WASHINGTON STATE
BAR ASSOCIATION

Board of Governors Meeting

Meeting Materials

April 16-17, 2021
The Historic Davenport Hotel, Spokane, WA
Zoom, Webcast and Teleconference

Board of Governors Meeting
The Historic Davenport Hotel, Spokane, WA
April 16-17, 2021

WSBA Mission: To serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE
ALL ITEMS ON THIS AGENDA ARE POTENTIAL ACTION ITEMS

To participate remotely: Join via Zoom or Call 1.888.788.0099
Friday, April 16th – Meeting ID: 961 5866 4067 Passcode: 156838
https://wsba.zoom.us/j/96158664067?pwd=bGJmUEZPZFNZMkRjc2s5azNXVFJIUT09

Saturday, April. 17th – Meeting ID: 983 4508 4989 Passcode: 235609
https://wsba.zoom.us/j/98345084989?pwd=NTBabnBncHAzNExJTkdJMHNoS2VEQT09

FRIDAY, APRIL 16, 2021

9:00 AM – CALL TO ORDER

☐ **ANNOUNCE BASIS FOR MOVING INTO EXECUTIVE SESSION PURSUANT TO THE WSBA BYLAWS ARTICLE VII.B.7.a.4**

EXECUTIVE SESSION

☐ **RECEIVE ADVICE FROM LEGAL COUNSEL RE REQUEST FOR INDEMNIFATION OF ATTORNEYS FEES OF ROBIN HAYNES PURSUANT TO THE WSBA BYLAWS ART. XIV**

RETURN TO PUBLIC SESSION

☐ **ACTION RELATED TO EXECUTIVE SESSION DISCUSSION** (if needed)

CONSENT CALENDAR & STANDING REPORTS

☐ **CONSENT CALENDAR**

A governor may request that an item be removed from the consent calendar without providing a reason and it will be discussed immediately after the consent calendar. The remaining items will be voted on *en bloc*.

- Review & Approval of March 18-19, 2021 BOG Meeting Minutes..... 6

☐ **PRESIDENT'S REPORT & PRESENTATION OF SPOKANE COUNTY BAR SPECIAL RECOGNITION**

☐ **EXECUTIVE DIRECTOR'S REPORT**..... 15

☐ **MEMBER AND PUBLIC COMMENTS** (30 minutes reserved)

Overall public comment is limited to 30 minutes and each speaker is limited to 3 minutes. The President will provide an opportunity for public comment for those in the room and participating

remotely. Public comment will also be permitted at the beginning of each agenda item at the President's discretion

☐ **REPORTS OF STANDING OR ONGOING BOG COMMITTEES**

Committees may "pass" if they have nothing to report. Related agenda items will be taken up later on the agenda. Each committee is allocated, on average, 3-4 minutes.

- Executive Committee, Pres. Kyle Sciuchetti, Chair
- APEX Awards Committee, Gov. Russell Knight, Chair
- Personnel Committee, Gov. Jean Kang, Chair
- Legislative Committee, Gov. PJ Grabicki, Chair
- Nominations Review Committee, Gov. Jean Kang & Pres-elect Brian Tollefson, Co-Chairs
- Diversity Committee, Gov. Sunitha Anjilvel, Co-Chair
- Long-Range Planning Committee, Pres. Kyle Sciuchetti, Chair
- Member Engagement Workgroup, Gov. Bryn Peterson, Co-Chair
- Budget & Audit Committee, Treas. Dan Clark, Chair ..... LM
- Equity & Disparity Workgroup, Gov. Alec Stephens
- Supreme Court Bar Licensure Task Force, Gov. Williams-Ruth

AGENDA ITEMS & UNFINISHED BUSINESS

☐ **DISCUSSION OF PROPOSED RULES FOR DISCIPLINE & INCAPACITY**, Gov. Brett Purtzer

- Solo and Small Practice Section Request to Comment, At-Large Member Nicholas Pleasants .. 60
- Criminal Law Section Comment 271

12:00PM – RECESS FOR LUNCH

AGENDA ITEMS & UNFINISHED BUSINESS

☐ **PROPOSED RESOLUTION REGARDING THE BAR EXAM IN WASHINGTON STATE,** Gov. Russell Knight 288

☐ **DIVERSITY COMMITTEE MATTERS**

- Proposed Comment to MCLE Board Proposed Amendments to Apr 11 ..... LM
- Request to Partner with the Joint Minority Mentorship program ..... LM

☐ **LAW CLERK BOARD PROPOSED AMENDMENTS TO APR 6 AND LAW CLERK PROGRAM REGULATIONS,** Board Members Christell Casey and Alexa Ritchie and Associate Director for Regulator Services Bobby Henry 385

5:00 PM – RECESS

SATURDAY, APRIL 17, 2021

9:00 AM – RESUME MEETING

AGENDA ITEMS & UNFINISHED BUSINESS

☐ **FISCAL YEAR 2021 REFORECAST BUDGET,** Treas. Dan Clark and Chief Financial Officer Jorge Perez 430

☐ **DISCUSSION OF DANIEL CROWE V. OREGON STATE BAR AND POTENTIAL IMPLICATIONS FOR MANDATORY BARS**, General Counsel Julie Shankland 444

☐ **PROPOSAL TO CREATE A RURAL PRACTICE COMMITTEE**, Assistant Dean, Professional Development and Externships at Gonzaga University School of Law Laurie Powers, Former WSBA Gov. Paul Swegle, Director of Advancement Kevin Plachy

12:00 PM – RECESS FOR LUNCH

☐ **LONG RANGE PLANNING COMMITTEE MATTERS**, Pres. Kyle Sciuchetti

- Proposed Charter for WSBA Long Range Strategic Planning Council, Past Pres. Rajeev Majumdar..... 565
- Draft Strategic Goals, Gov. Bryn Peterson..... 566
- Communications & Outreach Recommendations, Executive Director Terra Nevitt

SPECIAL REPORTS

☐ **LEGISLATIVE SESSION REPORT,** Gov. PJ Grabicki and Chief Communications Officer Sara Niegowski

☐ **UPDATE ON THE FUTURE OF WORK AT WSBA,** Terra Nevitt, Executive Director

☐ **REPORT ON THE BOARD'S EQUITY, DIVERSITY, AND INCLUSION ACTIVITIES**, Pres. Sciuchetti

☐ **GOVERNOR LIAISON REPORTS**

NEW BUSINESS

☐ **GOVERNOR ROUNDTABLE** (Governors' issues of interest)

4:00 PM - Adjourn

INFORMATION

- General Information
- Financial Reports

The WSBA is committed to full access and participation by persons with disabilities to Board of Governors meetings. If you require accommodation for these meetings, please contact Shelly Bynum at shellyb@wsba.org.

2020-2021 Board of Governors Meeting Issues

MAY (Seattle)
Standing Agenda Items:

- Legislative Report/Wrap-up
- Interview/Selection of WSBA At-Large Governor
- Interview/Selection of the WSBA President-elect
- WSBA APEX Awards Committee Recommendations
- Financials (Information)

JULY (Portland, OR)
Standing Agenda Items:

- Draft WSBA FY2022 Budget
- Court Rules and Procedures Committee Report and Recommendations
- WSBA Committee and Board Chair Appointments
- BOG Retreat
- Financials (Information)

AUGUST (Bosie, ID)
Standing Agenda Items:

- WSBA Treasurer Election
- Financials (Information)

SEPTEMBER (Seattle)
Standing Agenda Items:

- Final FY2022 Budget
- 2021 Keller Deduction Schedule
- WSBF Annual Meeting and Trustee Election
- ABA Annual Meeting Report
- Legal Foundation of Washington Annual Report
- Washington Law School Deans
- Chief Hearing Officer Annual Report
- Professionalism Annual Report
- Report on Executive Director Evaluation
- Supreme Court Meeting
- Financials (Information)

WASHINGTON STATE
BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes
Held Virtually
March 18-19, 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, March 18, 2021 at 9:05AM. Governors in attendance were:

Hunter Abell
Sunitha Anjilvel
Lauren Boyd
Treas. Daniel D. Clark
Matthew Dresden
Peter J. Grabicki
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, Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Director of Advancement Kevin Plachy, Equity & Justice Manager Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, Executive Administrator Shelly Bynum, Chief Communications and Outreach Officer Sara Niegowski, IT Director Jon Dawson, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), James E. MacPherson (WDTL), Practice of Law Board Chair Michael Cherry, and Kari Petrasek.

Executive Session Announcement (link)

Pres. Sciuchetti conducted a roll call to confirm a quorum and announced that the Board would meet in executive session from 9:09AM until 9:45AM as authorized by the WSBA Bylaws Art. VII.B.7.a.2. Pres. Sciuchetti extended the executive session to 10:00AM.

Consent Calendar (link)
Gov. Knight moved for approval of the consent calendar. Motion passed unanimously. Gov. Higginson was not present for the vote.

Moment of Silence (link)
Pres. Sciuchetti asked for the Board to recognize a moment of silence for those killed in Atlanta and the ongoing violence against people of Asian descent. Gov. Williams-Ruth made remarks about the history of discrimination and violence against Asian Americans and suggested people look to the Seattle University Korematsu Center to learn more.

President's Report (link)
Pres. Sciuchetti reported on the hybrid nature of the meeting and the planned hybrid meeting in April in Spokane, WA; that Board made a determination on a matter concerning late fees in executive session; and the election of Governor Elect Serena Sayani for District 7 South. Discussion followed about the transition to in-person meetings. Pres. Sciuchetti indicated that the Spokane meeting would be discussed further with the Executive Committee.

Presentation of Local Hero Awards (link)
Pres. Sciuchetti honored Meredith Gerhart and Emily Nelson as local heroes, nominated by the Thurston County Bar Association and the Government Lawyers Bar Association, respectively. Their remarks followed.

Executive Director's Report (link)
Exec. Dir. Nevitt reported on the remote bar exam, the evaluation of WSBA's ability to transition to a more remote work place, and she welcomed Human Resources Director and Chief Culture Officer Glynnis Klinefelter Sio to the Executive Leadership Team. Discussion followed about the equity and privacy issues related to the remote bar exam and the steps taken by WSBA to address and mitigate them.

Member & Public Comments (link)
There were no comments.

Reports of Standing or Ongoing Board of Governors Committees (link)

Executive Committee. Pres. Sciuchetti reported that the Committee heard about the work of the Council on Public Defense and discussed the commitments made to the Minority Bar Associations, noting that he has appointed Gov. Stephens as a liaison to the Washington Race Equity & Justice Initiative.

APEX Awards Committee. Gov. Knight reported that the deadline for award nominations has been extended to March 31.

Personnel Committee. Pres. Sciuchetti reported that Gov. Anjilvel and Gov. Williams-Ruth would be leading the Committee's work to review and make recommendations with regard to the Employee Climate Survey.

Legislative Committee. The report was deferred to later in the meeting.

Nominations Review Committee. Pres. Elect Tollefson noted that the Committee is meeting monthly and its actions are being reported out to the Board via email.

Diversity Committee. Gov. Anjilvel reported that the Committee is meeting monthly, though it has not set a permanent schedule for the year, and noted that the meetings are open and attendance is encouraged. She noted that Gov. Boyd has joined the Committee. The Committee is working on a long-range plan for a pipeline program.

Long-Range Planning Committee. Pres. Sciuchetti noted that Committee has met several times and is laying the groundwork for establishing a long-range strategic plan. The Committee is meeting regularly on the fourth Thursday of each month.

Member Engagement Workgroup. Gov. Peterson reported that the Committee is exploring how to reach out to and gather feedback from members.

Budget & Audit Committee. Treas. Clark referred to his written report in the materials and noted that one-third of the way through the fiscal year WSBA is running a net gain to the general fund despite having budgeted for use of reserve.

Equity & Disparity Workgroup. Gov. Stephens reported that the workgroup has prioritized two areas of initial focus. A subcommittee Chaired by Laura Sierra is exploring recommendations regarding GR12. A second subcommittee chaired by Kim Sandher is exploring the experiences of the justice system by low-income and people of color. He noted that the workgroup is being led by a steering committee made up of himself, Kim Sandher, Laura Sierra, Terra Nevitt, and Kirsten Abel.

Washington State Task Force on Bar Licensure. Gov. Williams-Ruth noted that the Task Force being chaired by Justice Raquel Montoya-Lewis and Dean Rooksby has met once and established clear guidelines for its work, including that the Task Force will have no impact on upcoming bar exams. He noted that the Task Force's work is not limited to the bar exam but rather the entire

admissions process, including character and fitness, reciprocity, and the APR 6 Law Clerk program. Discussion followed, including where to watch and/or find out additional information about the Task Force.

COVID Task Force. Co-Chair Kevin Plachy referred to the written report and reported that the Task Force has been focused on the member survey regarding COVID-19 impacts, noting that the results have been reported in the March issue of Bar News.

Budget & Audit Committee Items (link)

Fiscal Year 2020 Audit Results & Financial Statements. Mitch Hansen, Partner at Clark Nuber PS reported on his firm's audit of the fiscal year 2020 financial statements. He reported that it was a very efficient process, done entirely remotely this year, noting that WSBA's Finance Team was very well prepared. His presentation included an overview of the scope and deliverables, the audit process, the areas of emphasis, and specific COVID-19 considerations. The result of the audit was an unmodified option, noting that there were no adjustments, which is a good indicator of the quality of WSBA's systems and team. He also presented recommendations for remote work internal controls, flagged new FASB Standards, and the need for network penetration testing, which he noted WSBA is doing.

Limited License Legal Technician License Fee Proposal. Treas. Clark moved to set the 2022 license fee for Limited License Legal Technicians at the same rate as last year, which is $229. Gov. Stephens seconded. Motion passed unanimously. Govs. Abell, Boyd, Higginson, and Peterson were not present for the vote.

Discussion & Resolution Regarding the Bar Exam in Washington State (link)
Gov. Knight presented the purpose and intent of the resolution provided in the materials, noting three areas in which he believes there is widespread agreement: (1) that some form of bar exam is important in terms of protecting the public, (2) the way in which diploma privilege was granted raised some questions, (3) that there are serious concerns that the bar exam may have a discriminatory impact and that should be examined. Discussion followed, including the appropriate timing for a statement and whether the Board has sufficient information to take a position, comments in support of and in opposition to the proposed resolution, the merit of and concerns about the bar exam, public dialogue about the bar exam and law school, opposition by the WSBA Diversity Committee and lack of stakeholder engagement, whether the BOG's representative's hands will be tied to a position, and the makeup of the Task Force.

Gov. Grabicki moved for approval of the resolution. Discussion continued, including on the makeup of the Task Force, timing of taking a position, and the need for stakeholder engagement.

Gov. Stephens moved to postpone action until December or January depending on when the Board of Governors meets. Discussion followed on the motion to postpone. Motion failed 3-9. Gov. Boyd was not present for the vote.

