

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting
Late Meeting Materials

November 5, 2022
Hotel Bellwether
Bellingham, WA
Zoom and Teleconference

**WASHINGTON STATE
BAR ASSOCIATION**

Board of Governors

BOARD OF GOVERNORS MEETING Late Materials November 5, 2022 Hotel Bellwether, Bellingham, WA Zoom and Teleconference	
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FY 23 WSBA President, Executive Committee, and Strategic Long Range Planning Council Report

November BOG Meeting 2022

Welcome to the FY 23 Board of Governors year. It's my sincere honor to serve as the FY 23 WSBA Bar President! Below are a summary of various WSBA Executive Committee, BOG Activities, and Strategic Long Range Planning Council's activities to start FY 23, which comprise my November BOG Meeting President's Report.

I'm very excited that the BOG is going to be back in Bellingham, Washington. We haven't been there since January 2018! I wanted to have the BOG come here this year, since we had been scheduled to and unsuccessfully had to cancel physical meetings here during former President Majumdar's year in FY 2020, and former President Sciuchetti's year in FY 2021 due to Covid-19.

Below are a summary of various BOG pertinent actions, LRSPC, and Executive Committee since the start of FY 23.

FY 23 BOG Committee Assignments: I issued the FY 23 BOG Committee assignments to various Governors and BOG Officers. One thing I tried to do different this year was to assign two (2) Governors as co-liaisons to a lot of committees, including all of the Minority Bar Associations. My intent of doing this was to try to ensure that there would be enhanced coverage and interaction between various entities and the BOG. I also felt doing this would allow more Governors to have a greater experience in interacting with various other legal groups. It's my sincere hope that also doing this will help to strengthen interactions between the Board of Governors and Minority Bar Associations, Sections, and other groups which the BOG has liaison relationships and interactions with.

WSBA Executive Committee: The BOG Executive Committee met on October 7, 2022. This year will have a largely different composition of the committee v. FY 22. The FY 23 committee members are Dan Clark, President; Brian Tollefson, Immediate Past President; Hunter Abell, President-Elect; Francis Adewale, Treasurer, & 2L Representative; Alec Stephens, Personnel Chair & 3L representative; Kari Petrasek, 1L representative.

WSBA President Bill Hyslop Funeral: Several WSBA staff, former WSBA President's and Governors attended former WSBA President Bill Hyslop's funeral on October 8, 2022, and the Spokane County Bar Association's memorial service for him on October 12, 2022. Bill dedicated several years of service to WSBA and dedicated his entire career to public service.

NW Bar Leaders Meeting: WSBA hosted the Northwest Bar Leaders meeting. This is an annual meeting that rotates between Idaho, Montana, Oregon, Utah, Nevada and Washington. Last year was in Bozeman, Montana. This year was Washington's year to host, and it was held in Spokane, at the historic Davenport hotel. Feedback from the other bars was that they greatly enjoyed the location and hotel. We met on October 10 and 11 and discussed various issues facing each state Bar. A common theme was that most states are seeing a decline in membership, and new members. Washington seems to be doing better in that regard than a lot of our neighboring states.

BOG Officers meeting with the Supreme Court: The BOG Officers held it's annual meeting with the Supreme Court on October, 12, 2022. The meeting went well and we presented on various issues such as the FY 24 license fees, the state of WSBA's current budget, the current lease and potential for looking to move and/or to purchase a building, and other pertinent issues.

ETHOS Presentation to Supreme Court: The BOG held its ETHOS bar structure presentation with the Court on October 13, 2022. We worked with the Court to invite all governors from the FY 22 and FY 23 BOG to this presentation and allowed all of them an opportunity to make comments and interact with the Court. The presentation ultimately went well, and the Court indicated it appreciated receiving both the majority and the minority reports from the Board of Governors.

