

REGULATION 101. DEFINITIONS

As used in these Regulations the following definitions shall apply:

- (a) An “active member” shall mean any person licensed to practice law in the State of Washington as an active member of the Washington State Bar Association.
- (b) The “Board” shall mean the Disciplinary Board established pursuant to RLD 2.3.
- (c) The term “Chairperson” shall mean the chairperson of the Board.
- (d) The term “firm” means any attorney or group of attorneys practicing law in the State of Washington, regardless of the form or legal entity under which such practice is conducted.
- (e) The “Auditor” shall mean the person or accounting firm conducting the audits and examinations specified in RLD Title 13.
- (f) The “Association” shall mean the Washington State Bar Association.
- (g) The “Director” shall mean the Executive Director of the Association.
- (h) “Examination” shall mean a review and testing by the audit of the internal controls and procedures used by an attorney or firm to receive, hold, disburse and account for money or property in which a client or other person has an interest using generally accepted auditing standards, to the extent they apply, without, however, making outside confirmations. In order to conduct such review and testing, the auditor shall have access to all of the internal books and records kept by the attorney or firm of attorneys which comprise the attorney’s or firm’s financial records showing financial transactions involving the receipt of client’s funds for fees, costs or other purposes, either from the client or third persons and all expenditures by the firm or attorney for the firm or attorney, for clients or third persons and all distributions to the attorney or attorneys including but not necessarily limited to all journals, ledgers, books of account, cancelled checks, deposit slips, bank statements, check registers, cash accounts, receipts, correspondence, records of accounts receivable, income and expense statements, balance sheets, tax returns of all types, federal, state, county, and city excepting, however, income tax returns.
- (i) “Audit” shall encompass “examination” but in addition may include positive or negative confirmation from external sources.

REGULATION 102. PERSONS AUTHORIZED TO CONDUCT AUDITS

- (a) The Director may from time to time select such person or persons or accounting firm as the Director deems qualified to conduct the audits and examinations specified in RLD Title 13. The selection of the auditor or auditors shall be subject to confirmation by the Board of Governors.
- (b) The auditor need not be a Certified Public Accountant but must be qualified under the laws of the State of Washington to practice public accountancy. The auditor may be an accounting firm or individual or individuals.
- (c) The auditor or auditors may, but need not be, in the employ of the Association. If the auditor is the employee of the Association the auditor need not be qualified under the laws of the State of Washington to practice public accountancy.
- (d) If the Director selects as auditor or auditors person who are independent contractors, they may be hired to perform all or some examinations or audits or solely for the performance of a particular examination or audit. No auditor shall perform an audit or examination of a firm or attorney for whom the auditor has performed accounting work in the two (2) years preceding the date of the proposed examination or audit. The auditor, as a condition of employment, shall agree that neither the auditor nor any accounting firm with which the auditor is associated, will perform accounting work for any attorney or firm which the auditor audits or examines for a period of not less than two years (2) years following the date of said audit or examination, whichever is later; however, this shall not preclude performances of accounting work for clients of the attorney or firm, nor preclude the auditor from being a lay or expert witness on behalf of a client of the attorney or firm.
- (e) Compensation of the auditor or auditors shall be as determined by the Director subject to confirmation by the Board of Governors.

REGULATION 103. EXAMINATION AND AUDIT REPORTS

- (a) The auditor shall furnish a written report of each examination or audit to the Board.
- (b) The report shall contain the date of the audit or examination, the name of the firm or attorney, and a statement of the scope of the examination or audit. In respect to each examination, it shall include a statement to the effect that either (i) as a result of the examination, an audit or further examination is indicated or, (ii) during the course of the examination, the auditor has not observed anything which would indicate a need for further examination or audit at this time. In respect to each audit, the report shall state either (i) as a result of the audit, the auditor concludes that RPD 1.14 has not been complied with (stating the particulars), or (ii) as a result of the audit, the auditor has not observed anything which would indicate RPC 1.14 has not been complied with. The auditor shall further state an opinion, whether the attorney or firm has cooperated as required by RLD 13.2, giving particulars if lack of cooperation is claimed.
- (c) Upon request by the Chairperson, the auditor shall make available the working papers in respect to particular examinations or audits, for review by the Board and shall consult with the Board in respect to particular examinations and audits. Upon request the auditor shall similarly make available the working papers to and consult with the Board of Governors.
- (d) Upon conclusion of the examination or audit, the auditor shall make available to the attorney or firm a copy of the audit report.
- (e) The auditor shall preserve inviolate all confidences and secrets of clients of the examined attorney or firm. No client name or information which would permit identification of a particular client shall be revealed in working papers or the report of the auditor, except that the name or names of clients who have filed complaints with the Association may be released. As a condition of the auditor's employment, the Association shall require such undertakings of the auditor as may be required to insure compliance with this regulation.
- (f) When the audit is concluded, if it is determined pursuant to Reg. 104(a) that no further investigation, examination or action is appropriate, the Association's copies of the audit report, working papers or other materials relating to the audit shall be destroyed, except that the Association shall maintain a record showing the identity of any attorney or firm audited and the dates of the audit to ensure that the restrictions of Reg. 105(a) are complied with.

