

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

**Board of Governors Meeting**  
**Late Meeting Materials**

**July 16-17, 2021**  
**Skamania Lodge, Stevenson, WA**  
**Zoom and Teleconference**

<b>BOARD OF GOVERNORS MEETING</b> <b>Late Materials</b> <b>July 16-17, 2021</b> <b>Skamania Lodge, Stevenson, WA</b> <b>Zoom and Teleconference</b>	
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# WASHINGTON STATE BAR ASSOCIATION

## BOARD OF GOVERNORS MEETING

### Minutes

Held Virtually  
May 20-21, 2021

#### Call to Order and Welcome ([link](#))

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Kyle Sciuchetti on Thursday, May 20, 2021 at 9:10 AM. Governors in attendance were:

Hunter Abell  
Sunitha Anjilvel  
Lauren Boyd  
Treas. Daniel D. Clark  
Matthew Dresden  
Carla Higginson  
Russell Knight  
Tom McBride  
Bryn Peterson  
Brett Purtzer  
Alec Stephens  
Brent Williams-Ruth

Also in attendance were President-Elect Brian Tollefson, Immediate Past President Rajeev Majumdar, Gov-Elect Serena Sayani, Gov-Elect Francis Adewale, Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Director of Advancement Kevin Plachy, Chief Equity & Justice Officer Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, Executive Administrator Shelly Bynum, Chief Communications & Outreach Officer Sara Niegowski, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), James E. MacPherson (WDTL), and Michael Cherry, Chalia Stallings-Ala'ilima, and Kari Petrasek.

#### Executive Session Announcement ([link](#))

Pres. Sciuchetti made welcoming remarks and announced the purpose and basis for moving into Executive Session pursuant to the WSBA Bylaws Article VII (B)(7)(a)(2) and (4) to receive any

confidential discipline information regarding the candidates for President-Elect and to discuss with legal counsel a request to authorize collective bargaining for WSBA staff. He noted that the Board would be in executive session until 10:00 AM. Pres. Sciuchetti announced an extension of executive session to 10:30 AM. Treas. Clark was not present for the portion of the executive session relating the receipt of any confidential discipline information regarding the candidates for President-Elect.

#### Report on Executive Session ([link](#))

Pres. Sciuchetti noted the purpose of the executive session and provided background regarding a petition for the WSBA to authorize collective bargaining. He noted that the Board was not prepared to take action at this time, but would continue to gather information in order to make that decision. He noted that the topic would be on the agenda at the July meeting for continued discussion and potential action.

#### Review Interview and Election Procedures ([link](#))

Pres. Sciuchetti reviewed the process for the President-Elect election under the WSBA Bylaws, noting that the Bylaws direct that candidates should not be present for each other's interviews and that the election will be by secret ballot. Discussion followed about whether the Bylaws should be amended to promote transparency in voting and discussion. Gov. Higginson moved that the Board invite the candidates to be present for the discussion. Gov. Abell seconded. Discussion followed regarding the distinction between being present for each other's interviews vs. the Board's deliberations; concern about adopting procedures outside of the Bylaws on the floor of meetings; and clarification that the motion was limited to the Board's deliberation and not to candidate interviews. The Board heard public comment from James MacPherson who noted the history of the voting procedures and in support of having candidates present for the discussion, but not for the interviews. The motion passed 8-1 with Govs. Stephens and Clark abstaining. Gov. McBride was not present for the vote.

Pres. Sciuchetti requested that the candidates not be present for the discussion pursuant to the WSBA Bylaws.

#### Interviews and Selection of 2020-2021 WSBA President-Elect ([link](#), [link](#))

*Allen D. Brecke.* Mr. Brecke delivered his opening statement. Executive Director Nevitt asked and Mr. Brecke responded to the three preset questions. Board members asked and Mr. Brecke answered additional questions. Pres. Sciuchetti allowed an additional five minutes for questions and answers noting that each candidate would receive 15 minutes for questions and answers as well.

*Daniel D. Clark.* Treas. Clark's opening statement and his responses to the preset questions were delivered by video. Treas. Clark answered additional questions from the Board. Due to the delay caused by typing, Treas. Clark received additional time to receive and respond to questions.

*C. Olivia Irwin.* Ms. Irwin delivered her opening statement. Executive Director Nevitt asked and Ms. Irwin responded to the three preset questions. Board members asked and Ms. Irwin answered additional questions from the Board.

The candidates were invited back into the room for the discussion. Gov. Higginson requested that public comment not be taken during the Board's discussion. Discussion followed, including a desire to hear from members and support for Gov. Clark's candidacy. The Board heard public comment from James E. Macpherson in support of Gov. Clark's candidacy. Pres. Sciuchetti and Executive Director Nevitt provided direction on the election, noting that Executive Director Nevitt, Pres. Elect Tollefson, and Pres. Sciuchetti would tally the results. The Board voted via electronic secret ballot. Pres. Sciuchetti announced that Gov. Clark was the winner of the election.

#### Practice of Law Board ([link](#))

Chair Michael Cherry provided an overview of the Practice of Law Board's (POLB) scope of work and reported on its current activities. He discussed new avenues for legal services, including online legal services and presented the risks of doing nothing. He reported that the POLB will be proposing the creation of a legal regulatory sandbox to support innovative legal services, while closing the justice gap and ensuring consumer protection. He noted that the intent is for the sandbox to be funded through fees from sandbox participants and grants and not by legal practitioners. He presented the risk benefit model that will be used and the process for entering into and existing out of the sandbox. He noted that the next step is to present a first draft of the proposal to the Washington Supreme Court on July 1, noting that it will be an iterative process and that the POLB will continue to seek the input from the Board of Governors and other interested parties.

Discussion followed, including the need for accountability for those in large companies making decisions that could harm the public; the nature of the monitoring anticipated; potential accountability mechanisms for non-members; concern about endorsing online legal services; how the sandbox model might serve to improve the quality of services; questions about how the bar can seek to regulate private industry and clarification that the regulation would only apply to the law-side of the business and would be pursuant to court order; a request for the slides to be provided to the governors and the public; clarification that the Board is not being asked to take any action at this point; that the preferred approach is to continue regulating individuals and for the legal profession to adapt to innovative ways of delivering legal services; regulation of entities

without a presence in the United States; the appropriate entity to monitor sandbox participants and the need for sufficient resources to monitor the technology being used; support for the POLB's intent, noting that criminal enforcement of the unauthorized practice of law has never been a useful tool; and the limitations of looking at other jurisdictions given the deep diversity among bar associations.

#### Consent Calendar ([link](#))

Gov. Dresden moved for approval of the consent calendar. Motion passed unanimously.

#### President's Report ([link](#))

Pres. Sciuchetti commented on the challenges and benefits of hybrid meetings, noting that the next meeting in July was originally planned for Portland but will likely be moved to Vancouver to facilitate a better connection to the local bar associations. He noted that the July meeting will include our annual retreat, which is being planned by Pres. Elect Tollefson. He commented on his work with the Legal Foundation of Washington to support federal funding for legal aid.

#### Executive Director's Report ([link](#))

Executive Director Nevitt referenced her written report and highlighted several items, including recognition of the reelection of Gov. Sunitha Anjilvel to a second term on the Board; activities to recognize well-being in law week; activities to recognize volunteer recognition week; continued planning in response to the easing of public health restrictions; a new online platform for Bar News; and the upcoming Access to Justice Conference to be held remotely in August.

#### Legislative Session Wrap-Up ([link](#))

Chief Communications & Outreach Officer Niegowski provided the legislative wrap-up noting that the legislature met almost entirely remotely and was largely successful in accomplishing its work. In terms of WSBA's priorities, both pieces of WSBA-Request legislation were signed into law. Both were put forth by the Business Law Section. SB 5005 originated from the Corporate Act Revision Committee of the Business Law Section. The bill updated the Washington Business Corporation Act to enable corporations to deliver notices and other communications to shareholders and directors by email and other forms of electronic transmission without obtaining prior consent. SB 5034 originated from the Nonprofit Corporations Committee of the Business Law Section. The bill is a comprehensive update and modernization of the Washington Nonprofit Corporations Act, which has not received a significant overhaul since it was enacted in 1967. Among the many changes in the new act are more efficient processes for electronic transmission of notices and meetings, more comprehensive rules governing members and directors, and updates in record keeping and filing requirements. It also addresses charitable assets of nonprofit corporations and addresses the authority of the attorney general to investigate and intervene to protect charitable assets.

She noted that WSBA commented on several other pieces of legislation. The Board Legislative Committee (BLC) took action to support funding for Resolution Washington, the statewide association of dispute resolution centers. The BLC also took action, in collaboration with the Elder Law Section, to oppose the passage of HB 1197, an act relating to health care decisions made by a designated person. The BLC also voted to support the passage of SB 5339, but that bill did not pass out of policy committee.

Finally, WSBA monitored numerous proposals of interest to WSBA sections. She noted that WSBA referred 712 bills to sections, tracked 489 bills by request, and coordinated action on 11 bills.

Chief Niegowski also announced the return of Sanjay Walvekar as WSBA's Outreach & Legislative Affairs Manager.

#### Board of Bar Examiners Report ([link](#))

Board of Bar Examiners Chair Bruce Turcott provided an overview of the functions of the Board, which includes grading the exams, and writing the Washington law component of the exam. He spoke to the lack of diversity of the Board and explained the recruiting and appointment process. He spoke positively about the Q&A session we recently did. He noted that the Board has been doing grading remotely and will need to decide whether to return in person. Vice-Chair Cathy Helman presented on the bar exam grading process. Admissions Manager Gus Quiniones presented on the innovation of using a secure online grading software to facilitate a more efficient and secure process. He also highlighted upcoming projects, which includes remote grading of the July exam in August and updating the Washington Law Component of the exam in January 2022. He spoke to the upcoming July exam, which will be conducted remotely. He noted that there are currently there are 762 lawyer applicants, 88 LPOs, and 41 LLLTs. Discussion and questions followed, including a clarification that the BOBE members and the graders are one in the same; the efforts being made to recruit members of color to serve on the Board; why WSBA adopted the UBE originally, one reason being the portability of the score; the anonymity of grading; and the amount of Washington law tested on the exam and the specifics of how the Washington Law Component is administered.

#### Member & Public Comments ([link](#))

There was no public comment.

#### Reports of Standing or Ongoing Board of Governors Committees ([link](#))

*Executive Committee.* Pres. Sciuchetti reported that at its last meeting the committee met with the Character & Fitness Board, LLLT Board, and Limited Practice Board and discussed the process

for electing the president-elect. He noted the committee may want to take up revising the election process for the future.

*APEX Awards Committee.* Gov. Knight noted that the Board adopted the nominations of the APEX Committee on the consent agenda. He noted the names will remain confidential until honorees have been notified.

*Personnel Committee.* No report.

*Legislative Committee.* No report.

*Nominations Review Committee.* Pres. Elect Tollefson noted that the committee meets almost monthly to address any pending nominations but that the bulk of the work will occur at its June meeting when they will consider the nominations for all WSBA entities.

*Diversity Committee.* Gov. Anjilvel reported that WSBA will be sponsoring the Joint Minority Mentorship Program, that the committee is working on a recurring diversity column for the Bar News, and that the committee is working to develop a pipeline program to foster diversity in the profession.

*Long-Range Strategic Planning Council.* Pres. Sciuchetti noted that the Board adopted the draft strategic goals and the council's charter at the April meeting. He noted that the council is moving forward to identify specific issues to accomplish in the short-term, and in the next five to 10 years.

*Member Engagement Workgroup.* Gov. Peterson reported that WSBA has engaged with a company to conduct a member survey.

*Budget & Audit Committee.* Treas. Clark referred to his written materials.

*Equity & Disparity Workgroup.* Gov. Stephens reported that the next meeting will be June 3. He noted the workgroup will be proposing possible revisions to the interpretation of GR 12.2 and has met with General Counsel. The workgroup is also looking at experiences of people of color in the justice system. He noted his concern with the lack of demographic data in terms of making progress on having more representative entities.

*Supreme Court Bar Licensure Task Force.* Gov. Williams-Ruth reported on the April meeting of the task force where the creation of subcommittees was discussed. He noted that the task force has



not get gotten into substantive discussions and that he is listening to the perspectives of governors and the public and that he will be taking those perspectives to the task force.

#### Update RE Proposed Rules for Discipline & Incapacity ([link](#))

Gov. Purtzer presented the proposed language to send out to members about the proposed amendments. He noted that the recommendation of the ad hoc committee is to encourage comment by members rather than for the Board to take a position, at least initially. Discussion followed including note that the Criminal Law Section has submitted a letter in opposition to the proposed rules and they are encouraging the Board to support their viewpoint; that efficiency, effectiveness, and public protection are important and may not always reflect the desires of the membership, particularly when it comes to discipline; and the importance of gathering input before taking a position.

#### Update on the Future of Work at WSBA ([link](#))

Executive Director Nevitt provided an update on the transition to a new normal at WSBA. Watch tape, including the results of employee pulse surveys that demonstrate strong continued interest in working remotely; the benefits of a more remote work force; the potential costs of transitions; and a potential subleasing opportunity. Discussion followed regarding the amount of space available for sublet; what the space will look like and how it will support remote workers to be in the office as needed; what reopening WSBA will look like with regard to traffic into the office; reconfiguration of the 6<sup>th</sup> floor in order to better control access to address health and safety concerns; that WSBA is not requiring vaccinations but will continue to require masking for as long as is prudent; and software that can be used to support hoteling.

#### Governor Liaison Reports ([link](#))

Gov. Boyd reported a request from the Criminal Law Section to consider moving WSBA's office to a less expensive location in central Washington.

#### Council on Public Defense Matters ([link](#))

Chair Stearns provided an overview of the Ayerst Ayers case as background of the CPD proposed rule changes. In that case, an individual was appointed counsel to represent over 100 people, despite not admitted to practice law in the State of Washington. He noted that the proposed changes are intended to avoid a repeat of that malfeasance by ensuring the independence of public defense. He provided an overview of the changes, including revisions to Standard 18 relating to defense contracts; a proposed new Standard 19 to set forth the process for appointing counsel and overseeing public defense; and amendments to the three appointment rules CrRLJ 3.1(d)(4), CrR 3.1, and JuCR 9.2(d).

Chair Stearns detailed the 18 month process the Council on Public Defense engaged in to develop these proposals, including extensive stakeholder input. Discussion followed, including the impact and potential burden of these changes on various jurisdictions, especially small counties and cities. Gov. Purtzer moved the proposal as set forth in the materials. Discussion continued, including whether these changes, which are largely advisory will have the desired impact; outreach to judges; the potential cost of implementing these proposals and the necessity of them; and the potential economic benefit of provided good quality representation; why the proposals shouldn't be requirements; and the nature of the feedback received and the responses thereto, which was largely supportive, though not unanimous. Motion passed unanimously with Govs. Clark and Stephens abstaining. Govs. Higginson and Knight were not present for the vote.

Prof. Boruchowitz presented the Emergency Guidance Caused by Pandemic Driven Increased Public Defense Workloads for approval. He presented the scope of the challenge and its impact. He noted that the statement will help public defenders in working with local governments, which can support with allocation of federal funding and by expanding diversions programs. Discussion followed regarding the allocation of federal funds and whether public defense should be a priority for those funds. Gov. Stephens moved for approval. The Board heard public comment from Nancy Hawkins encouraging the Board to seek funds for the Courts in general, which have many funding needs. Discussion followed, including a concern about reducing bail across the board. Motion passed 9-1 with Gov. Higginson abstaining. Gov. Knight was not present for the vote.

#### Discussion RE At-Large Young Lawyer Governor Election ([link](#), [link](#))

Volunteer Engagement Advisor Paris Eriksen presented an overview of the recruitment process. General Counsel presented the issue before the Board given that there was only one candidate for the at-large seat. Past Pres. Majumdar spoke to the intent of the Bylaw, which was to prevent the Young Lawyers Committee undue influence in the process. Discussion followed regarding the other criteria of being an active member that qualifies as a "Young Lawyer"; support for declaring the only candidate as the winner, which is how a congressional seat would be treated; and clarification of the action(s) being requested.

Chair Neuharth presented the Young Lawyer Committee's recruitment and vetting process, which included personal outreach and an interview of Mr. Couch. He noted that the Young Lawyer Committee is not taking a position on what approach the Board should take to avoid the appearance of favoritism. Discussion continued, including how the outreach for this seat compared to the outreach conducted for the Diversity At-Large Seat and the number of members that could qualify for the position. Gov. Higginson moved that we extend the deadline to seek additional candidates. Discussion followed, including opposition to the motion; whether additional outreach would be useful; reasons that eligible members may not be seeking the

position; that the Board's role should be to set policy rather than second-guessing the actions taken; a desire to treat Mr. Couch, who did apply on time equitably; a desire to promote competition for Board positions; lack of support for the Board selecting candidates for the ballot rather than the Young-Lawyers Committee; disappointment in having a single applicant; that single applicants also occur for congressional seats and officer elections; that Jordan Couch is a highly qualified candidate; that the Bylaws don't set a specific deadline as is the case with other elections; that the committee is supportive of having a competitive process if that is what is desired; that we haven't treated other positions in the same manner; the value of having more than one candidate; support for sticking with the process, especially given the nearly universal agreement that Mr. Couch is a strong candidate; that extending the deadline would promote inclusion; that all of the positions should be treated the same and that only; that the at-large seats are distinct because of the entities serving in a gatekeeper role; and a desire to understand the deficiencies in the in process. Gov. Stephens moved the question. Motion to call the question failed 6-5. Gov. Knight was not present for the vote.

Discussion continued, including that extending the deadline gives the appearance of the Board acting out of a lack of appreciation for the candidate; question about what will happen in the event that additional candidates cannot be recruited; and that the process was followed. The Board heard public comment from Bestylew Miale-Gix, speaking in her personal capacity, in opposition to the motion. The Board heard public comment from Chalia Stallings-Ala'ilima in opposition to the motion.

Discussion continued, including concern about taking an ad-hoc approach; whether extending the deadline is consistent with the bylaws vs adding a name; concern that extending the deadline is arbitrary and frustrates fairness by changing the rules midway; that there are no election policies; that extending the deadline makes sense given that we don't have any additional candidates in mind; that the motion is not intended to set a precedent; that the motion is not a critique on the candidate or process; and opposition to extending the deadline. Gov. Higginson's motion was restated to extend the deadline for submission of names for the at-large position to July 12 and to ask the Young Lawyers Committee to forward two additional names, if they can, to the Board. It was clarified that it would be up to the Young Lawyers Committee as to how to handle the process. Motion failed 8-2. Gov. Clark was not present for the vote.

Gov. Stephens moved to approve the recommendation and certify that Jordan Couch is the winner of the election. Motion passed 8-1 with Gov. Higginson abstaining. Gov. Clark was not present for the vote.

Committee on Professional Ethics Recommendation to Withdraw Proposed Amendments to RPC 7.2 and 5.4 ([link](#))

Committee on Professional Ethics Chair Pam Anderson presented the request. She noted that WSBA's proposed amendments to RPC 7.2 and 5.4 to the Supreme Court that would've made it clear that a referral service could be entitled to a portion of a fee for referral. In the meantime, the Court adopted other changes that resulted in RPC 7.2 being reserved. The Committee is recommending that the Board withdraw its recommendations and remand the matter back to the Committee on Professional Ethics to determine if additional amendments are needed. Gov. Purtzer moved the proposal. Motion passed unanimously. Govs. Clark and Knight were not present for the vote.

Proposed Amendments to APR 9 ([link](#))

Associate Director Bobby Henry introduced the proposed amendments to APR 9, which provide a limited license for legal interns. Professor Lisa Kelly presented the proposal of the law schools, which would allow clinical students in their 2L year to serve as licensed legal interns. She noted that the majority of states do allow students to be licensed interns before their 3L year, as do some tribal, federal, and administrative courts. The amendments will help law schools to answer the call to graduate students that are practice-ready. She summarized that 2Ls are more than capable of exceeding as legal interns, particularly under the close supervision of an experiential law program. She further noted that clinics support student-well-being and retention, especially for students of color; allow students to understand the depth of legal need promoting a commitment to public service; serve access to justice needs; and benefit courts by reducing pro se representation. Assoc. Dir. Henry presented the other amendments proposed by regulatory staff which will broaden who qualifies to graduates of LLM programs and the Rule 6 Law Clerk program; expand the options available in the event of misconduct by an intern; elimination of a provision denying access to the bar exam in the event of misconduct as only the Washington Supreme Court can make such a determination; and facilitate electronic processes. Discussion followed as the benefits of experiential education and curiosity about why the limited license was originally limited to 3Ls.

Gov. Williams-Ruth moved to adopt the proposed revisions. Discussion continued about the value of experiential education; changes in law school curriculum; clarity about which 2Ls can participate and a question as to whether clinical experience should be a prerequisite to becoming a Rule 9; the level of support and supervision provided in clinical education; that the supervising attorney is personally responsible for actions of the intern; clarification that the expansion only applies to those in a clinical program and not to students interning with attorneys in private or government practice; whether it is sufficiently clear that it is limited to those enrolled in clinical programs; whether encouraging students to veer into social justice is appropriate before law students have learned the basics of practice; whether there are insufficient 3Ls for the clinics;

whether instead we should encourage 2Ls to intern in law offices; that the social justice aspect is not intended to be political, but to teach lawyering skills and the focus is on those who can't afford legal services because that's the required focus; the distinction between clinical experience and working with a practicing attorney; that there are an abundance of 2Ls and 3Ls that would like clinical experience; the specific provisions creating the exception for clinical students; clarification that, if approved, the WBSA would be co-sponsors with the three law schools.

Gov. Higginson moved to postpone to the July meeting. Discussion followed regarding the nature of the concern being raised; comments in opposition to the motion to postpone; and that the proponents anticipated that there may be feedback that may require additional work. Motion to postpone passed 7-2. Govs. Clark, Abell, and Knight were not present for the vote.

Professor Kelly shared her contact information and requested any additional feedback be sent. Gov. Williams-Ruth volunteered to share his suggested language. Gov. Stephens urged the presenters to engage in dialogue with Gov. Purtzer.

Report on the Board's Equity, Diversity, and Inclusion Activities, Including Discussion of April 19 Training ([link](#))

Pres. Sciuchetti began the discussion by acknowledging the anniversary of the death of George Floyd, noting the conviction of Derek Chauvin for his murder. ChrisTiana ObeySumner summarized the most recent training of the Board and invited general feedback and questions. Discussion followed about the impact of the training. ChrisTiana moved to their specific questions, including what topic(s) the Board would like to see incorporated into the training and an invitation to share a concept or a term from the training, conversations, or in your own education you are grappling with. Suggested topics included pronouns and gendered language; having meaningful dialogue with such a broad group; the role of WSBA in this work; reconciling individual roles with institutional roles; and the history of exclusion in the context of structural racism. Discussion continued about the lack of participation in the discussion; that the public nature of the discussion puts a damper on the discussion; appreciation for the organizational investment in the training; a call to action to practice being uncomfortable in responding to these questions; a desire to explore whether or not we believe in systemic racism and hidden truths; working on speaking up and the importance of interrupting; how to engage in effective outreach with communities of color and other underserved groups; appreciation for the training; and lack of action, despite training. Mx. ObeySumner presented and explained their praxis for equitable growth.