Ad Hoc Covid-19 Group: I requested volunteers to serve on an informal ad hoc committee to come up with a potential proposal to attempt to reconcile the differences between the BOG's Covid-19 policy and the Executive Director's Covid-19 policy. Immediate-Past President Tollefson, Governor Fay, and others participated in this along with WSBA staff Paris Erickson. Ultimately the group has a proposal that will be presented at the November BOG meeting for potential consideration.

BOG Planning Retreat: On October 23, the BOG held a virtual zoom all day FY 23 strategic goal planning retreat. This retreat consisted of small groups where Governors and staff got to know each other better, as well as a review of various potential strategic goals that the BOG and staff had ranked in order of priority prior to the meeting. The BOG then ultimately initially started to rank some of these in a higher priority based on those in attendance input. Staff will compile more information and come back in the January BOG meeting with more information.

WSBA President Eric Jan Peterson Funeral: Former WSBA President Kyle Sciuchetti served as a liaison for myself and WSBA to attend former WSBA President Peterson's funeral. The funeral was scheduled after the BOG had scheduled its all day meeting on October 23, 2022. I appreciated Kyle's willingness to represent WSBA at this event.

Washington Woman Lawyer's Event: I attended the Washington Woman Lawyer's annual conference in Yakima, on October 23, 2022.

BOG Teambuilding/Leadership Retreat: The BOG held an all day training on November 4, 2022. We had Mr. John Phelps the former Director of the Arizona State Bar serve as the facilitator for the retreat training. The topics the BOG tackled were attempting to better utilize time management of meetings, working more collaboratively together as a team, and better interactions between WSBA volunteers and staff.

Strategic Long Range Planning Council: The SLRPC, has met once so far in FY 23. The committee is examining potential options as far as real estate locations and potential current listed real estate for sale in examining if WSBA should look to potentially purchase a building. The committee reviewed and discussed various listings in the Seattle downtown area and two in Spokane that had been provided by our broker JLL.

Ultimately the committee recommended additional listings be compiled by JLL from outside of downtown Seattle. Some of the areas requested were Ballard, Renton, and other areas outside of Seattle. The Council will be continuing to examine this issue and what the next steps will be at future meetings as we continue to discuss a potential recommendation to the BOG regarding recommendations on our current location and lease which is set to expire at the end of 2026.

This is a summary of various things going on with the Board of Governors, BOG Executive Committee and the Long Range Planning Council. If you have any specific questions, please contact me at DanClarkBog@yahoo.com

