



Gonzaga University *School of Law*

Externship Program

Student Handbook

Externship Program Student Requirements

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Externship Requirements

General Information

The purpose of the Gonzaga University School of Law Externship Program is to train students in practical lawyering skills through integration into the legal system. The Program partners the student, the Supervising Attorney or Judge, and the Externship Director and Externship Faculty. The extern student will perform a variety of challenging tasks, in and out of court, under the guidance of a Supervising Attorney or Judge, and reflectively examine those experiences with the guidance of the Externship Professor through a classroom seminar.

A qualified student may earn a maximum of 15 externship credits toward graduation, over a maximum of two semesters. To qualify for participation in the Externship Program, students must be enrolled in, or have completed sixty credits toward graduation, or be exceptional students who have successfully completed one year of law school and possess sufficient skills to participate in an externship as determined by the Externship Director, with feedback from the 1L professors.

The Externship Program is dedicated to furthering the mission of the Gonzaga University community, as shown in its commitment to equal access to the judicial system for all citizens. Students enrolled in the Program will be allowed to work for government entities and non-profit organizations. Students are not allowed to work in private firms.

The American Bar Association specifically prohibits a law student from receiving academic credit and compensation for the same work. Based on the results of an ABA accreditation study of Gonzaga Law School in 2006, work study is considered to be compensation; therefore, students receiving this form of financial aid may not earn academic credit by volunteering their time in the same placement for which they are working and receiving payment through the work study program. However, if you are receiving work study for a position, you can still work in an alternate externship placement and earn academic credit for that work. Please see the Externship Staff if you have any questions about this ABA and work-study restriction.

Program Staff

Externship Director:

Inga Laurent (509) 313-3747 ilaurent@lawschool.gonzaga.edu

Adjunct Professor:

Juliana Burnett juliana_burnett@yahoo.com

Program Coordinator:

Robbie McMillian (509) 313-3740 rmcmillian@lawschool.gonzaga.edu

The Externship Program offices are located on the 4th floor in the Faculty Suite. Inga Laurent's office is room 430; Robbie McMillian's office is room 428.

The Application Process

The first step in acquiring an externship is to complete, sign and submit an application that is available from the Program Coordinator, Robbie McMillian, or on the web page. Each application is subject to the approval of the Externship Director.

At the time you present your completed application, please attach a current resume and writing sample. Your signature at the bottom of the application indicates your consent for Externship Staff to review your unofficial transcript to ensure compliance with academic rules governing the receipt of clinical credits, limited to 15 total clinical credits, all of which may be earned in the Externship Program. Even if you already have secured a placement, you still must submit this information and apply to the Program to secure enrollment.

DISTANCE PLACEMENTS: Students who are seeking to extern outside the greater Spokane/Coeur d'Alene area need to specifically state "where" they are interested in going and research potential placements in that area. Students are encouraged to apply and secure a placement prior to the externship application process. However, it is important to make sure the position meets the requirements of the Program. The Program has placed students all over the country and internationally and the Externship Staff will work with students to come up with placement ideas.

Limited License to Practice Certification and Supervision

It is necessary that any extern providing court representation or legal advice to clients, in state courts, be certified (called Rule 9 in Washington State) or similarly certified for the state in which they extern. Each state's requirements vary, so visit the website of your state's bar association for more information. In Washington, students must have completed at least 60 credits in order to apply for a Rule 9 certification. If you need to acquire Rule 9 certification, please stop by the Registrar's Office to obtain the Rule 9 Application and Handbook. You should begin the process as early as possible because applications can take up to eight weeks to process.

Whether or not you are seeking Rule 9 Certification, your Supervising Attorney must meet the supervising requirements as outlined in the Rule 9 application and in the Supervising Attorney/Judge's Handbook in order to participate in the Externship program.

NOTE: A student in the Externship Program cannot be supervised by a family member or by someone with less than five (5) years experience practicing law.

Credits & Hours

On the externship application, please mark which semester that you are applying for, including the year. You may earn a maximum of 15 externship credits toward graduation, which can be allocated from two to 15 credits in one or two semesters.

Keep in mind that you may only extern for a total of two semesters, so plan your credits accordingly. Each semester, one credit of your externship will be a graded seminar.