Discussion continued, including clarification that the intent of the resolution is not too bind the engagement of WSBA's representatives to the Court's Task Force, discussion about the role of Task Force participants, and comments in support of and in opposition to the proposed resolution. The Board heard public comment from Jordan Couch about the bar exam as an intentional tool of racial discrimination, former Gov. Andrea Jarmon in opposition to the resolution as premature and also citing its racialized history, and James E. MacPherson in support of the resolution, which puts forth an initial position that reflects the viewpoint of members. Discussion continued, including the Board's June 26, 2020 resolution and its commitment to repairing and rebuilding relationships with Minority Bar Associations, stakeholder engagement, and the ability of Task Force members to fully engage in the process unbound by the Board's resolution.

Gov. Williams-Ruth moved to amend the first bullet point to read "in order to ensure a competent, ethical and diverse legal profession, the WSBA supports a new method of admission that improves our profession through membership and inclusion, rather than exclusion." Pres. Sciuchetti deferred discussion on the motion to amend until after discussion on the proposal to amend the WSBA Bylaws Article III.

Second Read: Proposed Amendments to WSBA Bylaws Art. III Re Inactive Application Fees as Recommended by the LPO and LLLT Boards (link)
LPO Board Member Bill Ronhaar and LLLT Board Member Sara Bove presented the proposal to amend the WSBA Bylaws to waive the application fee under certain circumstances. Gov. Grabicki moved for approval. Motion passed unanimously. Gov. Boyd was not present for the vote.

Discussion & Resolution Regarding the Bar Exam in Washington State (continued) (link)
Discussion continued on the motion to amend, including inclusion of language referencing the diversity of the profession, the extent to which the amendment changes the original intent of the resolution, and a desire to address the Rule 6 program in the resolution. The Board heard public comment from Jordan Couch regarding the lack of efficacy of the bar exam. Discussion continued, including a concern that voices in support of the bar exam will not be well represented at the Task Force absent the Board weighing in, groups that might be left out of the conversation, and a suggestion to look at the California model. Pres. Sciuchetti deferred additional discussion until after the Annual report of the Client Protection Fund Board.

Client Protection Board Annual Report (link)
Chair Carrie Umland presented the annual report of the Client Protection Fund Board, including its history, purpose, and processes. She highlighted claims related to fee disputes as being difficult to resolve. She noted the Fund is maintained as a self-sustaining trust funded by assessments and restitution payments. She noted that in 2020 the Board met four times to consider 52 applications, involving 30 lawyers and that it approved 33 applications, involving 16 lawyers.

Legislative Session Report (link)
Gov. Grabicki reported on the current Washington State legislative session. Discussion followed. The Board took public comment from Nancy Hawkins regarding the WSBA Family Law Section's dissatisfaction with the legislative review process and a request to make this a future agenda item. Pres. Scuichetti suggested that this be a discussion with the Executive Committee.

Discussion & Resolution Regarding the Bar Exam in Washington State (continued) (link)
Discussion continued on the motion to amend. Gov. Dresden moved to amend the amendment to delete the word "new" and delete the words "mentorship and" and add "and treat Rule 6 Law Clerks the same as law school graduates." Discussion followed, including the exclusionary impact of identifying specific groups in the resolution, whether the resolution should be deferred to a later meeting, the need for outreach to the Minority Bar Associations, and the effectiveness of the resolution. The Board heard public comment from James E. MacPherson.

Gov. Williams-Ruth moved to call the question on the motion to amend the amendment. Motion passed 10-1. Gov. Boyd was not present for the vote.

Motion to amend the amendment failed 5-6. Gov. Boyd was not present for the vote.

Motion to amend failed 4-7. Gov. Boyd was not present for the vote.

Gov. Anjilvel moved to remove all references to diversity and inclusion in the resolution. Discussion followed regarding the intent of the original language and the intent of the amendment.

Gov. Stephens moved to postpone the discussion until the April meeting. Discussion followed about having sufficient time to consult with Minority Bar Associations, whether the motion was appropriate in light of the previous motion to postpone, and the merits of the motion to postpone. Motion to postpone failed 5-7. Gov. Boyd was not present for the vote.

Discussion continued on Gov. Anjilvel's motion to amend, including questions about the specific language changes requested.

Gov. Grabicki moved to table. There was a discussion about the appropriateness and the nature of the motion. The motion was clarified to be a motion to postpone indefinitely, which is debatable. Discussion followed on the motion to postpone. Motion to postpone indefinitely was ruled as out of order until the underlying motion to approve the resolution was being taken up. Pres. Sciuchetti deferred further discussion to the next day.

The Board heard public comment from Nancy Hawkins regarding executive session.

Executive Session Announcement (link)
Pres. Sciuchetti conducted a roll call to confirm a quorum and announced that the Board would meet in executive session at 9:09AM to discuss two matters as authorized by the WSBA Bylaws Art. VII.B.7.a.4 and 6. Pres. Sciuchetti returned to public session to announce that the executive session would end at 11:30AM. extended the executive session to 11:40AM.

Discussion & Resolution Regarding the Bar Exam in Washington State (continued) (link)
Discussion resumed on the motion to amend. Gov. Anjilvel withdrew her motion to amend. Discussion followed about the previous motion to table and the effect. It was clarified that if the motion were to pass, it would not require a two-thirds majority vote to re-raise the issue. Gov. Grabicki renewed his motion to table indefinitely. Discussion followed to clarify the motion, in favor of the motion, and expectations of the work that will occur between this meeting and the next discussion, including seeking input from members. Gov. Grabicki withdrew his motion to table. Gov. Knight moved to reconsider the previously defeated motion to table to April. Discussion followed including how outreach will be conducted. Motion to reconsider passed 12-1.

Discussion followed on the motion to table to April. Govs. Anjilvel, Dresden, Clark, Abell, Knight, and Peterson volunteered to serve on a subcommittee to engage in outreach. The Board heard public comment from James E. MacPherson in favor of the motion and regarding outreach. Motion passed 11-1. Gov. Higginson was not present for the vote.

Discussion regarding outreach continued. Pres. Sciuchetti created an ad hoc task force, appointed Govs. Anjilvel, Dresden, Clark, Abell, Knight, and Peterson, and suggested that the group work with Chief Communication Officer on broad outreach to the membership.

Second Read: WSBA Bylaws Amendments to Article VI Re Governor Elections
Discussion was deferred to the April meeting.

Pro Bono & Public Service Committee Comment on the MCLE Board's Suggested Amendments to APR 11 (link)
Chair Bonnie Rosinbum presented the request to comment. Discussion followed in support of the request to comment. Gov. Clark moved for approval. Motion was approved unanimously. Govs. Boyd, McBride, Peterson, and Williams-Ruth were not present for the vote.

Update on the Future of Work and WSBA (link)
Exec. Dir. Nevitt presented an update on the future of work. Discussion followed about having the ability to change course if the transition doesn't work as well as expected, confirmation that cost savings is a goal, how subletting might work, the desire for regular updates on this project, and employee views about the office location.

Creation of a Technology Committee (link)
Gov. Dresden presented his idea to create a Technology Committee and his reasons for it noting that he was seeking to learn if there was sufficient interest to bring back a proposal in April. Discussion followed, including support for the idea and the use of resources required to create a new committee.

Governor Liaison Reports (link)
Gov. Williams-Ruth made comments on the liaison role generally as well as specific work with the World Peace through Law Section, noting that he will be moderating one of their upcoming "listen in" sessions. Gov. Dresden provided updates regarding the Pro Bono and Public Service Committee, noting that they are actively seeking new committee members; the Creditor Debtor Section and its legislative work; the Board of Bar Examiners; and the Office of Civil Legal Aid and its legislative work. Gov. Anjilvel reported on Criminal Justice Task Force chaired by Professor Chang at Seattle University. She noted the goal of the task force is to present a report to the Supreme Court regarding criminal justice reform. She noted that the meetings are open for all to attend. Gov. Anjilvel also shared an update from the Practice of Law Board summarizing its current work. Finally, she reported on the work of the Solo & Small Practice Section and the Civil Remote Jury Trials Work Group and noted her intent to connect with the Elder Law Section. Gov. Stephens reported on his ongoing relationship with the Civil Right Section. Pres. Sciuchetti reported on his conversations with the Government Lawyers Bar Association, noting that he has appointed Gov. Boyd as liaison to that association.

ABA Mid-Year Meeting Report (link)
ABA Delegates Jaime Hawk and Maggie Smith reported on the ABA's second-ever all remote meeting. Delegate Hawk provided some programming highlights. Delegate Smith provided an overview on the 30 resolutions approved at the meeting. Discussion followed, including encouragement to attend ABA meetings.

Governor Equity, Diversity, and Inclusion Reports (link)

Pres. Sciuchetti referenced the Board's response to the letters from the Minority Bar Associations. He noted that he has appointed to the Gov. Stephens as a liaison to the Race Equity & Justice Initiative. Discussion followed about the intent of this agenda item and individual reports about work within and outside of WSBA.

Governor Roundtable (link)

Gov. Peterson urged that we continue to work to expand our Member Wellness Program. Discussion followed. Gov. Higginson requested additional work be done to consolidate all of our policies and resolutions in one place. Discussion followed regarding interest in such work and how to move it forward. Gov. Higginson also raised a concern about the use of Box. Discussion followed. Gov. Higginson raised a member question about getting Bar News sent to their home address. Discussion followed. Gov. Williams-Ruth made a request that we work to avoid late materials, late agenda items, etc. Gov. Stephens apologized for his remarks regarding a policy being discussed at the Diversity Committee Meeting. Pres. Elect Tollefson requested that all the meetings get sent out as Outlook meeting invitations. He also thanked the Board and the employees for keeping the work going and having a generally smooth transition to remote work. Discussion followed. Govs Abell and Grabicki presented on the rural practice initiative. Gov. Abell also encouraged governors to solicit nominations for the APEX Awards.

ADJOURNMENT

There being no further business, Pres. Sciuchetti adjourned the meeting at 4:18PM on Friday, March 19, 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: April 9, 2021

RE: Executive Director's Report

COVID19 Response

The WSBA Coronavirus Internal Task Force ("Internal Task Force") has continued working to deliver resources and programs to support WSBA members and the public during these unprecedented times. Please review WSBA's COVID19 Resource Page at https://www.wsba.org/for-legal-professionals/member-support/covid-19 for complete information.

The External Task Force, with support from the Internal Task Force, distributed a survey to all WSBA members and over the past couple of months has collaborated with the internal task force in analyzing the data. The purpose of the survey is to better inform WSBA on the impact of the pandemic on the legal profession. The task force has worked with WSBA Communications and Outreach Department to have the survey results published in the upcoming issue of The Bar News. The task force recently developed an executive summary and infographic to add the WSBA COVID Resource Page and to distribute more broadly in Take Note and to various list serves. In answer to some of the concerns by members of keeping up with the differing court procedures throughout the state, the task force is working on a WSBA branded resource sheet that lists each of the courts in all of the WA Counties along with links to their websites that contain the various procedural orders for that specific court. Once completed the resource will be distributed to WSBA members on the WSBA COVID Resource Page, through Take Note and the various list serves.

2021 Board of Governor Elections Update

Congratulations to Treasurer Dan Clark for his re-election to serve as Governor for District 4 and Francis Adewale elected as Governor for District 5. A reminder that Serena Sayani has been declared the winner for District 7-South. Elections in Congressional Districts 1, 4, and 5 concluded April 1. The results are listed below. Because no candidate received 50% of the vote for Congressional District 1, we will be conducting a run-off election with candidates Sunitha Anjilvel and Paul W. Taylor. The run-off election begins April 13 and ends April 23. If a member contacts you regarding their ballot, please forward their email to parise@wsba.org.

Application deadline for the At-Large Young Lawyer seat is April 20. Application materials should be emailed to barleaders@wsba.org. All applicants will be interviewed by the Washington Young Lawyers Committee (WYLC) on Saturday, May 8. The WYLC will forward at least three candidates for inclusion on the ballot. The election for the At-Large Young Lawyer seat is June 1 – June 15. Click here to learn more.

Application deadline for President-elect is April 20. Application materials should be emailed to barleaders@wsba.org. Candidates will be interviewed by the full Board at the May Board meeting. President-elect is determined by a vote of the Board. Click here to learn more.

2021	WSBA Board of Governor Election Results	
District 1	Sunitha Anjilvel (97 votes, 46%) G. Kim Risenmay (41 votes, 20%) Paul Spatafore (15 votes, 7%) Paul W. Taylor (56 votes, 27%)	Total Electorate: 2,344 Total Votes: 209 (8.9%)
District 4	Daniel D. Clark (164 votes, 68%) Alan Tindell (77 votes, 32%)	Total: Electorate 1,152 Total Voters: 241 (20.9%)
District 5	Francis Adewale (225 votes, 54%) Michael Cressey (56 votes, 14%) Sarah El Ebiary (43 votes, 10%) Stephen Eugster (89 votes, 22%)	Total Electorate: 2,569 Total Votes: 413 (16.1%)
		Total Electorate: 6,065 **Total Votes: 863 (14.2%)**

February Bar Exam Results

Grading of the February Bar Exam, which was our first ever conducted remotely is complete. Congratulations to the 132 candidates that passed the exam. You can find the full pass list on our website on April 10. The overall pass rate was 63.2%, which is an increase over prior exams.

	Candidates	Overall Pass Rate	First Time Pass Rate	Repeat Pass Rate
February 2021	209	63.2%	73.7%	35.1%
February 2020	296	47.6%	55%	39%
February 2019	315	50.8%	61.1%	41.6%
February 2018	317	49.2%	64%	34%
February 2017	355	57.7%	67.2%	47.7%

Conducting a remote exam gave rise to a number of novel issues, questions, and concerns specifically relating to equity and privacy. Chief Regulatory Counsel Renata Garcia, Admissions Manager Gus Quinones, and their team took these concerns seriously and provided a thoughtful approach to administering the exam to the best of our abilities. We received 58 responses to our post-bar exam survey (a 28% response rate). When asked for their overall exam experience on a sale of 1-10 (10 being a great experience), the weighted average was 7. Among bar exam respondents, 60.3% would chose to take the exam remotely if given the option, with 29.3% preferring an in-person

exam, and 10.3% having no preference. By comparison, 79% of LPO respondents and 58.3% of LLLT respondents would chose a remote exam. We will continue to consider stakeholder input and exam taker experiences as we prepare to administer the July exam remotely, including hosting a question and answer session. Currently 736 people are registered for the July licensing exams.

Suggested Amendments Related to the Task Force on the Escalating Cost of Civil Litigation Published for Comment

The Washington Supreme Court has ordered the publication for comment of the GR 9 package related to the suggested amendments to the Civil Rules. The rules will be published for comment beginning January 2022 and the comment period will close on April 30, 2022. These rule proposals are the result of over nearly 10 years of work by three different task forces with considerable stakeholder input at every stage in the process. The Court's order, the GR 9 Cover Sheet and the proposed amendments are attached.

Suggested Amendments to CRLJ 17, CRLJ 56, CRLJ 60, and ER 413 Published for Comment

The Washington Supreme Court has ordered the publication for comment the above described suggested amendments as proposed by the WSBA Court Rules and Procedures Committee and recommended by the Board of Governors on November 13, 2020. The rules will be published for comment beginning May 1, 2021 and the comment period will close on July 1, 2021. The Court's order, the GR 9 Cover Sheets, and the proposed amendments are attached.