Respectfully,

Daniel D. Clark
WSBA #35901
FY 23 WSBA President



WSBA'S WELLBEING COUNCIL

Dr. Dan Crystal, Member Wellness Program Manager

Kyle Sciuchetti, Past WSBA President

Kevin Plachy, WSBA Advancement Department Director

BACKGROUND

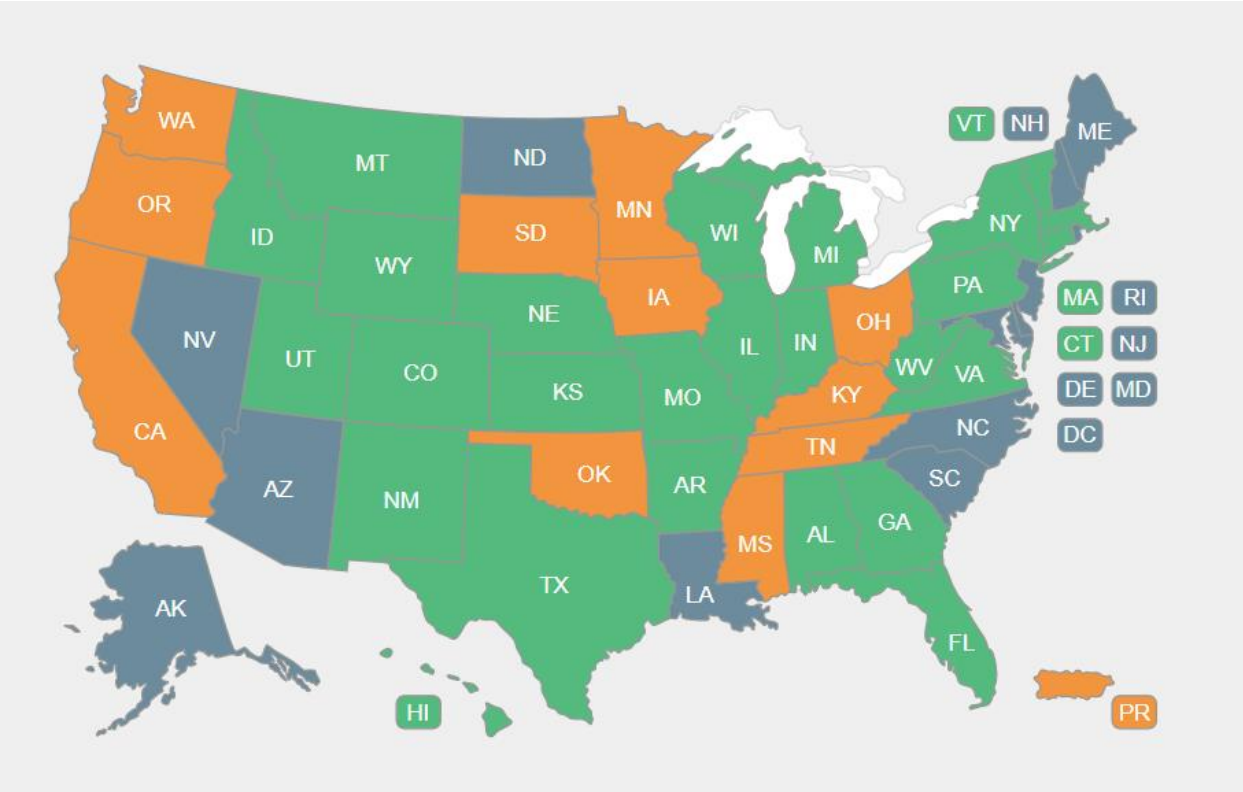
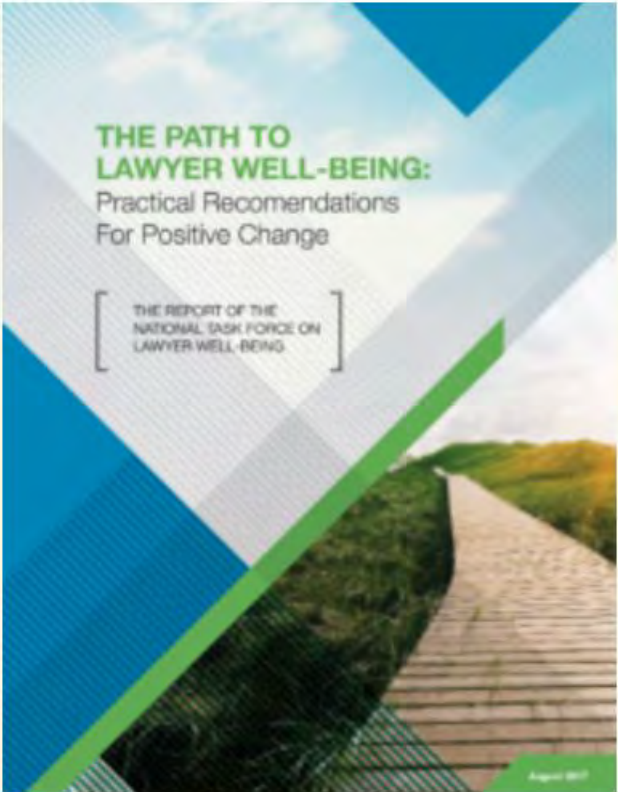
Member Wellness Focus in FY21

- To expand program resources to members, the Board of Governors approved addition of 1 FTE in Member Wellness
- The need for a Member Wellness Committee/Council was discussed in FY21
- With the Board's approval, we are now bringing the creation of the Council to fruition.

WHY A COUNCIL?