Fall/Spring Externship Credits											
Total Credits	Seminar	Field Credits	Hours Required	Number of Weeks in Semester	Approximate Hours Worked per Week	Distance Journals	Distance Papers	Distance TWEN Forums	Distance Live Chats	Local Journals	Local Paper/Presentation
15	1	14	640	17	38	9	1	2	2	5	1
14	1	13	620	17	36	9	1	2	2	5	1
13	1	12	600	17	35	9	1	2	2	5	1
Total Credits	Seminar	Field Credits	Hours Required	Number of Weeks in Semester	Approximate Hours Worked per Week	Distance Journals	Distance Papers	Distance TWEN Forums	Distance Live Chats	Local Journals	Local Paper/Presentation
12	1	11	580	17	34	7	1	2	2	5	1
11	1	10	560	17	33	7	1	2	2	5	1
Total Credits	Seminar	Field Credits	Hours Required	Number of Weeks in Semester	Approximate Hours Worked per Week	Distance Journals	Distance Papers	Distance TWEN Forums	Distance Live Chats	Local Journals	Local Paper/Presentation
10	1	9	540	15	36	5	1	2	2	5	1
9	1	8	480	15	32	5	1	2	2	5	1
8	1	7	420	15	28	5	1	2	2	5	1
7	1	6	360	15	24	5	1	2	2	5	1
6	1	5	300	15	20	5	1	2	2	5	1
5	1	4	240	15	16	5	1	2	2	5	1
4	1	3	180	15	12	5	1	2	2	5	1
3	1	2	120	15	8	5	1	2	2	5	1
2	1	1	60	15	4	5	1	2	2	5	1

** Subject to Change Without Notice

Summer Externship Credits											
Total Credits	Seminar	Field Credits	Hours Required	Number of Weeks in Semester	Approximate Hours Worked per Week	Distance Journals	Distance Papers	Distance TWEN Forums	Distance Live Chats	Local Journals	Local Paper/Presentation
8	1	7	420	10	42	4	1	1	2	3	1
7	1	6	360	10	36	4	1	1	2	3	1
6	1	5	300	10	30	4	1	1	2	3	1
5	1	4	240	10	24	4	1	1	2	3	1
4	1	3	180	10	18	4	1	1	2	3	1
3	1	2	120	10	12	4	1	1	2	3	1

** Subject to Change Without Notice

As You Begin Your Externship

Read all the Rules of Professional Conduct that are controlling in the jurisdiction in which you will be externing. Coordinate with your Supervising Attorney or Judge the days and hours you will be working. Communication with your supervisor is vital to the success of your externship experience.

You will not be given credit for time spent at the Externship placement which begins before the start of the semester or extends past the end of the semester unless it is approved by the Externship Director and your Supervising Attorney or Judge before the semester begins.

Externship Seminar

Your grade in the Externship Program is based upon your attendance and participation at the seminar and at least one mandatory meeting with your Externship Professor, as well as your successful completion of the field experience. Attendance is expected for all classes. If you are absent more than permitted by the law school attendance rules, you will be withdrawn from the Externship Program.

During the seminar, you will be **required** to submit the following, as assigned in the syllabus:

- Journal Assignments
- Time sheets, signed by yourself and your Supervising Attorney or Judge
- Presentation or paper assignments
- TWEN Forum and Live Chat assignments

Please note: Students who fail to comply with the requirements will receive an incomplete, be withdrawn from the Externship Program or fail the course.

Journals

The purpose of keeping a journal during your externship is to provide a reflective learning experience. You are expected to write about what you are learning about the law, lawyering skills, and yourself as a student and as a lawyer. Serious reflection can give you valuable insight into such things as:

- Types of work that you prefer (research, writing, talking to clients, in court);
- Areas of substantive law that interest or bore you;
- Ways in which you interact with the legal system;
- Ways in which you interact with people in your work environment;
- Ways in which people in your work environment interact with each other;
- Working styles: long projects with few deadlines, or fast-paced, multi-deadline environment?

Your journals will be returned to you with comments. After three months of writing about your experiences, you will be amazed to see what you have accomplished and what you now know about yourself that you never knew before. That new knowledge may enable you to make more informed long-term career decisions.

You will turn in your journals as specified by your Professor, either in class or via TWEN. Use the same format as used in the samples, i.e., your name, the due date of the

journal entry, and the journal number. Please refer to Attachments A-C at the end of this handbook.

Journals should be two double-spaced pages. Please remember, however, that the Externship Program does not share in attorney/client privileged information matters. Keep this in mind when writing journals and during class discussions and any private discussions.

Your journal should include observations and reflections of your field experience, the judicial system, and your insights. A recitation of the week's events is not adequate.

Your journal will be graded based upon the quality of your discussion. For those of you new to journal writing, we have listed below some topics to guide you and stimulate your thinking:

1. Your goals for your externship (periodically redefined) and your progress toward meeting your goals.
2. Your thoughts or reflections about issues discussed in any of the Externship Seminar class sessions.
3. Professional responsibility, professionalism in practice and ethics.
4. Your observations about the practice of law.
5. The substantive law which you are working with.
6. What it means to be a lawyer in the context of the work that you are doing.
7. Justice or access to justice issues.
8. Professional relationships.
9. Specific comments about what you are learning.
10. Legal education and how the externship experience fits in with curriculum.

Please type your journals. We have attached entries from three different journals (Attachments A-C). The first two entries were well done (however, the second was a bit brief), and the third one was unacceptable. If you have problems distinguishing between them, please see us right away.

NOTE: Timely completion of work is a critical component of being a good lawyer. In this class, your journals and time sheets are your lawyer's work. If they are turned in late, they will be graded accordingly.