## Budget and Audit Committee Items ([link](#))

*Selection of WSBA Financial Auditor.* CFO Perez noted that the policies and procedures require an RFP for audit services every 6 years. He reported that WSBA has solicited eight and received four proposals. He presented the Budget and Audit Committee's recommendation to renew our engagement with Clark Nuber noting the competitive bid, the lack of need for transition, and our satisfaction in working with them. Gov. Stephens moved for approval. Discussion followed about the potential downsides of continuing with the same firm and support for the proposal noting Clark Nuber's experience with governmental and dues-paying organizations. Motion passed unanimously. Govs. Abell, Clark, Higginson, and Knight were not present for the vote.

*Proposal to Increase the Facilities Reserve.* CFO Treasurer presented the Budget & Audit Committee's proposal to move \$500K from unrestricted funds to the Facilities Fund in preparation for the termination of our lease in 2026. He noted that it can be moved back if needed. Gov. Peterson moved for approval. Discussion followed regarding the nature of the projections; the reason for adding to the reserve; and the history of building up the fund. Motion passed unanimously. Govs. Abell, Clark, Higginson, and Knight were not present for the vote.

## Governor Roundtable ([link](#))

Gov. Williams-Ruth commented on the murder of George Floyd and the Supreme Court's letter of June 4, noting that the letter was the end of the discussion about whether our system of justice has problems of race and that we must do something about it. He proposed that we adopt a policy that restricts travel to jurisdictions that have passed voter registration laws. He introduced a second proposal to deal with conflicts of interest for members of the Board of Governors. He expressed concern about the action taken yesterday to diverge from the Bylaws without notice to the members and about what will happen if some governors chose to engage entirely remotely. Gov. Anjilvel noted that the Diversity & Inclusion Plan is set to be reviewed next year, which will be the 10 year anniversary.

## **ADJOURNMENT**

There being no further business, Pres. Sciuchetti adjourned the meeting at 3:59 PM on Friday, May 21, 2021.

Respectfully submitted,

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Terra Nevitt  
WSBA Executive Director & Secretary

**WASHINGTON STATE**  
**BAR ASSOCIATION**

**TO:** WSBA Board of Governors  
**FROM:** Executive Director Terra Nevitt  
**DATE:** July 12, 2021  
**RE:** Executive Director's Report - Updated

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Follow-up Information: MCLE Credit for Law Clerk Tutors

At the April meeting of the Board of Governors, during the Governor Roundtable, there was a question raised as to whether a tutor in the law clerk program may seek CLE credit for the work that they do. Chief Garcia noted that both the MCLE Board and the Law Clerk Board are discussing the idea. An update on those discussions is attached.

Attachments

Memo Re MCLE Credit for Law Clerk Tutors  
WSBA Demographics Report



**TO:** WSBA Board of Governors  
**FROM:** Renata de Carvalho Garcia, Chief Regulatory Counsel  
**DATE:** July 9, 2021  
**RE:** **MCLE Credit for Law Clerk Tutors**

**INFORMATION: Update on MCLE Credit for Law Clerk Tutors**

Over the years, there have been several requests by Law Clerk tutors to receive MCLE credit for giving their time as tutors.<sup>1</sup> Requests have considered both *teaching* and *mentoring* credit. Tutors are not currently eligible for teaching credit per APR 11(e)(6): “*Teaching law school courses, when the instructor is not a full-time law school professor*”. Law clerk tutors are also not eligible for mentoring credit as the Law Clerk Program is not approved as a “Structured Mentoring Program”.

At its April 9, 2021 meeting, the MCLE Board discussed the potential for tutors to claim MCLE credit for instruction time. The MCLE Board stated it was open to working with the Law Clerk Board, and on May 7, 2021, the Law Clerk Board expressed a desire to work with the MCLE Board to suggest an amendment to APR 11(e)(6).

On May 21, 2021 the MCLE Board formed a workgroup to explore a suggested amendment to APR 11(e)(6). The workgroup will meet for the first time in August (exact date to be determined). The workgroup is composed of two members from the MCLE Board (Ayanna Colman and Chris Bueter), and two members from the Law Clerk Board (Emily Mowrey and John Meyers).

**Relevant Rules:**

APR 11(e)(6): “*Teaching law school courses, when the instructor is not a full-time law school professor*”

APR 6(a): “*The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the lawyer bar examination; it is not a special admission or limited license to practice law.*”

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<sup>1</sup> Tutors provide three hours of personal supervision each week, including discussion of the law. It’s a four-year program and each year, law clerks are required to study six subjects and pass monthly examinations. The exams are developed, administered and graded by the tutors.



# WSBA Member\* Licensing Counts 7/12/21 11:09:31 AM GMT-07:00

Member Type	In WA State	All
Attorney - Active	26,531	33,559
Attorney - Emeritus	113	121
Attorney - Honorary	325	372
Attorney - Inactive	2,530	5,595
Judicial	628	658
LLLT - Active	50	50
LLLT - Inactive	3	3
LPO - Active	786	799
LPO - Inactive	141	158
	31,107	41,315

By District		
	All	Active
0	5,560	4,549
1	2,825	2,341
2	2,083	1,671
3	2,053	1,712
4	1,344	1,145
5	3,165	2,573
6	3,280	2,746
7N	4,901	4,189
7S	6,306	5,205
8	2,197	1,869
9	4,759	4,030
10	2,842	2,378
	41,315	34,408

By State and Province	
Alabama	27
Alaska	206
Alberta	11
Arizona	359
Arkansas	18
Armed Forces Americas	2
Armed Forces Europe, Middle East	24
Armed Forces Pacific	14
British Columbia	98
California	1,894
Colorado	261
Connecticut	48
Delaware	7
District of Columbia	336
Florida	275
Georgia	91
Guam	14
Hawaii	133
Idaho	477
Illinois	167
Indiana	40
Iowa	29
Kansas	30
Kentucky	33
Louisiana	47
Maine	14
Maryland	117
Massachusetts	86
Michigan	72
Minnesota	106
Mississippi	5
Missouri	67
Montana	170
Nebraska	18
Nevada	151
New Hampshire	13
New Jersey	66
New Mexico	77
New York	247
North Carolina	82
North Dakota	10
Northern Mariana Islands	6
Nova Scotia	1
Ohio	78
Oklahoma	30
Ontario	16
Oregon	2,753
Pennsylvania	81
Puerto Rico	6
Quebec	2
Rhode Island	13
South Carolina	28
South Dakota	11
Tennessee	59
Texas	383
Utah	183
Vermont	15
Virginia	281
Virgin Islands	2
Washington	31,107
Washington Limited License	1
West Virginia	6
Wisconsin	45
Wyoming	20

By WA County	
Adams	15
Asotin	25
Benton	412
Chelan	259
Clallam	163
Clark	960
Columbia	8
Cowlitz	153
Douglas	44
Ferry	10
Franklin	61
Garfield	3
Grant	137
Grays Harbor	117
Island	166
Jefferson	117
King	17,456
Kitsap	843
Kittitas	95
Klickitat	28
Lewis	117
Lincoln	15
Mason	108
Okanogan	95
Pacific	30
Pend Oreille	15
Pierce	2,434
San Juan	92
Skagit	287
Skamania	20
Snohomish	1,697
Spokane	2,036
Stevens	57
Thurston	1,693
Wahkiakum	12
Walla Walla	118
Whatcom	612
Whitman	79
Yakima	450

By Admit Yr	
1946	1
1947	2
1948	2
1949	1
1950	5
1951	13
1952	19
1953	16
1954	21
1955	9
1956	32
1957	21
1958	26
1959	28
1960	28
1961	23
1962	29
1963	29
1964	33
1965	46
1966	57
1967	54
1968	79
1969	88
1970	91
1971	96
1972	151
1973	236
1974	223
1975	286
1976	340
1977	348
1978	384
1979	410
1980	438
1981	470
1982	453
1983	494
1984	1,093
1985	555
1986	755
1987	725
1988	632
1989	693
1990	869
1991	841
1992	817
1993	914
1994	871
1995	818
1996	798
1997	908
1998	890
1999	903
2000	903
2001	908
2002	994
2003	1,054
2004	1,084
2005	1,116
2006	1,188
2007	1,263
2008	1,097
2009	976
2010	1,072
2011	1,058
2012	1,086
2013	1,222
2014	1,360
2015	1,596
2016	1,312
2017	1,393
2018	1,315
2019	1,369
2020	1,563
2021	594

Misc Counts	
All License Types **	41,680
All WSBA Members	41,315
Members in Washington	31,107
Members in western Washington	27,077
Members in King County	17,456
Members in eastern Washington	3,962
Active Attorneys in western Washington	23,163
Active Attorneys in King County	15,350
Active Attorneys in eastern Washington	3,322
New/Young Lawyers	6,795
MCLE Reporting Group 1	10,919
MCLE Reporting Group 2	11,628
MCLE Reporting Group 3	11,490
Foreign Law Consultant	18
House Counsel	337
Indigent Representative	10

By Section ***		
	All	Previous Year
Administrative Law Section	235	232
Alternative Dispute Resolution Section	318	314
Animal Law Section	81	88
Antitrust, Consumer Protection and Unfair Business Practice	196	199
Business Law Section	1,237	1,236
Cannabis Law Section	93	108
Civil Rights Law Section	179	165
Construction Law Section	520	509
Corporate Counsel Section	1,083	1,093
Creditor Debtor Rights Section	460	450
Criminal Law Section	381	370
Elder Law Section	615	644
Environmental and Land Use Law Section	793	768
Family Law Section	978	959
Health Law Section	391	392
Indian Law Section	329	322
Intellectual Property Section	857	868
International Practice Section	222	243
Juvenile Law Section	144	138
Labor and Employment Law Section	983	982
Legal Assistance to Military Personnel Section	68	66
Lesbian, Gay, Bisexual, Transgender (LGBT) Law Section	107	115
Litigation Section	1,031	1,005
Low Bono Section	83	120
Real Property Probate and Trust Section	2,303	2,268
Senior Lawyers Section	242	237
Solo and Small Practice Section	886	894
Taxation Section	622	616
World Peace Through Law Section	144	129

\* Per WSBA Bylaws 'Members' include active attorney, emeritus pro-bono, honorary, inactive attorney, judicial, limited license legal technician (LLLT), and limited practice officer (LPO) license types.

\*\* All license types include active attorney, emeritus pro-bono, foreign law consultant, honorary, house counsel, inactive attorney, indigent representative, judicial, LPO, and LLLT.

\*\*\* The values in the All column are reset to zero at the beginning of the year (Jan 1). The Previous Year column is the total from the last day of the prior year (Dec 31). WSBA staff with complimentary membership are not included in the counts.

To: Washington State Bar Association Board of Governors

From: Tracy Flood, Vice President  
Washington State Bar Foundation

Re: Moderate Means Program Update

Date: July 12, 2021

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As you know, the Washington State Bar Foundation is the fundraising arm of the Washington State Bar Association (WSBA). Our mission is to raise funds to support WSBA programs that increase diversity in the legal profession and improve the public's access to, and understanding of, the justice system. The Foundation Board disburses funds to WSBA annually in support of programs that align with our mission.

Launched in April 2011, one of the programs that we help fund is the Moderate Means Program (MMP), part of WSBA's public service portfolio. Designed to fill the gap for accessing legal services into which moderate income households fall, the program initially referred cases in family, housing, and consumer law. The COVID-19 pandemic saw a huge rise in unemployment law cases, so in 2020 the program was expanded to include unemployment benefits cases.

The funds that the Foundation awards to WSBA for this project are in turn awarded to the law schools at Gonzaga University, the University of Washington, and Seattle University to support the administration of this program.

As we mark ten years of this critical program, we wanted to highlight the work that the WSBA has done on the program and share the impact it has had on law students, legal professionals and clients. The FY20 report on the Moderate Means Program is attached for your information. Thank you so much for allowing us time to make this report.

Today's presenters will include:

- Tracy Flood, Vice President, Washington State Bar Foundation
- Michele Fukawa, Assistant Director, Center for Civil & Human Rights, Gonzaga University School of Law
- Ajibola Oladapo, Moderate Means Attorney
- Clay Wilson, Seattle University School of Law
- Christine Luckasen, JD, 2021, Gonzaga University School of Law, Moderate Means Program participant
- J Kallaway, University of Washington School of Law, Moderate Means Program participant

# Washington State Bar Association Moderate Means Program

*Lawyers Helping the People of Washington*

A PARTNERSHIP WITH THE LAW SCHOOLS OF  
Gonzaga University, Seattle University, and the University of Washington



## Data Coordinator Report, FY 2020: October 1, 2019-September 30, 2020

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### I. INTRODUCTION & OVERVIEW OF MMP’S IMPACT

The Data Coordinator position is a .75 FTE position created in October 2015 and staffed by Anna Creed at Gonzaga University School of Law. The data coordinator addresses these core areas:

- User support for students, staff, and participating attorneys and support for both application and main MMP websites;
- Process management including collaborating with MMP staff to improve LegalServer function, training students to use LegalServer effectively, ensuring the best service to clients and accurate case files/data;
- Report development, data analysis, and creation of best practices;
- Brainstorming and implementing MMP expansion based on data metrics.

#### **A. Thumbnail of FY 2020 Statistics: Requests for Services, Intakes, Referrals**

Unless otherwise stated, the statistics in this report were compiled using the rules and definitions the team updated in October 2016.

In FY 2020, the students and staff of the Moderate Means Program:

- Received 2,037 unduplicated requests for services,
- Conducted 1,262 intakes,
- Resolved 2,012 cases,
- Closed 529 cases as “Referred to MMP Attorney”,
- Made 591 attorney referrals during this period, and
- Recorded 3,056 attorney referral attempts to the pool of 514 MMP attorneys who were active during the fiscal year.

#### **B. Site Closures**

During FY 2020, the program was closed to new applications between December 19, 2019-January 3, 2020. There were no interruptions in service by LegalServer and no other MMP closures to new applications despite the effects of the COVID pandemic and stay-at-home orders.

#### **C. LegalServer User Support**

The data coordinator regularly updates panel member and student user profiles in LegalServer and conducts regular audits of MMP student profiles to ensure that only students active with the program have access to LegalServer. Ms. Creed has also taken an active role in training students at all three law schools and has produced the indexed manual that is the basis for each school’s manual and provides updates as requested by staff attorneys.

Because of the COVID-19 pandemic, she moved training for Gonzaga Law students from in-person to wholly online and began to conduct all LegalServer trainings for students at the Seattle University Law School students and the University of Washington Law School.

Ms. Creed also helped to onboard Kristina Larry, the new Staff Attorney for the University of Washington’s MMP office in February 2020.

#### **D. Response to COVID-19**

In March 2020, all three law schools moved to a remote/online learning format because of the COVID pandemic. On March 23, Washington State Governor Jay Inslee issued Executive Order 20-25, “Stay Home – Stay Healthy,” to slow the spread of coronavirus disease 2019 (COVID-19). This order required all students and staff to continue working and learning online.

#### **Program moved wholly online/by telephone:**

Because the MMP is a telephone-based referral program, shifting to an entirely distance-model for delivery of client and student services was smoother for the MMP than it likely was for other legal service programs. Ms. Creed was able to continue to work remotely and maintain the accuracy of the data in the LegalServer case management system through panel member and student audits.

**Student participation:**

MMP student participation appeared unaffected and 141 law students participated during FY 2020.

**MMP Requests for Services:**

MMP service requests dropped during April 2020 and began to climb back over the summer. For more details, please see Section II(A)(1) During the stay-home order, panel members began to consult with clients telephonically/via video and continued to limit their physical contact even when the order expired on May 31, 2020.

Courts continued to limit their dockets and changed their rules for telephonic/video appearances. The drop in requests seems to have dovetailed with the drop in placement opportunities, with requests increasing as courts and law offices were able to open.

The state moratorium on evictions, which was extended through December 31, 2020, has coincided with an increase in housing assistance. For more details on this, please see Section II(A)(1).

**Expansion of the MMP:**

To help with Washington's unemployment crisis, the MMP expanded into a new area of practice. Seattle U's Cindy Yeung, assistant director of the Access to Justice Institute which oversees the MMP, suggested that the MMP assist eligible applicants with denials of unemployment benefits. The new practice area was fully online in July 2020. For more details, please see Section II(A)(1).

**E. Process Management—Ensuring Accurate Program Data**

Because LegalServer can only provide relevant data about the MMP's work when data is entered accurately and in a timely manner, streamlining and standardizing LegalServer processes is one of the data coordinator's key tasks. Below is a description of the process changes and updates Ms. Creed has made to LegalServer and the accompanying trainings. **Please note that none of these changes incurred any charge or fee from the LegalServer CMS.**

During FY 2020, Ms. Creed has:

1. Implemented several projects that have allowed her to gather information needed to plan for the MMP's future and make the site easier to navigate.
  - a. She configured a referral hub to allow applicants who apply via CLEAR\*Online to have their application electronically transferred to the MMP if the applicant meets the MMP eligibility criteria.
  - b. She developed a new Legal Problem Code, case questions page, and interface with the WSBA attorney application to be a panel member after the MMP team, at Cindy Yeung's request, decided to provide services to applicants who were contesting or supporting the denial of unemployment benefits before the ESD. These applicants had to meet the MMP's financial eligibility criteria.
  - c. She developed new processes to allow her to get a better data about:
    - i. Case flow and the length of time that it takes for an application to move through the MMP intake and referral process.
    - ii. MMP applicants and clients, their geographic and demographic backgrounds.
2. Significantly updated the training manuals used by Gonzaga Law and Seattle U as requested by Staff Attorneys each semester/quarter and as needed for changes in LegalServer use. UW is using a version of the Seattle U manual but has not requested updates or changes yet.

3. Conducts all LegalServer training for all three schools, tailored to their programmatic differences, to ensure that the case and client data is re
4. Researched and compared the panel members' hourly rates to reasonable attorney rates throughout Washington for services within the scope of the MMP.
5. Compiled and analyzed the reasons that panel members give for leaving the program.
6. Provided weekly and monthly reports to the staff at the three law schools and the WSBA about open cases and case outcome statistics.

## II. CLIENTS AND CASES

### A. Are there any trends in the types of cases or issues referred?

Because the most information is collected on cases that reach the referral stage, it is difficult to compare case trends across requests for services to referrals without acknowledging the gaps in information.

To understand case trends, it is not enough to review only requests for services; we must also review cases that reach the intake and referral stage. Many requests for services have incomplete information about the person applying, both personal and financial, where the applicant is from, and what their legal issue is. However, relying on only information from cases that reach the intake or referral stage means that we are reviewing a smaller number of cases that make it to this point in the process and are ignoring other possible areas of need.

#### 1. Requests for Services

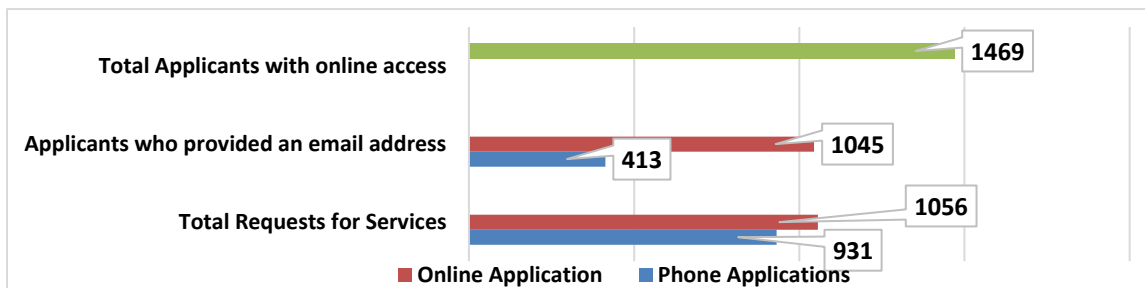
During FY 2020, the MMP received 2,037 requests for services. The lack of information in many of our RFS can hinder MMP's ability to plan strategically.

##### a. How Applicants are Accessing MMP Services

One question Ms. Creed had was how applicants were accessing the program and whether access to the internet/a smart phone was a barrier to accessing to MMP services.

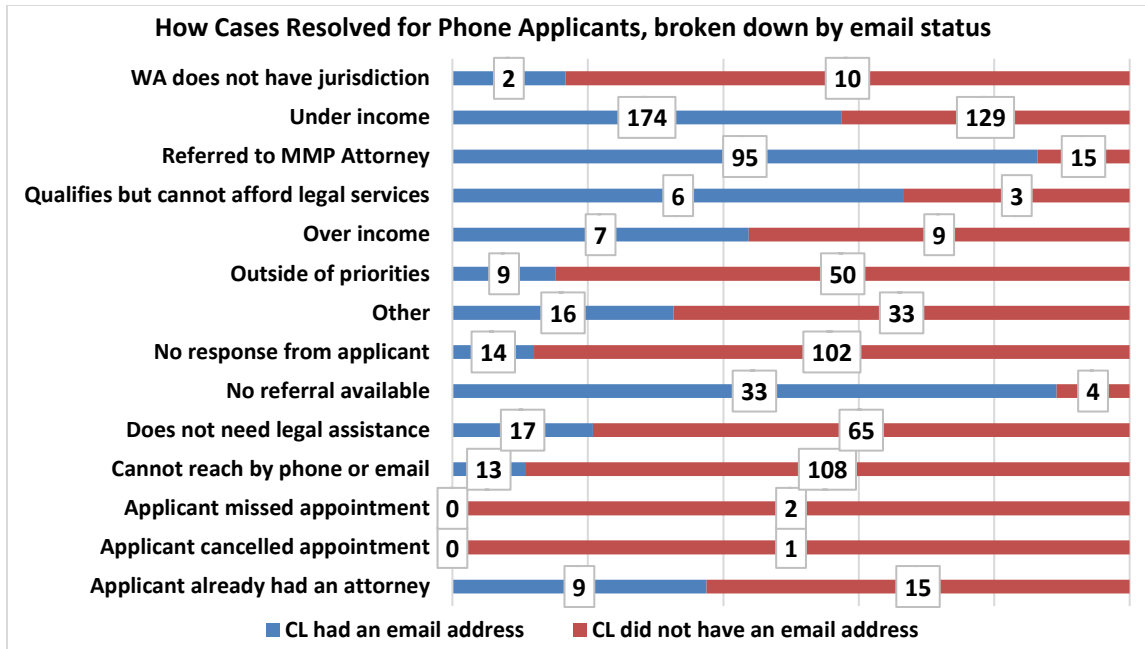
##### i. Online vs. Telephone Applications

However, only 1,056, or 52%, of FY 2020's requests for services came in an online application raising concerns that access to internet/smart phones was a potential barrier to accessing the program. However, of the applicants who applied by phone, 413 or 42% provided their email address implying that they had reasonable access to the internet. This brings the percentage of applicants with some internet/smart phone access to 72%.



Of the 981 who applied by phone during FY 2020, all but 41 have had their cases resolved. Comparing the outcomes of those cases provides some insight into our application pool and may help in directing future client recruitment efforts.





