and

(4) of his right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal.

These proceedings shall be made a part of the record.

(b) Notice of Appeal.

(1) Filing. In order for the Court of Appeals to obtain jurisdiction of an appeal in a criminal cause the original and a copy of a written notice of appeal must be filed with and the filing fee paid to the clerk of the superior court unless the appellant is authorized to proceed in forma pauperis, within thirty (30) days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty (30) days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the division of the Court of Appeals to which the notice of appeal is directed and transmit therewith the filing fee, if any. Failure of the superior court clerk to file the copy with, and forward the filing fee, if any, to the clerk of the Court of Appeals, will not affect the validity of the appeal.

(2) Contents. A notice of appeal shall be in substantially the following form:

(Caption——same as in Superior Court)

NOTICE IS HEREBY GIVEN TO: (Other parties of record) represented by (names and addresses of counsel) that (name of appellant) appeals to Division _____ of the Court of Appeals from the (order, judgment, or decree) entered by the Superior Court of the State of Washington for _____ County on (month, day, year) in _____ County Cause No. _____.

The defendant is presently in confinement at _____. (or) The defendant has been released on bail and his address is _____.

DATED this _____ day of _____, _____.

(Signature)

_____

Address and telephone number of counsel for appellant or appellant if pro se, or clerk if notice prepared in accordance with (a)(3) above.

(3) Service. A party filing a notice of appeal shall notify all other parties in the case by mailing a copy of the notice of appeal to the party's attorney of record, or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal is filed and shall be sufficient notwithstanding the oath of the party, or

his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged.

(c) Notice of Co–Party of Cross–Appeal. A co–party who did not join in the notice of appeal but who desires to join the appellant or a respondent who desires to prosecute a cross–appeal shall give notice in accordance with CAROA 33.

(d) Responsibility after Notice of Appeal.

(1) Superior Court Clerk. Immediately after the giving of a notice of appeal, the clerk of the superior court, at the expense of the public prosecution, shall prepare and transmit to the clerk of the Court of Appeals a certified copy of the judgment or order appealed from, together with a certified copy of the written notice of appeal. The clerk of the superior court shall notify the clerk of the Court of Appeals as soon as the proposed statement of facts is filed. Either appellant or respondent may have transmitted to the Court of Appeals such additional portions of the record and files in the cause as they may believe have a bearing upon the issues involved.

(2) Superior Court.

(i) Determination of Resources and Costs. If the defendant files a timely notice of appeal or is a respondent and petitions the superior court for the expenditure of public funds for his costs on appeal, the superior court shall make findings as to the defendant's ability to pay and enter an order authorizing the expenditure of public funds for those costs allowable under CAROA 47 which the defendant cannot pay. If the defendant is found unable to pay the filing fee, the order shall also include authority to proceed in forma pauperis. Public funds for the payment of the statement of facts shall be limited to portions of the record necessary for review of assignments of error. Assignments of error so patently frivolous that reasonable minds could not differ as to their frivolity shall not be considered. If the defendant desires, but is unable to pay counsel, the superior court shall appoint counsel, preferably trial counsel. If, in the discretion of the trial court, other than trial counsel should be appointed, trial counsel shall be retained as co–counsel. No counsel shall withdraw without written authority of the trial court.

(ii) Denial of Costs. If a petition for the expenditure of public funds is denied in whole or in part, the defendant shall be advised of his right to have the order of denial reviewed by petitioning for a writ of certiorari and shall be advised of the limitations of time for filing such a petition.

(iii) Jurisdiction for Perfecting Appeal. The superior court shall retain jurisdiction for the purposes of fixing of bail, certification of the statement of facts, and appointment or withdrawal of counsel except a motion to withdraw as counsel for appellant on the ground that counsel can find no grounds on which he can in good faith base an appeal.

(3) Reports by Counsel. Counsel for defendant on appeal shall keep the Court of Appeals currently advised of his appearance or withdrawal and the address of the appellant. Court appointed counsel shall serve the defendant with a copy of the brief prepared in his behalf and file proof of service with the appellant court.

(4) Supplemental Appellant's Brief. The chief judge may authorize the defendant to file a brief supplementing the brief of his counsel if good cause is shown and the motion for authority to file the brief is received within fifteen (15) days after the brief of his counsel is filed.

(e) Procedure to Perfect Appeal.

(1) Statement of Action. Within fifty–five (55) days after the filing of the notice of appeal, unless the chief judge shall previously order otherwise, the appellant or his counsel must file a statement that:

(i) Arrangements have been made with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and with the clerk of the superior court for the transcript which is to be filed pursuant to CAROA 44, or

(ii) A motion has been made in the superior court for a determination pursuant to (d)(2)(i) above.

Failure to comply with provisions of this subsection may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk of the Court of Appeals.

(2) Statement of Facts.

(i) When Transcribed. When the proposed statement of facts is received by the appellant, he shall file the original with the clerk of the superior court, serve the copy on one of the adverse parties, and file proof of such filing and service with the clerk of the Court of Appeals. Notice of the filing of the statement of facts shall also be served on all other adverse parties. Provided, that the chief judge in his discretion may extend the time for the filing of the proposed statement of facts to a day certain if good cause be shown and the application for extension of time be made before the time for filing has expired. If proof of filing and service of the statement of facts is not filed within ninety (90) days, plus any additional time allowed by the chief judge, after the notice of appeal was filed with the clerk of the superior court, the clerk of the Court of Appeals shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of delay.

(ii) Time Requirements. The statement of facts must be filed within ninety (90) days after the entry of the judgment or order from which the appeal is taken unless the time is extended for good cause by the chief judge. If the statement of facts is not timely filed, the clerk of the Court of Appeals shall order counsel for the appellant or the court reporter, or both, to appear on the next motion day when the matter may be heard, unless the proposed statement of facts is filed by the Friday preceding the motion hearing, to explain the cause of the delay.