Time Sheets

Time sheets must be kept on a daily basis and submitted **regularly** to the Program Coordinator. Time must be recorded in 0.1 (6 minute increments) of an hour and reflect your activities in detail, e.g., the tasks you perform on a specific case, including the steps you take in your research. See the example time sheet in the back of the book as Attachment D.

Please note that time sheets must be signed by your Supervising Attorney or Judge and submitted to the Externship Office on a regular basis before credit is awarded.

You must keep a running total of your cumulative hours at your placement. **It is not the responsibility of the Externship Staff to ensure that you have added your hours correctly or taken credit for all of the hours and days worked.**

The following items **may** be counted as part of your total Externship hours:

- Private meetings with your Supervising Attorney or Judge;
- A limited number of sick days, as approved by the Externship Director

The following items **may not** be counted as part of your total Externship hours:

- Holidays where your office is closed;
- Time spent writing in your journal or filling out your time sheet;
- Class meetings or preparation for class meetings;
- Time spent working at home (unless approved by the Externship Director);
- Lunch hours

The Externship runs on the same schedule as your regular classes. A limited number of hours may be accrued in advance of the semester with permission from the Externship Director and your Supervising Attorney or Judge. Likewise, you may complete your Externship up to one week early if you have the total number of required hours and appropriate permission from both your Supervising Attorney or Judge and the Externship Director.

Pro-Bono Requirement

In accordance with the Mission Statements for Gonzaga University and Gonzaga Law School, work done in an Externship placement must be on a **strictly pro-bono basis in a qualified public service placement**, without the benefit of pay or work study. The Gonzaga University Community strongly supports equal access to justice in the community in which its graduates live and work; the Externship Program supports this ideal as well, thus making it the main goal of the course.

Papers/Presentations/TWEN Forums and Live Chats

The Externship Seminar requires students locally to write a research paper on a particular topic and present in class their research. Students will sign up for a topic that is provided in the syllabus or students can seek approval by their Professor to research and present on another topic related to their placement. The research papers should be at least 5-pages in length and have proper citations. The presentations should be informative and interactive.

Distance externs will also be required to write at least one research paper. Additionally, distance externs will participate in scheduled Forum assignments and Live Chats with their Externship Professor and other externs via TWEN. See class syllabi for specifics.

Please see example research papers in the back of the book as Attachments E and F.

One-on-One Meetings

During your one-on-one meeting each semester with your Externship Professor, you will be expected to discuss your externship experience and be responsible for leading the discussion during the meeting on topics of your choice. Some students find it helpful to mark a few journal entries prior to their private meeting.

If you miss a scheduled private meeting, you are responsible for rescheduling, which must take place within one week of the missed meeting. If you do not reschedule the meeting in a timely manner, your grade will be affected.

Externs Evaluation of Placement

Within one week following the last day of your externship, you are required to fill out and turn in to the Externship Office the Extern's Evaluation of Placement, which is a component of your final grade. Please be complete and candid on this form in order for the Externship Program to make the best placement decisions for future externs. These evaluations will not be sent to your Supervising Attorney or Judge; they are for the school's use only, so please be honest with your remarks.

Externship Grades

The one credit grade that you receive for the Externship Seminar is graded according to law school policies. Credit for the field placement is on a pass/fail basis. **Failure to comply with the requirements is grounds for termination (without credit) of the Externship, a grade of "F" and/or preclusion from participating in future Externships.**

A Note from the Externship Staff

Thank you for reviewing the Externship Requirements Handbook. We hope it was helpful to you. For more information on this educational experience, we invite you to visit our office or to schedule an appointment to speak with the Externship Director. We are always happy to assist.

Attachment “A”

First Sample Journal Entry

Good, Detailed and Reflective – would receive full credit

Name: Joe Student

Journal Due Date: Friday, June 20, 2008

Journal Entry #4

This week has been another good week. I am really enjoying this opportunity to observe different proceedings and interact with Judge Davis and the court staff. I am amazed at how well the staff is able to coordinate the calendar and files and enter minutes on each hearing and proceeding, especially when there are 55-70 misdemeanor hearings in one morning.

This week, I have been able to watch more of the taped jury trial. One aspect of the trial that I approached Judge Davis about was the numerous bench discussions between the judge and counsel off the record. I have seen other bench trials where similar discussions have taken place, but in this trial there seems to be an abundance of these discussions. Judge Davis indicated that the attorneys in this trial were very good attorneys and so when they wanted to approach the bench, he took extra time to listen to the views of each attorney.

It is human nature to judge somebody or to have your own opinion on something when it comes up. I do it all the time when I observe hearings. The test for a good attorney or judge is to take a step back and look at the issue from an objective stance. The judge indicated that it is possible and that good attorney's can sway opinions based on good legal arguments.