Suggested Amendment to RPC 1.11 Comment 2 Adopted

The Washington Supreme Court has expeditiously adopted the Board of Governor's suggested amendment to RPC 1.11 Comment 2 relating to special conflicts of interest for former and current government officers and employees. The amendment was proposed by the WSBA Committee on Professional Ethics and approved by the Board on November 13, 2020. The Court's order and the revised rule are attached.

Attachments

February Bar Exam Press Release
Washington Supreme Court Order No. 25700-A-1343
Washington Supreme Court Order No. 25700-A-1339
Washington Supreme Court Order No. 25700-A-1337
Litigation Update
WSBA Demographics Report

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Terra Nevitt, Executive Director

DATE: April 9, 2021

RE: Continued discussion of proposed resolution in support of a bar exam

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ACTION: Approve proposed resolution in support of a bar exam

At its March 18-19, 2021 meeting, the Board of Governors considered the above described resolution. The Board moved to table the proposal to the April meeting in order to gather additional member feedback. Attached, please find the materials originally presented at the March meeting, as well as the member feedback we have received.

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS RELATED TO THE TASK FORCE ON THE ESCALATING COST OF CIVIL LITIGATION: NEW CR 3.1—INITIAL CASE SCHEDULES; CR 16—PRETRIAL PROCEDURE AND FORMULATING ISSUES; CR 26—GENERAL PROVISIONS GOVERNING DISCOVERY; CR 77—SUPERIOR COURTS AND JUDICIAL OFFICERS	)	**O R D E R** NO. 25700-A-1343

The Washington State Bar Association, having recommended the suggested amendments related to the task force on the escalating cost of civil litigation: NEW CR 3.1—Initial Case Schedules; CR 16—Pretrial Procedure and Formulating Issues; CR 26—General Provisions Governing Discovery; CR 77—Superior Courts and Judicial Officers, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto re to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following

addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of April, 2021.

For the Court

González C.J.
CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Amendments to

SUPERIOR COURT CIVIL RULES

Suggested New CR 3.1 and Suggested Amendments to CR 16, 26, 77

A. Proponent

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B. Spokespersons

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C. Purpose

The proponent recommends adoption of suggested amendments to the Superior Court Civil Rules (CR) with a focus on modifying discovery rules to decrease the cost of litigation.

I. History of the Suggested Amendments

Escalating Cost of Civil Litigation Task Force

In 2011, the WSBA Board of Governors (Board) chartered a task force titled the Task Force on the Escalating Cost of Civil Litigation (ECCL Task Force). The Board charged the ECCL Task Force with analyzing civil litigation processes in Washington courts and to make recommendations

that would improve access and reduce costs.[1] The ECCL Task Force studied the issues for several years and submitted recommendations to the Board in June 2015.[2] In its final report, the ECCL Task Force offered a variety of rule revision options that the Task Force expected would reduce barriers to access or costs or both.[3]

At its June 2016 meeting, the Board voted on each of the ECCL Task Force recommended options, approving some and rejecting others. In July 2016, the Board issued its Report on the Recommendations of the Escalating Costs of Civil Litigation Task Force, which explained its decision on each option.[4] Among the Board-approved options were provisions for initial case schedules, individual judicial case assignments, mandatory discovery conferences, mandatory initial disclosures, cooperation as a guiding principle, pretrial conferences, and mandatory early alternative dispute resolution.[5]

Civil Litigation Rules Drafting Task Force

On November 18, 2016, in the wake of its vote on the ECCL Task Force recommendations, the Board chartered the Civil Litigation Rules Drafting (Rules Drafting) Task Force. The purpose of the Rules Drafting Task Force was to draft proposed civil rules to implement the ECCL options ratified by the Board.[6] The Rules Drafting Task Force was further charged with soliciting and receiving input from stakeholders, including lawyers, judges, and other interested persons or entities, on its suggested amendments.

Over the next fifteen months, the Rules Drafting Task Force met, drafted, and received input from stakeholders. Although some stakeholder input reflected disagreement with decisions previously made by the Board, the drafting work of the Task Force focused on implementing the options ratified by the Board in June 2016.

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[1] The ECCL Task Force Charter and related materials are available at https://www.wsba.org/connect-serve/committees-boards-other-groups/civil-litigation-rules-drafting-tf/escalating-cost-of-civil-litigation-task-force.

[2] TASK FORCE ON THE ESCALATING COST OF CIVIL LITIGATION, FINAL REPORT TO THE BOARD OF GOVERNORS (June 15, 2015), https://www.wsba.org/docs/default-source/legal-community/committees/eccl-task-force/reports/eccl-final-report-06152015.pdf?sfvrsn=3a993cf1_4.

[3] *Id.* at 2.

[4] BOARD OF GOVERNORS, REPORT OF THE BOARD OF GOVERNORS OF THE WASHINGTON STATE BAR ASSOCIATION ON THE RECOMMENDATIONS OF THE ESCALATING COSTS OF CIVIL LITIGATION TASK FORCE (July 2016), https://www.wsba.org/docs/default-source/legal-community/committees/civil-litigation-rules-drafting-task-force/bog-response-to-eccl-report-072016.pdf?sfvrsn=e64c06f1_5.

[5] *Id*. at 2-4.

[6] The Civil Litigation Rules Drafting Task Force Charter and related materials are available at https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/civil-litigation-rules-drafting-task-force.

After a first reading in July 2018, the Rules Drafting Task Force submitted its suggested rule amendments for approval at the Board's September 27-28, 2018 meeting.[7]

At that meeting, citing concern that there had been insufficient stakeholder input on the Task Force recommendations, the Board elected to postpone action on the draft amendments and to convene a work group to gather additional stakeholder input and report back to the Board.

Civil Litigation Rules Revision Work Group

In September 2019, the Board chartered a second drafting entity, the Civil Litigation Rules Revision (Rules Revision) Work Group, to solicit and incorporate additional stakeholder input, with a particular emphasis on stakeholders with civil litigation experience and sophistication. The Board tasked the Rules Revision Work Group with revising, as appropriate, the Task Force's suggested amendments to reflect the additional stakeholder input.

At the Board's September 17-18, 2020 meeting, the Rules Revision Work Group submitted revised suggested amendments.[8] The Board unanimously approved the suggested amendments. With the exception of one CR 26 subsection regarding privilege logs, the proposed amendments were endorsed by all stakeholders.

II. SUGGESTED AMENDMENTS

The following observations explain the purpose of the suggested rule amendments. In addition, to provide context about development of the suggested amendments, Section III identifies and explains a number of potential suggested amendments that ultimately were not approved by the Board for submission as part of the suggested rule set.

New CR 3.1: Adopting a statewide case schedule. Suggested CR 3.1 is a new rule that would impose a statewide initial case schedule. Suggested CR 3.1(a) incorporates some aspects of the King County and Pierce County local rules regarding case schedules, including requiring disclosure of expert witnesses and a discovery deadline. Suggested CR 3.1(a) provides for case-schedule deadlines stated in terms of weeks before the trial date, which would be set for 52 weeks after the action is commenced. Suggested sections (b)-(d) of CR 3.1 are procedural, dictating the timing of case schedule deadlines, service requirements, and the availability of modifications to the case schedule. Suggested sections (e)-(f) of CR 3.1 provide for exemptions from the initial case-schedule requirement for specific types of actions; in other matters,

[7] Memorandum from the Rules Drafting Task Force Chair to Board (Sept. 12, 2018), Board Meeting Public Session Materials (Sept. 27-28, 2018), at 162-270. Past Board meeting materials are available at https://www.wsba.org/about-wsba/who-we-are/board-of-governors/board-meeting-minutes.

[8] The Rules Revision Work Group Charter, its proposal to the Board, and related materials, including comments from stakeholders and a summary of those comments, are available at https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Civil-Litigation-Rules.

exemptions may be granted on motion or the court's initiative. CR 3.1(g) sets forth a party's ongoing obligation to timely respond to discovery requests.

CR 16: Adopting new statewide pretrial procedures. It is widely agreed that pretrial scheduling orders used in King and Pierce counties, as well as in the federal district courts, achieve significant time savings at trial. Accordingly, suggested new CR 16(a) would require that parties submit a joint pretrial report to the court. Under the suggested rule, the pretrial report must include a summary of the case, agreed material facts, the material issues in dispute, a list of expert witnesses, an exhibit index, the estimated length of trial, suggestions for shortening the trial, and a statement regarding whether alternative dispute resolution would be useful. Suggested amendments to current CR 16(a) (renumbered as CR 16(b)) modify and add to the topics the trial judge may consider at a pretrial conference. Existing CR 16(b) is consequently renumbered as CR 16(c) with additional clarifying revisions.

CR 26(b)(5): Curbing abuse of case schedule deadlines. Many observers agree that, regrettably, parties in many instances manipulate the discovery process by refusing to respond to discovery requests until the case-schedule deadline. Such conduct impedes discovery, subverting the purpose of case schedules to create a bright-line cutoff for completion of the discovery process. The rules should not enable a party flatly to refuse to respond to appropriate discovery requests until the case-schedule deadline. Thus, suggested amendments to CR 26(b)(5) make it clear that the tactic is inappropriate, enabling trial courts to deter abusive discovery conduct. *See also* suggested CR 3.1(g).

CR 26(e): Continuing duty to supplement discovery responses. Existing CR 26(e) defines the extent to which a party has a duty to supplement responses previously given in response to discovery requests. The rule specifies that a party has no continuing duty to supplement responses, but then defines a number of exceptions to the general rule where supplementation is required under specified circumstances. Under the current system, to obtain supplementation a party often must either expressly demand it or propound new discovery specifically requesting supplementation. Suggested amendments to CR 26(e) would impose a general, continuing duty to supplement all discovery responses, expediting the discovery process, making more discoverable information available sooner, and better ensuring full disclosure before trial.

CR 26(e): Clarifying the form of supplements. Often when a party supplements a discovery response, the supplementing party includes the totality of the prior discovery response, including all the unchanged responses. This places an unnecessary burden on the responding party to search out and find supplemental information, an expenditure of time that serves no

useful purpose. An additional suggested amendment to CR 26(e) specifies that supplemental responses shall include only the supplemental information.

CR 26(g): Prohibiting general objections. Parties routinely make so-called general objections. At present, the Civil Rules require each objection to interrogatories and requests for production be answered specifically. CR 33(a) ("the reasons" for objection to an interrogatory must be stated in lieu of an answer); CR 34(b)(3)(B) (party must state a "specific objection" to a request for production of documents, including the reasons). Despite these specificity requirements, because the rules do not expressly prohibit general objections, some parties assert that they are appropriate. A recipient of a general objection is typically obliged to wrangle with the objection proponent over the validity of the objection. This temporarily thwarts the requesting party's ability to obtain complete responses, delays the discovery process, and can lead to an increase in discovery motions.

For these reasons, an express and overarching prohibition on the use of general objections is warranted. Federal case law rejects the use of general objections. *See, e.g.*, *Hager v. Graham*, 267 F.R.D. 486, 492 (N.D.W. Va. 2010) ("General objections to discovery, without more, do not satisfy the burden of the responding party under the [FRCP] to justify objections to discovery because they cannot be applied with sufficient specificity to enable courts to evaluate their merits."); *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. of the Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) ("Blanket refusals inserted in to a response ... are insufficient to assert a privilege."); *Chubb Integrated Sys., Ltd. v. Nat'l Bank of Wash.*, 103 F.R.D. 52, 58 (D.D.C. 1984) ("[A] general objection [does not] fulfill [a party's] burden to explain its objections."). The suggested amendment to CR 26(g) makes it clear that general objections are inappropriate.

CR 26(g): Requiring a privilege log. Washington case law has made clear that when otherwise discoverable material is withheld based on an assertion of privilege, a "privilege log" should be provided. Parties infrequently provide a privilege log unless it is requested, and it takes additional time to prepare and obtain a previously unprovided privilege log, sometimes weeks or months, delaying the discovery process. In some instances, the parties are in dispute about whether a privilege log must be provided and, if so, what its content should be, requiring judicial intervention and further delaying the discovery process. Accordingly, an additional suggested amendment to CR 26(g) requires a privilege log as a part of any response in which documents or information are being withheld on grounds of privilege. Codifying the necessity of a privilege log will expedite discovery and deter non-meritorious assertions of privilege. The language for the suggested amendment to CR 26(g) is taken almost verbatim from *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 538, 199 P.3d 393 (2009).

CR 77(i): Assigning a judge. Assignment of a specific judge to a specific case creates efficiencies through the development of ongoing knowledge and experience developed by the assigned judge in a particular case. This can save substantial time otherwise needed to educate the judge about the case when the parties come before the court on motions and certainly at trial. A suggested amendment to CR 77(i) requires the assignment of a specific judge to every case, but provides for alternatives in the event that pre-assignment is not feasible in a particular jurisdiction.

III. AMENDMENTS CONSIDERED BUT NOT SUGGESTED

The Board declined to endorse several ECCL Task Force recommendations on grounds that they would have unintended consequences or would not effectively promote efficiencies and cost reductions. What follows is a brief explanation of those proposals.

Duty of cooperation. To further the overarching goal of cost reduction through cooperation among parties, the Rules Drafting Task Force proposed a number of amendments, including language in CR 1 requiring parties to reasonably cooperate with one another and the court, as well as a provision in CR 11 authorizing imposition of sanctions for failure to reasonably cooperate. The term cooperation was not defined. These amendments were not approved for submission because of the absence of a workable definition of cooperation, the sufficiency of existing remedies for noncooperation, and the potential for the cost of litigation to increase owing to an increase in disputes about whether a party sufficiently cooperated. Despite the importance of cooperation, it was concluded that its codification as a rule would not decrease litigation costs and would likely generate unintended and undesirable outcomes.

Mandatory early mediation. The Rules Drafting Task Force included a new mandatory early mediation requirement and procedures, which would have imposed an early-mediation deadline of eight months before trial, subject to modification by motion. These amendments were not approved for submission because in the great majority of cases parties would likely seek to extend the early-mediation deadline, which would only serve to increase the cost of litigation. In addition, it was concluded that early mediation could result in unjust results in some cases, such as premature settlements or failed early mediation efforts that generate the need for additional costly mediations.

Mandatory discovery disclosures. To implement the concept of mandatory discovery disclosures, the Rules Drafting Task Force drafted amendments to CR 26 that would have required mandatory initial disclosures of certain information and documents by a deadline in the initial case schedule. These amendments were not approved for submission because the "one size fits all" approach fails to account for the specific subject matter of a case, because many practitioners consider initial disclosure deadlines to be only a "check-the-box"

requirement that actually increases the cost of litigation, because practitioners believe the federal model has not achieved the goal of streamlining discovery as intended, and because even in jurisdictions that require initial disclosure, parties essentially engage in the same quantum of formal discovery.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
NEW CR 3.1 INITIAL CASE SCHEDULES

CR 3.1 INITIAL CASE SCHEDULES

(a) Initial Case Schedule. When a summons and complaint are filed, and unless exempted pursuant to this rule, the court shall, in addition to any Local Rule case schedule requirements, issue an initial case schedule with at least the following deadlines:

1. Expert Witness Disclosures.

   A. Each party shall serve its primary expert witness disclosures no later than 26 weeks before the trial commencement date.