- We examined whether to establish a committee or council
- Under WSBA bylaws committee membership is limited to active WSBA members (with some exceptions)
- The Member Wellbeing Council will be comprised of WSBA members and non-WSBA members
- A Council provides more latitude to constitute the Wellbeing with the most effective members to accomplish its purpose

A NATIONWIDE MOVEMENT



EXAMPLES FROM OTHER STATES

Colorado

Wellbeing Recognition Pilot Program for Legal Employers

Massachusetts

Recommended mandatory wellbeing CLE; assisting solos with health insurance; a centralized mentoring repository; study a secured leave policy; judiciary engagement in bench/bar discussions; adjusting e-filing deadlines for healthier work hours; promoting management trainings for supervisory attorneys in firms; educating managers about stigma; assignment of a Wellness Officer in larger institutions.

OUR CHARTER

Key Objectives

- Surveying the membership.
- Best practices among other states.
- Including a listening session.
- In alignment with WSBA's strategic goals.

CONSTITUENTS

Identifying a Diverse Group of Stakeholders

- Solos through Large Firms
- Members of the Judiciary
- Law school representative
- Presence of mental health experts
- Prioritizing Diversity, Equity, and Inclusion

THANK YOU!

QUESTIONS?

WSBA Board of Governors

2022

ANTI-

harassment

TRAINING

Presented by:

Clarence Belnavis

cbelnavis@fisherphillips.com



WHY

It

matters.



Wash. Fruit Company Sued Over Discrimination, Retaliation

A fruit company in central Washington is accused in a federal lawsuit of discriminating against an employee based on her sex and retaliating against her and her husband.

wp The Washington Post

Alaska governor candidate faces sexual harassment lawsuit

The lawsuit filed Friday accuses Charlie Pierce of "constant ... no way to report harassment or discrimination without fear of reprisal.

Oregon Live

Portland settles lawsuit, pays \$93,000 to former fire paramedic who alleged employment discrimination

The city of Portland last week settled a lawsuit brought by a former ... who alleged a decade's worth of employment discrimination that he...

S JD Supra

EEOC Ramps Up Litigation of Discrimination and Harassment

...

In late August, the EEOC filed a pattern or practice lawsuit against a California restaurant. The lawsuit claims, among other allegations,...

Fierce Pharma

Eli Lilly hit with another age discrimination lawsuit—this time

...

Now, the company is defending against age discrimination allegations from a federal agency. In a new lawsuit, the U.S. Equal Employment Opportunity Commission (...)



**In your career and tenure on the B.O.G., you will
leave a legacy.**

How will you be remembered?

Today's Agenda:

1. **Why Do This?** One Reason + Seven Other Reasons
2. **Getting On The Same Page** – Legal Definitions of:
 - *Protected Class*
 - *Discrimination*
 - *Harassment*
 - *Retaliation*
3. **Five-Step Plan** For Governors
4. **Pop Quiz**

SAME PAGE?

Same
Page.

SAME PAGE

#1

The Most Important Reason

Sexual harassment harms victims.

- It should not be tolerated by any entity.
- WSBA's mission includes "serv[ing] the public," "ensur[ing] integrity," and "champion[ing] justice."

2. Lawsuits are costly, time-consuming, embarrassing, and stressful for all involved



3. Lawsuits hurt the reputation of those involved and the organization

4. Professionalism leads to higher productivity and higher morale



5. Maintaining high morale means lower turnover



6. You could be named in a lawsuit
7. You could be held liable under WA law
8. You could be held accountable under WSBA policy

Taking appropriate steps before and after a complaint may offer the Bar Association a legal defense



LEGAL DEFINITIONS YOU NEED TO KNOW ABOUT



“protected class”

- Groups protected by law from **discrimination**, including **harassment**
- Characteristics that may not be considered when making employment decisions or you will commit **discrimination**
- If offensive behavior is targeted at an employee because of a protected class, it may become **harassment**

What are the protected classes?

FEDERAL LAW includes...