This discussion moved again into trial preparation and its importance. However, the discussion focused on pre-trial submissions of paper instead of actual trial appearance. In a telephone conference that I attended in the Judge's chambers, one party had filed a motion for

summary judgment and the other party had filed a reply in opposition to summary judgment. Judge Davis relies heavily on compliance to the Rules of Civil Procedure, primarily Rule 7 which indicates the proper procedure for filing a paper with the court.

In the rule, it states that in a reply, each statement of fact should be recited and either admitted or denied. In this case, the rule had not been complied with and it immediately gave an unfavorable view of the party. Obviously, this initial view does not decide the motion, but it certainly gets under judge's skin.

When an attorney files with the court a paper that is not complete or does not comply with the rules that impression carries over into the trial and gives the impression of an unprepared attorney. As I discussed in earlier journals, the unprepared attorney is frowned upon. This week, I learned that it is not just preparing for the trial that is important, it extends to all paper and dealings leading up to the trial that must be prepared for.

Also this week, I observed a half-day bench trial over debt collection. The defendant appeared *pro se*. I have seen a few *pro se* litigants during the three weeks that I have been here and some are better than others. All, however, have been emotionally charged and, unfortunately, the law does not really deal well with emotional arguments. This particular *pro se* litigant cross-examined the plaintiff's first witness, who happened to be the company accountant, about information and procedures that she had no knowledge about. I still don't know why the plaintiff's attorney did not constantly object to such questions over relevancy. It was apparent that the questions the defendant was asking were emotionally driven so as to try to prove that his stance on not paying his debt was correct, even though it was not based on any legal argument.

Perhaps I need to develop a better opinion toward *pro se* litigants, and hopefully I will be able to before this externship is over. I have a hard time because they don't understand what

kinds of arguments are relevant to the issue and how to make those arguments. In all reality, I don't have any idea how to make the arguments and what arguments to make, I just know that I would want to pay for an attorney if I was involved in any type of litigation.

Grade: 100/100

Attachment "B"

Second Sample Journal Entry

Good, Reflective, but too brief

NOTE: Would pass but not get full credit

Name: Joe Student
Journal Due Date: Monday, March 10, 2008
Journal Entry #3

One of the assignments I worked on during the past two weeks involves the imposition of restitution on criminal defendants. I found this concept and the way the courts have dealt with these defendants interesting. In 1984, Congress enacted several laws which aided the federal judiciary in imposing enforceable restitution decisions. The legislative history surrounding these laws outlined the importance of protecting victims. In conjunction with this, I researched the Inmate Financial Responsibility Program ("IFRP") which allows inmates an opportunity to work while incarcerated, make money, and pay off their fines and restitution responsibilities. I found this whole program to be an excellent idea that served several purposes. First, it is a way to give inmates, some of whom never held steady employment, to learn a skill and heighten their self-

esteem. Second, this program makes inmates take responsibility for their past actions, and make amends with those adversely impacted by their “bad” decisions. More than punitive, I think repaying those we hurt is therapeutic.

I found this entire process to take a realistic approach in positively affecting society as well as giving inmates a sense of accomplishment. To this end, I found the reading concerning “Lawyer Language,” by Ronald Goldfarb particularly interesting. It seems as though our profession is so “sterile.” I often wonder how we uncover the truth in our system which is often so far removed from the incident at issue. With all the “assuming arguendols,” and the “hereinafters”. I wonder how a jury or a judge can truly transport themselves mentally back to an occurrence to determine exactly what happened. This is why I found the IFRP so refreshing. It seemed to be very straightforward, with a sound legislative history.

I found the readings on opening statements very interesting in that they reinforce the concept of humanness. I am refreshed by the acknowledgment of how important it is to be sincere, genuine and understandable. After three years of law school, I have seen some of my humanity squeezed out of me. I am glad to know the quest to recapture my humanity will serve me well in the courtroom. I’m curious to know how a jury will react to my style of presentation. I long to be passionate about the causes I advocate and I think it will be interesting to see how that is perceived by a jury. I look at the lawyers I know and it seems that the best trial lawyers are those who are the most down to earth.

Grade: 90/100

Attachment “C”

Third Sample Journal Entry Not acceptable, weak and not reflective

Name: Joe Student
Journal Due Date: Monday, April 24, 1999
Journal Entry #3

This week was a light week for me. Not only was there nothing on the court calendar, but I wasn't feeling too well. So, I worked on an Order of Continuance and the Motion for New Trial.

The only interesting thing this week was the government's "Motion" for a search warrant. Apparently, this is the second time one came across the judge's desk. I had to work on the warrant to see if the procedural requirements were met and then see if there were enough facts to support the warrant.

Grade: 0/100

Attachment "D"



EXTERNSHIP PROGRAM
Weekly Timesheet

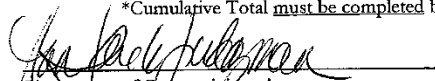
Name: Jill Student Work Week of: June 16, 2008
 Placement Office: Hon. Jack Judgeman Date Submitted: June 27, 2008

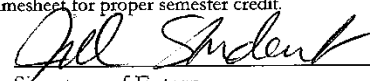
Please calculate time in tenths (.1) of an hour (6 minute increments).