   B. Each party shall serve its rebuttal expert witness disclosures no later than 20 weeks before the trial commencement date.

2. Discovery Cutoff. The parties shall complete discovery no later than 13 weeks before the trial commencement date.

3. Dispositive Motions. The parties shall file dispositive motions no later than nine weeks before the trial commencement date.

4. Pretrial Report. The parties shall file a pretrial report no later than four weeks before the trial commencement date.

5. Trial Commencement Date. The court shall commence trial no later than 52 weeks after the summons and complaint are filed.

(b) Computation of Time. If application of subsection (a) would result in a deadline falling on a Saturday, Sunday, or legal holiday, the deadline shall be the next day that is not a Saturday, Sunday, or legal holiday.

(c) Service. The party instituting the action shall serve a copy of the initial case schedule on all other parties no later than ten days after the court issues it.

(d) Permissive and Mandatory Case Schedule Modifications.

1. The court may modify the case schedule on its own initiative or on a motion demonstrating (a) good cause; (b) the action's complexity; or (c) the

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impracticability of complying with this rule. At a minimum, good cause requires the moving party to demonstrate due diligence in meeting the case schedule requirements. As part of any modification, the court may revise expert witness disclosure deadlines, including to require the plaintiff to serve its expert witness disclosures before the defendant if the issues in the case warrant staggered disclosures.

2. No case schedule may require a party to violate the terms of a protection, no-contact, or other order preventing direct interaction between persons. To adhere to such orders, the court shall modify the case schedule on its own initiative or on a motion.

(e) Exemptions by Action Type. The following types of actions are exempt from this rule, although nothing in this rule precludes a court from issuing an alternative case schedule for the following types of actions:

RALJ Title 7, appeal from a court of limited jurisdiction;

RCW 4.24.130, change of name;

RCW ch. 4.48, proceeding before a referee;

RCW 4.64.090, abstract of transcript of judgment;

RCW ch. 5.51, Uniform Interstate Depositions and Discovery Act;

RCW ch. 6.36, Uniform Enforcement of Foreign Judgments Act;

RCW ch. 7.06, mandatory arbitration appeal;

RCW ch. 7.16, writs;

RCW ch. 7.24, Uniform Declaratory Judgments Act;

RCW ch. 7.36, habeas corpus;

RCW ch. 7.60, appointment of receiver if not combined with, or ancillary to, an action seeking a money judgment or other relief;

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RCW ch. 7.90, sexual assault protection order;

RCW ch. 7.94, extreme risk protection order;

RCW Title 8, eminent domain;

RCW ch. 10.14, anti-harassment protection order;

RCW ch. 10.77, criminally insane procedure;

RCW Title 11, probate and trust law;

RCW ch. 12.36, small claims appeal;

RCW Title 13, juvenile courts, juvenile offenders, etc.;

RCW Title 26, domestic relations;

RCW 29A.72.080, appeal of ballot title or summary for a state initiative or referendum;

RCW ch. 34.05, Administrative Procedure Act;

RCW ch. 35.50, local improvement assessment foreclosure;

RCW ch. 36.70C, Land Use Petition Act;

RCW ch. 51.52, appeal from the board of industrial insurance appeals;

RCW ch. 59.12, unlawful detainer;

RCW ch. 59.18, Residential Landlord-Tenant Act;

RCW ch. 71.05, mental illness;

RCW ch. 71.09, sexually violent predator commitment;

RCW ch. 74.20, support of dependent children;

RCW ch. 74.34, abuse of vulnerable adults;

RCW ch. 84.64, lien foreclosure;

SPR 98.08W, settlement of claims by guardian, receiver, or personal representative;

SPR 98.16W, settlement of claims of minors and incapacitated persons; and

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WAC 246-100, isolation and quarantine.

(f) Other Exemptions. In addition to the types of actions identified in subsection (e), the court may, on a party's motion or on its own initiative, exempt any action or type of action for which compliance with this rule is impracticable.

(g) Timeliness of Discovery Responses. Imposition of a case schedule deadline does not excuse a party's obligation to timely respond to discovery propounded under these Rules. Parties shall not respond to discovery requests indicating a response will be provided by the case schedule deadline.

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 16 PRETRIAL PROCEDURE AND FORMULATING ISSUES

CR 16 PRETRIAL PROCEDURE AND FORMULATING ISSUES

(a) ~~Hearing Matters Considered~~. ~~By order, or on the motion of any party, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:~~

~~(1) The simplification of the issues;~~

~~(2) The necessity or desirability of amendments to the pleadings;~~

~~(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;~~

~~(4) The limitation of the number of expert witnesses;~~

~~(5) Such other matters as may aid in the disposition of the action.~~

Pretrial Report. All parties shall participate in completing a joint pretrial report filed no later than the date provided in the case schedule or court order. The pretrial report shall contain the following:

(1) A brief nonargumentative summary of the case;

(2) The agreed material facts;

(3) The material issues in dispute;

(4) The names of all lay and expert witnesses, excluding rebuttal witnesses;

(5) An exhibit index (excluding rebuttal or impeachment exhibits);

(6) The estimated length of trial and suggestions for shortening the trial; and

(7) A statement whether additional alternative dispute resolution would be useful before trial.

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 16 PRETRIAL PROCEDURE AND FORMULATING ISSUES

(b) Pretrial Conference. Each attorney with principal responsibility for trying the case, and each unrepresented party, shall attend any scheduled pretrial conference. At a pretrial conference, the court may consider and take appropriate action on the following matters:

(1) Formulating and simplifying the issues and eliminating claims or defenses;

(2) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and addressing evidentiary issues;

(3) Adopting special procedures for managing complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(4) Establishing reasonable time limits for presenting evidence;

(5) Establishing deadlines for trial briefs, motions in limine, deposition designations, proposed jury instructions, and any other pretrial motions, briefs, or documents;

(6) Resolving any pretrial or trial scheduling issues; and

(7) Facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(c) Pretrial Order. The court shall ~~make~~ enter an order ~~which recites~~ reciting the following:

(1) the action taken at the conference~~,~~;

(2) the amendments allowed to the pleadings~~,~~; and

(3) the parties' agreements ~~made by the parties as to~~ on any ~~of the~~ matters considered~~,~~.

The pretrial order ~~and which~~ limits the issues for trial to those not disposed of by admissions or agreements of counsel~~;~~ and ~~such order when entered~~ controls the subsequent course of the action~~,~~. However, the trial court should freely amend the order at trial absent prejudice demonstrated by the amendment.~~unless modified at the trial to prevent manifest injustice. The court in its discretion~~

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~~may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.~~

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SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 GENERAL PROVISIONS GOVERNING DISCOVERY

CR 26 GENERAL PROVISIONS GOVERNING DISCOVERY

(a) [Unchanged.]

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) – (4) [Unchanged.]

(5) *Trial Preparation: Experts*. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. A case schedule deadline to disclose experts does not excuse a party timely responding to expert discovery. Delayed disclosure of an expert constitutes a violation of CR 37 if the trial court finds the responding party delayed based on a case schedule deadline. (ii) Unless these rules impose an earlier deadline, and in no event later than the deadline for primary or rebuttal expert witness disclosures imposed by a case schedule or court order, each party shall identify each person whom that party expects to call as a primary or rebuttal expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

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(B) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(C~~B~~) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(D~~C~~) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(B)~~(A)(ii)~~ and (b)(5)(C)~~(B)~~ of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(B)~~(A)(ii)~~ of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(C)~~(B)~~ of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) – (8) [Unchanged.]

(c) - (d) [Unchanged.]

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response has a duty to seasonably supplement or correct that response with information thereafter acquired. Supplementation or correction shall set forth only the information being supplemented or corrected.~~that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:~~

~~(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:~~

~~(A) the identity and location of persons having knowledge of discoverable matters, and~~

~~(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert witness is expected to testify, and the substance of the expert witness's testimony.~~

~~(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:~~

~~(A) the party knows that the response was incorrect when made, or~~

~~(B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.~~

~~(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.~~

~~(4)~~ Failure to seasonably supplement or correct in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

(f) [Unchanged.]

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a ~~party~~ represented party ~~by an attorney~~ shall be signed by at least one attorney of record in the attorney's ~~individual~~ name., ~~whose address shall be stated.~~ A non-represented party ~~who is not represented by an attorney~~ shall sign the request, response, or objection ~~and state the party's address~~. Objections shall be in response to the specific request objected to. General objections shall not be made. No objection based on privilege shall be made without identifying with specificity all matters the objecting party contends are subject to

the privilege including the type of item, the number of pages, and unless otherwise protected the author and recipient or if protected, other information sufficiently identifying the item without disclosing protected content. The signature of the attorney or party constitutes a certification that the attorney or the party has read the request, response, or objection, and that to the best of their knowledge, information, and belief formed after a reasonable inquiry it is:

(1) – (3) [Unchanged.]

(h) – (j) [Unchanged.]

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 77 SUPERIOR COURTS AND JUDICIAL OFFICERS

CR 77 SUPERIOR COURTS AND JUDICIAL OFFICERS

(a) - (h) [Unchanged.]

(i) ~~Sessions Where More than One Judge Sits – Effect of Decrees, Orders, etc.~~ ~~[Reserved. See RCW 2.08.160.]~~ **Judicial Assignment.** The court should assign a judicial officer to each case upon filing. The assigned judicial officer shall conduct all proceedings in the case unless the court reassigns the case to a different judicial officer on a temporary or permanent basis. In counties where local conditions make routine judicial assignment impracticable, the court may assign any case to a specific judicial officer on a party's motion or on its own initiative.

(j) - (n) [Unchanged.]

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THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CRLJ 17—PARTIES PLAINTIFF AND DEFENDANT; CAPACITY; CRLJ 56—SUMMARY JUDGMENT; CRLJ 60—RELIEF FROM JUDGMENT AND ORDER; ER 413—IMMIGRATION STATUS	)	**ORDER** NO. 25700-A-1339

The Washington State Bar Association Court Rules and Procedures Committee, having recommended the suggested amendments to CRLJ 17—Parties Plaintiff and Defendant; Capacity; CRLJ 56—Summary Judgment; CRLJ 60—Relief from Judgment and Order; ER 413—Immigration Status, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites on May 1, 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than July 1, 2021. Comments may be sent to the following

addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of April, 2021.

For the Court

González C.J.
CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment

CRLJ 17 – PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Jefferson Coulter Chair, WSBA Court Rules and Procedures Committee
C. Purpose: Change all references to "insane" and "incompetent" to "incapacitated." This makes the rule consistent with the language of RCW 4.08.060. It also modernizes the language of the rule.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT

Rule 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in ~~his~~ their own name without joining with ~~him~~ them the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) ~~Infants~~ Minors or ~~Incompetent~~ Incapacitated Persons.

(1) When ~~an infant~~ a minor is a party ~~he~~ they shall appear by guardian, or if ~~he has~~ they have no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint a guardian ad litem. The guardian shall be appointed:

(i) when the ~~infant~~ minor is plaintiff, upon the application of the ~~infant~~ minor, if ~~he~~ they be of the age of 14 years, or if under the age, upon the application of a relative or friend of the ~~infant~~ minor;

(ii) when the ~~infant~~ minor is defendant, upon the application of the ~~infant~~ minor, if ~~he~~ they be of the age of 14 years, and ~~applies~~ apply within the time ~~he is~~ they are to appear; if ~~he~~ they be under

the age of 14, or ~~neglects~~ neglect to apply, then upon the application of any other party to the action, or of a relative or friend of the ~~infant~~ minor.

(2) When an ~~insane~~ incapacitated person is a party to an action ~~he~~ they shall appear by guardian, or if ~~he has~~ they have no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed:

(i) when the ~~insane~~ incapacitated person is plaintiff, upon the application of a relative or friend of the ~~insane~~ incapacitated person;

(ii) when the ~~insane~~ incapacitated person is defendant, upon the application of a relative or friend of such incapacitated ~~insane~~ person, such application shall be made within the time ~~he is~~ they are to appear. If no such application be made within the time above limited, application may be made by any party to the action.

GR 9 COVER SHEET

Suggested Amendment

CRLJ 56 – SUMMARY JUDGMENT

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: To make the rule read consistently change "he" to "the party." This makes the rule consistent with CR 56 and the remainder of CRLJ 56. It also allows easier understanding.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT

Rule 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 15 days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law, and other documentation not later than three days before the hearing. The moving party may file and serve any rebuttal documents not later than the day prior to the hearing. Summary judgment motions shall be heard more than 14 days before the date set for trial unless leave of the court is granted to allow otherwise. The judgment sought shall be rendered forthwith if the pleadings, answers to interrogatories, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial

controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he~~ the party cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Rulings by Court. In granting or denying the motion for summary judgment, the court shall designate the documents and other evidence considered in its rulings.

[Adopted effective September 1, 1984; September 1, 2016.]

GR 9 COVER SHEET

Suggested Amendment

CRLJ 60 – RELIEF FROM JUDGMENT OR ORDER

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: Separate the last two sentences of CRLJ 60(b)(11) from (b)(11). Those two sentences apply to all of CR 60(b) not just (b)(11). They should be clearly separated.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RALJ 4.1(b).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment. ~~The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.~~

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished—Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last

known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

GR 9 Cover Sheet
Proposal to Amend ER 413
Concerning Evidence of Immigration Status

Submitted by the Washington State Bar Association
Committee on Court Rules and Procedures
Chair: Jefferson Coulter

1. *Purpose*

ER 413 was adopted in September 2018 for the purpose of making evidence of immigration status inadmissible except for limited circumstances described in the rule. The rule was proposed in a joint submission of Columbia Legal Services, Northwest Immigrant Rights Project, Legal Voice, and the Washington Association of Prosecuting Attorneys. The proposed amendment would make collections to the language of the current rule to conform it to the intent of the current rule's original proponents.

The proposed amendment makes two changes; one to subsection (a)(5), and one to subsection (b)(l).

Subsection (a)(5)

Subsection (a) applies to criminal cases. In the original GR 9 coversheet, the rule's proponents wrote (emphasis added to the description of the purpose of subsection (a)(5)):

> Subsection (a) provides that immigration status is inadmissible unless (1) status is an essential fact to prove an element of a criminal offense or to defend against the alleged offense or (2) to show bias or prejudice of a witness for impeachment. The subsections of (a) set forth the procedures for using immigration status: (1) a written pretrial motion that includes an offer of proof (2) an affidavit supporting the offer of proof (3) a court hearing outside the presence of the jury if the offer of proof is sufficient (4) admissibility of immigration status to show bias or prejudice if the evidence is reliable and relevant and the probative value of the evidence outweighs the prejudice from immigration status. This procedure is similar to that adopted in RCW 9A.44.020 (3).
>
> *Subsection (a)(5) clarifies that subsection (a) shall not be construed to prohibit cross-examination regarding immigration status if doing so would violate a criminal defendant's constitutional rights.* There is a similar provision in Fed. R. of Evid. 412(b)(1)(C).

As stated, subsection (a)(5) was thus intended to clarify that ER 413 does not exclude evidence in a criminal case if the exclusion of evidence would result in a constitutional violation. But the current language in subsection (a)(5) does not clearly effectuate this intent. Instead, it provides that ER 413 does not exclude "evidence that would result in a

violation of a defendant's constitutional rights, "which can be read as providing that ER 413 does not prohibit evidence when the evidence itself would lead to a constitutional violation, instead of its exclusion. The proposed amendment would revise subsection (a)(5) to confirm to the intent stated by the original rule's proponents.

