

Washington Statutes Pertaining to Supreme Court Jurisdiction

2.04.190

Rules of pleading, practice, and procedure generally

The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing 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 the supreme court, superior courts, and district courts of the state. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.

Comment: The legislature has recognized the authority of the supreme court to promulgate rules governing practice and procedure in all legal proceedings in all courts. This includes the regulation of guardianship proceedings.

2.04.200

Effect of rules upon statutes

When and as the rules of courts herein authorized shall be promulgated all laws in conflict therewith shall be and become of no further force or effect.

Comment: The authority of the supreme court is paramount. If a statute conflicts with a court rule that regulates practice and procedure in legal proceedings, the court rule prevails.

2.04.210

Supplementary superior court rules

RCW 2.04.190 through 2.04.210 shall not be construed to deprive the superior courts of power to establish rules for their government supplementary to and not in conflict with the rules prescribed by the supreme court.

Comment: Local court rules may not conflict with rules established by the supreme court.

2.28.150

Implied powers—Proceeding when mode not prescribed

When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws.

Comment: Courts have any implied power needed to carry out authority explicitly conferred by the constitution or statutes. This provision further broadens the authority of the supreme court.

2.48.060

Admission and disbarment

The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such

approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and, with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: PROVIDED, HOWEVER, That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same.

Comment: All rules adopted by the state bar and all discipline imposed by the state bar on attorneys is subject to the approval of the supreme court. Thus, the supreme court has the final say on the rules governing professional conduct and ethics and on defining the type of conduct that would warrant disbarment or discipline.

2.53.005 Civil Legal Aid

The legislature finds that the provision of civil legal aid services to indigent persons is an important component of the state's responsibility to provide for the proper and effective administration of civil and criminal justice. The legislature further finds that state-funded legal aid services should be administered by an independent office of civil legal aid located within the judicial branch and subject to formal continuing oversight that includes bipartisan legislative representation.

Comment: Related statutes give the supreme court authority to appoint the director of the Office of Civil Legal Aid. Money allocated by the Legislature for civil legal aid may be used to pay attorneys appointed to represent clients in guardianship proceedings.

RCW 2.53.045

Fund distribution for attorneys appointed in dependency proceedings

(1) Money appropriated by the legislature for legal services provided by an attorney appointed pursuant to RCW 13.34.100 must be administered by the office of civil legal aid established under RCW 2.53.020.

(2) The office of civil legal aid may enter into contracts with the counties to disburse state funds for an attorney appointed pursuant to RCW 13.34.100. The office of civil legal aid may also require a county to use attorneys under contract with the office for the provision of legal services under RCW 13.34.100 to remain within appropriated amounts.

(3) Prior to distributing state funds under subsection (2) of this section, the office of civil legal aid must verify that attorneys providing legal representation to children under RCW 13.34.100 meet the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits described in this subsection must be determined as provided in RCW 13.34.100(6)(c)(ii)

Comment: The Office of Civil Legal Aid, with supervision of and approval by the supreme court, develops standards of practice, training, and caseload limits for attorneys appointed to represent children in dependency proceedings. Even without new legislation, the supreme court, on its own motion and under its authority to establish rules of practice, could impose similar requirements on trial courts and appointed attorneys in adult guardianship cases. It could mention the need for ADA-compliant performance standards and training for such attorneys in its annual report to the legislature. The authority is clearly there and the precedent is also there. It just needs to be done.

2.56.010

Office created – Appointment of administrator

There shall be a state office to be known as the administrative office of the courts. The executive officer of the administrative office of the courts is the administrator for the courts, who shall be appointed by and hold office at the pleasure of the supreme court of this state. The administrator's salary shall be fixed by the supreme court.

Comment: The supreme court can direct the administrator to conduct such research as is necessary for the court to develop rules of practice and procedure, including conducting such surveys of local courts regarding guardianship practice and procedure in those courts.

2.56.050

Judges, clerks, other officers, to comply with requests of administrator

The judges and clerks of the courts and all other officers, state and local, shall comply with all requests made by the administrator, after approval by the chief justice, for information and statistical data bearing on the state of the dockets of such courts and such other information as may reflect the business transacted by them and the expenditure of public moneys for the maintenance and operation of the judicial system.