Date	Pro Bono Task	Hours	Total
6/16/08	Review Trial Memoranda and exhibits for Department of Labor & Industries v. Jones.	3.4	6.9
	Observe morning plea calendar.	3.5	
6/17/08	Observe motion for clarification proceeding In Re: Detention of Smith.	.9	5.2
	Begin to review court materials In Re: Detention of Smith.	1.3	
	Draft bench memorandum re: Dept. of Labor & Industries v. Jones with Judge	3.0	
6/18/08	Review Order to Show Cause in re: Spokane Valley v. Kramer	.1	4.7
	Continue to review court materials In Re: Detention of Smith.	1.2	
	Finalize bench memorandum re: Dept. of Labor & Industries v. Jones.	3.4	
6/19/08	Review bench memorandum re: Dept. of Labor & Industries v. Jones.	.7	5.3
	Review Dept. of Labor & Industries v. Jones with Judge.	1.0	
	Observe Dept. of Labor & Industries v. Jones proceeding.	1.9	
	Continue to review court materials In Re: Detention of Smith.	1.7	
6/20/08	Observe presentment of Kent v. Simms	1.5	7.4
	Continue to review court materials In Re: Detention of Smith	2.6	
	Observe Motion for Expedited Discovery in re: Palmer Newsprint Company v. Public Utility District No. 1 of Palmer County.	1.0	
	Review memoranda in support of and in opposition to Motion for Preliminary Injunction in re: Palmer Newsprint Company v. Public Utility District No. 1 of Palmer County.	2.3	
6/21/08	Research cases cited in re: Palmer Newsprint Company v. Public Utility District No. 1 of Palmer County.	1.5	1.5

Total Hours for the Week: 31
 Prior Week's Cumulative Total: 92.8
 *Cumulative Total for Semester: 123.8

*Cumulative Total must be completed by student on each timesheet for proper semester credit


 Signature of Supervising Attorney
 or Supervising Judge


 Signature of Extern

Attachment “E”

The Personal Restraint Petition and the Practical Implications of the Statute of Limitations

Many convicted individuals are indigent and do not have a good understanding of the court system. To them the rules – procedure and evidence – must seem unfair even though they are intended to ensure nothing less than a constitutionally guaranteed fair trial. For example, many believe that the evidence used to convict them was gathered illegally or was unconstitutional. *See e.g., Petition of Williams*, 111 Wn.2d 353, 364, 759 P.2d 436 (1988) (making unsubstantiated assertions that prior convictions were unconstitutional and should not have been considered during sentencing). However, what many believe to be “illegal” or “unfair” is within the scope of the pertinent statutes and the court’s jurisprudence. As a result, these legally erroneous allegations make their way into the convicted individual’s petition for post-conviction relief, specifically their personal restraint petitions.

The Washington Rules of Appellate Procedure (“RAP”) 16.4, details the scope and grounds for the personal restraint remedy, providing that the appellate court will grant appropriate relief to a petitioner if the petitioner is under an unlawful restraint as defined under the rule. RAP 16.4(a)-(d). RAP 16.4 was adopted in 1976 as one of the original RAP rules. However, in 1991, RAP 16.4 was amended, limiting the remedy to include only “relief [which] may be granted under RCW 10.73.090, .100, and .130.” RAP 16.4(d).[1]

RCW 10.73.090 created a statute of limitations regarding “petitions or motions for collateral attack on a judgment and sentence in a criminal case.” RCW 10.73.090(1) and provides in pertinent part:

No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if

¹ Note that “RCW 10.73.090 and 10.73.100 apply only to petitions and motions filed more than one year after July 23, 1989.” RCW 10.73.130.

the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

RCW 10.73.090(a).[2] The statute further defines “collateral attack” as “any form of post-conviction relief other than a direct appeal” and “collateral attack” to include a personal restraint petition. RCW 10.73.090(b).

Generally, petitions must be made to the Court of Appeals, although they may be made to the Supreme Court in certain circumstances. RAP 16.3(c) (providing the Supreme Court will transfer petitions to the Court of Appeals in cases, unless they involve a sentence of death). Although the Washington State Supreme Court may consider a successive personal restraint petition raising a new issue, it is bound by the one-year time limit on collateral attack. RAP 16.4(d); RCW 10.73.090. The one-year time limit requires[3] dismissal of petitions unless the petitioner can show one or more of the six enumerated exceptions under RCW 10.73.100:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
- (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant’s conduct;

2 There is division among the Court of Appeals as to how to compute the one-year time limit under RCW 10.73.090. In *In re Carlstad*, 114 Wn. App. 447, 58 P.3d 301 (2002), Division One held that the petition must actually arrive at the appellate court within one year. However, in *State v. Hurt*, 107 Wn. App. 816, 27 P.3d 1276 (2001), Division Three was more lenient in holding that a petition is not time barred if the petitioner places the petition in the prison mailing system within one year. The Supreme Court has not addressed this issue at this time.