Of the 546 cases shown above, in which the applicant did not have or was not asked to provide an email address, 210 have a resolution reason that presupposes no contact with the applicant during which a program member could ask about access to internet/smart phone. Of the applicants who applied by phone, 174 applicants with email addresses were rejected as being under income as opposed to 129 rejected as under income who did not have email addresses.

***Suggestion:*** The MMP makes a concerted effort in FY 2021 to get information about our clients’ access to internet/smart phone services. Training staff and students to ask about email contact information will be key. This will help the program understand its pool of eligible applicants for future recruitment and services.

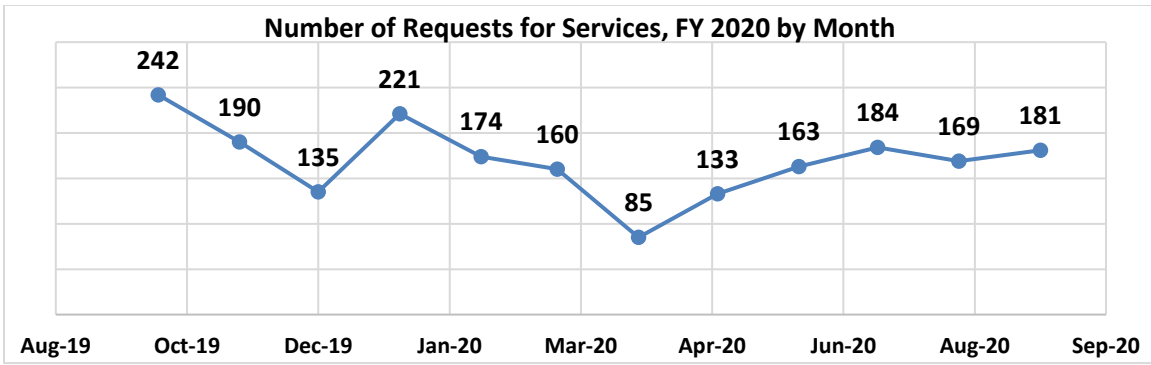
*ii. Integration with CLEAR\*Online Application*

During August 2020, the Data Coordinator set up the program’s LegalServer electronic referral hub so that applicants who were found ineligible for CLEAR\*Online’s online application were given the opportunity to apply to the MMP. This opportunity is provided only if the CLEAR\*Online applicant meets the MMP’s eligibility for income and LPC. The applicant clicks on a button during the application process and their application is electronically transferred to the MMP. Before this, applicants who were ineligible for CLEAR had to submit a separate application to the MMP. While this transaction cost seems low, applicants can burn out.

From August 12, 2020 to September 30, 2020, the MMP received 44 such applications out of a total of 179 online applications.

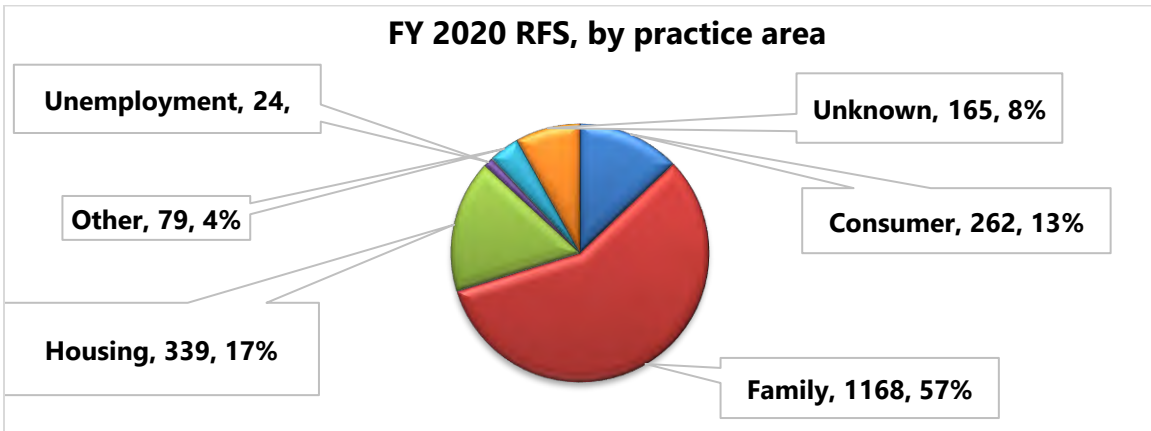
**b. When did Applicants Access MMP Services—Distribution of RFS by Month?**

Not surprisingly, requests for services dropped in March and April 2020. As our applicant pool began adjusting to the immediate crises brought on by the COVID-19 pandemic and the stay home order, they returned to the program for assistance with legal issues that got set aside because of the pandemic or were caused by the pandemic.



c. Why Did Applicants Apply: Changes in Types of Legal Issues by Month

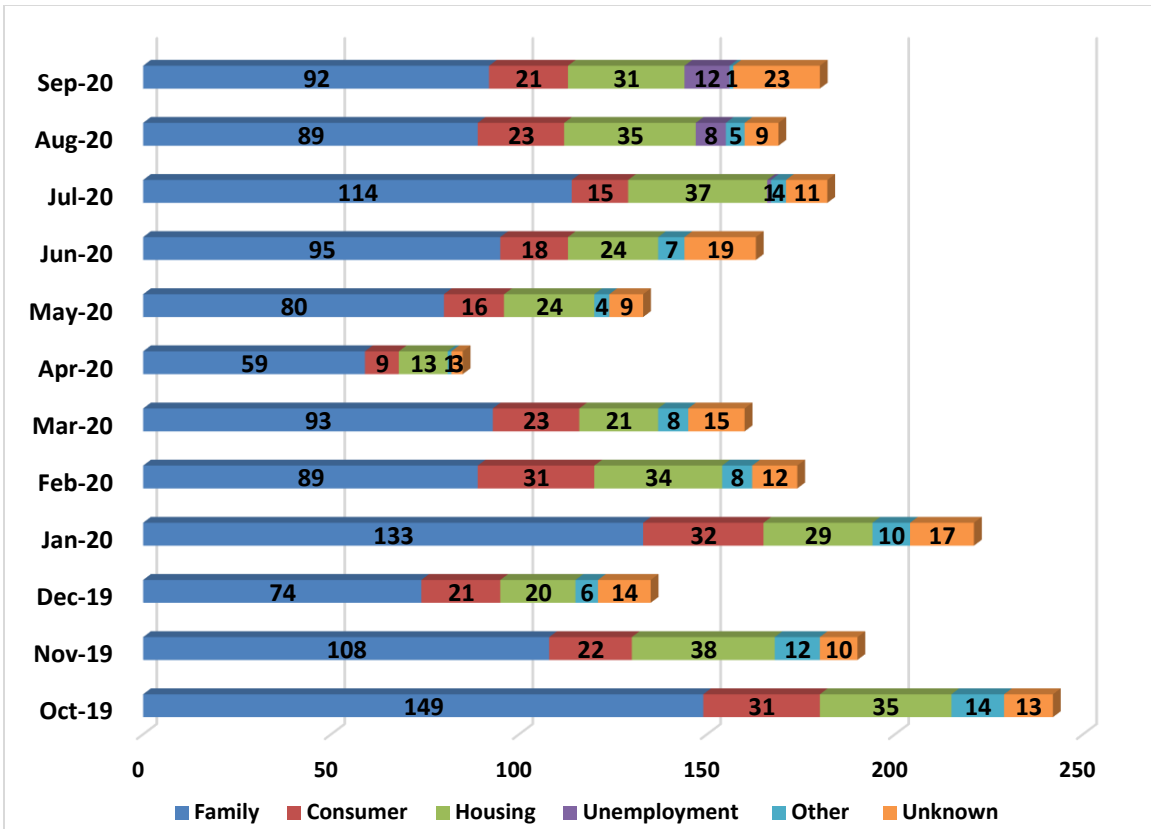
During FY 2020, there was a shift, small but not insignificant, in the types of cases that came to the MMP. In the past, the distribution of requests across the practice areas has been quite static: family law cases make up two-thirds to three-quarters of all requests for services. While the FY 2020 numbers may seem to fit this overall pattern, please see the graph below, there are some nuances to these numbers that may show how COVID has affected Washingtonians eligible for the MMP.



i. Changes in RFS, broken down by Legal Issue Type and Month:

The first change is that requests for housing assistance increased significantly in FY 2020 even though Governor Jay Inslee has put a moratorium on residential evictions in place. Below is a breakdown of each month's requests for services by legal problem type: [next page]



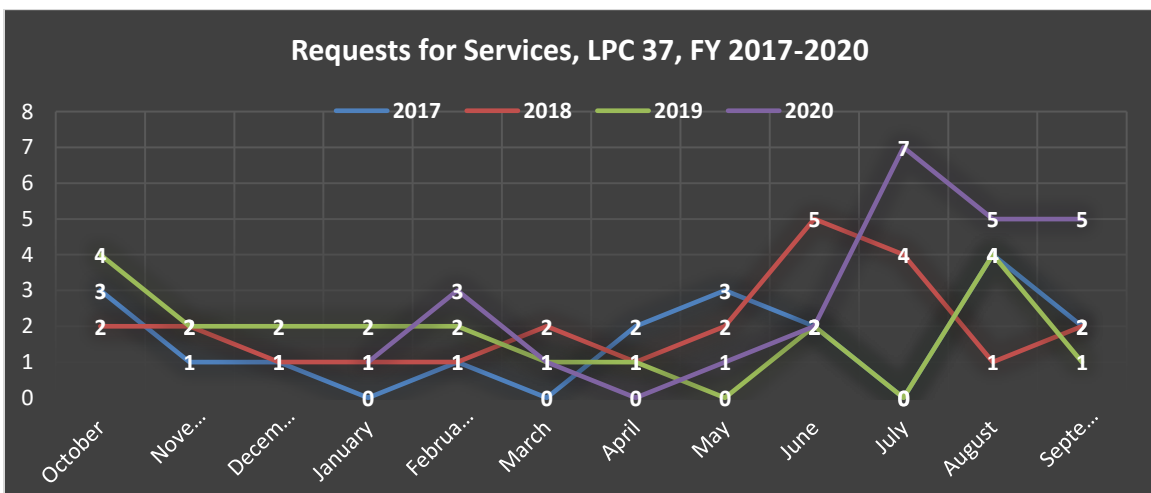


*ii. Increase in Requests for Assistance in Domestic Violence Cases:*

There was an increase in the frequency of cases with just the Legal Problem Code 37-Domestic Abuse. Generally, when an applicant seeks help with domestic abuse through the MMP, the issue of domestic violence is intertwined with another family law issue such as divorce, custody, or guardianship and the cases are tracked under those LPCs.

From the start of the MMP to the end of FY 2020, there have been 173 requests for services with LPC 37 from 167 unique applicants.

During FY 2017 through 2020, we see a distribution of requests for services with solely LPC 37 as follows:



Unfortunately, there seems to be an increase in requests for assistance in strictly domestic abuse cases that coincides with the COVID pandemic and restrictions on movement outside the home as well as increases in unemployment and other stressors.

*iii. Addition of a New Legal Practice Area:*

At the request of Cindy Yeung, Assistant Director of the Access to Justice Institute at Seattle University School of Law and MMP team member, the MMP investigated the feasibility of adding unemployment benefits as an MMP practice area in response to a surge of unemployment benefits filings. The new practice area was fully online in July 2020. It is limited to assisting financially eligible clients when their claim has been denied or if they are disputing a former employee’s claim.

At the end of FY 2020, the program had received 24 requests for services in this area and 18 panel members signed up to receive referrals in this area.

*d. Where Did Applicants Live*

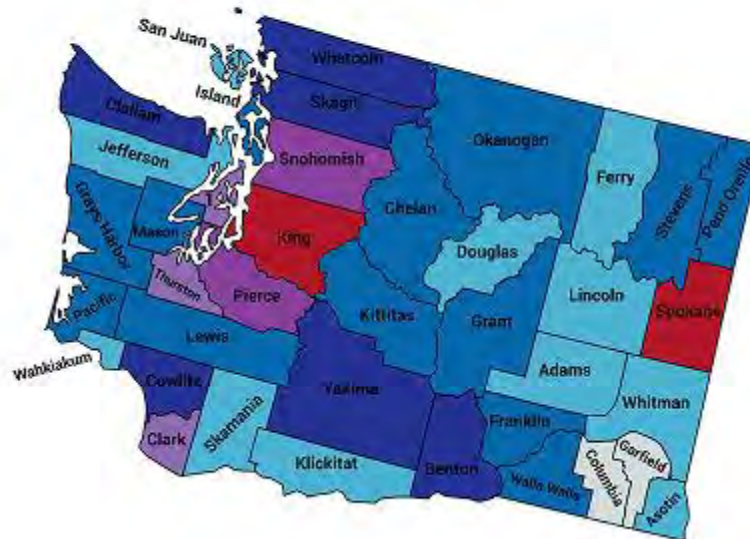
In FY 2020, 1,055 requests for services came in online with the remaining 981 coming in via phone. Ms. Creed asked the Staff Attorneys to include a request for the caller’s zip code on voicemail messages that greet incoming callers and there is now more geographic information about MMP applicants.

Students collected residence information in 1,649 requests for services, which is an increase from FY 2019 when we had no residential information for nearly 27% of our applicants. In order to get a better sense of where MMP’s applicants lived, Ms. Creed asked the Staff Attorneys to include a request that program callers provide their ZIP code when they left a message.

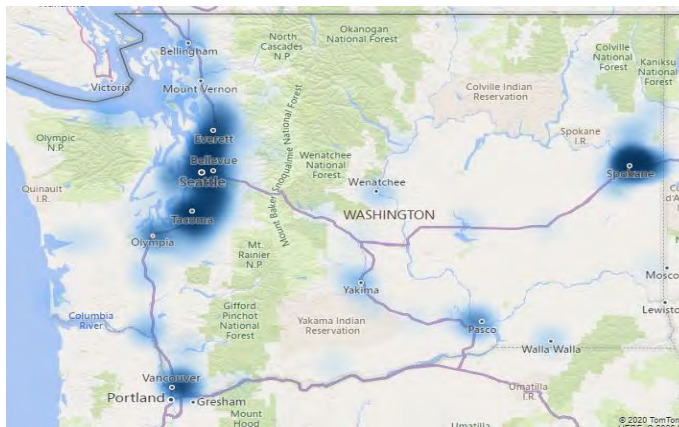
Based on the new information, 1,649 of MMP requests for services came from the following Washington counties:

County of Residence	Number of RFS during FY 2020	County of Residence	Number of RFS during FY 2020
Adams	4	Lincoln	2
Asotin	1	Mason	8
Benton	29	Okanogan	6
Chelan	17	Out-of-state	37
Clallam	21	Pacific	8
Clark	87	Pend Oreille	6
Cowlitz	29	Pierce	200
Douglas	5	San Juan	3
Ferry	3	Skagit	20
Franklin	19	Skamania	2
Grant	14	Snohomish	236
Grays Harbor	11	Spokane	312
Island	15	Stevens	15
Jefferson	5	Thurston	61
King	329	Wahkiakum	3
Kitsap	45	Walla Walla	10
Kittitas	7	Whatcom	29
Klickitat	5	Whitman	4
Lewis	10	Yakima	32

We can see the distribution across Washington by county:

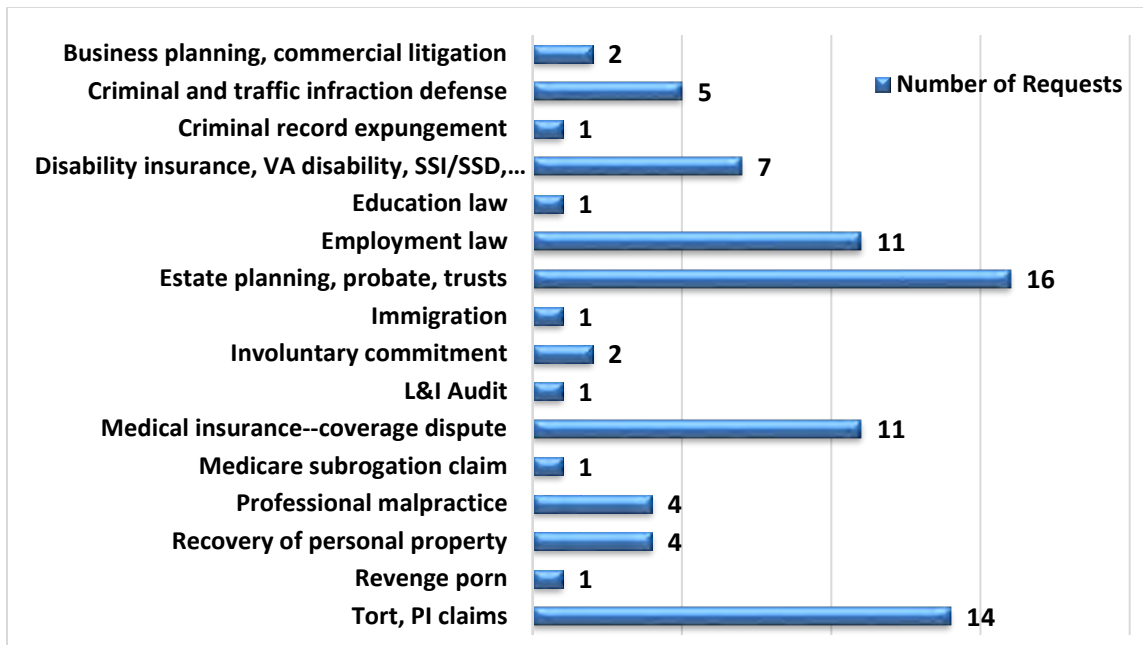


A closer look at the Requests for Service distributed by ZIP code gives another view of where MMP's applicants are concentrated within each county in the state:



e. Requests for Services Coded as “Other”

The MMP tracks cases that fall outside its scope of services to determine whether and how to expand the program and the services it offers. The “Other” RFS requests broke down in the categories outlined in the following graph. Please note that in one case, the actual basis of the case was not recorded, it was simply tagged as “Other.” The following graph shows the practice areas encompassed by the “Other” tag and the number of requests per practice area: [next page]



**Suggestion:** A reasonable expansion of program services would be to include estate planning, probate, and trusts as practice areas. People of moderate income are in the unenviable spot of being able to accumulate some assets but not enough wealth to either pay for assisted living or nursing care but are vulnerable to provisions like the Medicare spend-down requirements.

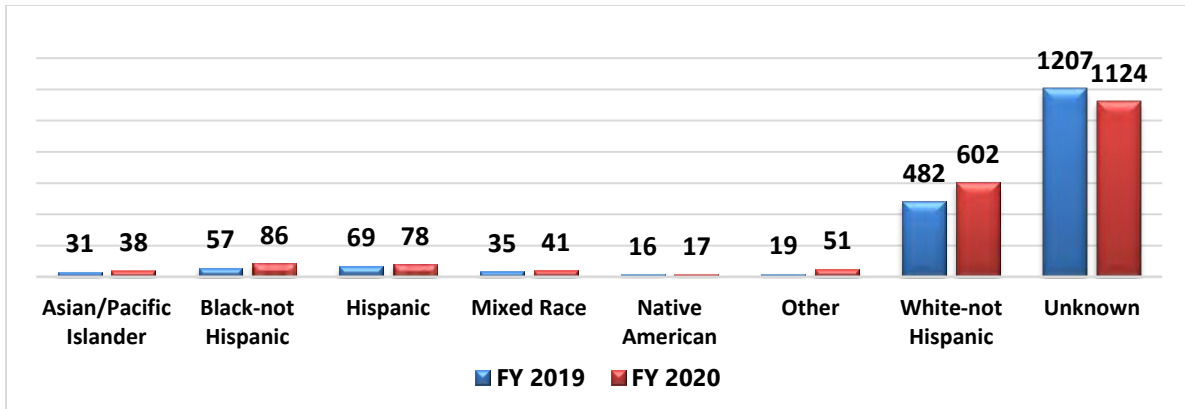
Basic estate planning can help moderate-income Washingtonians navigate end-of-life expenses and ensure that more people have advanced directives in place. Estate planning services, along with assistance in probates and trusts, is often flat-rate or hourly work that would also fit with the MMP’s rate structure.

f. RFS by Race/Ethnicity

The graph below shows the race/ethnicity of the program’s applicants. Out of the total RFS received, 1,124, or 55%, were “Unknown.” It also compares the numbers from FY 2019 with FY 2020 to show that the dearth of information about the people who seek MMP services is not new.

Because 55% of the applicants are in the “Unknown” category, the graph shows how difficult it can be to make predictions or draw conclusions strictly from RFS numbers. The online application asks for birthdate, veteran status, disability status, and language; these are not required questions. Questions regarding race/ethnicity are asked during the intake process. Many applications are resolved before students reach the demographic questions in the intake process.

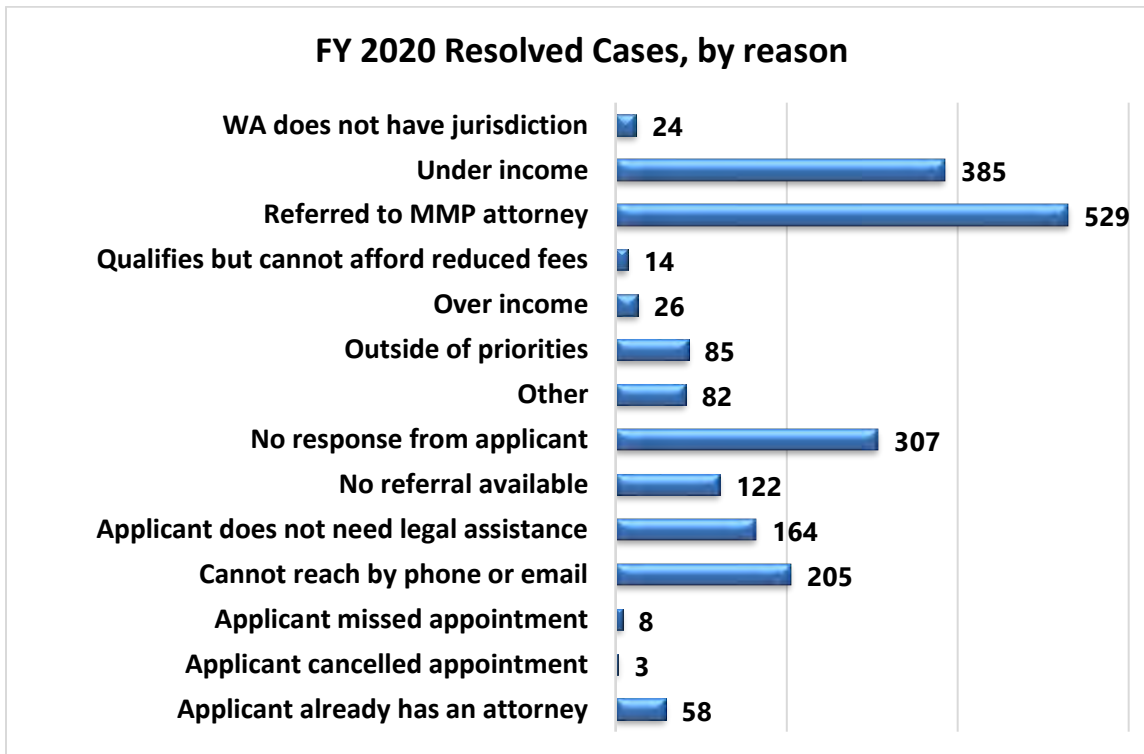
[next page]



**Suggestion:** If the WSBA and the MMP team would like more detailed information on race/ethnicity, we may want to consider changing the online application to include and/or require these questions. This might also be a training issue for MMP students as well; staff attorneys may want to stress the importance of getting this information from applicants regardless of any ultimate decision about eligibility for the program.

