

Collection Agency

Special Board

Meeting

Tab 1

Call to Order

November 3, 2020

1:00 PM



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9012

Olympia, Washington 98507-9027

**WASHINGTON STATE
COLLECTION AGENCY BOARD
SPECIAL BOARD MEETING AGENDA**

DATE: Special Board Meeting- Tuesday, November 3, 2020

TIME: 1:00 p.m.

LOCATION: Zoom

LINK: <https://dol-wa.zoom.us/j/96671451579?pwd=andST1ZxckYyYVZYMTJlQWd3TE4xQT09>

PHONE: (253) 215-8782

MEETING ID: 938 2068 5544

PASSCODE: 128221

ATTENTION: Board meetings are open to the public except when business calls for an Executive Session. During Executive Session all guests will be excused. Start times are subject to change by the Board Chair.

1. Call to Order

- 1.1. Introductions
- 1.2. Order Of Agenda
- 1.3. Approval Of Minutes: October 8, 2020

2. New Business

- 2.1. Permanent Rule Language – WAC 308-29-010, 308-29-085

3. Adjourn Meeting



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9012

Olympia, Washington 98507-9027

**WASHINGTON STATE
COLLECTION AGENCY BOARD
SPECIAL BOARD MEETING MINUTES**

DATE: Thursday, October 8, 2020

TIME: 9:15 a.m.

LOCATION: Zoom

MEMBERS PRESENT: Fred Wade, Chair
Scott Kinkley, Member
Mari Neubauer, Member
Mark Case, Member
Dirk Bunker, Member

STAFF PRESENT: Rick Storvick, Administrator
Kathe McDaniel, Assistant Administrator
Kimberly Hall, Administrative Assistant
Julie Konnersman, Management Analysis
Elizabeth Lagerberg, Advising AAG

1. Call to Order 9:15 AM

1.1. Introductions

Kim Hall conducted a roll call and all Board members and listed staff were present.

1.2. Order Of Agenda

MOTION: Mr. Kinkley made a MOTION to accept the agenda as presented. Ms. Neubauer seconded the MOTION and it passed.

1.3. Approval Of Minutes: September 17, 2020

MOTION: Mr. Bunker made a MOTION to accept the minutes as presented. Mr. Kinkley seconded the motion and it passed.

2. New Business

2.1. Emergency Rule Extension – WAC 308-29-010(2), 308-29-085 - 120 day extension

Mr. Storvick advised the Collection Board that the Rule Committee is actively meeting and making changes to the emergency rule language, in an effort to establish a permanent rule. Two board members (Mr. Kinkley and Mr. Case), along with a data security expert and additional experts are assisting with the rule language. The draft language will be presented to the Board for consideration to file a CR 102, but is currently not finished. At this time the emergency rule will require the filing of a CR-103E to provide a 120 day extension while work continues on the permanent rule.

MOTION: Mr. Bunker made a MOTION for staff to file a CR-103E to extend the current emergency rule for 120 days while work continues on the permanent rule. Mr. Case seconded the motion and it passed 3-2. (Note Mr. Kinkly and Ms. Neubauer opposed)

3. Adjourn Meeting 9:26 AM

Board Meeting

Tab 2

New Business

Topics for action or discussion by the board that were identified at or since the last board meeting.

Washington State Collection Agencies Board
Special Board Meeting via Zoom
November 3, 2020

Permanent Rule Language – WAC 308-29-010(2), 308-29-085

Background: On June 22, 2020, an emergency rule was filed under WSR 20-14-020 allowing the option for collection agency employees to work from home. The rule expiration date was extended to February 17, 2021, based on the Board's direction to file a CR-103E at their October 8, 2020, Special Board Meeting.

As per the direction of the Board at the June 22 meeting, permanent rulemaking efforts have been in progress to develop revised language before the emergency rule expires. The rules committee, comprising of two Board members and six subject matter experts, met for six consecutive Thursdays starting September 24 to draft the language attached. The six subject matter experts included Kirk Miller and Sam Leonard, attorneys recommended by Scott Kinkley, as well as Andy Madden, David Reid, and Kevin Underwood, attorneys recommended by Mark Case, and finally Gary Nicholas, an IT security expert employee of DOL.

Committee meeting agendas and details for public access were posted to the Board's website prior to every meeting and open to the public for participation utilizing the Zoom platform. The committee reserved 30 minutes at the end of each meeting to provide for public comment. Members of the public attended three of the six meetings and provided comments on two occasions.

Committee members were encouraged to draft and present proposed language for consideration each week. The process included a significant amount of robust discussion among committee members as they worked toward language that provides a foundation of reasonable regulation for collection agency employees to work remotely. After their October 22 meeting, staff distributed the draft through Listserv, to other interested parties, and posted it to the webpage requesting public comments. Two individuals submitted comments, which the committee considered on October 29 and made minor edits to the language accordingly. The committee encouraged one public participant to provide additional insights for the Board's consideration concerning ADA.