3 The court in *In re Turay*, 150 Wn.2d 71, 86, 74 P.3d 1194 (2003), was clear that “mixed” petitions *must* be dismissed:

However, since we have already determined that one of his claims does not fall within an exception in RCW 10.73.100, his petition must be dismissed. Where one or more of the grounds asserted for relief fall within the exceptions in RCW 10.73.100 and one or more do not, then the petition is a “mixed petition” that must be dismissed. *In re Pers. Restraint of Hankerson*, 149 Wash.2d at 697, 702-03, 72 P.3d 703 (2003); *In re Pers. Restraint of Stoudmire*, 141 Wash.2d 342, 349, 5 P.3d 1240 (2000); *see* RCW 10.73.100 (“[t]he time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based *solely* on one or more of the following grounds ...” (emphasis added)). Therefore, once the court determines that any one of the claims raised do not fall within an exception, the petition must be dismissed without any further consideration. *Hankerson*, 149 Wash.2d at 702-03, 72 P.3d 703. The court will not advise as to which claims are time barred and which are not, nor will the court decide claims under RCW 10.73.100 that are not time barred. *Id.*

Turay has filed, at best, a mixed petition that must be dismissed.

- (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;
- (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
- (5) The sentence imposed was in excess of the court's jurisdiction; or
- (6) There was been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding in a criminal . . . proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100(1)-(6); *see also In re Stoudmire*, 141 Wn.2d 342, 349, 5 P.3d 1240

(2000) (finding petitioner's personal restraint petition was not time barred because the sentencing was not valid on its face when sentences for second-degree and third degree child rape exceeded maximum sentencing periods); *In re Hinton*, 152 Wn.2d 853, 100 P.3d 805 (2004) (holding post-conviction relief was appropriate when petitioner's judgment and sentence was based on the conviction of a nonexistent crime).

The Supreme Court interpreted RCW 10.73.100 to prohibit "mixed" petitions, finding that only petitions "solely" based on the enumerated exemptions would be reviewable after the one-year time bar. *Stoudmire*, 141 Wn.2d at 349, 5 P.3d 1240. As a result, the claims that could be brought under RCW 10.73.100 are not addressed regardless of their merit. *See e.g., In re Stenson*, 150 Wn.2d 207, 76 P.3d 241 (2003) (dismissing petition as "mixed" because claim of newly discovered evidence relating to trial testimony of forensic expert witness was not an enumerated exception under the statute); *Stoudmire*, 141 Wn.2d at 350, 5 P.3d 1240 (finding petitioner's allegations of ineffective assistance of counsel and incorrect calculation of offender score rendered his petition "mixed" and thus, required dismissal).

While this is generally will not prevent an illegally restrained individual from being heard, it does have serious implications. There is no constitutional right to counsel to pursuing a

personal restraint petition. *Shumway*, 136 Wn.2d at 398, 964 P.2d 349. Therefore, many personal restraint petitioners are pro se. These petitioners often do not have a thorough understanding of the law, evidenced largely by the petitions that come into the commissioner's office.

Critically, these petitions are dismissed without prejudice. However, permitting a personal restraint petitioner to bring another motion does not address the real issue – that these individuals may be incapable of differentiating what qualifies as an exception under RCW 10.73.100 and what does not. Therefore, legitimate claims may be left unheard, dismissed merely to promote “judicial economy.” It is true that most petitions are dismissed or not reviewed at least at the Supreme Court. However, since I have been working here at least two petitions have been addressed by the court en banc. Therefore, it is apparent that such petitions cannot merely be dismissed as illegitimate or unimportant.

Importantly, judicial economy is a real concern. The court in *In re Hankerson* addressed such concern stating, “[T]he court will not analyze every claim that is raised in order to determine or advise which claims are time barred and which are not, nor will it decide claims under RCW 10.73.100 that are not time barred.” 149 Wash.2d 695, 703, 72 P.3d 703(2003). Outright dismissing mixed petitions does promote judicial economy. Many times the petitions that are filed with the court are more than thirty pages long and contain over ten causes of action. It takes a lot of time and resources to read through every allegation to determine if by chance one might qualify as an exception under RCW 10.73.100.⁴ On the other hand, permitting outright dismissal of mixed petitions may result in the court having to review more petitions overall. After being dismissed, the petitioner may file another (or many) amended petition in an attempt

⁴ When I received my first personal restraint petition I sat down and read all of the documents contained in the file to get a general idea of the facts of the case and the pertinent law. This ended up being a waste of time, as the petition was obviously mixed and thus, was resolved merely by acknowledging it was a mixed petition.

to fall within the scope of the statute. Many times, a petitioner just wants to feel as if he or she is being heard and his or her concerns are being addressed. Therefore, addressing petitions that contain allegations outside of RCW 10.73.100 may actually save the court time. All that would be required would be a short sentence stating that such claim does not fall within any of the six exceptions provided by the legislature.