## 2. Cases Resolved: Number, Reasons, Applicant Eligibility

During the 2020 fiscal year, students resolved 2,012 cases, some of which were active before FY 2020 started. These cases were resolved for the following reasons:



### a. The top three reasons an application was rejected/closed

- **Under income:** In 385 applications, students determined that the applicant was under the 200% of the program's minimum income requirement.

- **No response from applicant:** In 307 applications, students were able to leave a message for the applicant using the telephone number or email address provided but the applicant did not respond.
- **Cannot reach by phone or email:** in 207 cases, students were unable to make any contact with applicants.

*b. Top three reasons applicants were determined to be ineligible*

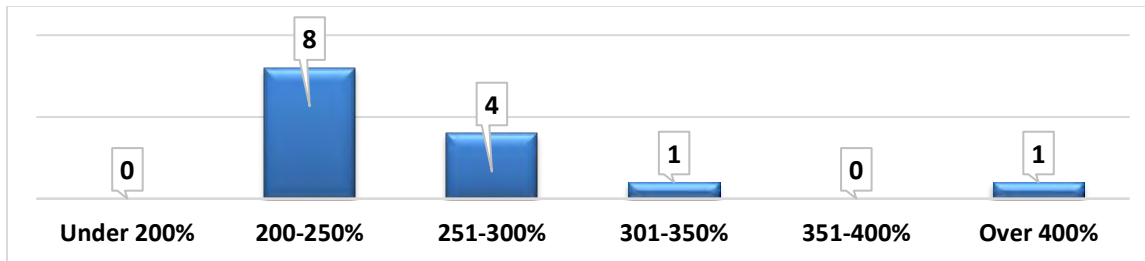
If we focus on the close/rejection reasons that involve a determination of eligibility, the reasons change to:

- **Under income:** In 385 applications, students determined that the applicant was under the 200% of the program’s minimum income requirement.
- **Applicant does not need legal assistance:** In 164 applications, students found that the applicants did not need legal help. Either their legal problem had resolved by the time the student contacted the applicant or the applicant needed social services.
- **Outside of priorities:** In 85 cases, students determined that the legal issue the applicant faced did not fall within the MMP’s scope.

Please note that while there were 122 cases closed/rejected because there was no referral available, this reason presupposes that the client was eligible for MMP services and had gone through the entire intake and referral process. Cases closed for this reason will be discussed in greater detail below.

*c. Income of applicants who qualified but could not afford reduced fees*

The applicants who qualified for the program but were unable to pay even reduced fees had incomes at the following percentage of poverty:

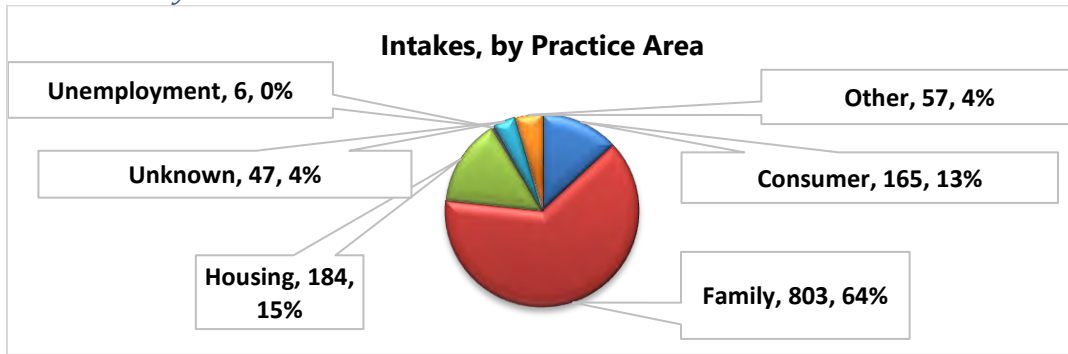


### 3. Intakes

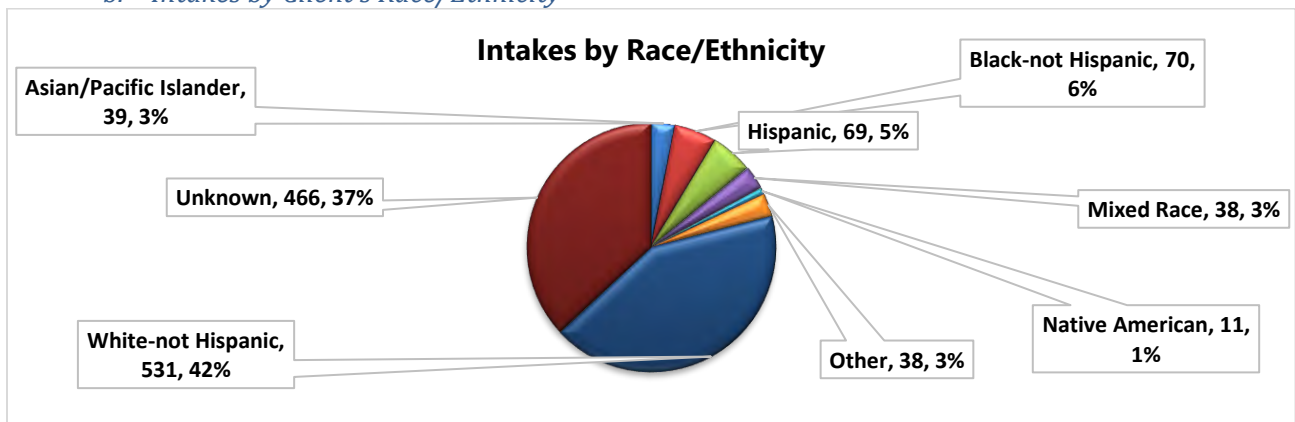
According to the compilation rules the program developed in 2016, “intakes” include all cases and matters in which MMP provided the applicant or client with any level of service. Along with cases referred to MMP attorneys, this includes cases and matters in which the applicant or client receives a referral to a legal or social services organization, the private bar, or any other services, including those outside of Washington State.

During FY 2020, MMP students conducted 1,262 intakes. Even though an intake is counted when a student makes meaningful contact with a client, there are still instances in which an application may be rejected as ineligible before the student identifies the exact legal issue. For examples of this, see below for Intakes broken down by LPC, age, and race/ethnicity. [next page]

a. *Intakes by Practice Area*

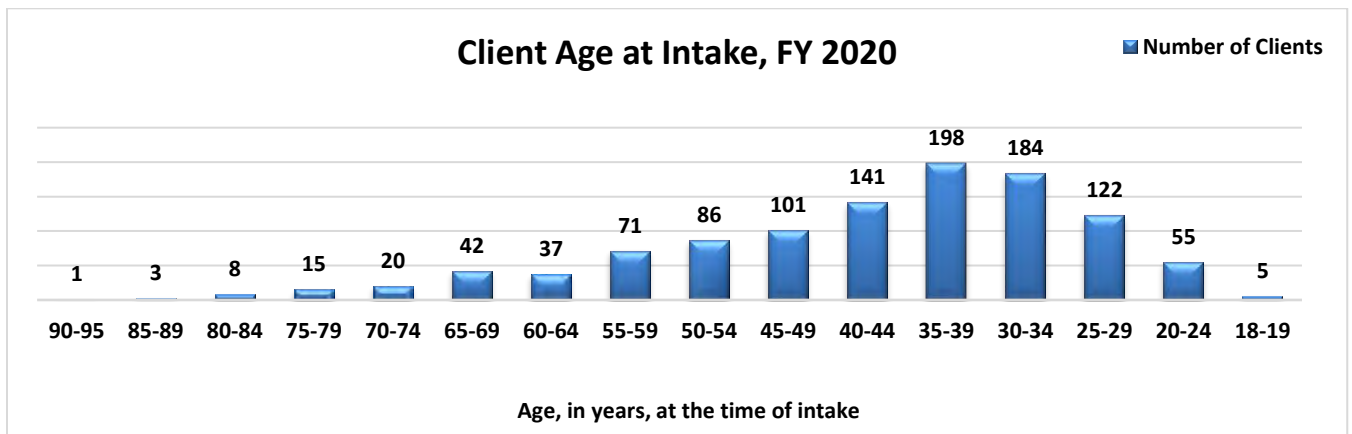


b. *Intakes by Client's Race/Ethnicity*



c. *Intakes by Age of Client*

Please note we do not have age information for 173 clients who reached the intake stage.



**4. Referrals**

Students made 3,056 referral attempts to 387 MMP panel members from a panel of 514 active members. MMP students made 591 referrals during FY 2020 and closed 529 cases as "Referred to MMP Attorney"

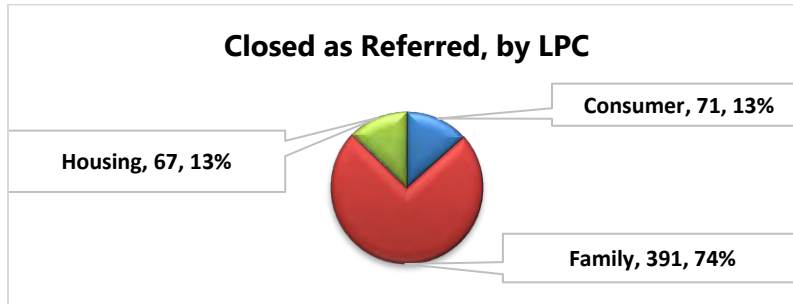
It is from the cases closed as "Referred to MMP Attorney" that the best demographic, practice area, geographic area, and financial information can be gleaned. Please note that a case may take several



referrals to close since a referral is defined by the program as the point when an attorney agrees to have their contact information given to the client.

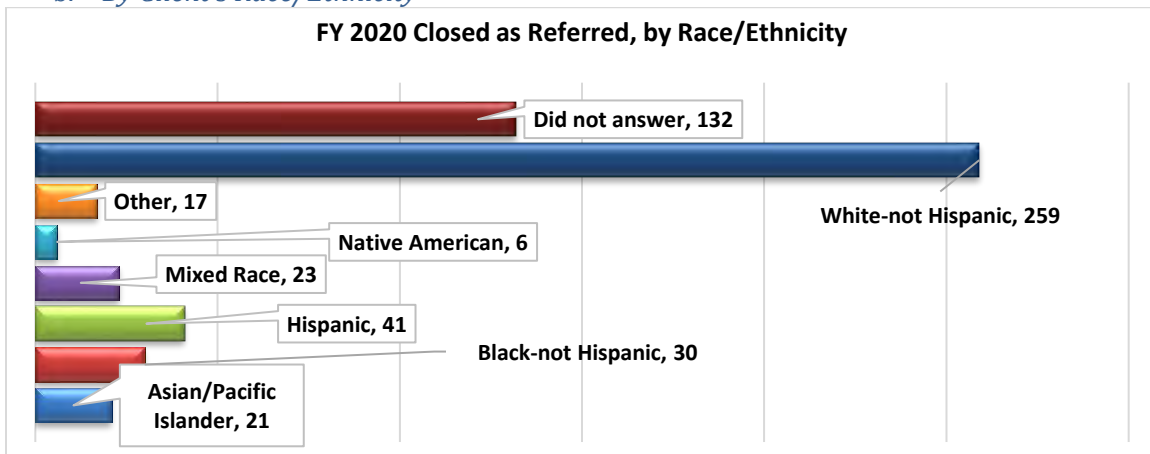
*a. By Legal Problem Code*

If we look at the cases that were successfully referred to MMP panel members, they fall into the following categories:

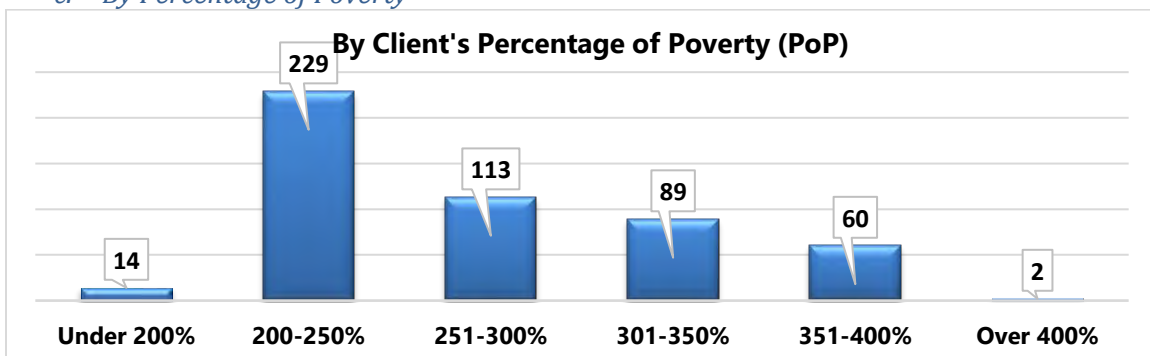


This breakdown does not differ tremendously from the breakdown of all requests for services by practice area.

*b. By Client's Race/Ethnicity*



*c. By Percentage of Poverty*

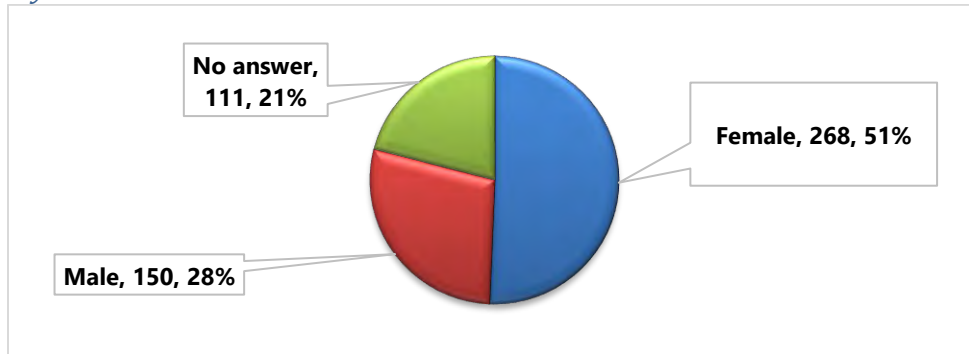


**NOTE:** The MMP takes cases in which the applicant's income is under 200% of poverty if the applicant has already been rejected by CLEAR as being over asset. The program also takes cases in which the applicant makes over 400% of poverty when the applicant is also paying child support that brings their PoP to within program guidelines. The numbers in the above graph are not adjusted PoP.



**NOTE:** This information can be quite helpful when recruiting new attorneys by giving them a sense of the average fee reduction they can expect.

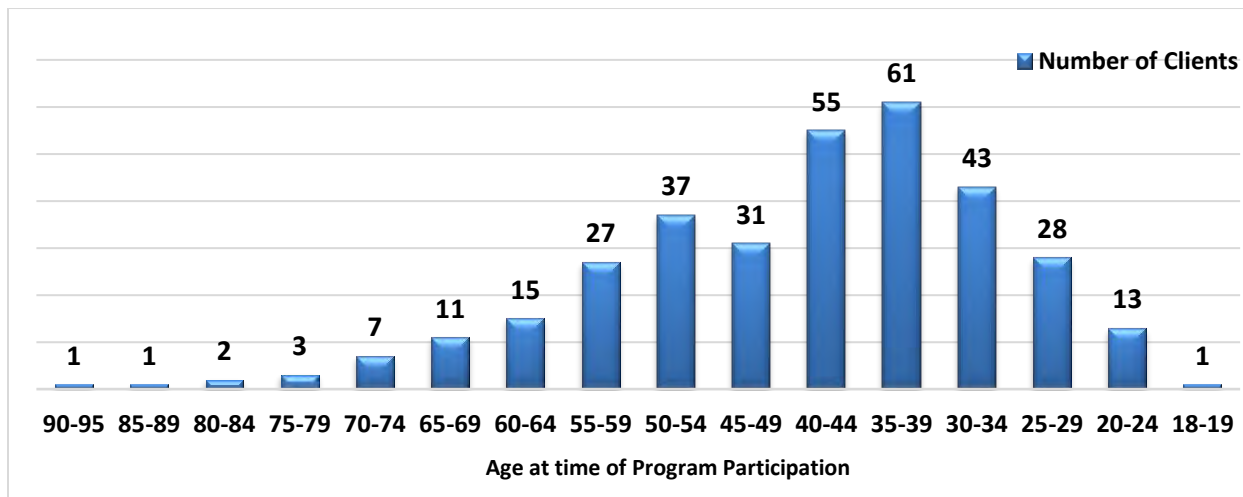
*d. By Client's Gender*



**Suggestion:** We may want to increase the options in our gender category to see if we get a better response rate and/or a more nuanced view of who our client base is.

*e. By Client's Age*

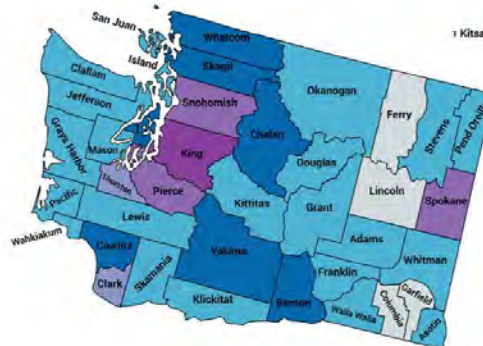
Please note that there are 12 clients for whom we have no age information.

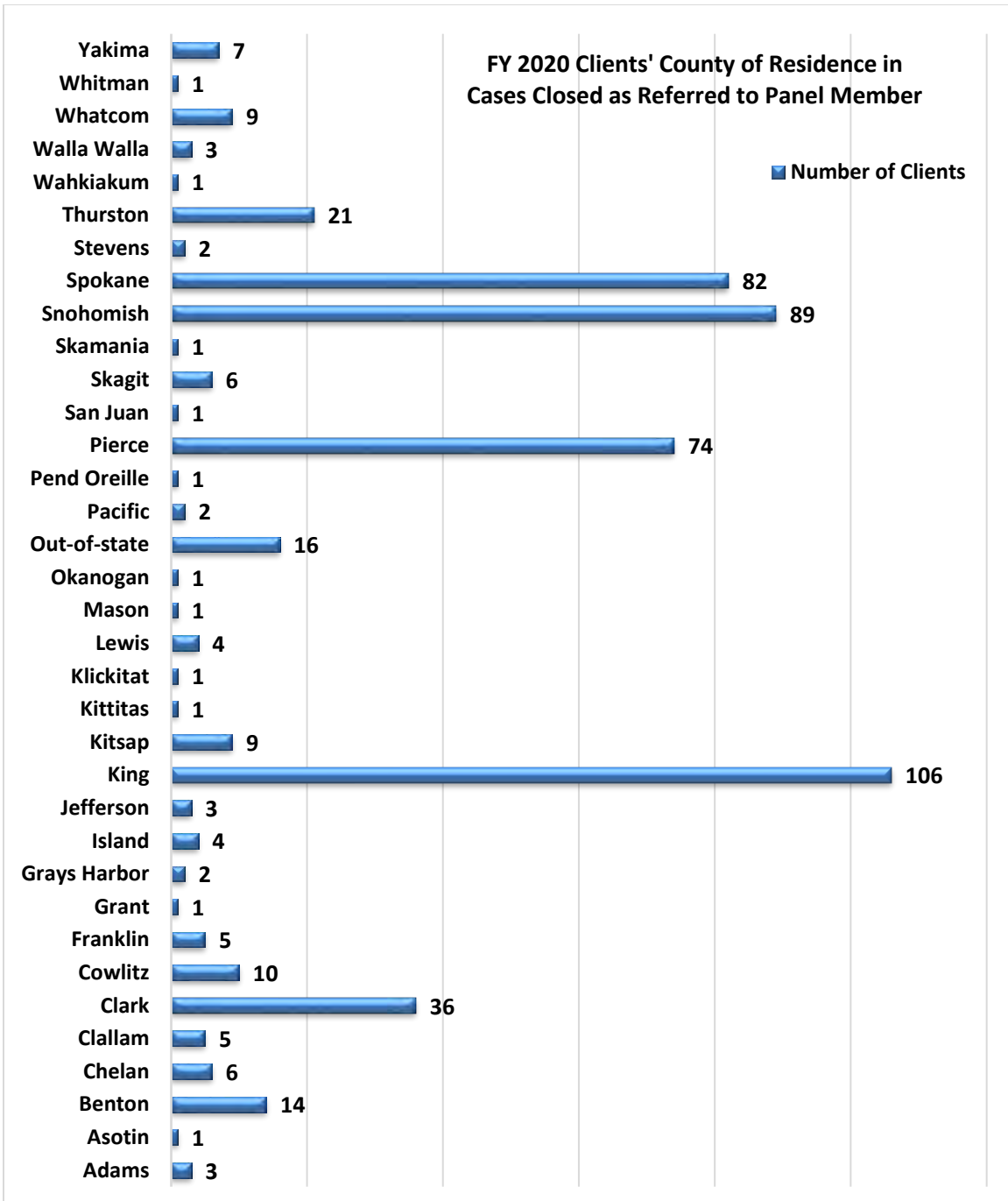


*f. By Client's County of Residence*

Below is a graphic representation of cases referred broken down by the client's residence within Washington State. The exact numbers per county follow.