(3) Appellant's Opening Brief. Within thirty (30) days after the date the proposed statement of facts is filed, the appellant shall serve on the respondent two copies, and file with the clerk of the Court of Appeals 16 copies, of his opening brief on appeal.

(4) Supplemental Brief. If an indigent defendant is authorized by the chief judge to supplement the brief of his appointed counsel, his appointed counsel shall have the copy of the statement of facts served on the defendant within ten (10) days after service of the appellant's opening brief. Proof of service will be promptly filed with the Court of Appeals. The defendant will provide appointed counsel a copy of his supplemental brief for reproduction within sixty (60) days after the statement of facts was served upon him. The copy of the statement of facts will be returned to his appointed counsel with the supplemental brief. If the copy of the statement of facts is not returned the supplemental brief will not be reproduced and the appeal will proceed as if a supplemental brief has not been authorized.

(5) Respondent's Answering Brief. Respondent shall, within thirty (30) days after service by appellant of his opening brief or, if a supplemental brief is authorized, within thirty (30) days after service by appellant of his supplemental brief, serve on the appellant not less than two copies, and file with the clerk of the Court of Appeals 16 copies of his answering brief.

(6) Appellant's Reply Brief. Not less than five (5) court days prior to the hearing, appellant may also serve on the respondent two copies, and file with the clerk of the Court of Appeals 16 copies of a reply brief.

(7) Transcript and Statement of Facts. Not later than one (1) week after service of respondent's brief, appellant will cause the transcript and statement of facts to be filed with the clerk of the Court of Appeals.

(8) Extensions of Time. Time limitations as set forth in this paragraph may be extended by order of the chief judge, for good cause shown by affidavit, provided the motion for extension is made before the time has expired. Stipulation of counsel does not constitute good cause.

(f) Reproduction of Briefs in Indigent Cases. When public funds have been authorized for the costs of briefs filed on behalf of a defendant, the briefs shall be reproduced by the Court of Appeals. Within the time allowed, an original copy of such briefs ready and suitable for photocopying shall be filed with the clerk of the cognizant division. The clerk shall reproduce the briefs and make the following distribution:

To Whom Sent	Number of Copies
Defendant	1
Counsel for Defendant	2
Opposing Counsel	2
State Law Library	5
Court of Appeals	As required
Supreme Court	7 if petition for review is filed and 5 additional if petition for review is granted

(g) Dismissal for Want of Prosecution. When time requirements set forth in section (e) are not met by the appellant, the clerk of the Court of Appeals shall note the cause on the next motion docket for dismissal for want of prosecution and give notice of the hearing date of the motion.

(h) Applicability of Civil Rules. The practice and procedure, except as in these rules otherwise provided, shall be, as nearly as possible, the same as in civil cases. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Mar. 7, 1973, effective July 1, 1973.]

Comment by the Court: (d)(2)(ii) prevents withdrawal of counsel without authority of trial court.

Rule 47 Reimbursement of costs——Indigent criminal appeals. (a) Authorized Claims.

(1) Superior Court Clerk. The superior court clerk may submit a bill for the statutory allowance for preparation of a transcript and for the actual amounts incurred for transmittal of the record, briefs and exhibits to the court of appeals.

(2) Court Reporter. The reporter may submit a bill at the rate of $1.50 per page for the original and one copy of that portion of the statement of facts ordered by the superior court. The statement of facts shall be on 8 1/2" by 13" paper; margins shall be lined 1 3/8" from the left and 5/8" from the right side of the page; indentations from the left lined margin shall be not more than: one space for "Q" and "A", three spaces for the body of the testimony, eight spaces for commencement of a paragraph, and ten spaces for quoted authority; space between lined margins shall be used in so far as practicable; typing shall be double spaced thirty lines to a page except comments by the reporter shall be single spaced. Type shall be ten-point pica type or its equivalent. Additional copies when ordered shall be produced by the most economical method.

(3) Counsel. Counsel for defendant may submit a bill for:

(i) the actual expenses not including ordinary overhead incurred by counsel for perfecting the appeal including travel accomplished or to be accomplished not to exceed amounts allowable to state employees for travel by private vehicle, and

(ii) professional services.

(b) Conditions Precedent to Recovery.

(1) Order of Indigency. No costs shall be recovered unless there is on file in the court of appeals a certified copy of an order of the superior court authorizing the expenditure of public funds for the purpose for which costs are claimed.

(2) Appointment of Counsel. No fees or costs of counsel shall be recoverable unless there is on file in the court of appeals a certified copy of an order of the superior court appointing the counsel who is claiming recovery of fees or costs incident to review.

(c) Form.

(1) Copies. Each cost bill shall be filed with the clerk of the court of appeals in an original and three duplicate copies.

(2) Social Security Number. Each claimant, except the superior court clerk, shall set forth his social security number under his signature.

(3) Court Reporter and Clerk. A cost bill submitted by the court reporter or clerk shall be identified by the court of appeal case caption and entitled "Criminal Appeal Invoice Voucher." It shall itemize the number

of pages, number of lines per page, and billing rate per page. It shall be signed by the claimant. It shall be certified in the following form:

(i) Clerk's Cost Bill. The clerk shall certify his cost bill as follows: "I hereby certify that the items and totals listed herein are correct charges for the preparation or actual costs of transmittal of portions of the record and files ordered by counsel or the trial court in the above–entitled appeal."

(ii) Reporter's Cost Bill. The superior court clerk shall certify the reporter's cost bill as follows: "I hereby certify that the amount claimed in this bill is for that portion of the statement of facts ordered by the trial court and the typing of the statement of facts and computing of the bill are in accordance with CAROA 47 (a) (2)."