However, the benefits of addressing a personal restraint petition regardless of the claims do not likely outweigh the drain on the court. While some petitioners may file multiple petitions, it is likely that many would not. Further, there is a large body of case law interpreting what constitutes an exception under RCW 10.73.100. *See e.g., In re Davis*, 95 Wn. App. 917, 977 P.2d 630 (1999), *affirmed* 142 Wn.2d 165, 12 P.3d 603 (2000) (holding that a personal restraint petition which would generally be time barred would be considered when such petition implicated double jeopardy and a recent clarification of the law.) Thus, trying to figure out whether a particular allegation, that is likely not written clearly or accurately, fits within the scope of an exception would cost the court a lot of time and resources. Lastly, as stated previously, the petitions are dismissed without prejudice and the exceptions enumerated under RCW 10.73.100 are not subject to any time bar. Thus, an unlawfully detained petitioner has the *opportunity* to be heard. Critically, the law seems more concerned about opportunity than about result. This is evidenced clearly in ineffective assistance of counsel claims. Therefore, dismissing mixed petitions seems consistent with court policy.

I would propose extending the statute of limitations period to two years. This clearly would provide restrained individuals more time to research and address their “wrongs” before being subject to the six enumerated exceptions. However, as this provision is a statute and not a court rule to reform this area of the law would involve the support of the people which would

likely prove difficult. Regardless, I believe this would ensure fairness in the court system by providing convicted individuals better access to the court system.

Attachment “F”

Duty of Candor to the Tribunal: RPC 3.3

Pursuant to Rules of Professional Conduct (RPC) 3.3, a lawyer has an affirmative duty to exercise candor toward the tribunal.⁵ RPC 3.3 prohibits a lawyer from knowingly: (1) mak[ing] a false statement of fact or law to a tribunal or fail to correct a false statement of material fact of law previously made to the tribunal by the lawyer; (2) fail[ing] to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited under Rule 1.6; (3) fail[ing] to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (4) offer[ing] evidence that he lawyer knows to be false. These duties continue until “final judgment in the proceeding has been affirmed on appeal or the time for review has passed.” RPC 3.3(b); RPC 3.3 cmt. 13. Additionally, subject to the rules governing client confidentiality,⁶ a lawyer is required to disclose to the tribunal that the evidence offered was false when the evidence is material and the lawyer comes to know of its falsity. RPC 3.3(c). When such material evidence cannot be disclosed pursuant to the rules governing client confidentiality, a lawyer must “make reasonable⁷

⁵ RPC 1.0(m) defines “tribunal” broadly as:

[A] court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

⁶ See RPC 3.3 cmt. 1.

⁶ See RPC 1.6 (discussing the rules regarding client confidentiality).

⁷ “‘Reasonable’ or ‘reasonably’ when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.” RPC 1.0(h).

efforts to convince the client to consent to disclosure” or seek to withdraw from representation.⁸ Finally, “[a] lawyer may refuse to offer evidence that the lawyer reasonably believes is false.” RPC 3.3(e).⁹

The rule is designed to ensure the integrity of the adjudicative process. RPC 3.3 cmt. 2. RPC 3.3 thus, requires a lawyer to balance the role of being an effective advocate with the duty of being candid to the tribunal. *See* RPC 3.3 cmt. 11 (noting the grave consequences of disclosing a client’s false testimony and the alternative of undermining the truth-finding process of the court). The comments address this balancing act and offer guidance, providing in relevant part:

A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate’s duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

RPC 3.3 cmt. 2. Therefore, a lawyer may be faced with instances where maintaining client confidentiality is in direct conflict with the lawyer’s duty of candor the tribunal.

The model rules resolve this balancing act in favor of candor to the tribunal, specifically by providing, “If a lawyer, the layer’s client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.” Model Code of Prof’l Conduct R. 3.3. In contrast, Washington State’s rule subjects the rule of candor toward the

⁸ *See* RPC 1.16 (detailing when a lawyer may withdraw from representation).

⁹ There is an exception to these general rules regarding *ex parte* proceedings because of the nature of such proceedings. *See* RPC 3.3(f); *In re disciplinary Proceeding Against Carmick*, 146 Wn.2d 582, 594-95, 48 P.3d 311 (2002) (noting that misrepresentations to the court in *ex parte* proceedings are viewed with particular disfavor and finding lawyer violated RPC 3.3 when he made false statements to the trial court to facilitate an *ex parte* order releasing to his client court-held interest due on past child support without prior notice to the opposing party, who was legally entitled to the money). This exception will not be discussed in this memorandum.