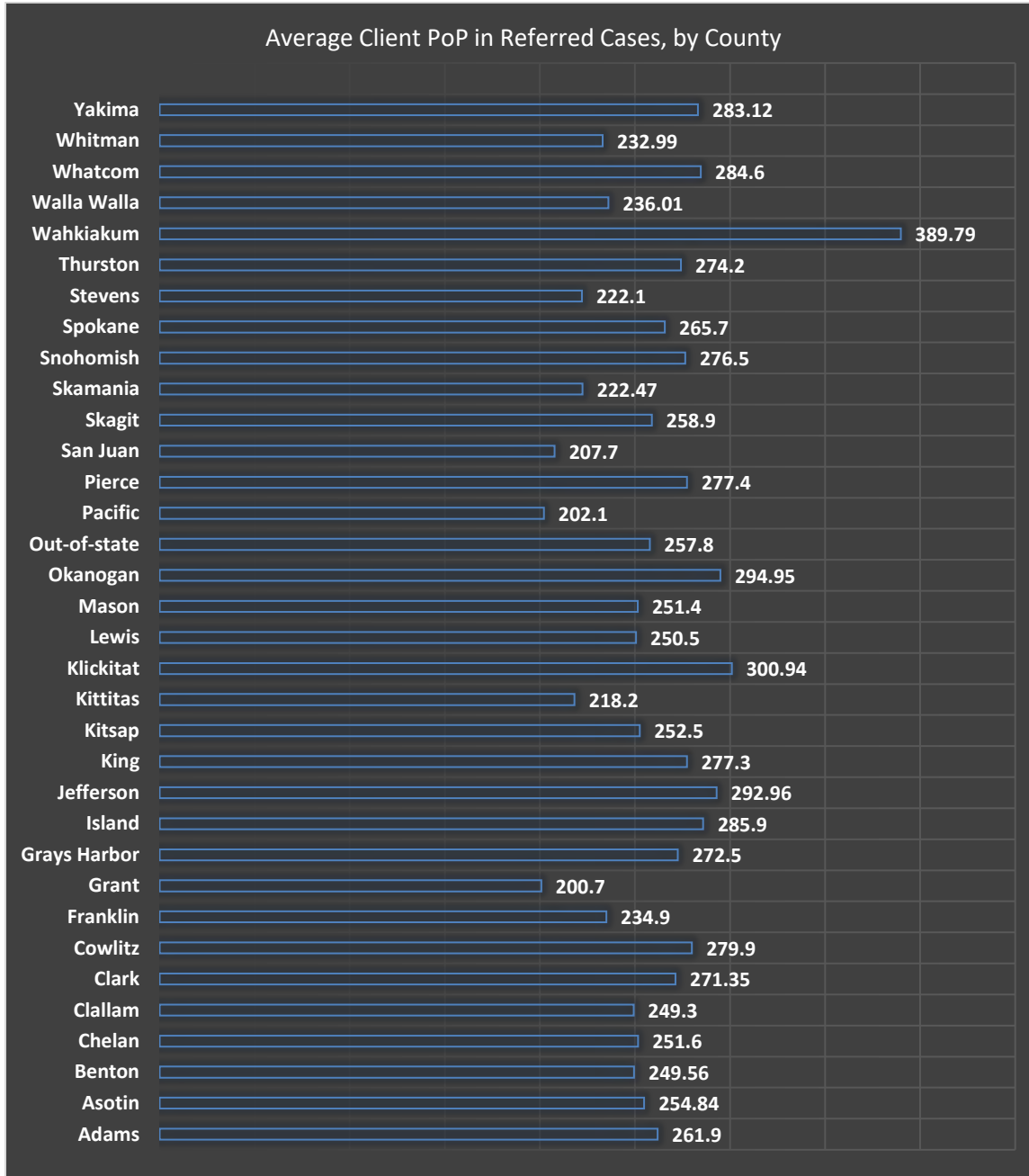
- 1-5 clients/cases
- 6-19 clients/cases
- 20-40 clients/cases
- 41-100 clients/cases
- 100+ clients/cases





*g. Client's County of Residence and Average Income*

Below is a depiction of the average percentage of poverty (PoP) for the clients in each county where the program was able to refer cases during FY 2020.



**B. Where is the biggest geographic area of need?**

During FY 2019, there were 514 panel members active during some point in the year. During the year, 41 members left the program and 43 and 13 LLLTs joined the MMP panel.

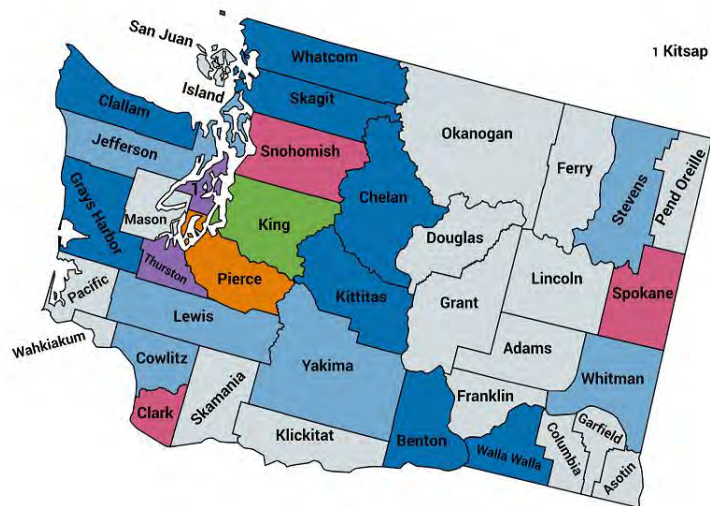
As for identifying the areas of greatest need, i.e. more clients than available attorneys, a look at the cases that were closed because no referral was available can be helpful but it does not necessarily provide a complete answer. Looking at where MMP attorneys are is a good start.

### 1. Counties with few or no participating MMP attorneys in the county

We have found that while attorneys sign up to provide coverage to multiple counties in Washington, they are most likely to take cases, particularly those in which they provide on-going representation, in the county where they have their physical office. While all counties are technically covered by MMP attorneys, the reality is that there are gaps.

- a. During FY 2020, there were 16 Washington counties that have no MMP attorneys in county: Adams, Asotin, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Klickitat, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Skamania, and Wahkiakum. This is up from 12 counties in FY 2020.
- b. There were 17 active attorneys who have their offices outside Washington State. Seven have their offices in Idaho and Oregon and near Washington cities. The remaining panel members are in California, Colorado, Hawaii, Maryland, Montana, and Nevada.
- c. There are 5 counties with one or two in-county attorneys: Island, San Juan, Stevens, Whitman, and Yakima.

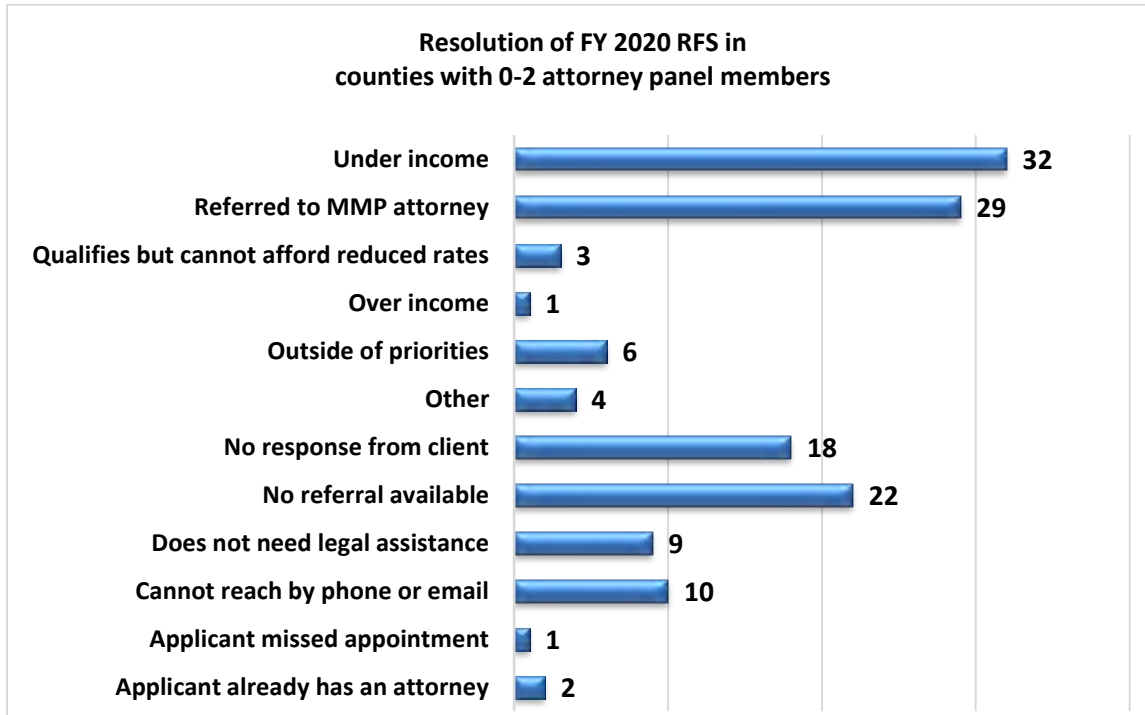
Below is a map that shows the distribution of the offices of participating MMP attorneys across the state with a table of the figures beneath.



Office Site	Number of Panel Members	Office Site	Number of Panel Members
Benton	10	Outside WA	17
Chelan	9	Pierce	44
Clallam	4	San Juan	1
Clark	34	Skagit	5
Cowlitz	3	Snohomish	31
Grays Harbor	4	Spokane	38
Island	2	Stevens	1
Jefferson	3	Thurston	18
King	252	Walla Walla	5
Kitsap	13	Whatcom	10
Kittitas	4	Whitman	2
Lewis	3	Yakima	2

## 2. Outcomes for cases from these counties

From the counties with 0-2 in-county MMP attorneys, MMP received 148 requests for services during FY 2020. This is taken from the group of the RFS for which we have residency information. Eleven of these requests are open/incomplete intakes. The remaining 137 were resolved with the following close/rejection reasons:



Based on responses from the MMP attorneys who accepted referrals in the 29 cases from these counties, we know about the ensuing representation in 10 cases:

- In two cases, the attorney is providing on-going representation;
- In one case, the attorney provided advice and counsel;
- In one case, the client could not afford the reduced fee;
- In one case, the client did not forward necessary information to the attorney and the attorney could not help;
- In five cases, the client had not contacted the attorney at the time the follow-up had been sent.

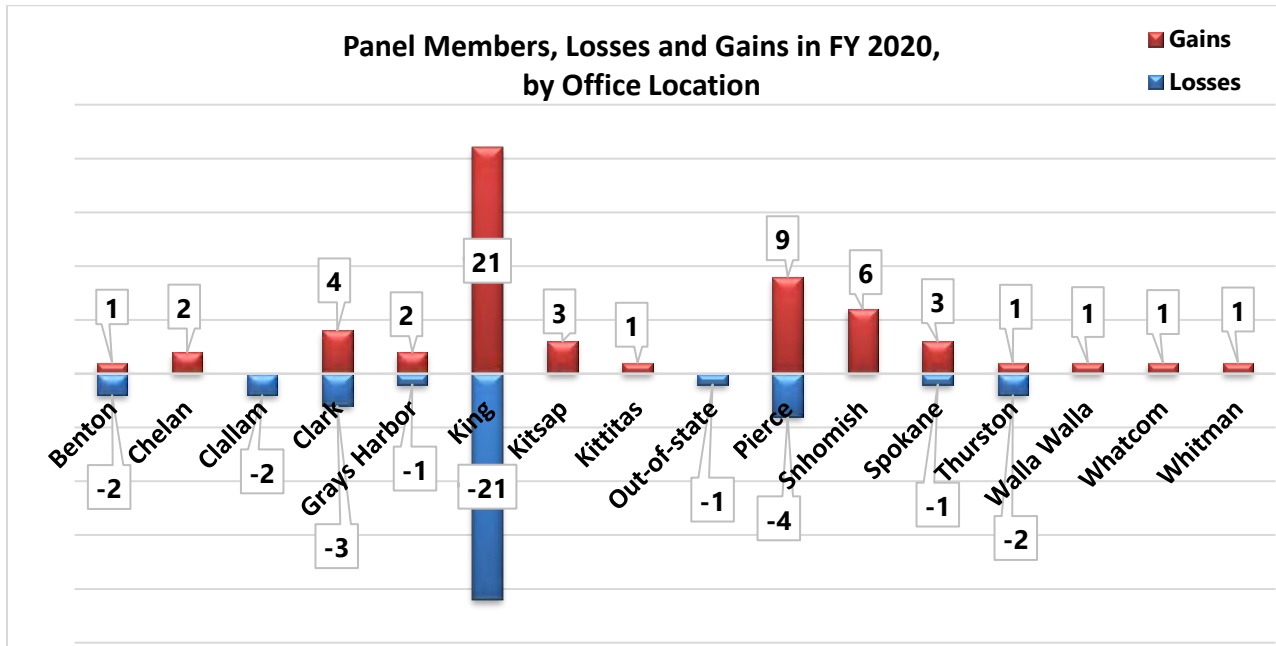
Considering the dearth of options in these counties, the students did an admirable job of placing these cases. However, this should not keep the WSBA from recruiting efforts in these counties and continuing with the long-distance lawyering program that has been discussed in the past.

## 3. Loss/Gain of Panel Members

The map in Subsection 1 above reflects the panel members who were active with the panel at some point within the FY 2020. Below are some details about the attorneys who left the panel or were removed as well as the new attorneys who joined. For example, Spokane lost 10 attorneys in FY 2019 and only gained one in FY 2020 and gained only one. Anecdotally, it has been very difficult to place family law cases in Spokane so the WSBA may want to increase their recruitment efforts there.

Below is data regarding the counties where the MMP lost and gained panel members during FY 2020. This can help the WSBA channel its recruiting activities in the coming year. The 13 LLLTs

who joined the program have their offices in Chelan (2 LLLTs), Clark (1 LLLT), King (8 LLLTs), Snohomish (1 LLLT), and Spokane (1 LLLT) Counties.

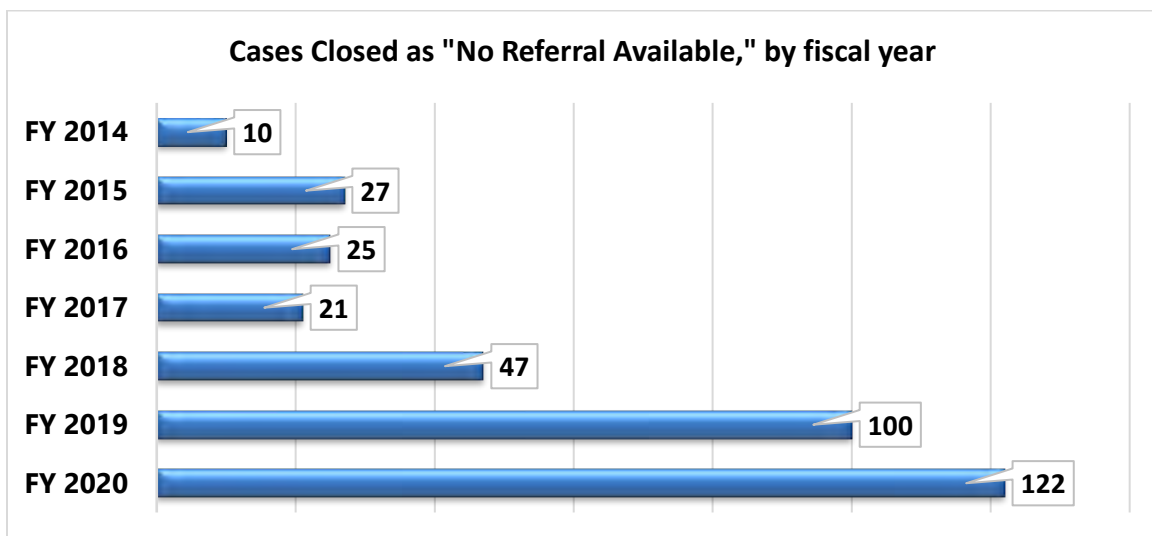


#### 4. Cases Closed as “No Referral Available”

In FY 2020, 122 cases were closed as “No Referral Available.” This number is far higher than previous years and a discussion of the kinds of cases and where the clients live may help shed light on the gaps in services across the state.

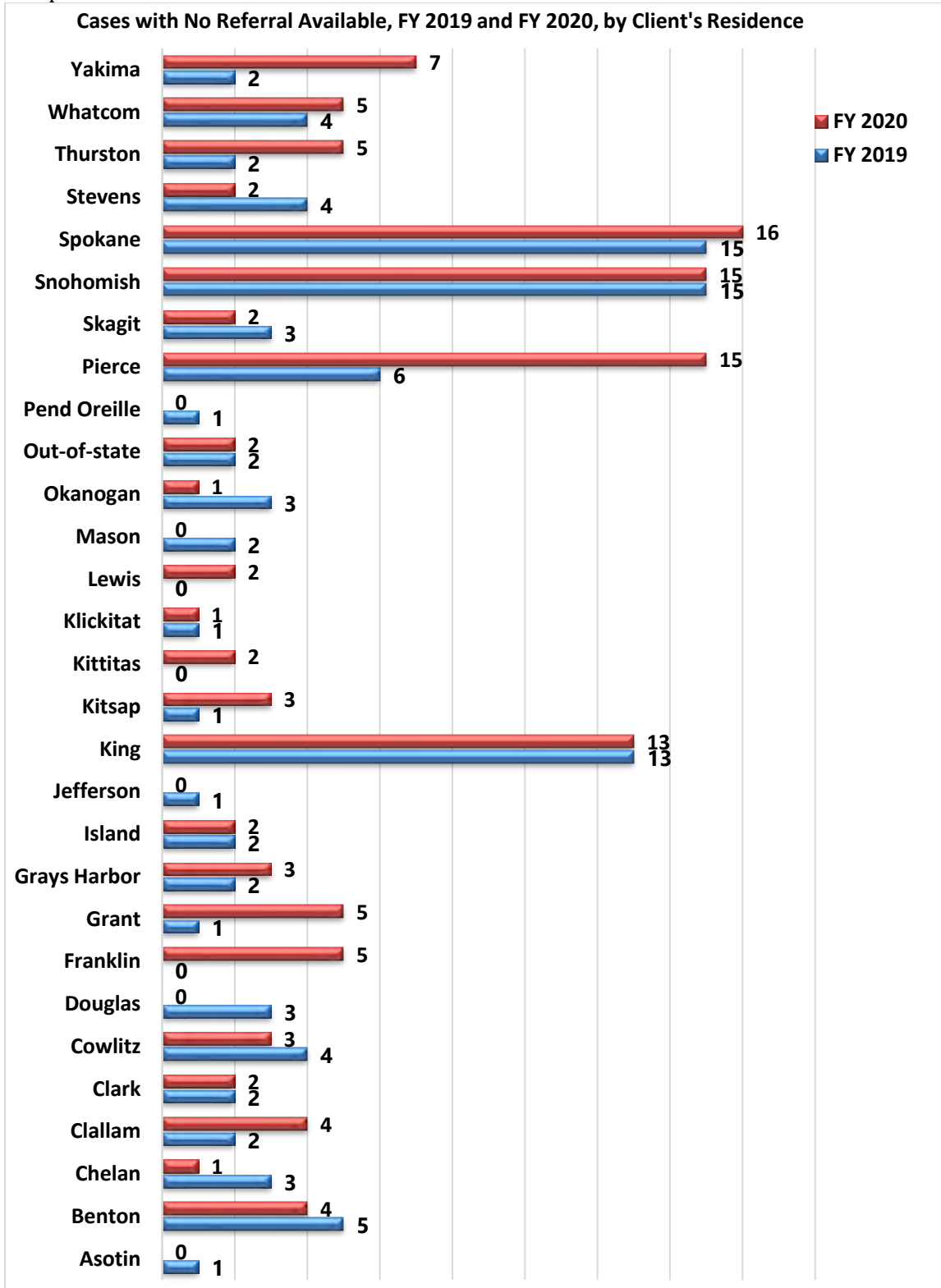
##### a. An increase in cases closed because no referral was available

Since the program began tracking these cases, the number of cases closed as “No referral available” has increased—dramatically over FY 2018-2020. In some cases, the client had come back for a second or third referral, to no avail, but in many cases, there simply was no attorney who would agree to the referral.



*b. Where these clients lived*

The graph below shows where these applicants lived and includes the same data from FY 2019 for comparison.

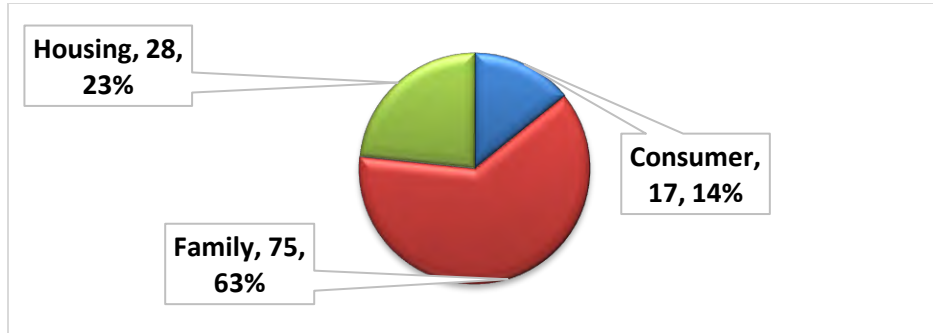


*c. Efforts to place the cases*

Students recorded 835 referral attempts in these cases. Since this is an average of 6.8 referral attempts per case, it is easy to see how, even in a county with 5 or 10 attorneys, a student can run out of options. The reasons why a case may be difficult to place can include a range of factors from the complexity of the case to time of year to the clients themselves.

*d. Practice areas of these cases*

Below is a graph that sets out the practice areas of the cases that were closed as “No Referral Available.” It does not appear to differ much from the practice area breakdowns for requests for services or intakes.



*e. Counties where it is difficult to place a case despite the number of panel members*

But even in counties where there appear to be sufficient attorneys in the MMP to provide services, there can be problems. Anecdotally, GU students have reported a great difficulty in placing family law cases in Spokane County. In reviewing the case stats for Spokane applicants with family law issues, it is easy to see why. As of the end of the FY 2020, there were:

- 34 MMP panel members have their offices in Spokane County;
- Of the 34 with offices in Spokane County, only 9 attorneys and 1 LLT accept any family law cases and only 15 accept private landlord/tenant cases;
- 8 MMP panel members who have signed up to provide coverage in Spokane County but whose offices are in Thurston, Walla Walla, Pierce, Snohomish, Clark, or King Counties, or out-of-state;

During FY 2020:

- 179 Spokane County residents requested MMP services for help with a family law matter, based on RFS in which the problem type was known;
- MMP students closed 41 family law cases as “Referred to MMP Attorney”;
- Closing the 41 cases required 745 referral attempts;
- Of the 16 Spokane County cases for which no referral was available, 13 were family law cases.