Attached is the draft language, as finalized by the committee on October 29, for your consideration to move forward with the filing of a CR-102. Once the board approves language to be filed with the CR-102, staff will work with the Code Revisers Office to submit the filing. This includes a public comment period and a public hearing, conducted at the end of the public comment period. Once public comments are collected, they will be presented to the Board in a concise explanatory statement along with a proposal to file the CR-103 for the Board's consideration as the final step to establish the rule.

Recommendation: Approve the attached draft language and direct staff to file a CR-102 with the Code Revisers Office to continue the process of permanent rulemaking concerning collection agency employees working remotely.

Submitted by Board Staff
October 30, 2020

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

WAC 308-29-010 Definitions. (1) Words and terms used in these rules have the same meaning as each has under chapter 19.16 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Branch office" is any location physically separated from the principal place of business of a licensee where the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

(3) "Business Office" is the licensed principal place of business or certified branch office from which the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

(4) "Collection Activities" as used in this section means those activities performed by Collection Agencies or the employees of

Collection Agencies, which are associated with collecting or attempting to collect debts pursuant to chapter 19.16 RCW.

((~~3~~))(5) "Employee" is a natural person employed by a licensee and shall not be deemed a "collection agency" or a "branch office" as defined in RCW 19.16.100 (5)(a) so need not have an additional license or certificate to perform collection activities on behalf of the licensee whether working from a business office or from the employee's virtual office.

(6) "Repossession services" conducted by any person shall not be deemed a collection agency as defined in RCW 19.16.100, unless such person is repossessing or is attempting to repossess property for a third party and is authorized to accept cash or any other thing of value from the debtor in lieu of actual repossession.

(7) "Managing employee" is an individual who has the general power to exercise judgment and discretion in acting on behalf of the licensee on an overall or partial basis and who does not act in an inferior capacity under close supervision or direction of a superior authority (as distinguished from a non-managing employee who is told what to do and has no discretion about what he or she can and cannot do and who is responsible to an immediate superior).

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-010, filed 5/22/01, effective 6/22/01; Order PL-123, § 308-29-010, filed 5/17/72.]

(8) "Remote work" occurs when an employee performs collection activity for a licensee from the employee's "virtual office" as defined herein and more particularly described in WAC 308-29-085. Work performed by a licensed attorney litigating claims on behalf of a licensee is not remote work subject to WAC 308-29-085.

(9) "Virtual Office," for purposes of chapter 19.16 RCW, chapter 18.235 RCW and chapter 308-29 WAC is a virtual extension of the licensee's business office, which is fully connected via electronic means and telecommunications to the business office and its employees and from which an individual employee may perform the same collection activities and be similarly monitored as if located the business office and as more particularly described in WAC 308-29-085.

NEW SECTION

WAC 308-29-085 Remote work requirements. A licensee may allow qualified employees to perform collection activities from virtual offices if the following requirements are met:

(1) Employee List. A licensee must keep a record of employees who are permitted to perform collection activities from a virtual office. The list must be kept current, and must include the employee's name, telephone number and email address, and the virtual office location address.

(2) Equipment List. A licensee must maintain a current record of licensee equipment supplied to an employee for use in their virtual office.

(3) Employee Remote Work Agreement. A licensee must provide the employee a written agreement or checklist signed by the employee that indicates the employee has reviewed and agrees to the following requirements:

a. While working remotely, the employee must agree to maintain confidentiality of consumer data, must maintain all collection agency data electronically and may not print hard copies or otherwise reproduce copies of collection agency data.

b. The employee must read and agree to comply with the licensee's IT Security Policy and any updates.

c. Employee must agree to maintain the safety and security of licensee's equipment at all times as more particularly described by the licensee.

d. An employee must review a description of the specific type of collection work the employee or class of employee is allowed to perform while working from their virtual office.

e. The employee must agree not to disclose or convey to the consumer that the employee is working from a virtual office or that the virtual office is a place of business.

f. An employee must be advised that the employee's collection agency activities are subject to review and calls to and from the virtual office will be monitored and recorded.

(4) Virtual Office Requirements. An individual employee's virtual office is an extension of the licensee's business office and must meet the following requirements:

a. It must have full connectivity with the licensee's business office systems including computer networks and phone system and must provide licensee the same level of oversight and monitoring capacity as if the employee were performing their activities in the business office.

b. It must have the capability to record calls made to and from the virtual office and to monitor virtual office calls in real time.

c. It must be located within the United States and, within 100 miles of the licensee's business office.

d. It must be in a private location where the employee can maintain consumer confidentiality during the performance of their collection activities.

e. It must meet all security requirements of this section and contain the equipment necessary to conduct the licensee's work safely and efficiently.

f. Each employee shall be connected to the business office via a virtual office that requires unique credentialing for access by each employee.

g. No more than one employee may work from a virtual office from the same physical location, except that co-habitating employees may each maintain a virtual office from their shared residence.

h. Physical records must be stored and maintained at the business location and may not be stored at the virtual office. Employees may not print or store physical records in the employee's virtual office.