Subsection (b)(1)

Subsection (b) applies to civil cases. The original GR 9 coversheet describes it as follows (emphasis added to the description of the purpose of subsection (b)(1)):

> Subsection (b) provides that in a civil proceeding, immigration status evidence of a party or witness shall not be admissible except where immigration status is an element of a party's cause of action or where another exception to the general rule applies.
>
> *Subsection (b)(1) sets forth two limited circumstances where evidence of immigration status would be handled through a CR 59(h) motion. The proposed rule balances the concerns of prejudice against immigrants highlighted by the Supreme Court with the legitimate need of a defendant, in limited cases, to raise status issues where reinstatement or future lost wages are sought.*

As stated, the intent of subsection (b) was to make evidence of immigration status generally inadmissible in civil cases, except for Rule 59(h) motion raising specified circumstances having to do with wage loss or employment claims. But current subsection (b)(1) is not cabined to Rule 59(h) motions. Instead, it applies to any posttrial motion involving the described circumstance. This substantially expands the scope of the "limited" exception. For example, "posttrial motions" include motions under Rule 60, which may be filed a year or more after judgment. In contrast, Rule 59(h) motions must be brought within ten days after entry of judgment. The proposed amendment would restrict the admissibility of immigration status evidence to Rule 59(h) motions. The proposed amendment would clarify the exception applies to motions brought under CRLJ 59(h) as well as CR 59(h).

2. *Procedure*

Because the proposed amendments are technical fixes to conform ER 413 to its stated purpose, the WSBA Court Rules and Procedures Committee does not believe a further hearing is necessary. However, it will defer to the Supreme Court if a hearing would be useful to clarify the proposal. The Committee does not believe expedited consideration of this proposal is necessary.

SUGGESTED AMENDMENT
SUPERIOR COURT RULES OF EVIDENCE (ER)
RULE 413 – Immigration Status

(a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607. The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

(1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) (If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

(4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(5) Nothing in this section shall be construed to exclude evidence if the exclusion of that evidence would violate ~~result in the violation of~~ a defendant's constitutional rights.

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in subsection (b)(l), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

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SUGGESTED AMENDMENT
SUPERIOR COURT RULES OF EVIDENCE (ER)
RULE 413 – Immigration Status

(1) Posttrial Proceedings. Evidence of immigration status may be submitted to the court through a posttrial motion made under CR 59(h) or CRLJ 59(h):

(A) where a party, who is subject to a final order of removal in immigration proceedings, was awarded damages for future lost earnings; or

(B) where a party was awarded reinstatement to employment.

(2) Procedure to review evidence. Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

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132 Candidates Pass February 2021 Washington State Bar Exam

SEATTLE, WA [April 10, 2021] — The Washington State Bar Association (WSBA) announced that 132 candidates passed the Uniform Bar Exam administered in February 2021. Administered over a two-day period, the Exam is a substantive law exam for those interested in becoming licensed in Washington to practice law as a lawyer, and includes multiple choice, essay and performance questions. The other required component of the Washington Bar Exam is an exam on professional responsibility (the Multistate Professional Responsibility Exam or MPRE). Completion of a separate online educational component with accompanying online exam addressing specific areas of Washington law (the Washington Law Component) is also required to qualify for admission. The WSBA will recommend successful candidates who also have passed a character and fitness review and completed other pre-licensing requirements to the Washington Supreme Court for entry of an order admitting them to the practice of law in Washington as a lawyer.

See the full pass list on our website. Passage percentages are given below.

February 2021 Washington State Bar Exam Statistics:

Overall Pass Rates

Applicant Type	Pass	Fail	Total	Pass Rate
ABA-JD	92	41	133	69.2%
APR 6 Law Clerk	5	5	10	50.0%
U.S. Attorneys	18	3	21	85.7%
Foreign/LLM Graduate	15	23	38	39.5%
Foreign Common Law Attorney	1	2	3	33.3%
Non-ABA JD/ABA LLM	1	3	4	25.0%
Total	132	77	209	**63.2%**

First Time

Applicant Type	Pass	Fail	Total	Pass Rate
ABA-JD	79	26	105	75.2%
APR 6 Law Clerk	4	2	6	66.7%
U.S. Attorneys	16	2	18	88.9%
Foreign/LLM Graduate	11	7	18	61.1%
Foreign Common Law Attorney	1	2	3	33.3%
Non-ABA JD/ABA LLM	1	1	2	50.0%
Total	112	40	152	**73.7%**

Repeaters

Applicant Type	Pass	Fail	Total	Pass Rate
ABA-JD	13	15	28	46.4%
APR 6 Law Clerk	1	3	4	25.0%
U.S. Attorneys	2	1	3	66.7%
Foreign/LLM Graduate	4	16	20	20.0%
Foreign Common Law Attorney	0	0	0	0.0%
Non-ABA JD/ABA LLM	0	2	2	0.0%
Total	20	37	57	**35.1%**

The average UBE score total was 275.09; the required passing score was **266**.

About the Washington State Bar Association
The WSBA is authorized by the Washington Supreme Court to license over 40,000 lawyers and other legal professionals in Washington. In furtherance of its obligation to protect and serve the public, the WSBA both regulates lawyers and other licensed legal professionals under the authority of the Court and serves its members as a professional association — all without public funding. The WSBA's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

# # #

Contact: Jennifer Olegario, WSBA Communications Manager
206-727-8212; jennifero@wsba.org

To: The President, President-elect, Immediate Past-President, and Board of Governors
From: Julie Shankland, General Counsel
Lisa Amatangel, Associate Director, OGC
Date: March 30, 2021
Re: Litigation Update

No.	Name	Brief Description	Status
1.	*Block v. Scott et al*, No. 20-2-07931-1 (Pierce Sup. Ct.)	Alleges civil rights and public records violations.	Complaint filed 10/07/20.
2.	*Small v. WSBA,* No. 19-2-15762-3 (King Sup. Ct.)	Former employee alleges discrimination and failure to accommodate disability.	On 07/17/19, WSBA filed an answer. Discovery is complete. On 10/02/20 WSBA filed a motion for summary judgment; on 10/20/20 this motion was denied in part and granted in part. On 11/09/20 WSBA filed a motion for reconsideration of the court's order on summary judgment. On 03/03/21 the parties will engaged in mandatory Alternative Dispute Resolution. Trial was set for 03/22/21.
3.	*Block v. WSBA et al.*, No. 18-cv-00907 (W.D. Wash.) ("*Block II*")	See *Block I* (below).	On 03/21/19, the Ninth Circuit stayed *Block II* pending further action by the district court in *Block I*. On 12/17/19, Block filed a status report with the Ninth Circuit informing the Court of the Block I Court's reimposition of the vexatious litigant pre-filing order against Block. On 06/18/20, the Ninth Circuit lifted the stay order and ordered the appellees who have not yet filed their answering briefs to do so by 08/17/20 (WSBA filed its answer brief before the stay order was entered). Block's reply was due 10/09/20, then extended to 12/28/20.
4.	*Eugster v. WSBA, et al.*, No. 18201561-2, (Spokane Sup. Ct.)	Challenges dismissal of *Spokane County 1* (case no. 15-2-04614-9).	Dismissal order signed 01/06/20. On 01/16/20, WSBA filed a supplemental brief on fees under CR 11 and RCW 4.84.185. Fee award of $28,586 granted on 02/14/20; Eugster filed a notice of appeal on 03/02/20. WSBA filed its

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			response brief on 12/14/20. Appeals briefing is complete; fees on appeal requested.
5.	*Block v. WSBA, et al.*, No. 15-cv-02018-RSM (W.D. Wash.) ("*Block I*")	Alleges conspiracy among WSBA and others to deprive plaintiff of law license and retaliate for exercising 1st Amendment rights.	On 02/11/19, 9th Cir. affirmed dismissal of claims against WSBA and individual WSBA defendants; the Court also vacated the pre-filing order and remanded this issue to the District Court. On 12/09/19, the United States Supreme Court denied plaintiff's Petition of Writ of Certiorari. On 12/13/19, the District Court reimposed the vexatious litigant pre-filing order against Block; Block filed a notice of appeal regarding this order on 01/14/20. Block filed an opening brief on 11/06/20; WSBA filed its answering brief on 01/07/21. Block's optional Reply Brief was due on 01/28/21. On 09/10/20, Block moved to vacate the vexatious litigant order; WSBA opposed the motion and it was denied. In response to the district court's denial of Block's motion to vacate, on 10/01/20, Block filed a motion for an indicative ruling on whether the district court would vacate the vexatious litigant order if the appellate court remanded the case for that purpose. WSBA opposed the motion. Block filed a reply on 10/16/20. This motion is pending.
6.	*Eugster v. Littlewood, et al.*, No. 17204631-5 (Spokane Sup. Ct.)	Demand for member information in customized format.	Dismissed (GR 12.4 is exclusive remedy) and $58,114.50 in fees awarded; Eugster appealed. Merits and fee appeal briefing completed. Matter transferred to Division I and set for panel consideration on 09/25/20 without oral argument. Dismissal and fee award affirmed on 10/05/20. Eugster's motion

			for reconsideration was denied on 11/05/20. Mandate issued 02/03/21. $438.51 in costs awarded.
7.	*Eugster v. WSBA, et al*., No. 18200542-1 (Spokane Sup. Ct.)	Alleges defamation and related claims based on briefing in *Caruso v. Washington State Bar Association, et al.*, No. 2:17-cv-00003-RSM (W.D. Wash.)	Dismissed based on absolute immunity, collateral estoppel, failure to state a claim. Briefing complete on appeal and cross-appeal on fees. Case transferred to Division II. Oral argument heard on 10/22/19. On 01/07/20, the Court affirmed dismissal and reversed fee denial. Eugster filed a petition for review with the Washington Supreme Court; petition denied on 07/08/20. Case remanded to determine fee award. On 11/30/20 the superior court granted defendants' fee request in full ($27,380.50). No appeal was filed.

WSBA Member* Licensing Counts 4/1/21 10:20:54 AM GMT-07:00

Member Type	In WA State	All
Attorney - Active	26,473	33,355
Attorney - Emeritus	115	122
Attorney - Honorary	329	376
Attorney - Inactive	2,598	5,725
Judicial	627	657
LLLT - Active	46	46
LLLT - Inactive	3	3
LPO - Active	795	807
LPO - Inactive	144	162
	31,130	41,253

Misc Counts	
All License Types **	41,609
All WSBA Members	41,253
Members in Washington	31,130
Members in western Washington	27,127
Members in King County	17,483
Members in eastern Washington	3,967
Active Attorneys in western Washington	23,139
Active Attorneys in King County	15,332
Active Attorneys in eastern Washington	3,312
New/Young Lawyers	6,586
MCLE Reporting Group 1	10,943
MCLE Reporting Group 2	11,670
MCLE Reporting Group 3	11,212
Foreign Law Consultant	18
House Counsel	328
Indigent Representative	10

By District		
	All	Active
0	5,349	4,332
1	2,841	2,343
2	2,078	1,660
3	2,063	1,712
4	1,351	1,148
5	3,168	2,565
6	3,292	2,752
7N	4,930	4,199
7S	6,327	5,208
8	2,195	1,858
9	4,809	4,050
10	2,850	2,381
	41,253	34,208

By Section ***	All	Previous Year
Administrative Law Section	231	232
Alternative Dispute Resolution Section	313	314
Animal Law Section	77	89
Antitrust, Consumer Protection and Unfair Business Practice	186	199
Business Law Section	1,219	1,237
Cannabis Law Section	84	109
Civil Rights Law Section	171	165
Construction Law Section	511	511
Corporate Counsel Section	1,074	1,094
Creditor Debtor Rights Section	454	452
Criminal Law Section	370	372
Elder Law Section	607	644
Environmental and Land Use Law Section	767	768
Family Law Section	944	964
Health Law Section	383	392
Indian Law Section	313	322
Intellectual Property Section	841	872
International Practice Section	219	244
Juvenile Law Section	142	138
Labor and Employment Law Section	965	982
Legal Assistance to Military Personnel Section	66	66
Lesbian, Gay, Bisexual, Transgender (LGBT) Law Section	103	116
Litigation Section	1,019	1,007
Low Bono Section	81	120
Real Property Probate and Trust Section	2,266	2,274
Senior Lawyers Section	239	239
Solo and Small Practice Section	864	897
Taxation Section	614	619
World Peace Through Law Section	139	130

*** 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.**

By State and Province	
Alabama	28
Alaska	205
Alberta	11
Arizona	353
Arkansas	18
Armed Forces Americas	2
Armed Forces Europe, Middle East	26
Armed Forces Pacific	13
British Columbia	100
California	1,866
Colorado	257
Connecticut	49
Delaware	7
District of Columbia	337
Florida	273
Georgia	87
Guam	13
Hawaii	140
Idaho	475
Illinois	170
Indiana	39
Iowa	29
Kansas	28
Kentucky	29
Louisiana	46
Maine	13
Maryland	116
Massachusetts	86
Michigan	74
Minnesota	102
Mississippi	6
Missouri	67
Montana	165
Nebraska	18
Nevada	156
New Hampshire	13
New Jersey	65
New Mexico	73
New York	251
North Carolina	83
North Dakota	10
Northern Mariana Islands	5
Nova Scotia	1
Ohio	76
Oklahoma	29
Ontario	16
Oregon	2,723
Pennsylvania	79
Puerto Rico	5
Quebec	1
Rhode Island	11
South Carolina	27
South Dakota	10
Tennessee	58
Texas	386
Utah	182
Vermont	15
Virginia	280
Virgin Islands	2
Washington	31,130
Washington Limited License	1
West Virginia	6
Wisconsin	47
Wyoming	20

By WA County	
Adams	15
Asotin	26
Benton	408
Chelan	260
Clallam	162
Clark	965
Columbia	8
Cowlitz	155
Douglas	44
Ferry	12
Franklin	58
Garfield	3
Grant	137
Grays Harbor	115
Island	171
Jefferson	120
King	17,483
Kitsap	844
Kittitas	97
Klickitat	27
Lewis	121
Lincoln	14
Mason	104
Okanogan	95
Pacific	29
Pend Oreille	15
Pierce	2,447
San Juan	91
Skagit	287
Skamania	20
Snohomish	1,695
Spokane	2,042
Stevens	60
Thurston	1,696
Wahkiakum	12
Walla Walla	119
Whatcom	610
Whitman	78
Yakima	449

By Admit Yr	
1946	1
1947	2
1948	2
1949	1
1950	5
1951	15
1952	19
1953	16
1954	21
1955	10
1956	33
1957	22
1958	26
1959	28
1960	28
1961	23
1962	30
1963	30
1964	33
1965	47
1966	57
1967	55
1968	81
1969	88
1970	94
1971	98
1972	154
1973	237
1974	227
1975	292
1976	345
1977	349
1978	388
1979	416
1980	441
1981	476
1982	460
1983	498
1984	1,096
1985	560
1986	760
1987	729
1988	638
1989	692
1990	871
1991	842
1992	819
1993	918
1994	877
1995	821
1996	804
1997	910
1998	892
1999	908
2000	906
2001	911
2002	998
2003	1,057
2004	1,085
2005	1,119
2006	1,188
2007	1,268
2008	1,101
2009	981
2010	1,077
2011	1,062
2012	1,090
2013	1,231
2014	1,361
2015	1,605
2016	1,323
2017	1,400
2018	1,322
2019	1,372
2020	1,568
2021	290