(4) Counsel. A cost bill submitted by counsel for the defendant shall be in the following form:

(i) identified by the court of appeals case caption,

(ii) entitled "Cost Bill of Counsel for Defendant,"

(iii) itemized as to actual hours expended by counsel in preparation of the appeal and amount of compensation claimed therefor, expenses paid by counsel incident to appeal, actual travel expenses of counsel incurred or to be incurred for argument in the court of appeals, and

(iv) subscribed with the affidavit of counsel that the items and totals listed therein are correct charges for actual labor or costs necessarily incident to the proper consideration of the appeal by the court of appeals.

(d) Time of Filing Cost Bills.

(1) By Court Reporter and Clerk. The reporter and clerk may file a cost bill as soon as the services for which the claim is submitted have been performed, but not later than ten days after the filing of the opinion.

(2) By Counsel. Counsel for defendant shall file his cost bill not later than ten days after the opinion in the case becomes final as provided by CAR 15. Only one cost bill shall be filed by counsel.

(e) Disallowance of Costs.

(1) Waiver of Costs. When a cost bill has not been filed within the time allowed, such claim will be deemed to have been waived.

(2) Improper Brief. When, in the opinion of the court of appeals, a brief by counsel is improper in substance, or unnecessarily long, the court may, in its discretion, disallow all or a portion of the costs thereof claimed by counsel.

(3) Unnecessary Delay. When, in the opinion of the court of appeals, the court reporter or counsel has been dilatory, the court may, in its discretion, disallow all or a portion of the cost bill.

(f) Allowance of Costs, Pursuant to CAR 24, when cost bills are in the proper form for payment, the clerk of the court of appeals shall forward the bills to the clerk of the supreme court.

(1) Court Reporter and Superior Court Clerk. Within ten days after a cost bill of the court reporter or superior court clerk has been forwarded to the supreme court, the clerk of the supreme court shall either approve it for payment or notify the claimant of his objections to its allowance by a clerk's ruling. Unless the claimant notes exceptions to the clerk's ruling within ten days, for hearing on a regular motion day, the amount will be deemed approved in accordance with the clerk's ruling.

(2) Counsel. The supreme court clerk shall present counsel's cost bill to the supreme court. The supreme court, in its discretion, will make such allowance as it determines is fair and equitable, consistent with funds available and projected budgetary requirements. Allowances shall be made by order of the chief justice. If all or a portion of the counsel's claim be disallowed by the order, notice of such disallowance shall be transmitted to the claimant by the supreme court clerk. Unless exceptions to the order are noted by the claimant within ten days after the date of the letter of notification for hearing on a regular motion day, exceptions will be deemed to have been waived. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Aug. 5, 1970, effective July 1, 1969; amended Aug. 24, 1972, effective Sept. 1, 1972; amended, adopted Nov. 1, 1973, effective Jan. 1, 1974.]

Rule 48 Proceedings in case of reversal in criminal cases. When in a criminal action the judgment against the defendant is reversed and it appears that no offense whatever has been committed, the court of appeals will direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense although defectively charged in the indictment or information, the court of appeals, if the defendant is in prison, will direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 49 Arguments. No more than two counsel on a side will be heard upon the argument, unless the court shall direct otherwise: Provided, That each party who has appeared separately and by different counsel in the superior court shall, if he so desire, be heard through his own counsel. The counsel for the appellant shall be entitled to open and close the argument upon the merits in all cases. In argument of motions, except motions heard with the merits of the cause and all preliminary or collateral matters, the counsel for the party having the affirmative of the issue shall open and close. Unless extended upon application, arguments in causes appearing on the regular calendar shall be limited to one–half hour on a side: Provided, That in causes where two or more appellants or two or more respondents appear separately in this court and file separate briefs, each may be heard as the court may permit, but in no case will more than two hours be allowed for arguments. Arguments upon motions shall be limited to one–quarter of an hour on a side. Applications for an extension of time for argument shall be made to the chief judge in writing not less than ten days prior to the date of the hearing. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 50 Post opinion procedures. (a) Petitions for Rehearing or Modification Addressed to Court of Appeals.

(1) Time. Any party to a case in which an opinion is filed may, before the opinion becomes final (See CAR 15), file in the court of appeals a petition for rehearing or modification.

(2) Form. Petitions may be printed or typewritten and copies produced by some legible, permanent process in accordance with the requirements of CAROA 42. An original and three copies shall be filed with the court.

(3) Content. The manner in which it is considered the opinion should be changed shall be succinctly stated followed by supporting argument.

(b) Petition for Review Addressed to the Supreme Court.

(1) Time. Any party to a case in which an opinion has been filed by the court of appeals, may within twenty days after the denial of a petition for rehearing or modification, file in the supreme court a petition for review. A copy of the petition must be filed with the court of appeals and a copy served on the opposing party within the twenty day period. Proof of service of the copy on the opposing party shall be filed in the supreme court with the petition. A petition not filed and served as herein provided will not be considered.

(2) Form. Petitions may be printed or typewritten and copies produced by some legible permanent process in accordance with the requirements of CAROA 42. An original and twelve copies shall be filed with the supreme court. The petition, exclusive of the opinion of the court of appeals, shall not exceed twenty pages.

(3) Content. A petition for review shall contain the following parts:

(i) Jurisdictional Statement. The date of the opinion and order denying the petition for rehearing or modification, and a statement of the reasons why the supreme court should assume jurisdiction. Specify:

Any decision of the supreme court of Washington with which it is asserted the decision of the court of appeals is in conflict, and a showing of such conflict; or

Any decision of a division of the court of appeals asserted to be in conflict with the decision of another division, and demonstrating such conflict; or

Any significant question of law under the constitution of Washington or of the United States is involved; or

Any issue of substantial public interest that should be determined by the supreme court.

(ii) Facts. The facts material to the question presented.