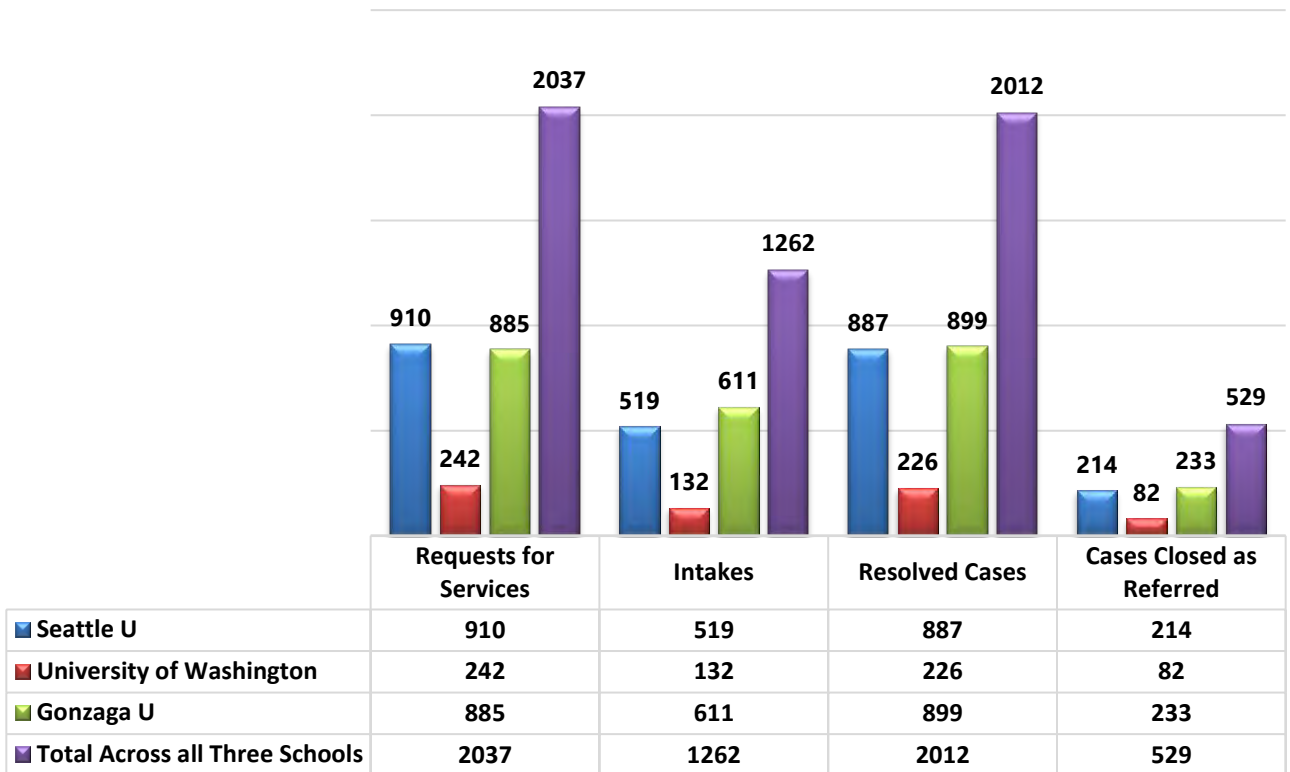
**III. CLIENT AND CASE OUTPUTS, BY SCHOOL**

**A. Case Outputs**

The chart below shows the number of intakes, requests for services, total resolved cases, and cases closed as “Referred to MMP Attorney,” each school handled during FY 2020. [next page]



**FY 2020 Case Outputs, by school**



**B. Case Placement Times**

In LegalServer, there currently is no easy mechanism to measure case flow without identifying several data points within the case placement/resolution process. Ms. Creed has identified data points and reviewed closed/rejected cases to show how cases move through the program from first request to case closed as referred.

Please note that in cases that have been previously closed but re-opened during the reporting period, the time calculations have been adjusted to reflect the later re-open date.

**1. Rejected Cases with Applicant Contact**

By “rejected with contact,” Ms. Creed is referring to matters that were rejected for a reason that presupposes some contact with the applicant. In such cases, the number of days between the applicant’s request for service and the date of rejection can show how quickly the matter was processed and the applicant was referred to more appropriate resources.

Of the cases resolved in FY 2020, there were 848 cases that were either rejected or closed for a reason that presupposed contact with the applicant. This pool does not include cases in which students tried or found a referral for their client. Nor does it include cases in which students could not get in touch with the applicants after attempts to contact them.

The cases reviewed in this section are those rejected/closed because the applicant:

- Already has an attorney,
- Missed an appointment,
- Cancelled an appointment,

- Did not need legal assistance,
- Other,
- Had an issue outside program priorities,
- Was over or under income,
- Qualified but could not afford reduced rates,
- Had a case outside Washington’s jurisdiction.

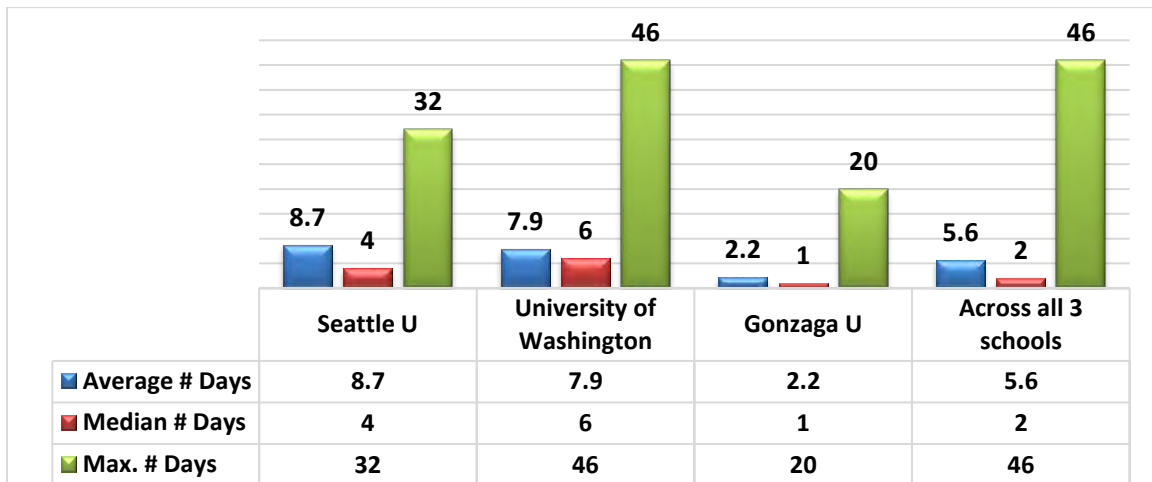
This leaves 848 applications that were rejected/closed for reasons that presupposed some contact with the client. SU rejected 389, UW rejected 57, and GU rejected 402. Of these cases that were rejected, 44 were reopened cases and the re-opening has been accounted for in the data.

Below are statistics, by school, that show the average number of days between a request for services and the rejection of the application for these cases. **Please note that in cases that have been previously closed but re-opened during the reporting period, the time calculations have been adjusted to reflect the later re-open date.**

*a. Days between Date of Request for Services until First Callback Attempt*

The first graph describes the period between the date the applicant makes their request for services and the first time a member of the MMP tries to get in touch with them. This shows the program’s responsiveness to requests for service. For cases that have been re-opened and rejected several times, it is difficult to determine when the request for services and the relevant first callback attempt were made so data from five such cases in this set have been omitted.

Included are calculations for each school as well as the program as a whole. The minimum number of days for all three schools was zero.



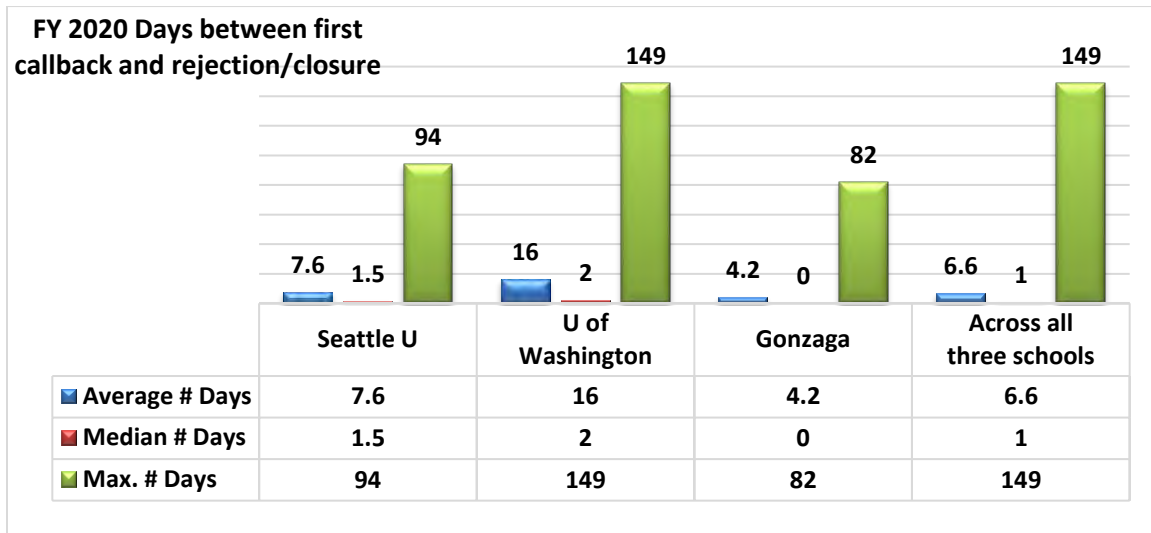
*b. Days between First Callback Attempt and Date of Rejection*

The second graph describes the period between the first callback attempt and the actual date the case is rejected. In these cases, the rejection generally occurs shortly, if not during, contact with the applicant so the date of rejection/closure often marks the point when the student first gets to speak with the applicant.

These numbers can show how effective each school is at following up on contacting applicants as well as how difficult it is to get in touch with some applicants.

The graph includes stats for each school as well as across the program. For cases that have been re-opened and rejected several times, it is difficult to determine the relevant callback and rejection/close dates. Thirty-two of such cases have been omitted from the set.

For each school, the minimum number of days was zero, so this has not been included on this graph.



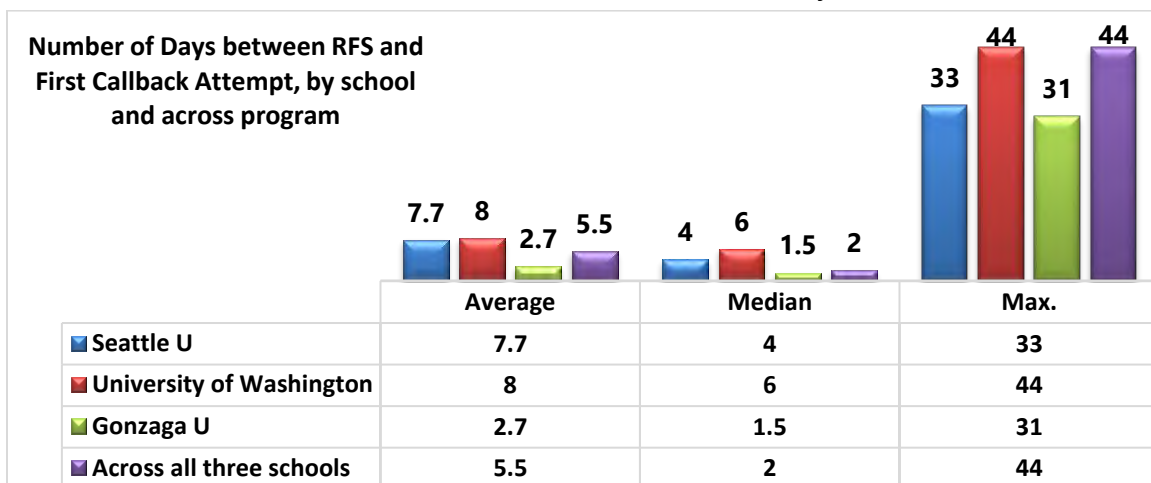
2. Cases Closed as “Referred to MMP Attorney” and “No referral available”

For the 529 cases that were closed as “Referred to MMP Attorney” and the 122 that were closed as “No referral available,” during FY 2020, Ms. Creed identified the following data points as part of the case flow analysis. As always, the average number of days as well as the median, maximum and minimum are provided.

a. Number of days between the request for services and the date of the first attempt to contact the applicant

As with the rejected cases above, this period shows how nimbly the program responds to the applicant. Even if the callback attempt is not successful, the applicant and their case is being actively pursued.

The maximum periods are often attributable to a lack of student participation during winter breaks at the three law schools. For each school, the minimum number of days was zero.

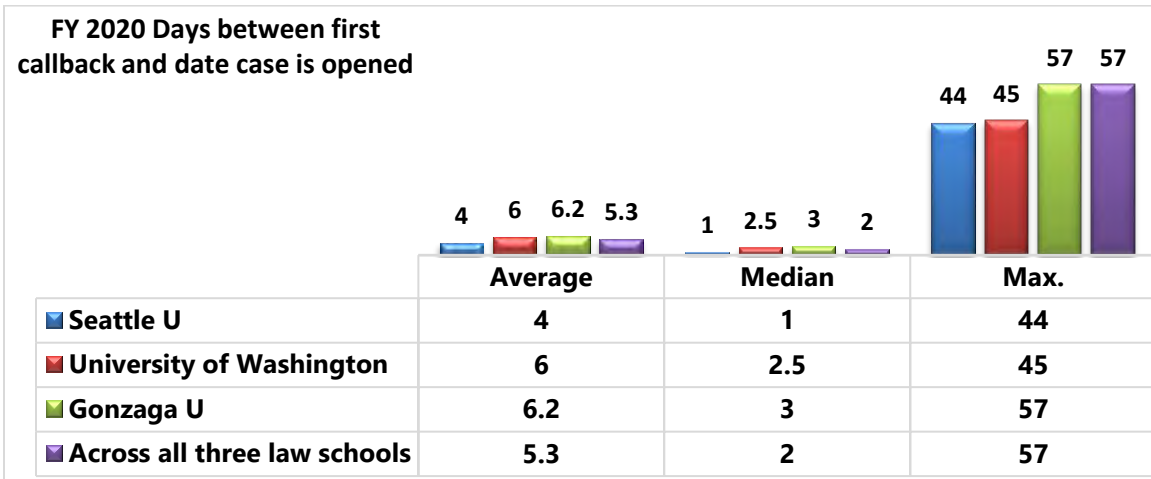


*b. Number of days between the first callback attempt and the date the case is opened*

A case is opened when a student completes the six pages of the intake process and accepts the matter as a case on the final page.

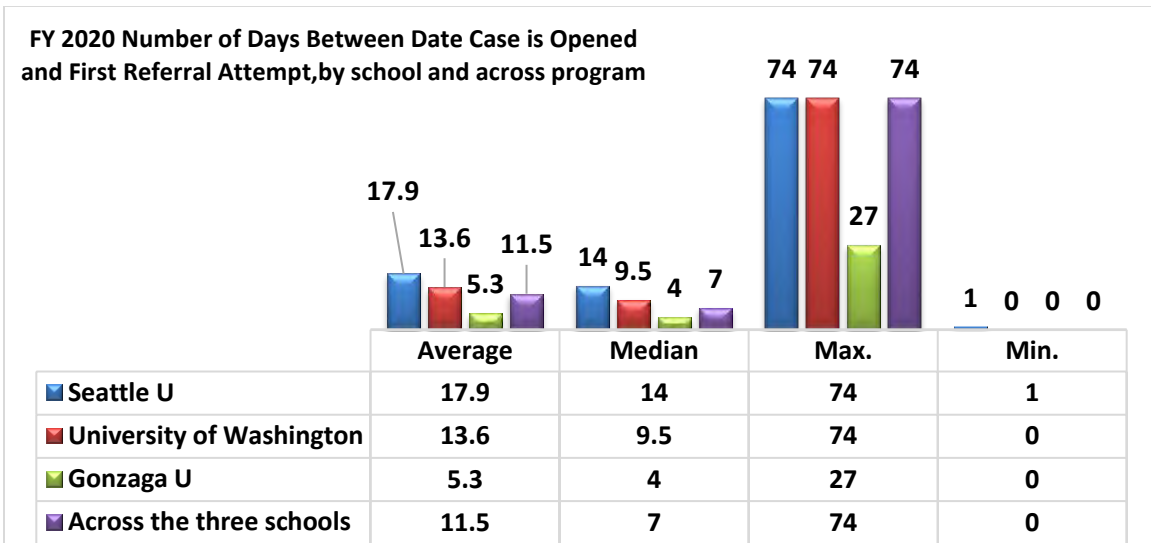
At this point, the intake interview with the client is usually complete, barring some follow-up questions. This period usually reflects the entirety of the callback process as well as the intake interview and also reflects the different ways each school handles the scheduling of intake interviews. At Gonzaga, the initial contact with the applicant serves as a prescreen and an intake is frequently scheduled later. At Seattle and UW, the intake is often conducted during the initial contact with the applicant.

For each school, the minimum number of days was zero.



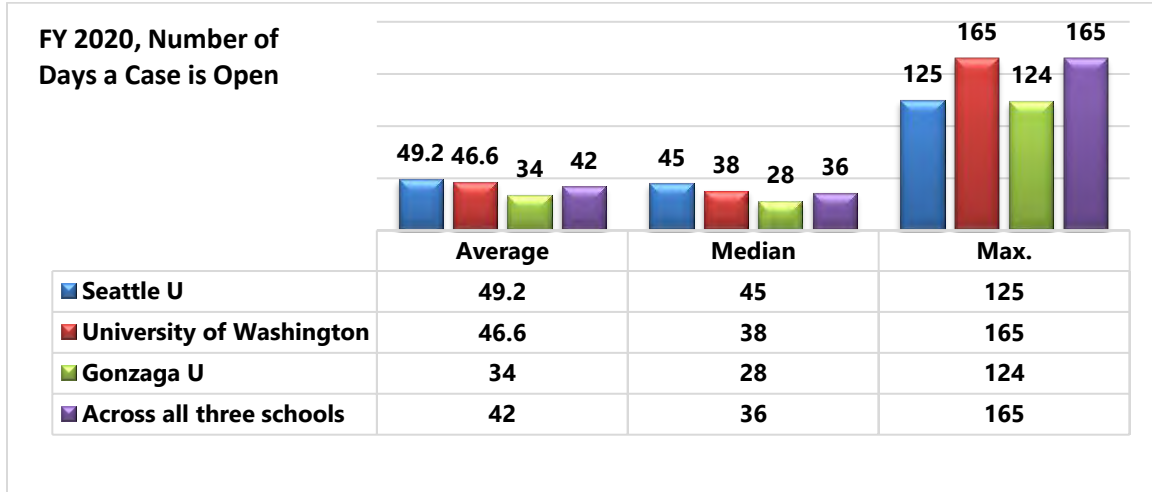
*c. The number of days between the date the case is opened and the first referral attempt*

Once a case is opened, students generally complete their notes, analysis, and summary which is then reviewed by their staff attorney. Once the staff attorney approves their work, students are then permitted to contact attorneys for referrals. This period generally shows the amount of time students and staff spend on the case between the intake interview and the time when it is ready for referral.



d. *The number of days a case is open*

This period intends to measure the activity on a case from the date the case is opened, generally once the intake interview is complete, through writing up the summary/analysis and its review/approval by a staff attorney and through the entirety of the referral process including all referral attempts.



IV. LAW STUDENTS—PARTICIPATION AND TRAINING

During the reporting period, 141 law students across the state were active in the program according to LegalServer statistics. Twenty-eight were UW students; 61 were SU students; and 52 were Gonzaga students.

Ms. Creed has worked on the following LegalServer training projects during FY 2020:

- a. **Updating Resources and Training Manual:** To be used in training new student participants to use LegalServer in a consistent manner. All three schools use an indexed manual, tailored to their program’s processes and updated per the staff attorney’s requests.
- b. **Conducted student training via zoom and made recordings available via Google.**
- c. **Updated intake and case profiles as suggested by staff and students.**

V. STAFF COLLABORATION AND PROJECTS

Ms. Creed has and will continue to attend MMP staff meetings. Ms. Creed is MMP’s point of contact for PSTI, Inc., the third-party vendor that maintains and updates the MMP LegalServer database platform. She has and will continue to meet individually with MMP staff attorneys and WSBA staff as needed.

VI. OTHER PROGRAM EXPANSION

As discussed earlier, the MMP has expanded to provide service to moderate-income Washingtonians with denials of unemployment benefits. The MMP has also expanded to accept electronic case transfers from applicants who are determined to be in eligible for CLEAR\*Online but are eligible for MMP services.

Ms. Creed has and will continue to provide data and statistical information to inform MMP’s continued strengthening and expansion into geographical and additional substantive legal areas. In addition, she has reviewed LegalServer’s capabilities and developed methods:

- To assist the WSBA in determining where their resources can be best employed to recruit new panel members;
- To assist the WSBA and the MMP team in developing a long-distance lawyering program;
- To assist with the MMP's mentor program.

She will also complete the surveys for former clients and current and former panel members and will continue to take part in the discussions about how LegalServer can be used to support MMP programs as they develop.

**TO:** WSBA Board of Governors

**FROM:** WSBA Family Law Section, Patrick Rawnsley, Chair

**DATE:** July 12, 2021

**RE:** **Family Law Section Comments on GR40 Informal Domestic Relations Trials**

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The WSBA Family Law Section hereby submits a comment on the proposed GR40 rule changes. We are providing the comment to serve as input into the Board's discussion and potential comment on the subject and to also seek permission from the Board for the Family Law Section to submit the comment directly to the WA Supreme Court.

Thank you for your time in reviewing the comment and for your consideration in approving it for submission to the WA Supreme Court.

Respectfully Submitted,

Patrick Rawnsley, Chair of the WSBA Family Law Section

**TO: WSBA FAMILY LAW EXECUTIVE COMMITTEE**  
**FROM: CHRIS FOX**  
**RE: Informal Domestic Relations Trial (IDRT)**  
**June 30, 2021**

Informal Family Law Trials have been adopted in two Washington State superior courts.

**Thurston County Superior Court [LSPR 94.03F](#).** Adopted effective September 1, 2017. Amended effective September 2019 and amended effective January 13, 2020. Scope: To resolve all issues in original actions or modifications for dissolution of marriage, paternity, parenting plans, child support, and non-parental custody.

**King County Superior Court [LFLR 23](#).** Adopted September 24, 2020 and effective January 2, 2021. Scope: To resolve issues in actions for divorce, parentage, parenting plan and child support, relocation, and non-parental custody, and modification of parenting plans or non-parental custody orders.

- [Information for Party Re Formal & Informal Trial](#)
- [Informal Trial Selection Form](#)

Acting on the [December 2020 proposal by Spokane attorney](#) Dennis “D.C.” Cronin, WSBA No. 16018 for a general statewide rule for Informal Domestic Relations Trial (IDRT), the Washington State Supreme Court published in April 2021 [the following proposed rule](#).

**SUGGESTED [NEW] GENERAL RULE 40**  
**INFORMAL DOMESTIC RELATIONS TRIAL (IDRT)**

**(1)** Upon the consent of both parties, Informal Domestic Relations Trials (IDRT) may be held to resolve any or all issues in original actions or modification for dissolution of marriage, separate maintenance, invalidity, child support, parenting plans, residential schedules, and child custody filed under chapters 26.09; 26.19; 26.26A; 26.26B; and 26.27 RCW.

**(2)** The parties may select an IDRT within 14 days of a case subject to this rule being at issue. The parties must file a Trial Process Selection and Waiver for IDRT in substantially the form specified at \_\_\_\_\_. This form must be accepted by all superior courts.

**(3)** The IDRT will be conducted as follows:

(a) At the beginning of an IDRT, the parties will be asked to affirm that they understand the rules and procedures of the IDRT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IDRT process.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by



the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Washington State Child Support Schedule if child support is at issue.

(d) The parties will not be subject to cross-examination. However, the Court will ask the nonmoving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented.

(h) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(i) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement, but best efforts will be made to issues prompt judgments.

(k) The Court may modify these procedures as justice and fundamental fairness requires.

**(4)** The Court may refuse to allow the parties to utilize the IDRT procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an IDRT has been commenced but before judgment has been entered.

**(5)** A party who has previously agreed to proceed with an IDRT may file a motion to opt out of the IDRT provided that this motion is filed not less than 10 calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause. A change in the type of trial to be held may result in a change in the trial date.

Informal family law trials currently exist in Alaska, Idaho, Iowa and Utah, and in one Oregon county. The following tables contained in [Informal Domestic Relations Trials](#), published January 26, 2021 by the National Center for State Courts, identify and provide information about the rules and procedures in each program.