REGULATION 104. DETERMINATION THAT FURTHER EXAMINATION AND AUDIT OR OTHER ACTIONS ARE WARRANTED.

- (a) The Chairperson or a delegate shall review all reports of the auditor. After such review and upon such further investigation, which the Chairperson may direct, and after such consultation, if any, as the Chairperson deems appropriate with the Board, Director, Board of Governors, or Association counsel, the Chairperson shall make such order in respect to further examination and audit as the Chairperson deems appropriate, consistent with RLD 13.1. In addition, the Chairperson may order other actions by the attorney as are necessary to insure that the attorney's handling of client funds complies with the requirements of the Rules of Professional Conduct.
- (b) In any case where the Chairperson orders the attorney to make payments in order to insure that the attorney's handling of client funds during the examination period complied with the Rules of Professional Conduct and the amount to be paid exceeds \$1,500, the attorney may appeal the order requiring payment to a subcommittee of the Disciplinary Board consisting of three lawyers who are members of the Board appointed by the Chairperson. The subcommittee shall review the auditor's report, and any other materials submitted by the attorney and the auditor and shall have the authority to change or modify the Chairperson's order as a majority of the subcommittee deems appropriate. The subcommittee's order shall be final.

REGULATION 104A. AUDITOR'S OPINIONS ADVISORY ONLY.

- (a) The opinions expressed in the report of the Auditor shall be advisory only. They shall not in and of themselves constitute findings of fact in any disciplinary proceedings against any attorney unless so stipulated by the attorney or the attorney's counsel.

REGULATION 105. METHOD OF SELECTION OF ATTORNEYS AND FIRMS TO BE EXAMINED.

- (a) At such time and from time to time as the Board of Governors after consultation with the Board shall determine, random examination of attorneys or firms shall be conducted. Procedures shall be established by the Board, in consultation with the Board of Governors, for the selection of the attorneys or firms to be examined which (1) will utilize the principle of random selection and (2) will distribute the examinations among the congressional districts of the state substantially in the ratio that the number of attorneys in each district bears to the total number of active attorneys in the state. For example, the Board may (i) determine the total number of examinations which can be made during the time period in question by the auditor or auditors, (ii) allocate the number of examinations to each district substantially in the same ratio that the number of active attorneys therein bears to all active attorneys in the state and (iii) select attorneys by random within each group. If the number drawn is that of an attorney who is an employee or member of a firm, the firm shall be examined. If the number is that of an active member who is a sole proprietor, such active member shall be examined. If the number is that of an attorney who, either as an individual or as a firm member, has been audited in the twenty-four (24) months immediately preceding the drawing, the Chairperson may in the Chairperson's discretion excuse such attorney or firm from examination.
- (b) Upon consent of an active member, the attorney's books and records or those of a firm may be examined even though the active member's number has not been selected randomly.
- (c) The Chairperson may at all time upon receipt of information that a particular attorney of firm may not be in compliance with RPC 1.14 authorize an examination.

REGULATION 106. CONTENTS OF LAWYER TRUST ACCOUNT INFORMATION FORM

Annually, each active member must provide a trust account information form prescribed by the Association by the date specified by the Association. The information form shall be certified by the member, in such a manner as the Association prescribes, stating that the information is true and correct. The Association may require disclosure of the following information:

- (i) Name, current address and bar number of the active member.
- (ii) Whether the member (or firm) maintains either an IOLTA account or other client trust account(s) for the deposit of client funds received in connection with representations undertaken using the member's Washington license.
- (iii) The name of the financial institution(s) and branch(es) where client funds are held, and the account numbers for each account.