(iii) Question. The issues of law involved. Only issues set forth in the petition will be considered.

(iv) Opinion. A copy of the opinion of the court of appeals shall be attached.

(c) Additional Filings.

(1) Petitions. No more than one petition for rehearing or modification and no more than one petition for review shall be filed by the same party.

(2) Answers and Replies.

(i) Petition for Rehearing. Neither an answer nor a reply to an answer to a petition for rehearing shall be served or filed unless called for by the court. The court may call for an answer, a reply to an answer, briefs, or additional copies of the petition or answer.

(ii) Petition for Review. The party opposing a petition for review may file an answer to the petition and serve a copy thereof upon the petitioner within fifteen days after the petition is served on the party opposing the petition. Proof of service of the copy of the answer on the petitioner shall be filed with the supreme court with the answer. If the party opposing the petition does not file an answer, the court may nevertheless require an answer, a reply to an answer, briefs, or additional copies of the petition or answer.

(d) Answer.

(1) When Filed. If an answer to any petition is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the petition. The answer shall be filed within fifteen days thereafter. A copy shall be served on counsel for the petitioner.

(2) Form. An answer shall be filed in the same form and in the same number as is required for the petition to which it is addressed.

(e) Appeal. When the court reverses a judgment or order of the superior court by less than a unanimous decision, the aggrieved party may appeal or cross appeal to the supreme court by filing a notice of appeal within ten days after the denial by the court of appeals for a petition for rehearing.

The original of the notice of appeal or cross appeal shall be filed in the supreme court and a copy thereof in the court of appeals. No briefs other than those filed in the court of appeals shall be filed unless requested by the supreme court. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended Sept. 27, 1971, effective Nov. 9, 1971; amended, adopted Nov. 29, 1971, effective Jan. 1, 1972; amended, adopted May 8, 1972, effective July 1, 1972.]

Comment by the Court: Complete revision of former ROA 50 providing new procedures.

Rule 51 Motion to dismiss. Any respondent may move the court of appeals to dismiss an appeal either on the ground that the court has no jurisdiction of an appeal from the judgment or order from which the appeal was taken or that the notice of appeal was not served or filed within the time limited by rule, or is insufficient, or that the appeal bond was not filed within the time limited by rule, or is not in form or substance such as to render the appeal effectual, or that the appellant's brief has not been served or filed, or that the record on appeal has not been sent up, or that the appeal has not been diligently prosecuted or on any ground going to the merits of the further prosecution of the appeal or on any two or more of the grounds hereinabove mentioned; and there may be combined with a motion to dismiss, a motion to affirm the judgment or order appealed from or a motion for damages on the

ground that the appeal was taken merely for delay, or was manifestly unauthorized by rule, or both such motions. A general appearance in the court of appeals shall not be a waiver of the right to make any motion herein authorized. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 52 Hearing and disposition of motion to dismiss. If the court of appeals on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same, to be well taken and true in effect, except lack of jurisdiction, the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the grounds of any such motion (except a failure to make the appeal within the time limited by these rules) the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service or filing of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the court of appeals, perfect the appeal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 53 Motions——How made and heard. (a) Motion Days. Unless otherwise directed by the chief judge, divisions II and III of the court shall sit for the hearing of motions on the Fridays of the first two weeks of each session and thereafter the first two Fridays of each month in which the court sits for the regular hearing of cases.

In division I, the court shall sit for the hearing of motions on each Friday of any week during which the court sits for the regular hearing of cases. The chief judge shall designate the respective panel to function on each motion day. [Adopted July 2, 1969, effective July 11, 1969.]

(b) Alternative Presentation. Motions to strike any portion of the transcript or the statement of facts, or to dismiss or affirm upon the record, and all technical motions tending to prevent the hearing of the cause upon its merits, may be made in writing and noticed for some motion day, or the same may be made and plainly stated in the brief of the moving party and heard at the time the cause is assigned upon the calendar.

(c) Notice Motions. All other motions in appealed causes must be made in writing and noticed for some motion day. The motions referred to in this and the first clause of the preceding paragraph will be known as "noticed motions."

(d) Filings and Calendars. At least ten days before the day fixed for the hearing of such a motion, the motion and notice, with proof of service, and briefs in support thereof, must be filed with the clerk. The clerk will prepare a calendar of noticed motions for each motion day.

(e) Briefs. Briefs in support of any motion are required in all cases. One copy of the brief of the moving party shall be served upon counsel for the opposing party, and the original and five copies thereof in a departmental hearing, and the original and nine copies thereof in a hearing en banc, shall be filed with the clerk at least ten days before the time the motion is to be heard. The opposing party, if he appears, shall serve a copy of his brief on the moving party, and file with the clerk a like number of copies at least on or before the Wednesday preceding the day of hearing. Briefs may be printed or typewritten and shall comply with Rule on Appeal 42, insofar as applicable. If typewritten, the copies must be clearly legible. Failure to comply with the provisions of this rule relating to briefs may result in striking the motion, hearing it without oral argument by the opposing party, if he has failed to comply herewith, or continuing it until a later motion day. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 54 Notices of motions. All notices of motions not given in the briefs must be in writing; and the necessary time of notice shall be not less than ten days, unless a different time is fixed by special order of this court. But where the service of a notice is made by mail between different places, the time of notice above mentioned shall be thirteen days. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 55 Court of appeals costs. (a) Costs.

(1) Allowance. In cases disposed of by an opinion of the court of appeals, costs on appeal will be taxed by the clerk in accordance with this rule. In cases disposed of by order, the court has discretion to award costs.

(2) Items. The costs which may be recovered are: The fee of the clerk of the court of appeals; The fee of the clerk of the superior court for preparing, certifying, and transmitting to the court of appeals the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; statutory attorney's fees; the actual amount incurred in the printing of the required number of briefs; the actual amount incurred, by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedeas bond.