(5) Employee Requirements. The licensee is responsible for ensuring that an employee working from a virtual office meets all of the following requirements:

a. To become eligible to work from a virtual office, the employee must have completed a training program at the licensee's

business office, which covers topics including compliance, privacy, confidentiality, monitoring and security, and other issues that apply particularly to working remotely from a virtual office.

b. In addition, an employee must complete a minimum of forty-five (45) days of direct oversight and mentoring in the licensee's business office prior to working from a virtual office. This requirement may be waived by the Board under emergency circumstances that the Board has determined makes it impossible to perform.

c. Once an employee begins to work from a virtual office, they must be subject to the same levels of communication, management, oversight and monitoring via telecommunications and computer monitoring as they would if working in the business office.

d. While working remotely the employee must comply with all applicable laws and regulations as outlined in chapters 19.16 and 18.235 RCW and chapter 308-29 WAC.

(6) IT Security Requirements. Licensees are responsible for developing and following a written IT security policy for virtual offices that outlines the security protocols in place safeguarding the company and consumer data. Consumer data in the form of an electronic record must have the appropriate protections against unauthorized or

accidental disclosure, access, use, modification, duplication, or destruction.

The IT security policy shall include the following additional requirements:

a. Virtual office access to the collection agency's secure system must be through the use of a virtual private network "VPN" or other system that requires usernames and passwords, frequent password changes, authorization, multifactor authentication, data encryption, and/or account lockout implementation.

b. The immediate installation or implementation of any system updates or repairs in order to keep information and devices secure.

c. The provision of safe and secure storage with expandable capacity for all electronic data including consumer and licensee data.

d. Virtual offices must contain computers and/or other electronic devices that have secure computer configurations and reasonable security measures such as updated antivirus software and firewalls.

e. Access to licensee's systems must occur on company-issued computers and electronic devices whose use is restricted to authorized employees while working at their virtual office, and an

employee's use of devices must be limited to employment related activities on behalf of licensee.

f. Consumer data is accessed securely through the use of encryption or other secure transmission sources.

g. An action plan has been developed and communicated with relevant employees on how to handle a data breach arising from remote access devices in accordance with applicable laws, which shall include any required disclosures of such breach.

h. A disaster recovery plan has been developed and communicated with relevant employees on how to respond to emergencies (e.g. fire, natural disaster, etc.) that have the potential to impact the use and storage of Licensee's data.

i. The secure and timely disposal of Licensee's data as required by applicable laws and contractual requirements.

j. An annual internal or external risk assessment is performed on the collection agency's protection of Licensee's data from reasonably foreseeable internal or external risks. Based on the results of the annual risk assessment, the collection agency shall make adjustments to its data security policy if warranted.

k. The licensee can stop the virtual office's connectivity with the network and remotely disable or wipe company-issued

computers and electronic devices that contain or have access to licensee's information and data when an employee no longer has an employment relationship with the company.

(7) Call Recording and Monitoring. Licensees must consistently record and monitor calls in which employees are performing collection activities. Call recordings must be maintained for a minimum of four (4) years and call monitoring must be regularly performed, a portion of which must be in real time. Recording and monitoring calls from virtual offices must meet industry standards for collection agencies and ensure that virtual office calls comply with chapter 19.16 RCW and more particularly with RCW 19.16.250 (13)(c), (18), and (19) and also chapter 9.73 RCW.

(8) Non-Disclosure. Neither the employee nor the licensee shall represent to debtors or any other party that the employee is working independently from licensee in a virtual office. Such acts include, but are not limited to:

a. Advertising in any form, including business cards and social media, an unlicensed address or personal telephone or facsimile number associated to an unlicensed location.

b. Meeting consumers at, or having consumers come to the employee's virtual office.

c. Holding out in any manner, directly or indirectly, by the employee or licensee, an address that would suggest or convey to a consumer that the virtual office is a licensed collection agency location or "branch office", including receiving licensee's mail, or storing books or records at the virtual office.

It shall not be considered a violation of this section if, in response to an inquiry about the remote worker's location, a remote worker responds that the worker is working remotely or working from a virtual office, or words to that effect.

(9) Data Breach: Should a licensee or virtual office experience a data breach as defined under chapter 19.255 RCW, the licensee must comply with the requirements of chapter 19.255 RCW.

(10) Evaluation. The Board will review and evaluate the adequacy of this section at least annually and will make amendments, as the Board deems necessary.

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Board Meeting

Tab 3

Adjournment