- **Race**
- **Religion**
- **Color**
- **National origin**
- **Gender/sex (*includes pregnancy*)**
- **Sexual orientation**
- **Age (*if 40 or above*)**
- **Disability (*mental/physical*)**
- **Veteran status**
- **Family leave**

STATE/LOCAL LAW adds others such as...

- **Gender identity**
- **Transgender people**
- **Marital status**
- **Family relationships**
- **Injured workers**
- **Workers' compensation**
- **People taking domestic violence leave**
- **Crime victims**
- **People with expunged juvenile record**

“discrimination”

Making an employment decision because of an employee or applicant’s protected class status

- > Hiring
- > Firing
- > Compensation
- > Assignments
- > Transfers
- > Promotion
- > Demotion
- > Layoff
- > Evaluations
- > Discipline
- > Training
- > Benefits
- > Resources
- > **Other terms and conditions...**

“harassment”

- **Offensive, intimidating, or hostile behavior related to any protected characteristic**
- **Unreasonably interferes with work performance (i.e., severe or pervasive)**
- **Objectively offensive behavior (to a reasonable person) that subjectively offends the victim**

Your Policy

WSBA Board of Governors Anti-Harassment Policy and Procedure

“Engaging in any act that discriminates against an employee because of sex...will not be tolerated.”

“No one will suffer retaliation for reporting workplace concerns, including, but not limited to that an employee who believes that the work environment has become a hostile or offensive place to work....”

“This policy applies during normal working hours, at work related or sponsored functions, and while travelling on work related business.”

Harassment can come in many forms...

QUID PRO QUO BEHAVIOR

When someone in a position of Power:

- **Offers a job benefit in exchange for sexual favors**
- **Threatens job detriment if employee refuses**



PHYSICAL BEHAVIOR

Unwarranted physical contact, such as:

- **Touching**
- **Pinching**
- **Patting**
- **Grabbing**
- **Poking**
- **Brushing against**
- **Hugs**
- **Kisses**
- **Neck/shoulder rubs**
- **Blocking movement**
- **Standing too close**
- **Intimidating behavior**

VERBAL BEHAVIOR

- **Derogatory comments**
- **Slurs or nicknames**
- **Name-calling**
- **Jokes or mocking**
- **Profanity**
- **Sexual innuendo**
- **Sexual comments**
- **Repeated requests for dates**
- **Asking about sexual history or experience**
- **Talking about your own sexual history**
- **Whistling, cat-calls**

VISUAL BEHAVIOR

Inappropriate images, such as:

- **Photographs**
- **Posters, pin-ups**
- **Cartoons**
- **Drawings**
- **GIFs, emojis**
- **Texts or emails**
- **Notes or writings**
- **Staring at or directing attention at a person's body**
- **Gestures**
- **Adult toys or props**

“Because of . . .”

Treating someone differently because they don't conform to a **stereotype** may be unlawful harassment.

- “He just needs to ‘man up’ and be tougher.”
- “She needs to be softer and gentler in her management style.”
- All _____ are _____.



Harassment is not necessarily *unlawful*.

One minor remark or inappropriate joke will not violate the law, but it may violate our expectations for appropriate workplace conduct.

WSBA BOG Policy: “Harassing behavior does not need to be *illegal* harassment in order for corrective action to be considered...”



NO USE EXCUSES

- I didn't know
- I was just joking
- **I didn't mean to harass anyone**
- The employee never complained
- I'm a good person
- I didn't intend for the comment to be sexual or offensive
- The employee laughed
- I thought it was consensual
- I have First Amendment rights to express my views
- I treat everyone the same (Equal Opportunity Harassment)



**WHAT WOULD
YOU DO?**

You overhear two employees on break calling each other culturally insensitive names. You know they are friends, and they are joking. Neither of the employees complains to anyone.