(3) Disallowance of Printing. When, in the opinion of the court of appeals, a brief is improper in substance or when a statement of facts is improper in substance or unnecessarily long, with regard to the issues raised on the appeal, the court may, in its discretion, order the disallowance as costs of any part or the whole of the disbursements for printing or preparing the same. Reference is also made to Rule 41 on disallowance of costs on briefs filed late.

(b) Party Entitled.

(1) Prevailing Party——Discretion. When the judgment of the superior court is affirmed or reversed, the prevailing party shall recover his costs. When the judgment of the superior court is reversed and remanded for

a new trial, the awarding of costs shall abide the final determination of the cause. When the judgment is affirmed in part, reversed in part, modified, or remanded for further proceedings, the court of appeals shall, in its discretion, award all or partial costs to either party or may order that the awarding of costs shall abide the final result of the further proceedings.

(2) Nominal Party. When a party on an appeal is a nominal party only, costs shall not be recovered against such party in any event.

(c) Cost Bill.

(1) Filing and Exceptions after Opinion. The prevailing party shall, within ten days after the filing of the opinion in a cause, file with the clerk and serve upon the adverse party a cost bill, unless costs are to abide final determination of the cause. If any adverse party excepts to any item therein, he shall, within ten days after service of the cost bill upon him, file with the clerk and serve upon the prevailing party his exceptions to such cost bill together with affidavits in support of his exceptions. Within ten days after exceptions are filed, the clerk shall grant or deny the exceptions by a clerks ruling. When the decision of the appellate court becomes final, the clerk shall tax in the remittitur the costs to which the prevailing party is entitled unless exceptions to a clerk's ruling are pending. If exceptions are pending, costs will be taxed by supplemental judgment signed by the clerk when the exceptions have been determined by the court of appeals.

(2) Filing and Exceptions after Judgment. When the costs on appeal are to abide the final result of an action, the ultimate prevailing party shall, within ten days after the judgment becomes final, file with the clerk a certified copy of said judgment and his cost bill of the prior appeal and shall serve a copy of said cost bill upon the adverse party. If any adverse party excepts to any item of said cost bill, said exceptions shall be handled in the same manner as provided in subsection (c) (1) of this rule. When the time for taking an appeal from the judgment entered upon a remand of the cause has expired and no notice of appeal has been given, the prevailing party shall, within ten days, file with the clerk a certificate of the clerk of the superior court certifying that no notice of appeal has been given. Whereupon the clerk shall include the costs of the prior appeal, as finally taxed, in a supplemental judgment and remit the same to the clerk of the superior court.

(3) Supplemental. In the event that additional premium on an appeal and/or supersedeas bond shall accrue prior to the final taxing of costs, the prevailing party may, within ten days after such accrual, file with the clerk and serve upon the adverse party a supplemental cost bill limited to this item only; said supplemental cost bill to be handled in the same manner as provided in subsection (c) (1) of this rule.

(d) Filing and Hearing Exceptions. If any party excepts to the costs as taxed by the clerk, he shall, within ten days of said taxing, file with the clerk and serve upon the adverse party his exceptions and said exceptions shall be heard by this court in the same manner as that provided by Rules 53 and 54 for the hearing of motions.

(e) Waiver of Objections. When a cost bill has been served and filed in time and no exceptions have been filed, objection thereto will be deemed to have been waived.

(f) Waiver of Costs. When a cost bill has not been filed within the time allowed by this rule, any claim to costs will be deemed to have been waived. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Rule 56 Habeas Corpus. (a) Jurisdiction and Filing. The court of appeals shall have original jurisdiction in habeas corpus proceedings. A petition for writ of habeas corpus shall be filed in the division geographically including the superior court entering the judgment and sentence on the basis of which petitioner is held in custody or, if petitioner is not being held in custody on the basis of a judgment and sentence, in the division in which the petitioner is located.

(b) Parties.

(1) Petitioner. The petition shall be brought in the name of the person in custody or by his guardian or parent as petitioner.

(2) Respondent. The person or agency exercising physical custody, restraints or conditions upon the petitioner's liberty shall be named respondent. The proper respondent of a person in the custody of an institution under the control of the State Department of Institutions is the director of that department.

(3) Transfer of Custody. If petitioner after serving and filing his petition is transferred from the custody of one agency to another, petitioner will forthwith advise the court and respondent's counsel. The court on its own motion will substitute the proper respondent, and the clerk of the court shall so notify substituted respondent or counsel for respondent.

(c) Petition. Under the titles indicated the petition shall set forth:

(1) Place of Custody. The place where petitioner is held in custody if confined.

(2) Basis of Custody. If held in custody pursuant to a judgment or sentence or other decree, the basis of the custody, including date, county and cause number, if available.

(3) Statement of the Facts. A statement of the facts upon which the allegation of illegal custody is based (the grounds for allegations that the imprisonment or custody is illegal).

(4) Legal Principles. The reason why the custody is unlawful or violates a constitutional right. Legal argument, citations, and authorities are not required, but, if submitted, shall be set forth in a brief separate from the petition, which shall be served and filed with the petition.

(5) Previous Petitions. Identify other applications or petitions filed with regard to the same allegedly unlawful custody by setting forth the court in which filed, date and disposition made by such court.

(6) Prayer. The relief being sought.

(7) Oath.

(i) If a notary is available. The petition shall be subscribed by the petitioner and verified as follows:

"_____ being first duly sworn, on oath, deposes and says that he is the petitioner in the above-entitled proceeding, that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

Notary Public in and for the State of Washington, residing at _____."

(ii) If a notary is not available. The petition shall be verified by the petitioner as follows:

"Under penalties of perjury, I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

_____ _____ ."

Date

(d) Proceeding in Forma Pauperis.