WSBA Member* Demographics Report 4/1/21 10:19:24 AM GMT-07:00

By Years Licensed	
Under 6	8,434
6 to 10	6,061
11 to 15	5,529
16 to 20	4,845
21 to 25	4,039
26 to 30	3,757
31 to 35	2,808
36 to 40	2,488
41 and Over	3,292
Total:	**41,253**

By Age	All	Active
21 to 30	1,845	1,777
31 to 40	9,204	8,286
41 to 50	10,096	8,434
51 to 60	8,959	7,085
61 to 70	7,560	5,628
71 to 80	3,022	1,991
Over 80	567	154
Total:	**41,253**	**33,355**

By Gender	
Female	12,311
Male	16,501
Non-Binary	21
Not Listed	25
Selected Mult Gender	26
Transgender	1
Two-spirit	4
Respondents	**28,889**
No Response	**12,364**
All Member Types	**41,253**

By Disability	
Yes	1,240
No	19,983
Respondents	**21,223**
No Response	**20,030**
All Member Types	**41,253**

By Sexual Orientation	
Asexual	22
Gay, Lesbian, Bisexual, Pansexual, or Queer	524
Heterosexual	4,856
Not Listed	110
Selected multiple orientations	20
Two-spirit	5
Respondents	**5,537**
No Response	**35,716**
All Member Types	**41,253**

By Ethnicity	
American Indian / Native American / Alaskan Native	234
Asian-Central Asian	26
Asian-East Asian	256
Asian-South Asian	66
Asian-Southeast Asian	74
Asian—unspecified	1,067
Black / African American / African Descent	660
Hispanic / Latinx	703
Middle Eastern Descent	21
Multi Racial / Bi Racial	1,043
Not Listed	216
Pacific Islander / Native Hawaiian	63
White / European Descent	23,206
Respondents	**27,635**
No Response	**13,618**
All Member Types	**41,253**

Members in Firm Type	
Bank	33
Escrow Company	59
Government/ Public Secto	5,077
House Counsel	3,092
Non-profit	434
Title Company	119
Solo	5,061
Solo In Shared Office Or	1,268
2-5 Members in Firm	4,178
6-10 Members in Firm	1,630
11-20 Members in Firm	1,240
21-35 Members in Firm	747
36-50 Members In Firm	542
51-100 Members in Firm	597
100+ Members in Firm	1,836
Not Actively Practicing	1,837
Respondents	**27,750**
No Response	**13,503**
All Member Types	**41,253**

By Practice Area	
Administrative-regulator	2,220
Agricultural	239
Animal Law	111
Antitrust	311
Appellate	1,630
Aviation	174
Banking	428
Bankruptcy	861
Business-commercial	5,196
Cannabis	119
Civil Litigation	514
Civil Rights	1,066
Collections	499
Communications	210
Constitutional	650
Construction	1,347
Consumer	739
Contracts	4,232
Corporate	3,549
Criminal	3,706
Debtor-creditor	903
Disability	587
Dispute Resolution	1,245
Education	470
Elder	838
Employment	2,775
Entertainment	312
Environmental	1,248
Estate Planning-probate	3,296
Family	2,585
Foreclosure	451
Forfeiture	101
General	2,550
Government	2,826
Guardianships	788
Health	934
Housing	307
Human Rights	304
Immigration-naturaliza	996
Indian	572
Insurance	1,628
Intellectual Property	2,286
International	887
Judicial Officer	416
Juvenile	805
Labor	1,115
Landlord-tenant	1,213
Land Use	857
Legal Ethics	280
Legal Research-writing	808
Legislation	422
Lgbtq	84
Litigation	4,692
Lobbying	168
Malpractice	734
Maritime	311
Military	379
Municipal	894
Non-profit-tax Exempt	623
Not Actively Practicing	2,050
Oil-gas-energy	238
Patent-trademark-copyr	1,320
Personal Injury	3,206
Privacy And Data Securit	335
Real Property	2,624
Real Property-land Use	2,092
Securities	766
Sports	172
Subrogation	121
Tax	1,280
Torts	2,051
Traffic Offenses	584
Workers Compensation	699

By Languages Spoken	
Afrikaans	5
Akan /twi	5
Albanian	2
American Sign Language	18
Amharic	21
Arabic	51
Armenian	8
Bengali	12
Bosnian	14
Bulgarian	12
Burmese	2
Cambodian	5
Cantonese	106
Cebuano	7
Chamorro	5
Chaozhou/chiu Chow	1
Chin	1
Croatian	20
Czech	7
Danish	19
Dari	4
Dutch	23
Egyptian	3
Farsi/persian	67
Finnish	8
French	695
French Creole	1
Fukienese	3
Ga/kwa	2
German	409
Gikuyu/kikuyu	1
Greek	31
Gujarati	14
Haitian Creole	3
Hebrew	41
Hindi	102
Hmong	1
Hungarian	18
Ibo	4
Icelandic	2
Ilocano	9
Indonesian	12
Italian	165
Japanese	208
Javanese	1
Kannada/canares	4
Kapampangan	2
Khmer	2
Korean	233
Lao	5
Latvian	6
Lithuanian	3
Malay	4
Malayalam	8
Mandarin	386
Marathi	6
Mien	1
Mongolian	2
Navajo	1
Nepali	5
Norwegian	35
Not_listed	45
Oromo	4
Persian	20
Polish	33
Portuguese	126
Portuguese Creole	1
Punjabi	68
Romanian	22
Russian	234
Samoan	7
Serbian	17
Serbo-croatian	13
Sign Language	20
Singhalese	2
Slovak	3
Spanish	1,828
Spanish Creole	4
Swahili	8
Swedish	52
Tagalog	72
Taishanese	4
Taiwanese	21
Tamil	11
Telugu	4
Thai	10
Tigrinya	4
Tongan	1
Turkish	15
Ukrainian	46
Urdu	46
Vietnamese	89
Yoruba	10
Yugoslavian	4

*** Includes active attorneys, emeritus pro-bono, honorary, inactive attorneys, judicial, limited license legal technician (LLLT), and limited practice officer (LPO).**

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Terra Nevitt, Executive Director

DATE: April 9, 2021

RE: Discussion of Proposed Rules for Discipline and Incapacity

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ACTION: Approve proposed comments to the suggested Rules for Discipline and Incapacity proposed by the WSBA Executive Director and published for comment by April 30, 2021

On December 11, 2020, the Washington Supreme Court ordered that the proposed Rules for Discipline and Incapacity (RDI) be published for comments to be submitted to the Court no later than April 30, 2021.

Background

The proposed RDI were developed by an internal workgroup of WSBA employees from the Office of Disciplinary Counsel, Office of General Counsel, and Regulatory Services Department. Following review of the draft by representatives of a variety of external stakeholders (including Governor Hunter Abell and Clerk of the Supreme Court Susan Carlson) and incorporation of suggested revisions, the draft rules were submitted to the Supreme Court on October 14, 2020. The Board had a brief discussion of the process for this rulemaking process and its role with Justice Mary Yu at the June 26-27, 2020 Board meeting. You can review the recording of that discussion here, beginning at minute 3:48.

WSBA solicited and received member comment for the Board's consideration. Those comments are attached and are being reviewed and analyzed by Gov. Purtzer and Gov. Higginson. I anticipate that they will have a proposed comment for the Board's consideration in late materials.

WSBA Entity Comments

In addition to a potential comment from the Board of Governors, the Solo and Small Practice Section and the Criminal Law Section have developed comments to the proposed RDI. These are attached.

Public comment on court rules by WSBA entities, including sections, is governed by the WSBA Legislation and Court Rule Comment Policy as amended by the Board of Governors November 13, 2015. It provides that prior to publically commenting on a proposed rule change the following must occur:

(a) at least 75% of the total membership of the Entity's governing body has first determined that the matter under consideration meets GR 12; and

(b) after determining that the matter meets GR 12, that the comments are the opinion of at least 75% of the total membership of the governing body of the Entity.

Additionally, entities cannot make a comment that is in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses. Finally, entities must have authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to commenting on behalf of the entity. In order to officially comment on behalf of the WSBA, the Entity must have the prior written approval of the Board of Governors.

Attached is a proposed comment by the Solo and Small Practice Section Executive Committee as well as comment by the Criminal Law Section Executive Committee submitted simultaneously to the Board of Governors and the Washington Supreme Court.

Attachments

1. Washington Supreme Court Order No. 25700-A-1328, including GR 9 and proposed amendments
2. WSBA Solo & Small Practice Section Executive Committee Request to Comment
3. WSBA Criminal Law Section Executive Committee Comment
4. WSBA Legislation and Court Rule Comment Policy
5. Stakeholder Feedback

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED NEW RULE CLASSIFICATION: RULES FOR DISCIPLINE AND INCAPACITY (RDI), AMENDMENTS TO GR 1—CLASSIFICATION SYSTEM FOR COURT RULES, AND RESCISSION OF RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELCS), ENFORCEMENT OF LIMITED PRACTICE OFFICER CONDUCT (ELPOCS), AND ENFORCEMENT OF LIMITED LICENSE LEGAL TECHNICIAN CONDUCT (ELLLTCS), CONFORMING AMENDMENTS TO GR 12.4, GR 12.5, GR 24, RPC 1.0B, RPC 1.6, RPC 1.15A, RPC 5.4, RPC 5.6, RPC 5.8, RPC 8.1, RPC 8.4, RPC 8.5, LLLT RPC 1.0B, LLLT RPC 1.15A, LLLT RPC 5.4, LLLT RPC 5.8, LLLT RPC 8.4, LPORPC 1.0, LPORPC 1.8, LPORPC 1.10, LPORPC 1.12A, APR 1, APR 5, APR 8, APR 9, APR 12, APR 14, APR 15, APR 15 PROCEDURAL REGULATIONS 6, 22.1, 23, 24.1, 24.2, 25.1, 25.5, 28, NEW SUGGESTED RULES APR 29 AND APR 30	**AMENDED ORDER** NO. 25700-A-1328

The Washington State Bar Association Executive Director, having recommended the suggested new rule classification: Rules for Discipline and Incapacity (RDI), amendments to GR 1—Classification System for Court Rules, and rescission of Rules for Enforcement of Lawyer Conduct (ELCs), Enforcement of Limited Practice Officer Conduct (ELPOCs), and Enforcement of Limited License Legal Technician Conduct (ELLLTCs), conforming amendments to GR 12.4, GR 12.5, GR 24, RPC 1.0B, RPC 1.6, RPC 1.15A, RPC 5.4, RPC 5.6, RPC 5.8, RPC 8.1, RPC 8.4, RPC 8.5, LLLT RPC 1.0B, LLLT RPC 1.15A, LLLT RPC 5.4, LLLT RPC 5.8, LLLT RPC 8.4, LPORPC 1.0, LPORPC 1.8, LPORPC 1.10, LPORPC 1.12A, APR 1, APR 5, APR 8, APR

9, APR 12, APR 14, APR 15, APR 15 Procedural Regulations 6, 22.1, 23, 24.1, 24.2, 25.1, 25.5, 28, and new suggested rules APR 29 and APR 30, and the Court having approved the suggested amendments, rescissions, and new rules for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments, rescissions, and new rules as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 11th day of December, 2020.

For the Court

Stegner, C. J.
CHIEF JUSTICE

GR 9 COVER SHEET
Suggested

RULES FOR DISCIPLINE AND INCAPACITY

A. Proponent

Terra Nevitt, Executive Director
Washington State Bar Association
1325 4th Ave, Suite 600
Seattle WA 98101-2539

B. Spokespersons

Douglas J. Ende, Chief Disciplinary Counsel
Washington State Bar Association
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Seattle, WA 98101-2539

Julie Shankland, General Counsel
Washington State Bar Association
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539

C. Purpose

The proponent recommends adoption of procedural rules for Washington State's discipline and incapacity system, to be known as the Rules for Discipline and Incapacity (RDI). If adopted, the suggested RDI would supersede and rescind the current disciplinary procedural rules, the Rules for Enforcement of Lawyer Conduct (ELC). The rules would also supersede and rescind the Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC) [1] and the Rules for Enforcement of Limited Practice Officer Conduct (ELPOC).

I. OVERVIEW

The ELC have been in effect since October 1, 2002; they replaced the Rules for Lawyer Discipline, adopted in 1983. The ELC have been amended from time to time since 2002, with

[1] The ELLLTC were adopted by the Court not as published rules but as an interim provision until a set of disciplinary procedural rules was drafted to replace it. See *In re the Matter of—Enforcement of Limited License Legal Technician Conduct*, Order No. 25700-A-1136 (Jan. 7, 2006). If the Court elects to adopt these suggested rules, Order No. 25700-A-1136 would likely need to be rescinded.

the most substantial amendments effective on January 1, 2014.[2] The suggested RDI represent the most substantial reexamination of the functioning of the discipline system in Washington State since enactment of the ELC in 2002.

The suggested RDI were drafted by staff from the Washington State Bar Association's (WSBA) Office of Disciplinary Counsel (ODC), Office of General Counsel (OGC), and Regulatory Services Department (RSD), with the goal of identifying and recommending modifications to the discipline system intended to create efficiencies and improve outcomes.

As approved in concept by the Washington Supreme Court in June 2017, the WSBA drafting work group developed a model of a single-portal, multi-license-type discipline and appeals system. During the preliminary drafting phase of the project, substantial effort was made to streamline the rules and create system efficiencies while retaining meaningful volunteer involvement in disciplinary procedures. Key drafting objectives included establishing a professionalized adjudicative system[3] and creating one set of disciplinary procedural rules for all license types.[4] The ELC served as the template for rule drafting, and much of the language and structure of the suggested RDI is drawn from the ELC. However, the rules have been substantially rewritten to improve efficiency of processes and ease of use. During development of the RDI, the drafting work group met with and updated regulatory boards and discipline-system entities, including the Disciplinary Board, the hearing officer panel, the Limited License Legal Technician Board, the Limited Practice Board, the Character and Fitness Board, and the Disciplinary Advisory Round Table. A first comprehensive draft RDI was completed by the WSBA drafting work group in early February 2020.

Shortly thereafter, the WSBA drafting work group convened discipline-system stakeholder representatives to review and provide feedback on the RDI draft. The volunteer reviewers were selected from among stakeholder groups and entities involved in the discipline process in Washington, including the Washington Supreme Court, the Disciplinary Board, hearing officers, the Board of Governors, the Disciplinary Advisory Round Table, the Limited Licensee Legal Technician Board, the Limited Practice Board, conflicts review officers, and lawyers who represent respondents. During the months of March to June 2020 and over the course of three

[2] The 2014 amendments were prepared by the WSBA ELC Drafting Task Force, which was tasked with implementing recommended discipline-system changes based on the 2006 ABA Report on the Washington Lawyer Regulation System.