tribunal to the duty of confidentiality by prohibiting disclosure if such disclosure is prohibited under RPC 1.6. *See* RPC 3.3(c)-(d). The comments justify such policy by stating that the duty of candor rarely requires a lawyer to withdraw from the representation of a client, implying that withdraw adequately remedies most situations regarding the duty of candor to the tribunal. *See* RPC 3.3 cmt. 15. Interestingly, the comments also note that under RPC 1.16, which details when withdraw from the representation of a client is permitted, a lawyer may have to seek a tribunal's permission to withdraw. *Id.* However, the rules do allow a lawyer to reveal information protected under RPC 1.6 to the court regarding the request for withdraw. *Id.*

In 2003, Washington State established the Committee for the Evaluation of the Rules of Professional Conduct ("Ethics 2003 Committee"). The Ethics 2003 Committee evaluated the Washington Rules of Professional Conduct and recommended adopting a rule identical to the Model Rule, regarding the duty of candor to the tribunal. Report and Recommendation of the Special Committee for Evaluation of the Rules of Professional Conduct (Ethics 2003) to the Board of Governors, Part 3 at 181, available at <http://www.wsba.org/lawyers/groups/ethics2003/report.htm> [hereinafter Report and Recommendation]. As noted before, the model rule provides a more expansive duty of candor, by narrowing the duty of confidentiality and requiring reasonable remedial action be taken by an attorney in some circumstances.¹⁰ This recommendation was not followed and Washington State continues to merely permit withdraw. RPC 3.3(c)-(d).

¹⁰ Critically the Ethics Committee acknowledged the sharp division regarding the proposed changes to this issue. The votes most accurately depict the division. In the Ethics Committee's own words:

The motion to adopt paragraph (a)(3) of proposed Rule 3.3 passed by a vote of nine in favor, three opposed, and two abstentions. The motion to adopt paragraph (b) passed by a vote of ten in favor, two opposed, and two abstentions. The motion to adopt paragraph (c) passed by a vote of eight in favor, three opposed, and two abstentions. The Committee's recommendation to adopt the remainder of Rule 3.3 was uncontroversial.

While the duty of candor to the tribunal is integral to the administration of justice, case law suggests that withdraw coupled with the strict sanctions imposed by the court are likely adequate to protect such considerations. “Under the ABA *Standards*, which we utilize in determining an appropriate sanction, the presumptive sanction for this misconduct is disbarment.” *In re Disciplinary Proceeding Against Dornay*, 160 Wn.2d 671, 682, 161 P.3d 333 (2007) (citing ABA *Standards* 5.11 (stating “[d]isbarment is generally appropriate when: [a] lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with administration of justice, false swearing, misrepresentation”); ABA *Standards* 6.11 (stating “[d]isbarment is generally appropriate when a lawyer, with intent to deceive the court, makes a false statement ... or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding”) (emphasis in original)).

For example, in *In re Disciplinary Proceeding Against Whitney*, 155 Wn.2d 451, 120 P.3d 550 (2005), an attorney was disbarred for violating the duty of candor to a tribunal when the lawyer testified falsely under oath in superior court while acting as a guardian ad litem in a family law dispute and then failed to cooperate fully and promptly with the Washington State Bar Association Disciplinary Board during the subsequent investigation. *Id.* The court noted that the lawyer’s conduct evidenced a dishonest or selfish motive, the lawyer committed were multiple offenses, the vulnerability of the victims, the attorney’s substantial experience in practice, and illegal conduct when finding disbarment an appropriate sanction despite the absence of prior discipline. *Id.* Additionally, there is only a limited amount of case law regarding

when a lawyer violates the duty of candor to the tribunal. Such implies that withdraw is an adequate remedy for potential violations under RPC 3.3.

Additionally, the Ethics Committee members who were opposed to the adoption of the model rule addressed legitimate concerns that undermining client-confidentiality would thwart lawyers, especially public defenders, from effectively representing their clients – which is potentially a *constitutional* violation. See Report and Recommendation at 181. The Report acknowledges “that indigent clients—particularly criminal defendants being represented at public expense—are already mistrustful of the lawyer’s role in the justice system.” Therefore, merely permitting withdraw best protects a defendant’s constitutional rights while adequately providing the lawyer an avenue to fulfill his or her duty of candor the tribunal. A balance must be struck somewhere and drawing the line to best protect defendants’ constitutional rights is in line with much of the Washington State Supreme Court’s jurisprudence. See *State v. Gunwall*, 106 Wn.2d 54, 59, 720 P.2d 808 (1986) (“Washington is one of many states that rely on their own constitutions to protect civil liberties.”); *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980) (noting that states have the sovereign right to provide greater protects in their own constitutions than those conferred by the United States Constitution).

The duty of candor to the tribunal is essential to the fair administrative of justice. However, it cannot function in a manner that potentially violates others’ constitutional rights. Further, the limited case law and heavy sanctions seem to serve as an adequate avenue for lawyers to ensure compliance with the RPCs. Thus, adoption of the model rule would have been inappropriate and maintaining a broader duty of confidentiality is consistent with the court’s constitutional jurisprudence.