(1) Motion. A petitioner, unable to pay the filing fee, may move to proceed in forma pauperis. The motion shall contain a statement of the petitioner's total assets.

(2) Clerk. When the petitioner is in the custody of an agency of the State Department of Social and Health Services, the clerk shall obtain a statement of petitioner's known assets from the superintendent of the institution exercising custody over the petitioner.

(3) Determination. If the chief judge finds the petitioner is unable to pay the filing fee, the petitioner will be authorized by notation order to proceed in forma pauperis. If the application to proceed in forma pauperis is denied, the petitioner shall be notified of the reason.

(4) Provision of Counsel and/or Transcript. Upon a finding that the petitioner is unable by reason of poverty to procure counsel or to pay for a transcript, and that the petition raises significant issues which by their nature and character indicate for proper review and determination the necessity of professional legal assistance or the availability of a transcript, the Court of Appeals may enter an order.

(i) Appointing counsel or directing a superior court to appoint counsel to represent the petitioner in the Court of Appeals or on an order of reference.

(ii) Directing a superior court to have a prior superior court proceeding or a reference hearing transcribed.

(iii) Authorizing payment of the costs of the above from public funds.

The procedure for obtaining reimbursement for such cost bills from public funds is governed by CAROA 47 (except paragraph (b) thereof). The bills shall be forwarded to the Supreme Court together with a certified copy of the order of the Court of Appeals and, in the case of a cost bill of counsel, an evaluation in accordance with CAR 24(e)2(i).

(e) Filing Petition. A petition for writ of habeas corpus will not be filed by the clerk of the court of appeals until the filing fee has been paid or the petitioner has been authorized to proceed in forma pauperis.

(f) Return and Answer. The respondent shall within twenty days after the petition is served and filed, unless the time be extended by the chief judge for good cause shown, file a return and answer setting forth:

(1) The authority or cause of the restraint of the party in his custody and if the authority be in writing, a certified copy thereof.

(2) Whether in the opinion of respondent or counsel for respondent a disposition of the petition requires a determination of fact.

(g) Briefs.

(1) Petitioner's Opening Brief. If petitioner files a brief with his petition, it shall contain the following designated sections:

(i) Facts. A succinct statement of the alleged facts upon which the argument that the custody is illegal is based.

(ii) Argument. Legal citations and authorities supporting the position of the petitioner.

(iii) Prayer. The relief being sought.

(2) Answering Brief. Respondent's answering brief shall be served and filed within twenty days after respondent's answer and return have been served and filed, unless the time is extended by the chief judge for good cause shown.

(3) Reply Brief. Petitioner's reply brief, if any, shall be served and filed at least three court days preceding the hearing.

(4) Form and Number of Briefs.

(i) Form. Briefs will be on letter size paper and printed or typed unless such facilities are not available. Only one side of the paper shall be used. Typewritten text shall not be smaller than pica or 10 point type, double spaced with lines not exceeding 5 inches in length. Quotations shall be single spaced and indented 5 spaces. Heading shall be in capital letters, underlined. Briefs shall be stapled along the left margin of the page.

(ii) Copies. An original and 5 copies of briefs will be filed with the clerk. Copies shall be produced, if means are available, by some method more legible and permanent than carbon. Examples of acceptable copy methods are permanent photocopy or mimeograph.

(h) Reserved.

(i) Hearing.

(1) Setting. The clerk shall promptly set the cause on the motion calendar and notify the parties of the date.

(2) Oral Argument. The cause shall be submitted without oral argument unless otherwise directed by the court.

(j) Motions.

(1) Form. Motions shall be verified in the same manner required for a petition. Proof of service setting forth the persons on whom the motion is served shall be subjoined to the motion. A copy of the motion must be served on the opposing party or his counsel.

(2) Disposition. Petitions or motions which do not relate to the merits of the petition for the writ and motions to dismiss the cause on grounds of frivolity or repetitiousness may be determined by the chief judge.

(k) Referral for Hearing. Petitions which require for disposition the resolution of an issue of fact which cannot be determined from the record will be referred to

the superior court entering the judgment or order upon which petitioner's retention is based. The reference court shall hold an evidentiary hearing to resolve the disputed questions of fact. Such hearing shall be held before a judge who was not involved in the challenged proceedings.

(1) Order of Referral. The order of referral shall contain provision for:

(i) Appointment of counsel at public expense if petitioner is found to be indigent.

(ii) Right to summon witnesses.

(2) Note for Hearing. When the respondent is represented by the attorney general or a prosecuting attorney, such attorney shall be responsible for promptly noting the hearing and serving notice on other parties. In all other cases, petitioner or his counsel shall have such responsibility.

(3) Procedure. Upon the conclusion of the hearing, the trial judge shall cause findings of fact to be made and a certified copy thereof to be filed with the court of appeals, and all court of appeals files forwarded in connection with the reference hearing to be returned to the court of appeals.

(l) Disposition on Merits. If, after a hearing by the court, it appears from the face of the record or from admitted facts that the petitioner is entitled to relief of some nature, the chief judge shall assign the cause for an opinion. In all other cases, except referrals, the petition may be denied by order.

(m) Review.

(1) If Petition Denied. The petitioner shall have thirty days after the entry of an order denying his petition in which to file in accordance with CAROA 50 a petition for review.

(2) If Relief Granted. If any relief be granted, upon motion of the respondent, the relief shall be stayed during the pendency of a petition for review. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969; amended, adopted Nov. 10, 1969, effective Nov. 21, 1969; amended, adopted Nov. 13, 1970, effective Jan. 2, 1971; amended, adopted Mar. 27, 1972, effective Mar. 27, 1972.]

Comment by the Court: Compete revision of former ROA 56.