[3] Under the ELC, the adjudicative functions are carried out by volunteer hearing officers who oversee disciplinary and incapacity proceedings, and by the Disciplinary Board, which conducts review of recommendations for proceedings and disputed dismissals and serves as the intermediate appellate body.

[4] Three different sets of disciplinary procedural rules currently govern the different license types in Washington: for lawyers, the ELC; for limited practice officers (LPOs), the ELPOC; and for limited license legal technicians (LLLTs), the ELLLTC.

meetings, the stakeholders provided substantive feedback both in person and in writing. The drafting work group then considered and incorporated that feedback into the final draft of the suggested RDI.

This purpose statement is a high-level overview of the RDI. A comprehensive, rule-by-rule explanation of the rule set is provided in Appendix A, which includes citations to specific provisions in the ELC from which the rule was drawn, if applicable, and explanation of any deviations from the ELC.

II. SUGGESTED RULES: KEY CONCEPTS AND INNOVATIONS

The suggested RDI reflect the key concepts and innovations summarized below. This summary is intended to serve as a roadmap for many of the substantive rule revisions and departures from the ELC.

1. Creating a comprehensive adjudicative entity composed of both professional and volunteer adjudicators.

The suggested RDI create an adjudicative entity—the Office of the Regulatory Adjudicator (ORA)—staffed by one or more professional adjudicators who would conduct disciplinary hearings for licensed legal professionals. Transitioning to professional adjudication is consistent with developments in a number of other jurisdictions, such as Arizona, Colorado, and Oregon. The current Washington lawyer discipline hearings system includes approximately 44 volunteers, including hearing officers and members of the Disciplinary Board, acting in various adjudicative capacities. For LLLTs and LPOs, hearing officers and each license type's respective all-volunteer regulatory board is responsible for carrying out the adjudicative functions for that license.[5] The RDI system would instead create a single, smaller pool of volunteers, the Volunteer Adjudicator Pool, who would perform meaningful, though more limited, adjudicative roles. The Volunteer Adjudicator Pool would include members from all license types and public members. Members of the pool, administered by the professional ORA adjudicator(s), would serve on two types of adjudicative panels:

Authorization Panel. Authorization panels would consider ODC requests, following an investigation, that disciplinary or incapacity proceedings commence by the ordering of the matter to hearing. Under the RDI, these are called requests for an order authorizing "the filing of a statement of charges" or "the initiation of incapacity proceedings," respectively.

[5] The respective regulatory boards are as follows: for LLLTs, the Limited License Legal Technician Board and for LPOs, the Limited Practice Board.

Appeal Panel. Appeal panels would hear and decide intermediate disciplinary and incapacity appeals and matters on interlocutory review.

The ORA panels would be composed of a single professional adjudicator and two to four volunteers drawn from the pool. This approach is designed to (1) ensure that volunteer members of the matching license type are assigned to the adjudicative panels (when practicable), (2) include public participation, and (3) create efficiencies over the current all-volunteer system.

2. Simplifying disposition and dismissal-review options.

To create additional efficiencies within the discipline system, the suggested RDI eliminate certain grievance disposition and review options, as follows:

Review/Discipline Committee Admonitions. As described below, the RDI would sunset committees of the three regulatory boards for the three license types in favor of ORA Authorization Panels. The authority of regulatory boards to issue admonitions without a hearing is eliminated. Admonitions under the RDI may be imposed following a hearing or by stipulation.

Advisory Letters. ODC routinely includes educational language in dismissal letters in an effort to bring problematic but not necessarily unethical conduct to the attention of a licensee. This approach serves the same purpose and achieves the same result as advisory letters currently issued by a review or discipline committee, but the latter requires a far more cumbersome process. The suggested RDI would therefore eliminate review and discipline committee advisory letters.

External/Adjudicative Dismissal Review. Review of dismissal decisions (called "closures" in the suggested RDI) by review or discipline committees rarely results in a different outcome,[6] yet the current review process consumes an extraordinary amount of staff and volunteer time to administer and carry out. Elimination of the current dismissal review process would not materially impair the public protection function of discipline, but it would save substantial resources, which, from a public protection standpoint, would be more productively spent pursuing provable and serious cases of ethical misconduct. ODC would still have the internal authority to reopen a grievance in appropriate circumstances, such as when a grievant provides additional, significant information.

[6] In 2019, for example, review committees upheld 357 dismissals, ordering more investigation in only 13 matters. Of those 13 matters ordered for further investigation, all were subsequently dismissed after further investigation, with one dismissed after diversion, one dismissed with a cautionary letter from disciplinary counsel, and six upheld on second review by a review committee.

3. Maintaining the distinction between confidential versus public disciplinary information but reorganizing the ELC Title 3 rules for clarity.

In an effort to clarify and simplify what has become a balkanized and difficult-to-comprehend area of disciplinary procedure, the drafting work group reorganized and consolidated ELC Title 3 into a number of provisions; it also severed certain components into separate, stand-alone rules. In particular, ELC Title 3 in its current form contains multiple independent provisions scattered throughout the title regarding releases of information, each with its own terminology and applicable processes. A major innovation in the RDI redraft of Title 3 is the consolidation of those provisions into two rules: one regarding release without notice, and another regarding release with notice.

Notably, however, the basic distinction between what is confidential disciplinary information and what is public disciplinary information is unchanged. Instead, RDI Title 3 is designed to make it easier to identify public versus confidential information. In general, most grievance information will remain confidential, and a matter will only become public after an Authorization Panel authorizes the filing of a statement of charges.

4. Reframing the role of grievants.

Under current disciplinary procedural rules, grievants are the equivalent of parties to the investigative stage of the process, with express rights to intercede during the course of an investigation, obtain confidential disciplinary information, and object to the dismissal of grievances. Experience and statistics show that this has created an overabundance of process, incentivized submission of voluminous, unsolicited documentation, and prolonged the final disposition of grievances. To ameliorate these lengthy, resource-intensive processes, the RDI reorient the role of a grievant (called a "complainant" in the suggested rules). Under the RDI, a complainant is simply an individual who brings information about potential misconduct to the attention of ODC and sometimes serves as a witness during the course of a proceeding. The role of complainants under the RDI would be analogous to the role of consumer complainants who submit complaints to the Attorney General's Office.

5. Improving and clarifying processes for incapacity proceedings.

The rules governing disability proceedings have been revised and restructured substantially for clarity and to streamline procedures. The suggested rules replace the term "disability" with "incapacity," as the latter more accurately describes the inability to perform the functions of a licensed legal professional. The suggested rules further simplify the decision matrix for the hearing adjudicator following an incapacity hearing and make clear that an incapacity determination is not a form of discipline.

6. Requiring Supreme Court review and approval of all adjudicated matters.

Currently, if a matter is not appealed, the Supreme Court reviews only suspension and disbarment recommendations; other adjudicated dispositions, such as reprimands, admonitions, and dismissals, are sent to the Court informationally. In light of the Court's plenary authority and its role as final arbiter of disciplinary and incapacity matters, under the suggested RDI, the Supreme Court would conduct final review of all matters in which there is a recommendation for or stipulation to a disciplinary sanction or the placement of a legal professional's license in incapacity inactive status. This proposed change in the RDI better reinforces the Court's status as the state actor actively supervising disciplinary processes.[7]

III. SUGGESTED RDI SYSTEM

In the RDI system, a matter would proceed as follows:

ODC Intake and Investigation. ODC would review and/or investigate all grievances (called "complaints" in the RDI) involving all license types. Disposition options would include closure, diversion, or recommendation for the filing of a statement of charges. Closure decisions would not be subject to adjudicative review. Upon receipt of new or additional post-closure information from a complainant, ODC would have the authority to reopen a complaint in appropriate circumstances.

Authorization Panels. An ODC request that a matter be ordered to a hearing would be considered by a three-person ORA Authorization Panel, composed of a professional adjudicator accompanied by volunteers from the pool, including one public member and, where practicable, one practitioner of the same license type. An Authorization Panel would have authority to order the filing of a statement of charges or the initiation of incapacity proceedings or to deny such requests.

Hearing Stage. An ORA hearing adjudicator would conduct and preside over all disciplinary and incapacity hearings. ORA adjudicators would also approve all stipulations, subject to final Supreme Court approval. Volunteer lawyers on the Volunteer Adjudicator Pool may also serve as settlement officers to assist in the resolution of matters by stipulation.

Appeal Panel. An intermediate appeal from a hearing adjudicator's recommendations, as well as matters on interlocutory review, would be reviewed by a joint ORA adjudicator-volunteer panel. Five-person ORA Appeal Panels would be composed of a professional adjudicator

[7] *Cf. N.C. Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, 1114 (2015) (dental board controlled by active market participants not afforded antitrust protection under state-action immunity where it did not receive active supervision by the state).

accompanied by volunteers from the pool, including at least one public member and, where practicable, at least one practitioner of the same license type.

Final Appellate Review/Supreme Court Orders. The Supreme Court would consider final appeals and order discipline for all license types.

A flow chart with more detail about the structure of the new disciplinary and incapacity system model is attached as Appendix B (Structure of the new Discipline and Incapacity System).

IV. CONFORMING AMENDMENTS TO OTHER COURT RULES

If the suggested RDI are adopted, the proponent recommends adoption of suggested conforming amendments to other sets of rules that either cross-reference or give effect to the ELC or other rules rendered obsolete by the new system. These amendments are largely technical in nature, although some are substantive, and are submitted for adoption simultaneously by separate GR 9.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

SUGGESTED NEW RULES FOR DISCIPLINE AND INCAPACITY

Redline Version

TITLE

RULES FOR DISCIPLINE AND INCAPACITY (RDI)

TABLE OF RULES

17.1 Effect on Pending Matters

TITLE 1 – SCOPE, JURISDICTION, DEFINITIONS, AND DUTIES

RDI 1.1 SCOPE OF RULES

(a) Purpose. These Rules are adopted by the Washington Supreme Court to govern the discipline and incapacity procedures and related processes for licensed legal professionals.

(b) Persons Subject to These Rules. The following persons are subject to these Rules regardless of the person's residency or authority to practice law in this jurisdiction:

(1) any licensed legal professional admitted, licensed, or authorized to practice law in this jurisdiction regardless of where the licensed legal professional's conduct occurs;

(2) any licensed legal professional admitted, licensed, or authorized to practice law in any other jurisdiction who provides or offers to provide any legal services in this jurisdiction; and

(3) any person previously admitted, licensed, or authorized to practice law as a licensed legal professional in this jurisdiction if the conduct occurred while admitted, licensed, or authorized to practice law.

(c) Exception for Judges. A lawyer serving as a judge or justice is subject to these Rules only to the extent provided by Rule 8.5(c) of the Rules of Professional Conduct.

(d) Disciplinary Authority. A licensed legal professional is subject to discipline for violations of the rules of professional conduct applicable to that licensed legal professional's license type.

(e) Authority; Multiple Jurisdictions. A licensed legal professional may be subject to the rules governing disciplinary and incapacity matters of both this jurisdiction and another jurisdiction for the same conduct.

RDI 1.2 NO STATUTE OF LIMITATION

No statute of limitation or other time limitation restricts submitting a complaint, initiating an investigation, or commencing a proceeding under these Rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any sanction or remedy is warranted.

RDI 1.3 DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these Rules have the following meanings:

(a) "Bar" means the Washington State Bar Association.

(b) "Bar counsel" means a staff lawyer, other than disciplinary counsel, employed by the Bar.

(c) "Clerk" when used alone means the Clerk to the Office of the Regulatory Adjudicator.

(d) "Clerk's file" means the pleadings, motions, rulings, decisions, and other documents filed with or by the Clerk in a proceeding or investigation under these Rules, which may include public and nonpublic information.

(e) "Complainant" means a person or entity who submits a complaint under Title 5 of these Rules, except for a confidential source under Rule 5.2(d).

(f) "Conviction" means a finding of a defendant's guilt of a crime in any jurisdiction, regardless of the pendency of an appeal, either (1) upon entry of a plea of guilty or nolo contendere, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn; or (2) upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(g) "Counsel" when used as a noun means a lawyer authorized to practice law in Washington State.

(h) "Hearing transcript" means a verbatim report of proceedings from a disciplinary or incapacity hearing.

(i) "Licensed legal professional" means a lawyer, limited license legal technician, limited practice officer, or other individual, who is admitted, licensed, or authorized to practice law in Washington State or any other jurisdiction.

(j) "Party" means the Office of Disciplinary Counsel or respondent, unless these Rules specify otherwise.

(k) "Supreme Court" or "Court" when used alone means the Washington Supreme Court.

(*l*) "Suspension" means a court-ordered temporary loss of authorization to practice law.

RDI 1.4 ACRONYMS

Acronyms used in these Rules have the following meanings:

(a) "APR" means the Admission and Practice Rules adopted by the Washington Supreme Court.

(b) "CR" means the Superior Court Civil Rules adopted by the Washington Supreme Court.

(c) "GR" means the General Rules adopted by the Washington Supreme Court.

(d) "LLLT" means limited license legal technician.

(e) "LLLT RPC" means the Limited License Legal Technician Rules of Professional Conduct adopted by the Washington Supreme Court.

(f) "LPO" means limited practice officer.

(g) "LPORPC" means the Limited Practice Officer Rules of Professional Conduct adopted by the Washington Supreme Court.

(h) "ORA" means the Office of the Regulatory Adjudicator.

(i) "RAP" means the Rules of Appellate Procedure adopted by the Washington Supreme Court.

(j) "RCW" means the Revised Code of Washington.

(k) "RPC" means the Rules of Professional Conduct for lawyers adopted by the Washington Supreme Court.

RDI 1.5 WORDS OF AUTHORITY

(a) "May" means "has discretion to" or "is permitted to."

(b) "Must" means "is required to."

(c) "Should" means recommended but not required.

RDI 1.6 DUTIES IMPOSED BY THESE RULES

A licensed legal professional must comply with the duties imposed by these Rules. Failure to comply may subject the licensed legal professional to discipline for violating RPC 8.4(*l*), LLLT RPC 8.4(*l*), or LPORPC 1.10(f) or may be considered an aggravating factor in determining the appropriate sanction for misconduct in any disciplinary proceeding. Duties imposed by these Rules include but are not limited to the following duties:

(a) furnish authorization for release of medical records, Rule 2.12(d);

(b) comply with orders, Rule 2.12(c), 10.1(d);

(c) maintain confidentiality, Rule 3.1(d);

(d) respond to any inquiries or requests made under Title 5, including subpoenas issued under Title 5;

(e) pay noncooperation costs, Rule 5.9;

(f) report being convicted of a felony, Rule 7.2(d);

(g) comply with conditions of a stipulation, Rule 9.1(j);

(h) report being disciplined, placed in incapacity inactive status or its equivalent, or resigning in lieu of discipline or its equivalent, in another jurisdiction, Rule 9.3(a);

(i) file an answer to a statement of charges or to an amended statement of charges, Rule 10.5(a);

(j) cooperate with discovery, Rule 10.10(f);

(k) attend a hearing and bring materials requested by disciplinary counsel, Rule 10.12;

(*l*) respond to subpoenas and comply with orders enforcing subpoenas, Rule 10.12(g);

(m) comply with conditions of probation, Rule 13.6;

(n) pay restitution, Rule 13.7;

(o) pay costs and expenses, Rule 13.8;

(p) notify clients and others of inability to act, Rule 14.1;

(q) discontinue practice, Rule 14.2;

(r) serve a declaration of compliance, Rule 14.3;

(s) cooperate with an examination of books and records, Rule 15.2; and

(t) notify the Office of Disciplinary Counsel of a trust account overdraft, Rule 15.4(d).