Comment: The legislature has specifically directed judges and clerks of all courts in the state to respond to requests from the administrator for information about local policy and practice. The supreme court should direct the administrator to request information from all local courts on: (1) the percent of guardianship cases in which an advocacy attorney is appointed; (2) any performance standards adopted by the local court; (3) the policy and procedure for appointment and payment of such attorneys; (4) any training requirements for such attorneys; (5) training materials used in recent training programs, if any; (6) complaint procedures available to guardianship

respondents to call the court's attention to perceived deficiencies in legal representation and how such respondents are informed of those procedures; (7) the number of appeals filed by guardianship respondents in the preceding two years; (8) the number of adult guardianship petitions filed annually for the preceding two years; (9) any method for monitoring the performance of court-appointed attorneys in guardianship cases. Such information from each local judicial district would give the supreme court a factual basis from which to start a thorough review of the adequacy of legal services advocacy for respondents in adult guardianship proceedings.

2.56.210

Court access and accommodations coordinator — Duties

(1) Washington state courts are required by chapter 49.60 RCW, the law against discrimination, and by 42 U.S.C. Sec. 12101 et seq., the Americans with disabilities act, to provide equal access to persons with disabilities. To assist the courts to comply with these laws, the administrative office of the courts shall, subject to the availability of funds appropriated for this purpose, create the position of court access and accommodations coordinator.

(2) The coordinator shall:

(a) Review the needs of courts statewide for training and other assistance required to provide access and accommodation for persons with disabilities;

(b) Provide guidance and assistance upon request;

(c) Identify appropriate assistive devices and establish a system to improve courts' access to such devices.

(3) In carrying out the duties under this section, the coordinator shall consult with persons with disabilities, and shall facilitate communication between the administrative office of the courts and such persons and their representative groups.

Comment: The supreme court should direct the court access and accommodations coordinator to conduct a thorough review of the policies and

practices of each local court to ensure access to justice for respondents in adult guardianship proceedings. These courts are aware that such respondents have serious cognitive and communication disabilities and therefore, at the very outset of a proceeding, should conduct an ADA accommodation assessment – through the guardian ad litem or through the court-appointed advocacy attorney – as to what supports and services are needed to assist the respondent in understanding the proceeding and to communicate effectively with all participants in the proceeding. Once an assessment report is supplied to the court, the court should issue necessary orders to provide such supports and services as are necessary to make the proceedings ADA accessible as required by federal law. It appears that such a review of local policies and practices regarding ADA access for guardianship respondents with cognitive and communication disabilities has never been conducted by the access and accommodations coordinator or by any other state agency or official.

2.72.020

Office of public guardianship created — Appointment of public guardianship administrator

- (1) There is created an office of public guardianship within the administrative office of the courts.
- (2) The supreme court shall appoint a public guardianship administrator to establish and administer a public guardianship program in the office of public guardianship. The public guardianship administrator serves at the pleasure of the supreme court.

Comment: Other statutes specify that the office of public guardianship, under supervision of the supreme court, shall create performance standards and minimum training requirements for public guardians. They also state that a monitoring system shall be developed to ensure that performance standards are being met and training is occurring. The need exists for standards, training,

and monitoring of court-appointed attorneys. Their function is vital to the integrity of the guardianship process. Leaving these attorneys to their own devices places guardianship respondents at a disadvantage, considering that their disabilities preclude them from complaining about deficient legal representation. The time has come for the supreme court, as the public entity responsible for ADA compliance by the statewide guardianship system, to take correction actions to bring that system into compliance with Title II of the ADA and Section 504 of the Rehabilitation Act.

2.04.230

Report to governor

The judges of the supreme court shall, on or before the first day of January in each year, report in writing to the governor such defects and omissions in the laws as they may believe to exist.

Comment: The legislature gives the supreme court a duty to file a report with the governor each year calling attention to any deficiencies in the law the court believes exists. Thus, the supreme court has a forum in which it may highlight deficiencies in the statutory scheme for guardianship proceedings.