Rule 57 Procedure for petitions for extraordinary writs. (a) Scope of Rule. Petitions for all writs authorized by the state constitution and necessary and proper to the complete exercise of the court of appeals appellate and revisory jurisdiction, as prescribed by statute, shall be entitled, processed, and determined under the provisions of this rule EXCEPT petitions for writs of habeas corpus which shall be governed by CAROA 56.

(b) Additional Review by Writ. In addition to the writs that may be issued pursuant to (a) of this rule, an aggrieved party may petition the court of appeals for review of any final termination made by a superior court in any action or proceeding in which one or more of the following are present:

(1) Custody. Where the determination concerns the custody of a minor.

(2) Adoption. Where the determination concerns the adoption of a minor.

(3) Juvenile Court Proceedings. Where the determination is made by a juvenile court.

(4) Certificate of Public Use and Necessity. Where the superior court has granted or denied a petition for public use and necessity in an action of eminent domain.

(5) Free Statement of Facts. Where the superior court has denied, in whole or in part, a petition of an indigent criminal defendant for a statement of facts at county expense.

(6) Inadequate Remedy by Appeal. Where the remedy by appeal is inadequate.

(c) Stay of Proceedings and Jurisdiction.

(1) Proceedings in the superior court or the enforcement of any determination shall not be stayed by the application for a writ except as herein provided.

(i) Bond for Damages. If the chief judge stays proceedings in the superior court, he may require the petitioner to file a bond in an amount deemed sufficient to protect respondents from all damages that may be suffered by reason of the stay of proceedings: and

(ii) Cost Bond. The stay shall not be entered by the clerk until petitioner files a bond for costs as provided by (g) (2) of this rule.

(2) Jurisdiction. Jurisdiction of the court of appeals over the cause shall attach when

(i) the chief judge has stayed the proceedings in the superior court or issues an order granting the writ; and

(ii) petitioner has filed a bond for costs as provided by (g) (2) of this rule, and a bond, if required by (c)(2)(ii) of this rule;

(iii) provided that the superior court shall retain jurisdiction for the purpose of all proceedings to be held in such court for the purpose of settlement and certification of a statement of facts, and for all other purposes, as might be directed by order of the court of appeals.

(d) Contents and Format of Petition, Response, and Briefs.

(1) Contents of Petition. The petition for a writ shall be verified by petitioner or his counsel and shall contain a brief statement of the essential facts constituting the ground for review and issuance of the writ by the court of appeals. The petition shall be supported by a memorandum of authorities, and, if necessary, further supporting documents or affidavits.

(2) Response to Petition. A respondent may serve upon the petitioner or his counsel and file with the court of appeals a response to the petition. The response may contain additional facts verified by respondent or his counsel, a memorandum of authorities, or other supporting documents or affidavits.

(3) Format and Size. The caption of a petition for a writ shall appear as it does in the superior court proceeding, except that the aggrieved party shall be designated as the petitioner and all other parties as respondents. If the petition is for a writ of prohibition or mandamus directed to the superior court, the trial judge shall be named as a respondent. The petition and response shall be typewritten, printed, mimeographed, or produced by multilith or offset processes on letter-size paper (8 1/2 x 11 inches) and stapled on the left-

hand side. Briefs may be typewritten and shall comply in style and content with Rule 42; number thereof shall be governed by (g) (3) of this rule.

(e) Time of Filing and Service.

(1) Filing. A petition for a writ must be filed in the office of the clerk of the court of appeals within fifteen days after the determination in question has been made by the superior court, except as otherwise provided by RCW 8.04.070 for the review of a certificate of public use and necessity. Unless petitioner proceeds forthwith to present the petition to the chief judge ex parte or notes it for presentment within a reasonable time after filing, the court may dismiss the petition for want of prosecution.

(2) Service. When a petition for a writ is presented ex parte to the chief judge and an order to show cause is issued pursuant thereto, a copy of the petition and a copy of the order to show cause shall be served forthwith by the petitioner upon all respondents or their counsel.

A copy of the petition for a writ and notice or presentment thereof to the chief judge upon a day certain may be served by petitioner upon all respondents or their counsel prior to filing the petition.

All services shall be made in the manner prescribed in Rule 3. Proof of service shall be filed with the clerk.

(f) Preliminary Hearing on Petition.

(1) If the petition is presented ex parte, the chief judge may

(i) determine that the writ does not lie and deny the petition; or

(ii) he may issue an order to show cause why the writ should not issue. If an order to show cause is issued, the chief judge shall fix a time (1) for hearing thereon either before him or before the court and (2) for filing briefs in support of, and in opposition to, the issuance of the writ.

(2) Unless a shorter time, or another day and time, is fixed by the chief judge, the preliminary hearing before him on a petition for a writ shall be noted by petitioner for hearing on a THURSDAY at 1:30 p.m. not less than five nor more than fifteen days after service of a copy of the petition and notice of hearing upon respondent or his counsel. Immediately upon notice of hearing having been given, petitioner shall file with the clerk of the court of appeals the petition, notice of hearing, proof of service thereof, memorandum of authorities, and supporting documents.

(3) If the petition is presented to the chief judge after notice given as in these rules provided, the chief judge may

(i) determine that the writ does not lie and deny the petition; or

(ii) cause the hearing on the petition to be continued and

(iii) issue the writ;

(iv) provided, however, if the petition is for a writ of prohibition or mandamus the chief judge may only determine that the writ does not lie or cause the hearing on the petition to be continued and heard by the court.

(4) If the chief judge continues the hearing on the petition to be heard by the court, or directs that the writ issue, he may

(i) stay proceedings in the cause as in this rule provided; and

(ii) determine whether or not the matter is emergent. If emergent, the petition or writ shall be set for argument before the court on a motion day. If not emergent, the cause shall be set on the court's calendar by the clerk of the court of appeals.

(5) Time for Hearing and for Briefs. The order of the chief judge (i) directing the issuance of a show cause order, (ii) continuing the petition to be heard by the court, or (iii) directing that the writ issue, shall fix the date and time for hearing thereon and the time for service and filing of briefs of all parties.