- Is this unlawful harassment?**
- Is it a violation of your policy?**
- What should you do, if anything?**



Same fact pattern, but this happens at a restaurant outside of work

- **Is this unlawful harassment?**
- **Is it a violation of your policy?**
- **What should you do, if anything?**



Retaliation is Prohibited by Law

***No Employee May
Be Subjected to Retaliation
for Making a Good Faith
Complaint of Harassment/
Discrimination, Participating in an
Investigation, Supporting Another Employee's
Complaint, or Other Protected Activities***

Examples of protected activity

- Threatening to file or filing a complaint or charge alleging harassment
- Participating in an interview, investigation, hearing, trial, or other proceeding (as a witness or complaining person)
- Complaining to anyone about alleged harassment
- Requesting a reasonable accommodation for religion or disability
- Pregnancy
- Complaining about wages
- Taking protected leave



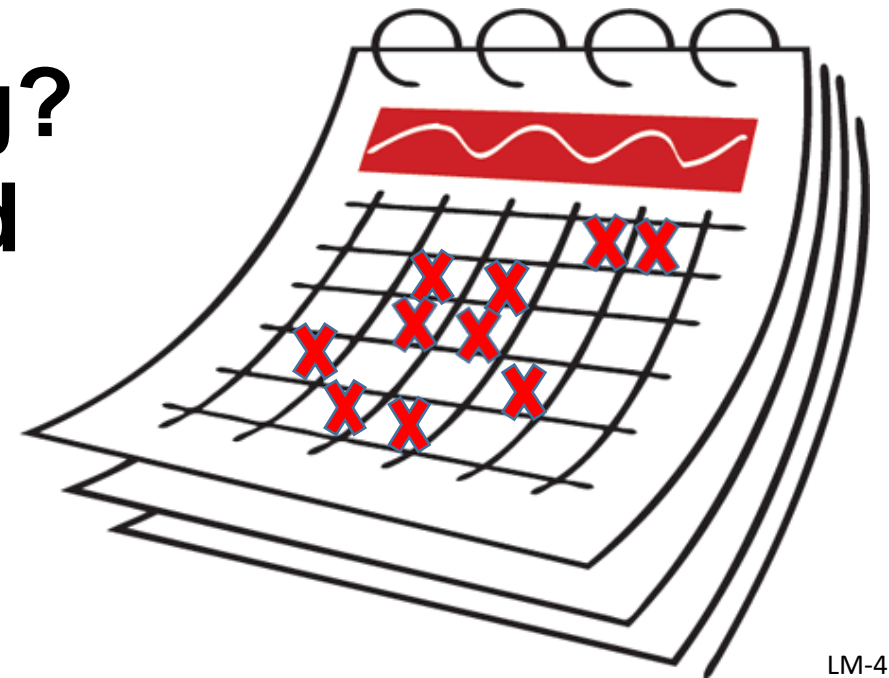
Forms of Retaliation

- An “adverse employment action”
 - “Materially adverse,” or enough to discourage the protected activity
 - BUT- the employer may still take action for legitimate, non-discriminatory reasons
 - Retaliation cannot be a “substantial factor” in the adverse decision
- A “hostile work environment”
 - Severe, pervasive, offensive
- **Bottom line: You must refrain from retaliation, immediately report potential retaliation, and actively monitor for retaliation**

**WHAT WOULD
YOU DO?**

Bob complains that Alf has been using sexually explicit language and stories during team meetings, which Alf leads. HR takes appropriate corrective action with respect to Alf and informs Bob that the issue has been addressed. Alf stops inviting Bob to the team meetings to avoid offending him and because Bob didn't really need to be there anyway.

- What should you do, if anything?**
- What if you review the team and determine that Bob really shouldn't be in the team meetings?**