	<b>Primary Citation(s)</b>	<b>Status</b>	<b>Form of Adoption</b>
<b>Alaska</b>	Alaska Rules of Court Rules of Civil Procedure <a href="#">Rule 16.2 – Informal Trials in Domestic Relations Cases</a>	Applies to entire state Effective April 15, 2015 Review and report after three years	Statewide court rule
<b>Idaho</b>	Idaho Rules of Family Law Procedure <a href="#">Rule 713. Informal Trial</a>	Applies to entire state Effective statewide July 1, 2015 (Originally adopted as IRCP Rule 16 (p) in 2008)	Statewide court rule
<b>Oregon</b>	11 <sup>th</sup> Judicial District	Pilot in Deschutes County	Local court rule

	Deschutes County Circuit Court Supplementary Local Rules <a href="#">Rules 7.045 and 8.015</a>	Effective May 29, 2013 Statewide rule under consideration	(Statewide court rule under consideration)
<b>Utah</b>	Judicial Council Rules of Judicial Administration <a href="#">Rule 4-904. Informal trial of support, custody and parent-time.</a>	Applies to entire state Effective April 12, 2012	Statewide court rule

	<b>Case and Hearing Types</b>	<b>How Selected</b>	<b>Waiver</b>
<b>Alaska</b>	Trials in actions of divorce, property division, child custody, and child, including motions to modify.	Opt-in. In a case proceeding to trial, the court may offer the parties the option of electing the informal trial process.	Parties must consent to the process. An explicit waiver of the rules of evidence is not included in the rule.
<b>Idaho</b>	Trials in actions for child custody and child support.	Opt-in. Parties must waive the application of the Idaho Rules of Evidence and the normal question answer manner of a trial.	Consent and waiver to be given verbally on the record or in writing on a form developed by the Supreme Court.
<b>Oregon</b>	Trials in original actions or modifications for divorce, separate maintenance, annulment, child custody and child support.	Forced choice/opt-in. Parties must select the type of trial they would like at the pre-trial conference. Both parties must select an informal trial, otherwise a traditional trial is scheduled.	Not explicitly required in the rule, however the trial selection form contains a written waiver and it is the practice of the court to engage the parties in an oral waiver on the record at the time of trial.
<b>Utah</b>	Trials in actions for child support, child custody and parent-time.	Opt-in. Upon waiver and stipulated motion, orally or in writing, by the parties.	The court must find that the parties have made a valid waiver of their right to a regular trial.

	<b>General Process</b>	<b>Evidence</b>	<b>Witnesses</b>
<b>Alaska</b>	Opening (summary of issues to be decided), the parties' present case in turn, opportunity to respond to factual information presented by opposing party, closing.	Parties may offer any relevant documentation. Court will determine admission and weight. Court may require additional documentation. Letters	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing

		from children regarding custody discouraged.	party. Exclusion of witnesses is implicit.
<b>Idaho</b>	The moving party speaks to the court regarding their position(s). The Court questions the party to develop required evidence. Process repeats for opposing party.	Parties may offer any documentation they wish the court to consider. Court shall determine weight, if any, given to each document. Court may order the record be supplemented.	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing party. Exclusion of witnesses is implicit.
<b>Oregon</b>	Opening (summary of issues to be decided), the parties' present case in turn, opportunity to respond to factual information presented by opposing party, closing.	Parties may offer any relevant documentation. Court will determine admission and weight. Court may require additional documentation. Letters from children regarding custody discouraged.	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing party. Exclusion of witnesses is implicit.
<b>Utah</b>	The moving party speaks to the court regarding their position(s). The Court questions the party to develop required evidence. Process repeats for opposing party.	Parties may offer any documentation they wish the court to consider. Court shall determine weight, if any, given to each document. Court may order the record be supplemented.	Only the court may question a party. Parties may advise the court of additional questions or issues they would like the court to address with the opposing party. Exclusion of witnesses is implicit.

	<b>Expert Witnesses</b>	<b>Role of Attorneys</b>	<b>Other</b>
<b>Alaska</b>	Expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May provide opening summary, propose questions for the court to ask of the opposing party or issues to explore, question expert witnesses and closing statement.	Court may disallow a request to withdraw from the procedure if it would prejudice the other party or postpone the trial date absent a showing of good cause.
<b>Idaho</b>	Guardian ad Litem and expert reports may be admitted without testimony. If expert testifies, all parties, their	May propose questions for the court to ask of the opposing party or issues to explore, question expert	

	attorneys and the court may question the expert.	witnesses and make legal argument.	
<b>Oregon</b>	Expert reports may be admitted without testimony. If expert testifies, all parties, their attorneys and the court may question the expert.	May provide opening summary, propose questions for the court to ask of the opposing party or issues to explore, question expert witnesses and make legal argument.	A party who previously agreed to the informal trial may motion the court to opt out of the informal trial not less than 10 days prior to trial. The Court will make effort to issue prompt judgments. The Court may modify procedures as justice and fundamental fairness requires.
<b>Utah</b>	If there is an expert, any report is entered as the Court's exhibit and the expert may be questioned by the parties, their attorneys and the court.	Following the opposing party's testimony, may identify areas of inquiry and the Court may make the inquiry.	Entry of an order by the court is explicitly included in the Rule. If the order is a final order, it may be appealed on any grounds that do not rely upon the Utah Rules of Evidence.

**Additional Resources**

**Alaska**

- [Getting ready for Hearing or Trial](#)
- [Domestic Relations Trials: Understanding the Two Options](#)
- [Family law hearing and trial prep videos](#)

**Idaho**

- [March 2014 Evaluation Report - Informal Custody Trial](#)

**Iowa**

- [Informal Family Law Trial Pilot Project, Final Report \(June 2018\)](#)

**Oregon**

- [Informal Domestic Relations Brochure and Information for Selecting Which Type of Trial.](#)
- [Oregon Judicial Department, Uniform Trial Court Rule 8.120 on Informal Domestic Relations Trials.](#)
- [Oregon's Informal Domestic Relations Trial: A New Tool To Efficiently And Fairly Manage Family Court Trials, By William J. Howe Iii And Jeffrey E. Hall](#)

## Utah

- [Article from the Utah Journal of Family Law written by Commissioner Cathy Conklin and now-retired Judge Ben Hadfield.](#)
- [Results of attorney survey from 2016](#)
- [Rule 4-904](#)
- [Waiver & consent form](#)

## Post Informal Trial Adoption Reports

### Idaho

#### [March 2014 Evaluation Report - Informal Custody Trial](#)

[Excerpts]

Judges were asked 16 questions regarding their interaction with and utilization of the ICT model in their courtroom. Questions ranged from asking about their process of utilization to perceptions of forms and perceptions of potential advantages and disadvantages of the ICT model.

Most judges reported that a typical ICT lasted anywhere from two hours to half a day, and 78% of judges (14) agreed that the process was more efficient than a traditional court trial. Additionally, a majority of judges interviewed believed the ICT was a more effective use of judicial time. A small percentage (less than 20%), were either unsure or had not done enough ICTs to accurately gauge whether or not it was a more effective use of judicial time.

While the ICT was considered potentially beneficial, it was not recommended for all cases. The majority of judges did not feel that it was a good option for cases involving domestic violence, or cases with a history of alleged child abuse or mental health or substance abuse issues. One judge specifically indicated that the ICT was probably not the best process for a case that had pending criminal charges. Also, the inability of an individual to provide adequate testimony as a result of limited cognitive capacity should be considered.

Regarding the Consent and Waiver form, none of the judges had concerns with the form or suggestions for ways to improve it.

The majority of judges reported that the ICT model was introduced and discussed at the litigant education class and was introduced again at the scheduling conference. Of the 18 judges interviewed, 11 indicated that they also introduced it at the pre-trial conference. However, some concerns were raised by two judges as to the best time to introduce the ICT process. These judges were of the opinion that it was best not to introduce the ICT until later in the case (right before trial), and should not be an option early on in the process.

Factors that indicated a particular case was especially well-suited to an ICT, as reported by judges, included self-represented litigants and simple-issue custody cases, including modification cases. **Several judges commented that the process was not well-suited for cases that presented with domestic violence or mental health issues because it was difficult to get at the bottom of**

**these issues without expert witnesses.** Also, parties generally did not understand that all evidence was not given equal weight. Most judges commented that they felt that ICTs were especially well-suited to modifications or initial filings that involved only custody and visitation disputes. *[Emphasis added]*

However, some judges felt that there were no factors that could “disqualify a case from an ICT”. **Additionally, a few judges indicated that they had used the ICT very successfully in high-conflict cases, including a case involving domestic violence.** *[Emphasis added]*

To ensure the parties understood the ICT process prior to agreeing to participate, 17 of the 18 judges (94%) indicated they used the Waiver and Consent form that had been developed for the ICT process, in addition to a verbal review of the process with the parties. Another 44% of judges (8) indicated that when parties were represented by attorneys, they asked the attorneys to review the ICT process with their clients.

### **Influence of ICT on Conflict**

Half of the judges believed the ICT process reduced conflict, 33% were unsure, and 17% believed that it did not reduce conflict. The judges primarily believed it reduced conflict because parties were not subject to cross-examination, were not able to question each other, and both parties were able to freely tell their side of the story without objection or argument. Other ways judges believed the ICT reduced conflict included:

1. **How the case was managed.** One judge attempted to make the experience positive by asking the parties to name positive aspects about the other party and attempted to help parties see their requests from the other party’s perspective. Another judge believed that to the extent the parties felt they had been heard and that the judge had listened to them, it enhanced the likelihood of acceptance of the decision which potentially reduced conflict.

2. **Reducing courtroom time.** One judge believed the ICT reduced conflict by reducing the number of times parties were in courtrooms involved in high stress conversations. For those who did not believe the ICT reduced conflict, reasons provided were that both parties are experiencing hurt in both the ICT and the traditional process regardless of how the case is tried and that the potential to increase conflict is actually raised by the ICT because of the difficulty of controlling the amount of venting, or “mudslinging,” the parties did during the hearings.

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## **Oregon**

### **[Oregon’s Informal Domestic Relations Trial: A New Tool To Efficiently And Fairly Manage Family Court Trials](#)**

Family Court Review, Vol. 55 No. 1, January 2017 70–83

*[Excerpts]*

Initially IDRT was conceived as a process to more efficiently manage the crushing family court docket and also as a way to relieve judges of the discomfort and concern over whether relaxing the rules of evidence or assisting in the preparation of judgments would violate judicial ethics rules.

It immediately became obvious that the benefits of IDRT were far greater than judicial economy and avoiding judicial ethics heartburn. This process was greeted by litigants as affording access to justice in a way that SRLs, even more than represented litigants, felt was more understandable. Furthermore, procedural fairness was advanced, as litigants felt and experienced being heard directly by the person who possessed the power to resolve the dispute.

Deschutes County Circuit Court proposed a Supplemental Local Rule (SLR 8.015) establishing IDRTs in 2012.<sup>13</sup> The court did so in collaboration with Oregon's Statewide Family Law Advisory Committee (SFLAC).<sup>14</sup> Since 1997 the SFLAC has generated many of Oregon's family law reforms and innovations. SFLAC was assisted in the IDRT innovation by IAALS.<sup>15</sup> This rule was approved by Chief Justice Balmer and went into effect on May 29, 2013. *[Emphasis added]*

...

### **Factors In Cases That Affect Suitability For An IDRT**

The broadest category of cases that are appropriate for the IDRT process are those where neither party is represented, where the marital assets are reasonably straightforward, and where no nonexpert witness testimony was critical to achieving a just result. Most cases involving two SRLs followed this pattern. IDRT was appropriate in these cases because most SRLs did not have sufficient familiarity with the law to effectively present their case, use witness testimony, operate within the confines of the rules of evidence, and focus on the statutory factors a judge must consider in deciding the issues presented.

Cases involving domestic violence where both parties are self-represented are viewed as particularly well suited for the IDRT process. The IDRT rules allow the victim to introduce medical and law enforcement reports without having to call a witness to establish foundation. Additionally, the IDRT process allows the victim to avoid cross-examination by the perpetrator, and the judge is able to maintain a level of control in directing the lines of inquiry and focus of the trial, thus mitigating the inappropriate exercise of power and control by a perpetrator during the conduct of the trial. *[Emphasis Added]*

Of the forty IDRTs conducted between June 2013 and December 2015, one or both parties were represented in as many as nine cases.<sup>22</sup> The IDRT process proved appropriate in cases where one or both litigants were represented, when the parties could not afford counsel for a traditional trial, where the trial was focused on a narrow issue, or where legal strategy suggested the IDRT process would allow evidence to be introduced that might otherwise be excluded in a formal trial process. allow evidence to be introduced that might otherwise be excluded in a formal trial process.

...

When initially implemented, some worried that the IDRT process would not be appropriate in cases involving high-value marital assets. These concerns were refuted by a self-represented divorcing couple who had worked together to resolve all issues, except the division of several parcels of real estate valued in excess of one million dollars. The parties had carefully researched the law, but arrived at different conclusions on how to correctly value the real estate. They simply wanted a judge to tell them who was correct and successfully used the IDRT process to bring that one issue before a judge.

There were no cases in which the IDRT process was initiated, but during the trial or hearing the



judge found this process to be unfair or inappropriate. The judges and attorneys participating in the evaluation agreed that the traditional trial process was more appropriate for cases in which both parties were represented, where there were significant and complex marital assets, where nonexpert testimony was critical in achieving a just result, or where there were complexities surrounding the issues of child custody and support.

...

## **Conclusion**

Deschutes County's IDRT process is an innovative option for courts seeking to better serve the public and provide greater access to justice and procedural fairness in any family law matter. While no panacea, this important innovation provides a less adversarial and more user-friendly family law dispute resolution regime for many disputes. It is particularly attractive to SRLs who struggle to navigate the complexities of the traditional trial model. Families reconstellating and requiring the assistance of the court need and deserve accessible, fair, and customer-friendly innovations like IDRT.

## **Perspectives:**

### **Judicial**

#### **Commissioner Jennie Laird, King County Superior Court**

***June 24, 2021 (email)***

"I communicated with Judge Sutton so far, and she believes there has been about 6-8 of these informal trials so far. The couple she has done, she reports went well. ...

I can tell you generally that the SCJA FJLC will be writing a letter in support of the statewide rule and proposing some comments to make the rule more "plain language" and also to incorporate some of the provisions from King and Thurston counties (such as an explicit waiver of the evidence rules and appeal based on the ERs, as an example). And to change the name from IDRT to IFLT, given "domestic relations" is an antiquated or at least non-plain language term. And the acronym flows a little better.

We had a subcommittee meeting yesterday, and judicial officers from both KC and TC reported positive experiences with their county rules. Permitting some flexibility for the details, in particular the timing of parties opting in, also seems important, given each county sets trial dates differently (some with a case schedule, some requiring a trial setting filing)."

#### **Commissioner Catherine S. Conklin, Domestic Relation, Second District Court, Utah**

***May - June 2021 (email thread excerpts)***

*From Commissioner Conklin:* The informal trials are a great tool for the right cases."

*To Commissioner Conklin:* Thank you very much for your email and for the accompanying documents. This is very helpful information which I have shared with members of the WSBA Family Law Executive Committee.

Memorandum to FLEC

Re: GR 40 – Informal Domestic Relations Trial (IDRT)

9

A number of WSBA attorney members have expressed concern about the imbalance of power and language disparities that exists in many relationships. The following comment by one member illustrates that concern:

The power imbalance that I see as problematic is not a division of chores and child-rearing in a marriage. A problematic power imbalance can be DV, history of controlling or intimidating behavior, vast disparity in education or employment that results in one spouse being far more skilled at paperwork and organization and speaking, etc. Language disparities can create a situation where one spouse cannot effectively communicate his/her position, cultural differences that require explanations and on and on.

The materials that are presented by courts thus far encourage parties to choose informal trials without identifying potential problems. Even more concerning, they do not spell out the responsibilities of a judge to protect against informal trials where unfair decisions can result from a power imbalance. A process that, in effect, requires a vulnerable spouse to identify problem areas before trial in front of the other spouse so as to avoid the informal trial does not understand the issues. In a world where many judges are not experienced with family law or, worse yet, have little interest in learning the intricacies of family law, such a new process as informal trials needs to be more protective of vulnerable spouses.

The law journal article that you sent includes a memo by Idaho Judge Simpson on his state's ICT model. His comments about screening identify some of the concerns, but it appears his comments are directed to counsel for the parties. However, in many cases there is no attorney and one or both parties are pro se. Should judicial officers perform the screening? It would be helpful to know if this is a concern in Utah and, if so, how it has been addressed.

*From Commissioner Conklin:* The type of screening you mention is performed by the judge or commissioner at the time of pre-trial. We have 8 judicial districts in Utah, and there are domestic relations commissioners in the 4 most populous districts. The commissioners handle only family law cases, so there is some expertise there. We have the ability to focus on one area of the law, while the judges have to do a little of everything. That is part of the reason for amending the rule on informal trials to make it clear that commissioners can do them.

But the power imbalance you describe will be present no matter what format the trial follows. It is easier for the parties to sit at their separate tables, with all of their notes and paperwork, and have the judge or commissioner asking questions instead of being on the witness stand and cross-examined by the opposing party. Like everything else in life, it's a tradeoff."

*To Commissioner Conklin:* Is there/should there be:

- advance orientation or training for judges preparing them for the informal trial process and procedures?
- Standardized form with post-trial survey questions posed to participating attorneys seeking comments and possible suggestions for improvements?

*From Commissioner Conklin:* Yes, to both of your questions. I have taught a couple of classes at our judicial conferences about informal trials, but we haven't done a survey since 2016 or so. We should do another one.

## Attorneys

**John Ferguell**

**Kent Attorney, WSBA 26461**

**June 24, 2021 (email)**

“In general, I thought it worked out very well. The process was as the (proposed GR 40) states. ... My case involved a dissolution, with kids. Child support, property/ debt division, maintenance and Parenting were all contested. The wife was not represented by counsel and frankly, was not prepared; however, it was not from her good faith effort to prepare. She just did not do much of anything during the whole case.”

*Notes from 6/27/21 PC:* One informal trial. 25-year experience. Client felt got “his day in court.” Informal trial option presented at pretrial hearing. Significant cost and time saving. Client (Petitioner) wanted to minimize cost. Had faith in Judge Sutton and comfortable having judge make call and question parties. Judge controls process. Judge controls questions: attorney submitted questions and judge asked questions she felt to be relevant. **Wouldn't discount use of informal trials in DV cases; provides more protection for victim and avoids cross examination.** Formal documents presented prior to trial: trial brief, financial declaration, proposed orders, etc. Ruling made at conclusion of trial. Petitioner's attorney instructed to make changes to proposed documents to conform to ruling. May not be favorable option with complex case with high valued estate and multiple experts. *[Emphasis added]*

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**Kiona Gallup, Kent Attorney, WSBA# 51997**

**Community Advocates Northwest**

**June 28,2021 (email)**

“I did just complete my first informal family law trial in King County.

Overall, it was a great experience. The only issue was a Final Parenting Plan modification, with .191 restrictions for chemical dependency and abusive use of conflict.

The opposing party represented themselves *pro se*. Had we gone through a formal trial, it would have been beyond challenging to get through trial efficiently.

I prepared my client prior on what to expect from Judge Sutton asking questions, rather than me. They did well, but I also had little to no concerns going in as to their credibility and ability to tell their story through testimony. It really was great having Judge Sutton ask the questions for which she needed the answers without all the red tape around evidentiary issues and hearsay. Follow-up questions from both sides went smoothly and elicited the necessary information.

This case had a lot of CPS records and police reports – it was wonderful not having to issue subpoenas to all the state agencies.

A lot may disagree, but I thought it was great that child hearsay statements could come in. Obviously, they both disagreed on what the child had to say, but it was left to the Court to determine credibility. Far too many people have a difficult time not testifying about their child's statements.

I think this is a wonderful tool and should be selected more often. I had zero problem being there to advise my client and let the Court put in the most "effort" in asking questions. Very rarely do parties (the majority of my client base) in family law have the financial or time resources to go through a formal trial.

I very much hope GR 40 is approved."

## **Suggestions**

### **Idaho Suggestions for Improvement**

- Suggestions that judges provided for improving the ICT model included:
- Attorney training from the Idaho State Bar
- Enhanced judicial education
- Allow the ability to include expert testimony in proceeding
- Discussion of ways to filter the information coming in to the Court
- Set date for exhibits to be submitted by parties to allow judges adequate time to review exhibits and prepare for the decision
- Enhanced flexibility with the process
- Development of a "how-to" for self-represented litigants

### **Idaho [March 2014 Evaluation Report - Informal Custody Trial](#)**

### **Oregon Suggestions For Improvement**

- The Deschutes County Court is in the process of developing a trial preparation outline for SRLs.
- There are excellent materials available, including those from the National Judicial Institute in Canada.
- When developed, the trial preparation outline would be of particular benefit to SRLs selecting either trial process, but these materials would be available to all litigants and lawyers.
- The attorney group felt that allowing the judge to review and consider any available mediator's report could help to narrow the issues for trial. Mediation proceedings in Oregon are confidential.

- As such, mediation reports are inadmissible unless both parties consent to their admissibility. Therefore, either the IDRT waiver would need to include the stipulation that mediator reports are admissible, or the mediation confidentiality statute would have to be amended.

**Oregon's Informal Domestic Relations Trial:  
A New Tool To Efficiently And Fairly Manage Family Court Trials - 2017**

# Family Law Section

*Family Law Section of the Washington State Bar Association*



July 12, 2021

Board of Governors  
Washington State Bar Association  
1325 Fourth Ave., Ste. 600  
Seattle, WA 98101

GR 40 – Informal Domestic Relations Trial (IDRT)

Dear Board of Governors:

The Family Law Executive Committee (FLEC) has unanimously endorsed the following comments and concerns regarding GR 40 and requested that I communicate these comments and concerns on behalf of FLEC to you along with the accompanying memorandum dated June 30, 2021.

## **Comments And Concerns Regarding Proposed GR 40 Informal Domestic Relations Trials (IDRT)**

1. Incorporate comments submitted by Superior Court Judges Association, including
  - a. Retitling IDRT to IFLT (Informal Family Law Trial).
  - b. Incorporating “plain language” in rules and pleadings.
2. Incorporate appropriate provisions from existing informal trial procedures in King County [LFLR 23] and Thurston County [LSPR 94.03F].
3. The existence or limitation of appellate options should be expressly identified in materials for attorneys and prospective participants, including any explicit waiver of evidence rules and evidence-based appeals.
4. Include provision that judges can, at any stage of proceeding, expand – but not further limit – the role of attorneys.
5. If the case includes the determination of a parenting plan or residential schedule, the judge shall review and consider the JIS (criminal history) of both parents and other adults in each parent’s household in the determination of whether an informal trial is appropriate or should occur and, if so, the judge shall take into consideration the relevance

of such history during the proceeding and in the determination of a parenting plan or residential schedule.