(g) Procedure after Preliminary Hearing.

(1) Filing Copies. If the chief judge issues an order to show cause, continues the hearing on the petition, or issues the writ, petitioner shall file with the clerk three additional copies of the petition.

(2) Bond. When petitioner files the appropriate order issued by the chief judge with the clerk, he shall also file a bond in the amount of three hundred dollars, conditioned that the petitioner will pay all costs that may be assessed against him in the proceedings, or on the dismissal thereof, not exceeding three hundred dollars, or in lieu thereof, the petitioner shall deposit with the clerk, cash in the sum of three hundred dollars for such purpose: Provided, however, that no bond or filing fee is required if the petition is filed by an indigent criminal or juvenile delinquent seeking review of the superior court's denial, in whole or in part, of a statement of facts at county expense.

(3) Submission of Briefs. Briefs in support of, and in opposition to, any petition, are required in all cases. One copy of the brief of petitioner shall be served upon each respondent or his counsel. The original and three copies shall be filed. Any respondent who appears shall serve a copy of his brief on petitioner or his counsel, and file with the clerk the appropriate number of copies.

(4) Filing Record and Proceedings. Within the time allowed for the service and filing of his opening brief, the petitioner shall file with the clerk such portion of the record and proceedings in the superior court as is needed for the purpose of reviewing the application or the determination. The record shall be certified or authenticated as in causes on appeal.

(5) Additional Record. Any respondent, within the time allowed for service and filing his brief, may file certified or authenticated portions of the record and proceedings additional to those filed by the petitioner.

(6) Response and Cross-Review. If the chief judge directs the clerk to issue the writ, respondents may continue to urge at the hearing thereon that the writ was improvidently issued and should be quashed; and may, without the necessity of a cross-petition, present and urge any claimed errors by the superior court which, if repeated upon a new trial, would constitute error prejudicial to respondents.

(h) Denial of Petition or Quashing Writ. The court may deny a petition for a writ, or quash a writ already issued, by journal entry.

(i) Attorney's Fees Awarded. In addition to statutory attorney's fees and court costs, reasonable attorney's fees may be assessed against petitioner if it is determined that a petition for a writ is not made in good faith.

(j) Notice of Appeal. If a timely petition for a writ of certiorari is denied, the petition shall be considered to be a notice of appeal timely and properly filed. [Adopted July 2, 1969, effective July 11, 1969; amended, adopted Sept. 3, 1969, effective Sept. 12, 1969.]

Comment by the Court: New provision authorizing a timely petition for a writ of certiorari which is denied to be considered as a notice of appeal timely and properly filed.

Rule 58 Reserved.

Rule 59 Transcript of judgment, effect of. A transcript of any order or judgment, or both, of the court of appeals, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 60 Effect of judgment——Execution under. If the court affirms or modifies any judgment or order appealed from, it may remand the cause to the superior court with directions to carry the same into effect, or it may itself issue the necessary process for that purpose to the sheriff of the proper county, as it may deem advisable. If the cause is remanded to the superior court to have such judgment or order carried into effect, the decision of the court of appeals, and its order entered thereon, upon being certified to the superior court and entered on its records, shall have the same force and effect therein as if made and entered by the superior court. Executions issued from the court of appeals shall be similar to those from the superior court, and of like force and effect, and returnable in the same time. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 61 Effect of reversal——Writ of restitution. If by a decision of the court of appeals the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of the judgment or order appealed from, either the court of appeals or the superior court may direct an execution or writ of restitution to issue for the purpose of restoring to the appellant his property, or the value thereof. But property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 62 Damages may be awarded, when. Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been stayed by a supersedeas bond, as in these rules provided, the court may award to the respondent damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, the court may award such damages as will effectually tend to prevent the taking of appeals for delay only. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 63 Appeals to be heard on merits. The court of appeals will hear and determine all causes removed thereto in the manner hereinbefore provided, upon the merits thereof, disregarding technicalities, and will upon the hearing consider as made all amendments which could have been made. [Adopted July 2, 1969, effective July 11, 1969.]

Rule 64 Reserved.

Rule 65 Reserved.

Rule 66 Disposition of material exhibits. (a) Transfer of Custody. Physical exhibits which, because of their bulk or weight, cannot be attached to the statement of facts, and which are only material to an issue of fact not before the court of appeals on review shall be retained in the custody of the trial court subject to being obtained on request by the court of appeals while the court of appeals has jurisdiction of the cause.

(b) Disposition. If a cause is remanded for further proceedings, the exhibits in the custody of the court of appeals shall be returned to the court having jurisdiction. When a cause is not remanded for further proceedings, counsel shall be notified, except in criminal cases, that the exhibits which cannot be retained in the court of appeals file will be destroyed or disposed of six months after the date of the remittitur unless:

(1) A stipulation is filed by counsel or the parties of record providing for disposition and costs of transfer of such exhibits. The clerk shall dispose of the exhibits in accordance with the stipulation.

(2) A party or counsel of record notifies the court of a desire for such an exhibit. The exhibit shall be returned to the clerk of the court having jurisdiction of cause for such disposition as that court shall determine proper.

(c) Destruction and Disposal. Six months after notification, except in criminal cases, the clerk shall destroy physical exhibits which cannot be retained in the court of appeals file and which have not been requested by counsel or parties of record unless:

(1) The exhibits are of historical value, in which case they will be transferred to the custody of the Washington State Museum.

(2) The exhibits are of material value, in which case they will be transferred to the state's central purchasing office for sale.

In criminal cases, exhibits may be destroyed on proof of death of the defendant. [Adopted July 2, 1969, effective July 11, 1969.]

Comment by the Court: Complete revision of former ROA 66 providing new procedures.