Your Role: Protecting Employees/Volunteers, the Board, Yourself, and the WSBA



Know the policy



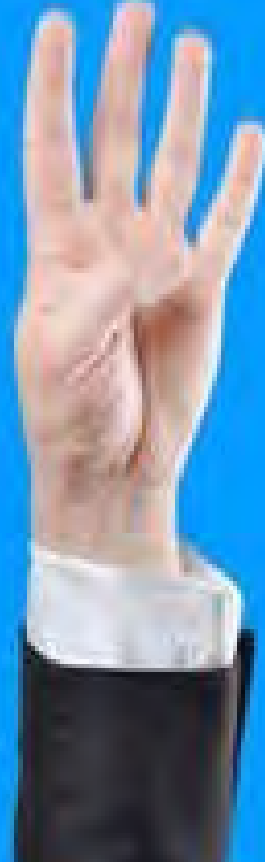
Look for warning signs



You're always a leader



Handle complaints



Report



Step 1: Know Your Policy

- **Demonstrates Your Commitment to Values**
- **Includes examples of harassing conduct**
- **Reporting policy encourages complaints**
- **Makes your decisions easier regarding reporting**
- **Prohibits retaliation**
- **Violation of your policy will subject an employee to disciplinary action, up to and including immediate termination**

Step 2: Look for warning signs

- **Diminished participation in group activities**
- **Expressing strong dislike for certain people**
- **Decrease in work performance**
- **Attendance problems**
- **Stress-related problems (headaches, nausea)**



You are always a leader

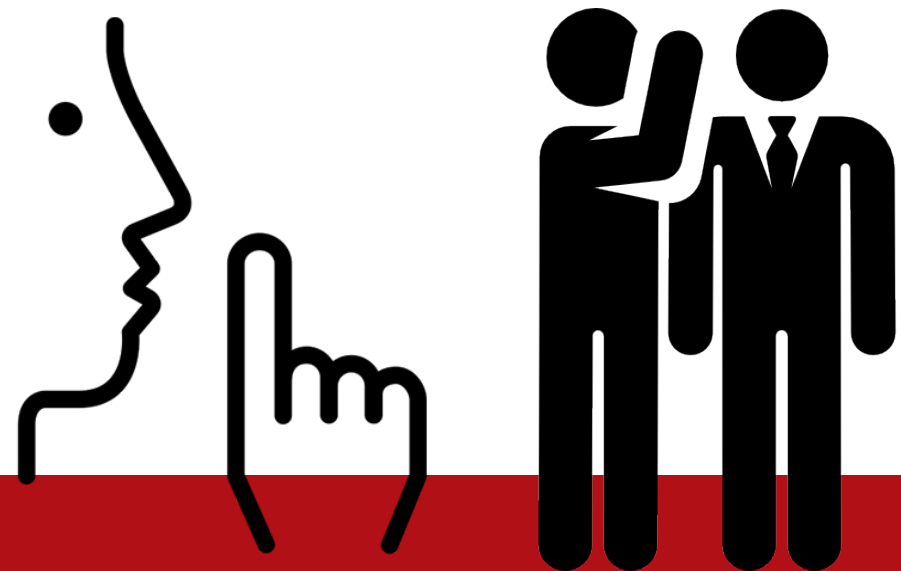
- **You are never off-duty, even while not at work (consider texts, social media, after-hours events)**
- **Model good behavior**
 - *Focus on work*
 - *Avoid excessively personal or intimate interactions*
 - *No gossip or bad-mouthing others*
 - *Practice acceptance and inclusion*
 - *Set the right tone*
 - *Interfere openly where appropriate*

Handle Complaints

Employees/volunteers might come to you

- Need to take **immediate** action
- Delays send the wrong signal and can be exploited in subsequent legal proceedings
- Listen carefully and impartially
- Assure them you will take their report seriously and there will be no retaliation

- **Conclude by telling them that you will protect their privacy, but that you must report**
- **There can never be an “off-the-record” discussion, it can’t be “just between the two of us”**
- **A complaint to you is a complaint to the WSBA**
- **Remind them that the WSBA does not tolerate retaliation**



Report

- **Immediately report any potential violation of EEO or anti-retaliation policy to HR**
- **Be discreet! Do not tell anyone else unless instructed to do so**
- **Provide any notes you took or relevant emails/texts (and understand they could be discoverable)**
 - **Take notes! Even just a calendar entry can be important**

Final Questions?



Presented by:

Clarence Belnavis

cbelnavis@fisherphillips.com