6. Enhance the orientation and education for judges, for attorneys and the public (who may be represented clients or pro se).
  - a. This could include a short video, in multiple languages.
  - b. NW Justice's Washington Law Help website is a good example with the following language options: American Sign Language / Amharic አማርኛ / Arabic للعربية / Cambodian / Khmer / Chinese (Traditional) 中文 / Farsi / فارسی / Hindi / हिन्दी / Korean 한국어 / Laotian ພາສາລາວ / Mandarin Chinese 官話 / Marshallese / Kajin Maje] / Oromo ኦሮሞኛ / Punjabi ਪੰਜਾਬੀ / Russian Русский / Samoan Gagana Samoa / Somali Soomaali / Spanish Español / Tagalog Pilipino / Tigrinya Ge'ez / Ukrainian Українська ) / Vietnamese Tiếng Việt.
  - c. It is particularly important that the judge presiding over an informal trial should have as much possible knowledge and experience in family law issues, including domestic violence (as defined by [RCW 26.50.010](#) – as amended in 2021 - See [1320-S2.SL](#)) and its impact upon participants in family law proceedings.
7. Uniformity across the state to provide consistency and avoid conflicts or confusion.
  - a. Allowing some flexibility for counties, e.g., time to opt in.
8. Budget/allocate funds to
  - a. survey judges, attorneys and parties who have participated in informal trials.
    - i. Particular emphasis and focus should be on types of cases, e.g., domestic violence, advantage/disadvantage in case where one party is pro se and the other is represented by counsel, complex issues, multiple experts, etc.
  - b. Obtain statistics from county court clerks.
    - i. regarding number and ratio of informal trials vs. regular trials.
    - ii. judicial efficiency (reduction of caseloads and back logs).
9. Any informal trial process should be for a limited time period such as two years and then not resumed until and unless there is a meaningful review of the results.
  - a. Such review should include judicial officers, lawyers, and clients as well as other named stakeholders.



WSBA Board of Governors

July 12, 2021

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- b. The review should monitor results state-wide, including stakeholder survey(s) and monitor national trends re informal trials; additional state adoptions; and modifications, enhancement or curtailment of existing informal trial programs.
- c. A report should be submitted not later than two years to the Supreme Court, including successes, failures, suggestions for improvements, recommendation for continuing program or elimination.

Sincerely,

/s/

Christopher J. Fox, WSBA 7345

Enclosure: Memorandum re GR 40

cc:

Kevin Plachy, [kevinp@wsba.org](mailto:kevinp@wsba.org)

Shelly Bynum, [shellyb@wsba.org](mailto:shellyb@wsba.org)

**MEMO**

**To:** Board of Governors

**From:** Andrea Jarmon, Co-Chair, Diversity Committee  
Governor Sunitha Anjilvel, Co-Chair, Diversity Committee

**Date:** June 25, 2021

**Re:** Update to FY 20 Annual Report

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This update on the Diversity Committee FY 20 Annual Report is provided to the Board of Governors (BOG), for the discussion at the July BOG meeting, as part of their annual dialogue between each WSBA entity and the Board. Below is a summary of the progress we have made since we submitted the FY 20 Annual Report last summer.

**Background & Purpose:**

The Washington State Bar Association's Diversity Committee is dedicated to implementing WSBA's Diversity and Inclusion Plan. The work of the committee is centered on programs and resources that promote the presence and retention of historically underrepresented groups in the legal profession. The Diversity Committee does this through collaborative partnerships and community building activities, the support of pipeline and mentorship programs, advocating for and sponsoring diversity training and CLEs, and making recommendations to the Board of Governors on issues and policies of impact to minority members in the profession, which highlight the numerous societal benefits of a diverse legal profession.

**FY 21 Accomplishments and Updates:**

- **AT LARGE GOVERNOR ELECTIONS:** In FY 20, the Committee proposed bylaw changes that would direct the Committee to vet and recommend At-Large Governor candidates for a member-wide election. The Board of Governors approved the bylaw change and the Committee followed the new policy for the first time at the end of 2020 following an incoming At-Large Governor's withdraw. The Committee assisted in communication efforts to ensure wide dissemination about the opportunity to apply to run for an At-Large Governor seat, designed interview questions and selection criteria, and interviewed 6 candidates. The Committee ultimately recommended four candidates for the member-wide election and a new At-Large Member was elected in January 2021.
- **MINORITY BAR ASSOCIATIONS:** The Committee continues to work with and support the MBAs in a variety of ways:

- In June 2020, comments raising concerns about racial bias were made by a sitting BOG member. Many MBAs including the Asian Bar Association of WA, Korean American Bar Association, WA Attorneys with Disabilities Association, Latina/o Bar Association, QLaw, Vietnamese-American Bar Association, Loren Miller Bar Association, MAMA Seattle, Filipino Lawyers of WA, and WA Women Lawyers submitted written communication to the BOG, expressing their concerns and requesting various actions. The Committee sent a letter to the BOG expressing its support of the MBAs and urging the BOG to respond to the MBAs, heed the Supreme Court’s call to action against racism, and fulfill its commitments in the mission statement, GR 12.2(6) and the Race and Equity Justice Initiative.
- The Committee has supported the MBAs in their work in supporting law students from underrepresented communities. The MBAs created the Joint Minority Mentorship Program which matches Bar members with law students from underrepresented communities. In April 2021, upon the Diversity Committee’s recommendation, the BOG approved the WSBA becoming an official sponsor.
- **MCLE RULE CHANGE:** The MCLE Board proposed a rule change which would require training in equity, inclusion and the mitigation of bias as part of the required ethics credits. The Committee has supported this change since the MCLE Board first submitted this proposal a few years ago. In April 2021, upon BOG approval, the Committee submitted comments to the Supreme Court in support of the proposed change.
- **BAR EXAM RESOLUTION COMMENT:** In March 2021, the Diversity Committee urged the BOG to hold off on passing a bar exam resolution so members including the MBAs could have time to submit their comments. The Committee then helped facilitate outreach to the MBAs, inviting them to submit comments. Subsequently, several MBAs submitted comments and some MBA leaders attended the April 2021 BOG meeting to give oral comments. The Diversity Committee also submitted its own memo to the BOG recommending that it forego passing the proposed bar exam resolution and instead allow the Supreme Court Bar Licensure Task Force to complete its work.
- **LAW STUDENT OUTREACH AND PARTNERSHIP WITH LAW SCHOOLS:** The Committee has been working to strengthen relationships with law schools and work with underrepresented law students to advance diversity and inclusion in the legal profession. They have engaged in the following activities this year:
  - The Committee invited students and staff from the three WA law schools to their Committee meetings to learn about their diversity, equity and inclusion efforts and identify how to collaborate on joint efforts.
  - The Committee historically has supported the Access Admissions Program through Seattle University School of Law’s Academic Resource Center (ARC). The

Access Admissions Program is targeted towards law school candidates from historically oppressed communities, and recognizes that students from these communities may have less access to education and standardized testing prep, and may have lower LSAT scores and/or undergraduate GPAs, and offers an alternative admissions process so that students from historically marginalized groups can still enter into the legal profession. The Committee is currently planning its first virtual ARC reception for 1L students that are part of the Access Admissions Program, to inspire and encourage more diversity in the legal profession, and give students the opportunity to network with people from various backgrounds and professions.

- The Committee is working on creating formal membership opportunities for a law student from each of the three WA law schools.
- **DIVERSITY, EQUITY AND INCLUSION CLES:** The Committee, in collaboration with members of different MBAs and others in the legal community convened a brainstorm session to inform the development of the FY 21 Legal Lunchbox CLEs which would be devoted to DEI topics. Following the brainstorm session, the Committee in partnership with WSBA staff developed a series of Legal Lunchbox CLEs responding to the WA Supreme Court's June 2020 Call to Action. The three CLEs build off each other to provide a foundation of learning about structural racism (March 2021), how to combat it as individuals (June 2021), and how it relates to and can be a catalyst for organizational change (September 2021).
- **COMMUNICATIONS:** In partnership with the Editorial Advisory Committee, the Committee is working to promote diversity, equity and inclusion in various WSBA communications including the WSBA Bar News. The Committees are working to create columns dedicated to issues related to diversity, equity, and inclusion and recruit authors to write articles. Two articles in development include one on Lawyers Against Systemic Racism which is based in Tacoma, and one on the Racial Justice Consortium which the Supreme Court has convened. The Committee and the Editorial Advisory Committee also plan to work together on using an equity lens in all aspects of the Bar News, in order to institutionalize the practice of having DEI focused submissions in the Bar News, the Diversity Committee has created a subcommittee that will work directly with the Editorial Advisory Committee for a regular submission. Additionally, the Diversity Committee continues to offer a diversity focused lens to provide feedback. Recently, both committees engaged in a successful dialogue related to the selection of the cover for the last issue of the Bar News.
- **MEMBERSHIP STUDY AND DIVERSITY AND INCLUSION PLAN:** The WSBA Diversity and Inclusion Plan provides that the WSBA will conduct a comprehensive membership demographics study every 10 years. The Diversity Committee, in partnership with WSBA staff, are preparing for the next study which is due in 2022. The Committee will be

identifying needed data points and will solicit input from relevant stakeholders before and while working with a data consultant. The Committee envisions the results of the study informing the update of a new Diversity and Inclusion Plan.

We look forward to meeting with you and happy to answer any questions at our meeting on July 16<sup>th</sup>. Thank you.



# OPEN MEETINGS AND THE WSBA BYLAWS

July 2021

# OPEN MEETINGS POLICY

Open meetings are:

- Open
- Public may attend
- Meeting schedules are reasonably available
- Members of the public are not required, as condition of attendance, to provide name or other information
- No secret ballot votes (Board elections are exceptions)
  
- Articles VII.B.1,3,4, and 6, IV.C.3



# SCOPE OF OPEN MEETINGS REQUIREMENTS ACTIVITIES

Open Meetings Policy applies to these activities:

- Meetings
- Hearings
- Actions
- Gathering information
- Gathering member comment

Article VII.A.1.b

# SCOPE OF OPEN MEETINGS REQUIREMENTS ENTITIES AND SESSIONS

Open Meeting Policy applies to:

- Entities Working under the authority of the Bar pursuant to court rule or Bylaws, or
- Entities Administered by the Bar pursuant to court rule

Open Meetings Policy Does NOT Apply to:

- Awards Committee
- BOG Personnel Committee
- Executive Sessions
- Judicial Recommendations Committee
- Matters made confidential by court rule (APR, ELC, ELPOC, ELLLTC, etc.)

Articles VII.A.1.b

# BOG AND BOG COMMITTEE EXECUTIVE SESSIONS WHEN AUTHORIZED

The BOG may meet in Executive Session at the discretion of the President subject to a majority vote of the Board of Governors that an issue is not properly raised in Executive Session, or as specifically provided by court rule:

- Consider real estate transactions when public knowledge would cause an increased or decreased price;
- Discuss individual regulatory matters made confidential by court rule or these Bylaws;
- Evaluate qualifications of Executive Director or General Counsel applicants; review the Executive Director's performance; or consider complaints regarding Board members, Bar staff, or Bar entity appointees;
- Discuss litigation or potential litigation, or have other privileged or confidential communications with legal counsel representing the Bar;
- Discuss legislative strategy; or
- Protect confidentiality; or prevent violations of individual rights, or unjustified private or personal harm, in the President's discretion. This subsection is narrowly and strictly construed; mere embarrassment or criticism is insufficient.

Article VII.B.7.a and b

# WHO ATTENDS BOG EXECUTIVE SESSIONS

Board Members

Executive Director

General Counsel

Other persons authorized by the BOG

Article VII.B.7.a

## OTHER BAR ENTITY EXECUTIVE SESSIONS WHEN AUTHORIZED

Other Bar entities may meet in Executive Session on matters within the scope of their work at the discretion of the Chair or as specifically provided by court rule:

- Discuss individual regulatory or other matter made confidential by court rule or Bylaws;
- Evaluate qualifications of applicants for Bar entity appointments;
- Discuss litigation, potential litigation, or have other privileged or confidential communications with legal counsel representing the Bar; or
- To discuss legislative strategy.

Article VII.B.7.c

# WHAT IS A MEETING?

A meeting is any regular or special meeting of the BOG or other Bar Entity contemplating transacting official business of the Bar involving, but not limited to:

Collective positive or negative consensus, or an actual vote of voting members present receipt of member information

Considerations

Deliberations

Discussions

Evaluations

Reviews

WSBA Bylaw Article VII.A.1.a-c

# QUORUM DEFINITION AND TIMING

Quorum is the presence of a majority of the entity's voting members.  
A majority is more than half.

A quorum must be present to start a meeting and when votes are taken.

A quorum is not required to adjourn a meeting.

Articles II.E.2, VII.B.9

# MEETING NOTICE REQUIREMENTS

Meeting Type	Notice Content	Notice Timing	Method
Regular BOG Meeting	Date, time and location	45 days prior to meeting/Agenda when finalized	WSBA website
Special BOG Meeting	Time, place, and purpose	5 days prior to meeting (can be waived)	Written and WSBA website
Emergency BOG Meeting	Subject matter	24 hours	Electronic
BOG Executive Committee Meeting	Not specified	5 days (can be waived)	Not specified

Articles VII.C.1-3, and VII.D.3



# MEETING NOTICE TIME DEFINITIONS

- Days are calendar days
- Dates falling on Saturdays, Sundays, or holidays refer to the next business day
  - WSBA holidays may be different from legal holidays defined in statute
- Articles II.D and II.E.1

# MEETING LOCATIONS

Meetings can be held in person, by videoconference, or by phone.

Meetings cannot be held by email, except:

BOG Legislative Committee-may meet by email between meetings during the legislative session if necessary and no committee members object

Section Executive Committees-may meet by email during the legislative session to discuss and vote on legislative positions, with notice to all executive session members, unless objection

Articles II.E.5, IV.C.4.c.5, VII.B.1,XI.F.2

# PARLIAMENTARY PROCEDURE ROBERT'S RULES

The most current edition of Robert's Rules of Order govern proceedings at BOG meetings.

# FINAL ACTION AND VOTING

Final action is a collective positive or negative consensus, or a vote of the voting members present at the time of the vote, upon a motion, proposal, resolution, or order.

- Presence can be either in person or electronic (video conference or telephone)
  - Consensus governs BOG Committees. Vote only if cannot reach consensus.
- 
- Articles II.E.2, IV.C.2, VII.A.1.c

# VOTING SECRET BALLOTS

## GENERAL RULE:

No secret ballot votes in public meetings

## EXCEPTIONS:

- Elections conducted by BOG
- Votes to remove Governors

Articles IV.A.4, IV.C.4.b, VI.D.2, VII.B.6

# VOTING WHO VOTES

President only votes when vote affect the result.

President-Elect is not voting member of BOG. Votes only when acting in the President's place at a BOG meeting when vote will affect the result.

Immediate Past President is not voting member of BOG. Votes only when acting in the President's place at a BOG meeting when vote will affect the result.

Article IV.B.1-3

# VOTING BOG COMMITTEES

## GENERAL RULE

Only Governors vote on standing BOG Committees.

## EXCEPTIONS

BOG Legislative Committee

President, President-Elect, and Immediate Past President are voting members

BOG Executive Committee

President and President-Elect are voting members

Articles IV.C.2, IV.C.4.b, VII.D.2

# MINUTES WHEN REQUIRED

## BOG MEETINGS

Except Executive Sessions

## COMMITTEES AND OTHER BAR ENTITY MEETINGS

Except authorized executive sessions and sub entities – unless they have authority to take action

## SECTION MEETINGS

## SECTION EXECUTIVE COMMITTEE MEETINGS

IV.B.5, VII.A.1.d, VII.B.3, XI.F.3.b



# MINUTES CONTENT

## MINUTES MUST CONTAIN:

- Members in attendance
- Date and time of meeting
- Meeting agenda
- Final actions
- Reasonable summary of discussions

Article VII.A.1.d

**TO:** WSBA Board of Governors

**FROM:** Alec Stephens, Co-Chair  
Personnel Committee

**DATE:** July 12, 2021

**RE:** Report and Recommendations from June 24, 2021, Personnel Committee in response to the Climate & Culture Survey Results pertaining to the Board of Governors—Part 1

**Action:** Approve Proposed Recommendations 2 & 3 from the Climate & Culture Survey Results regarding the Board of Governors.

On June 24, the Personnel Committee met for the first time this year and reviewed the Climate & Culture Survey Results and discussed the work that other groups (ELT, ED, Staff) are doing with their recommendations. The Committee acknowledged that it needed to address the recommendations pertaining to the Board of Governors.

The Committee reviewed the action plan drafted by Governors Brent Williams-Ruth and Sunitha Anjilvel to address the four recommendations for the BOG. [See Attached] A summary of the 4 recommendation areas are as follows:

Recommendation # 1: BOG commits to clarify its governance operating model.

Recommendation # 2: BOG engages in team development.

Recommendation # 3: BOG commits to engage in facilitated dialogue with staff about strategic and policy matters.

Recommendation # 4: BOG engages in strategic planning.

The Committee has determined that more work is needed before will proposed action on Recommendation # 1 and intends to bring those recommendations to the August BOG meeting. The Committee has also determined that the Board of Governors is already working on strategic planning and will take no further action on this recommendation.

Accordingly, the Personnel Committee proposes that the Board of Governors Approve the following Recommendations:

**Recommendation # 2: BOG engages in team development.**

- A. That the Board of Governors and the Executive Leadership Team engage in team building together.
- B. For the annual calendar to include a 2-day team building experience at the start of terms in October.
- C. Create a budget for team building separate from regular BOG meeting business.

**Recommendation # 3: BOG commits to engage in facilitated dialogue with staff about strategic and policy matters.**

- A. That the Board of Governors participate in a Quarterly check-in with staff. This will include participation by up to 6 members of the Board of Governors (the President, President-elect, and Treasurer and up to 3 additional Governors selected by the President based on the key issues to be discussed).
- B. Continue the important relationship between the Board of Governors and the Executive Leadership Team, in policy development and implementation.
- C. In recognition of line staff as important stakeholders, bring the voice of the Staff to issues the BOG is considering through a Staff Liaison.

## Overview:

In November 2020, Praxis HR made four recommendations for the BOG to implement in response to the WSBA Climate and Culture Survey

A sub-group of the Personnel Committee was formed to discuss these recommendations and provide action items for each of them. The group members are:

- Brent Williams-Ruth, Board Governor
- Sunitha Anjilvel, Board Governor
- Glynnis Klinefelter Sio, HR Director & Chief Culture Officer
- Terra Nevitt, Executive Director

## Recommendations & Action Plan:

# BOG RECOMMENDATIONS

*Recommendations are listed in the order in which they should be implemented.*

## RECOMMENDATION 1

**BOG commits to clarify its governance operating model.**

A governance operating model allows the BOG to fulfill its governance role by organizing the governance structure and the mechanisms by which governance is implemented. It should:

- Organize operational processes such that the BOG receives the information it requires to effect good governance and management and the business units can conduct their activities in ways that serve strategic ends
- Clarify the roles, responsibilities, reporting lines, and communications to bridge the gap between the governance model and operational realities
- Help people to answer questions such as, "Why are we doing this?" "Is this okay?" "Whose call is this?" and "Who do we need to tell about this?" and to know when to ask such questions
- Sustain governance by creating a feedback loop in which the BOG and EMT can identify and respond to new operational needs

## **Recommendation # 1 – Action Plan & Notes:**

We agree this is a top priority. Not only was it prioritized by Praxis HR, but the other three recommendations are already in progress. We need to clearly delineate the roles of the Board of Governors (BOG), Executive Director (ED), Executive Leadership Team (ELT), and Staff and establish communication norms.

Role clarity:

- BOG and ED need to agree on scope of authority with respective roles
- Understand and respect scopes of authority for decision making and execution of plans
- We need clarity in order to have trust. Everyone (staff, ED, BOG) needs to know their roles and stay in their lanes

Process for communication:

- Create a plan to improve transparency and protect confidentiality

- For example, if BOG asks for something – they should go through Personnel Committee or Staff Liaison
- Consider appointing a Staff Liaison (suggestion: Ana LaNasa-Selvidge, Chief of Staff) to bring staff issues forward to the BOG
- Providing a process for communication will help us avoid triangulation and mitigate distrust and gossip

## **RECOMMENDATION 2**

### **BOG engages in team development.**

Specifically, Praxis HR recommends the BOG engage in teambuilding work. This may include undergoing a Team Effectiveness Assessment, which provides an analysis of the team's strengths and areas for improvement and includes analysis of the team's performance in the areas of Trust, Conflict, Commitment, Accountability, and Results — the five areas of dysfunction on many teams as defined by Patrick Lencioni's "Five Behaviors of Effective Teams" model. Teambuilding work likely will focus on team processes — or the ways in which a team gets its work done — because these comprise the means by which team members' thinking, motivation, impact and behavior enable them to function and meet goals and objectives.

Praxis HR also recommends the BOG participate in a series of practicum sessions to dive deeper into how the five dysfunctions may be impacting their work and leadership effectiveness. The goal of these sessions is to enable team members to fix current dysfunctions and begin enacting positive changes. Each session will provide training and opportunities for practice and reflection.

## **Recommendation # 2 – Action Plan & Notes**

### Team building

- There is already time set aside at July BOG retreat for team building
- Suggestion for ELT and BOG to engage in team building together
- Recommendation that the annual calendar include a 2-day team building experience at the start of terms (October)
- Budget for team building separate from regular BOG meeting business
- Roll into Brian Tollefson's theme of "Common Ground" for FY22

### BOG Training

- Recommendation to train new Governors on how to navigate the BOG world (ex, provide templates, direction on how to add items to the agendas, etc)

## **RECOMMENDATION 3**

### **BOG commits to engage in facilitated dialogues with staff about strategic and policy matters.**

Once per quarter, the BOG president hosts a conversation with staff about what the BOG is working on and its direction, priorities and goals. A dialogue facilitated by a neutral outside facilitator allows participants — in this case, both BOG members and staff members — to arrive at shared understanding by:

- Creating and maintaining a safe dialogue environment that promotes equality of contributions and empathetic listening and encourages the sharing of views
- Encouraging participants to bring assumptions into the open
- Promoting learning and new insights by helping participants see and pay attention to differing perspectives
- Assisting participants in identifying connections and evolving a greater sense of their collective goals and direction

### **Recommendation # 3 – Action Plan & Notes**

Quarterly check in with staff

- Recommendation to broaden this beyond the President (ex, include Personnel Committee Chair and members)
- Continue to have BOG presence at All-Staff Meetings

Staff Liaison(s)

- Understanding staff are important stakeholders, but not policy makers, the best way to bring their voice to the table is through a Staff Liaison (thereby taking ED out of the equation)
- Leverage the ELT: It is the ELT's job to inform staff, gather input, and provide to BOG as appropriate

### **RECOMMENDATION 4**

**BOG engages in strategic planning.**

Specifically, the BOG sets and communicates to the EMT, Direct Managers/Supervisors and staff high-level short- and long-term strategic priorities for WSBA.

### **Recommendation # 4 – Action Plan & Notes**

- This is already being addressed
- The Strategic Planning Council is established and they are working on their goals
- There is a plan to get feedback from various stakeholders before moving forward

#### **Next steps**

The Sub-Committee (Brent and Sunitha) will present their recommendations to the Personnel Committee at the June 24, 2021 meeting. They will request time on the agenda to discuss this publicly, have a proposed motion, course of action, and a plan to go through the rest of the process.