TITLE 2 – ORGANIZATION AND STRUCTURE

RDI 2.1 WASHINGTON SUPREME COURT

The Washington Supreme Court has exclusive responsibility to administer the Washington discipline and incapacity system for licensed legal professionals and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual discipline and incapacity cases. Persons carrying out the functions set forth in these Rules act under the Supreme Court's authority and supervision.

RDI 2.2 WASHINGTON STATE BAR ASSOCIATION

(a) Function. The Washington State Bar Association:

(1) through the Bar's Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel, the Office of the Regulatory Adjudicator, and other Bar staff and appointees under these Rules to perform the functions specified by these Rules; and

(2) performs other functions and takes other actions necessary and proper to carry out the duties specified in these Rules or delegated by the Supreme Court.

(b) Limitation of Authority.

(1) The Bar officers, Executive Director of the Bar, Board of Governors, LLLT Board, and Limited Practice Board have no authority to direct the investigations, prosecutions, appeals, or discretionary decisions made under these Rules, or to alter the decisions or recommendations of regulatory adjudicators or adjudicative panels.

(2) The Chief Disciplinary Counsel or Chief Regulatory Adjudicator must report a violation or attempted violation of this section to the Chief Justice of the Supreme Court. If the person is a licensed legal professional, the violation may also be grounds for discipline.

(c) Restrictions. Bar officers, the Executive Director, and Board of Governors members cannot serve as regulatory adjudicators or special conflicts disciplinary counsel during their terms or until three years have expired after departure from office.

(d) Independence. In discharging their responsibilities under this Rule and in carrying out duties specified elsewhere in these Rules, the Bar and its Executive Director ensure that the Bar's discipline and incapacity systems are organized and structured to:

(1) safeguard the decision-making independence of the Office of the Regulatory Adjudicator and to appropriately separate its adjudicative processes from the investigative and prosecutorial functions delegated to the Office of Disciplinary Counsel and

(2) ensure the limitations of authority set forth in section (b)(1) are respected.

RDI 2.3 OFFICE OF THE REGULATORY ADJUDICATOR

(a) Function. The Office of the Regulatory Adjudicator (ORA) performs the adjudicative functions set forth in these Rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Regulatory Adjudicator. Regulatory adjudicators, or regulatory adjudicators pro tempore, are lawyer members of the Bar who act as adjudicators on all matters under these Rules and perform other duties as authorized by these Rules or as delegated by the Chief Regulatory Adjudicator.

(c) Chief Regulatory Adjudicator and Staff. The Bar must employ or contract with a suitable lawyer member of the Bar to serve as the Chief Regulatory Adjudicator and employ or contract with other suitable individuals, including regulatory adjudicators pro tempore or settlement officers, as necessary to carry out the functions of the ORA.

(d) Emergency Orders. In the event of an emergency affecting the discipline system, as a result of a natural or other major disaster, the Chief Regulatory Adjudicator may issue sua sponte emergency administrative orders relating to discipline and incapacity matters, except for those matters before the Washington Supreme Court, to ensure the continued administration of lawyer discipline and incapacity systems while protecting the health and safety of participants.

(e) Hearing Adjudicator. A regulatory adjudicator is referred to as the hearing adjudicator when assigned to preside over disciplinary hearings under Title 10 or incapacity hearings under Title 8.

(f) Volunteer Adjudicator. Volunteer adjudicators are members of the Bar or the public appointed to the volunteer adjudicator pool under Rule 2.6. Individual volunteer adjudicators are selected to serve, without compensation and as needed, on the adjudicative panels or as settlement officers in specific matters.

RDI 2.4 ADJUDICATIVE PANELS

(a) Panels in General. The Chief Regulatory Adjudicator convenes and administers adjudicative panels and assigns adjudicative matters under these Rules to the appropriate panel as required by these Rules. A regulatory adjudicator must serve as chair of each adjudicative panel. The Chief Regulatory Adjudicator assigns volunteer adjudicators from the volunteer adjudicator pool to fill the remaining positions of each panel.

(b) Authorization Panel. An Authorization Panel considers, and orders appropriate action on, matters assigned to it under these Rules including but not limited to requests for orders authorizing disciplinary counsel to file a statement of charges or to initiate incapacity proceedings. An Authorization Panel consists of the chair and two individuals assigned from the volunteer adjudicator pool, including an individual who has never been licensed to practice law and one member of the Bar. When practicable, the Chief Regulatory Adjudicator should assign to the Authorization Panel a member of the Bar who has the same license type as the respondent.

(c) Appeal Panel. An Appeal Panel adjudicates appeal and review proceedings as specified in these Rules. An Appeal Panel consists of the chair and four individuals assigned from the volunteer adjudicator pool, including an individual who has never been licensed to practice law and three members of the Bar. When practicable, the Chief Regulatory Adjudicator

should assign to the at least one member of the Bar who has the same license type as the respondent.

RDI 2.5 VOLUNTEER SELECTION BOARD

(a) Duties. The Volunteer Selection Board makes recommendations to the Supreme Court for the appointment and removal of volunteer adjudicators, and special conflicts disciplinary counsel. Information about the conduct or performance of a volunteer adjudicator, or special conflicts disciplinary counsel received by the Volunteer Selection Board, and deliberations of the Volunteer Selection Board, are confidential.

(b) Composition. The Volunteer Selection Board consists of five voting members and the Chief Regulatory Adjudicator as a non-voting member. The voting members are appointed by the Supreme Court and must include four active members of the Bar and one individual who has never been licensed to practice law. Voting members serve staggered three-year terms ending on September 30 of the applicable year. The Supreme Court appoints one of the voting members of the Board to serve as chair. No member may be appointed to serve more than two consecutive full terms.

(c) Restrictions. Volunteer Selection Board members cannot serve as regulatory adjudicators or special conflicts disciplinary counsel until three years have expired after departure from office.

(d) Expenses. The Bar reimburses Volunteer Selection Board members for actual, necessary, and reasonable expenses according to the Bar's expense policy.

RDI 2.6 VOLUNTEER ADJUDICATOR POOL

(a) Function. The volunteer adjudicator pool consists of volunteers who perform the functions of the adjudicative panels and of settlement officers as set forth in these Rules.

(1) *Adjudicative Function*. The Chief Regulatory Adjudicator assigns volunteer adjudicators to one or more of the adjudicative panels.

(2) *Settlement Officer Function*. The Chief Regulatory Adjudicator may assign volunteer adjudicators to serve as settlement officers under Rule 10.11(h).

(b) Composition. The volunteer adjudicator pool consists of at least 15 lawyer members of the Bar, three LLLT members of the Bar, three LPO members of the Bar, and three individuals who have never been licensed to practice law. The Supreme Court, upon recommendations from the Volunteer Selection Board, appoints individuals to the volunteer adjudicator pool.

(c) Terms. Appointments to the volunteer adjudicator pool are for staggered three-year terms ending on September 30 of the applicable year.

(d) Qualifications. Members of the Bar serving as volunteer adjudicators must be active members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceeding pending, have no disciplinary proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system.

(e) Expenses. The Bar reimburses volunteer adjudicators for actual, necessary, and reasonable expenses according to the Bar's expense policy.

RDI 2.7 DIVERSITY

Individuals and entities making appointments under these Rules must consider principles of diversity, equity, and inclusion and must promote the full and equal participation in the discipline and incapacity systems by persons historically underrepresented in the legal profession, including women, persons of color, persons with disabilities, and persons who identify as LGBTQ. Diversity in geography, area of practice, and practice experience may also be considered.

RDI 2.8 REGULATORY ADJUDICATOR CONDUCT

(a) Application of Code of Judicial Conduct. The integrity and fairness of the adjudicative system established by these Rules requires that regulatory adjudicators, including volunteer adjudicators, observe high standards of conduct. The Code of Judicial Conduct (CJC)

applies to a regulatory adjudicator and volunteer adjudicator to the same extent as the CJC applies to a judge pro tempore as set forth in the CJC Application section III, except that a regulatory adjudicator must comply with CJC 3.3 (Acting as a Character Witness), and need not comply with CJC 2.14 (Disability and Impairment) or CJC 2.15 (Responding to Judicial and Lawyer Misconduct).

(b) Restriction on Reviewing Own Decision. A regulatory adjudicator is prohibited from reviewing the regulatory adjudicator's own decision or order in any matter under these Rules, except for motions for reconsideration permitted under these Rules.

RDI 2.9 OFFICE OF DISCIPLINARY COUNSEL

(a) Definition and Function. The Office of Disciplinary Counsel consists of the Chief Disciplinary Counsel and other staff employed under section (c) of this Rule. The Office of Disciplinary Counsel and its staff perform investigative, prosecutorial, and other functions under these Rules.

(b) Disciplinary Counsel. Disciplinary counsel acts as counsel on all matters under these Rules and performs other duties as authorized by these Rules or as delegated by the Chief Disciplinary Counsel.

(c) Chief Disciplinary Counsel and Staff. The Bar must employ a suitable lawyer member of the Bar as Chief Disciplinary Counsel, suitable lawyer members of the Bar as disciplinary counsel, and other suitable staff as necessary to perform the functions and duties set forth in these Rules.

RDI 2.10 SPECIAL CONFLICTS DISCIPLINARY COUNSEL

(a) Function. When a matter is referred to special conflicts disciplinary counsel, special conflicts disciplinary counsel performs the duties of disciplinary counsel under these Rules.

(b) Referral of Matters.

(1) The Chief Disciplinary Counsel refers a matter to be handled by a special conflicts disciplinary counsel when the respondent is one of the following: a licensed legal

professional employed by the Bar; a judicial officer of, or licensed legal professional employed by, the Supreme Court; a governor or governor-elect of the Board of Governors; a regulatory adjudicator; a volunteer adjudicator; an adjunct disciplinary counsel; a special conflicts disciplinary counsel; or counsel appointed under Title 8.

(2) The Chief Disciplinary Counsel may refer a matter to be handled by a special conflicts disciplinary counsel when in the Chief Disciplinary Counsel's discretion it appears appropriate to promote the appearance of impartiality or to serve the ends of justice.

(c) Appointment, Qualifications, and Assignments.

(1) The Supreme Court, upon recommendation from the Volunteer Selection Board, appoints individuals to a pool to serve as special conflicts disciplinary counsel but does not assign matters to special conflicts disciplinary counsel in particular cases except as specified in section (3) of this Rule. Special conflicts disciplinary counsel are appointed for staggered three-year terms ending on September 30 of the applicable year.

(2) Special conflicts disciplinary counsel must be active lawyer members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system or regulatory system.

(3) When a matter is referred to special conflicts disciplinary counsel under section (b) of this Rule, the Chief Regulatory Adjudicator has discretion to select a particular individual from the pool of special conflicts disciplinary counsel to handle the matter. If the Chief Regulatory Adjudicator is unable to make the assignment or elects not to because of a disqualifying conflict or another legal or ethical restriction, the assignment is made by the Chief Justice or the Chief Justice's designee.

(d) Independence. It is the responsibility of a special conflicts disciplinary counsel to make decisions about the objectives for and appropriate disposition of an assigned matter, independently of the Office of Disciplinary Counsel and the Bar. A special conflicts

disciplinary counsel may consult with disciplinary counsel or bar counsel about disciplinary and incapacity processes and procedural matters.

(e) Access to Disciplinary Information. Special conflicts disciplinary counsel have access to any confidential disciplinary information necessary to perform the duties required by these Rules. Special conflicts disciplinary counsel must return any files and documents to the Bar promptly upon completion of the duties required by these Rules and must not retain copies.

(f) Expenses. The Bar reimburses special conflicts disciplinary counsel for actual, necessary, and reasonable expenses according to the Bar's expense policy.

(g) Compensation. The Bar may provide compensation to special conflicts disciplinary counsel at a level established by the Bar.

(h) Restriction on Representing or Advising Respondents or Complainants. Special conflicts disciplinary counsel are subject to the restrictions set forth in Rule 2.14(c).

RDI 2.11 ADJUNCT DISCIPLINARY COUNSEL

(a) Function. When a matter is assigned to adjunct disciplinary counsel, adjunct disciplinary counsel performs the duties of disciplinary counsel under these Rules as directed by disciplinary counsel.

(b) Assignment of Matters. The Chief Disciplinary Counsel assigns adjunct disciplinary counsel to any matter under these Rules when in the Chief Disciplinary Counsel's discretion it appears the appointment will assist the Office of Disciplinary Counsel in performing its duties under these Rules.

(c) Appointment and Qualifications.

(1) Upon the recommendation of the Chief Disciplinary Counsel, the Executive Director appoints individuals to a pool to serve as adjunct disciplinary counsel. Adjunct disciplinary counsel are appointed for staggered three-year terms ending on September 30 of the applicable year.

(2) The Chief Disciplinary Counsel has discretion to appoint an individual to serve as an adjunct disciplinary counsel pro tempore for purposes of a particular matter when it would advance the just and efficient administration of the discipline system.

(3) Adjunct disciplinary counsel must be active lawyer members of the Bar, have no record of public discipline, have no disciplinary or incapacity proceedings pending or imminent, and have no other active role in Washington's discipline and incapacity system or regulatory system.

(d) Access to Disciplinary Information. Adjunct disciplinary counsel have access to any confidential disciplinary information necessary to perform the duties required by these Rules. Adjunct disciplinary counsel must return any files and documents to the Bar promptly upon completion of the duties required by these Rules and must not retain copies.

(e) Expenses. The Bar reimburses adjunct disciplinary counsel for actual, necessary, and reasonable expenses according to the Bar's expense policy.

(f) Restriction on Representing or Advising Respondents or Complainants. Adjunct disciplinary counsel are subject to the restrictions set forth in Rule 2.14(d).

RDI 2.12 RESPONDENT

(a) Respondent. A respondent is a licensed legal professional who is the subject of a complaint, investigation, or proceeding under these Rules.

(b) Representation by Counsel. A respondent may be represented by counsel during any stage of a complaint, investigation, or proceeding under these Rules.

(c) Duty to Comply with Orders. A respondent must comply with all orders issued by the ORA or the Court.

(d) Duty to Provide Authorization for Release of Medical Records. If requested, a respondent must provide written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the investigation or proceedings, subject to a motion to the ORA to limit the scope of the

requested releases and authorizations for good cause shown. In proceedings under Title 8, this duty is governed by Rules 8.2(d), 8.3(f), 8.4(e), and 8.11(a)(2).

(e) Restriction on Charging Fee to Respond to Complaint. A respondent may not seek to charge a complainant a fee or recover costs from a complainant for responding to a complaint.

RDI 2.13 PRIVILEGES

(a) Communications Privileged. Communications to the Court, Bar, Board of Governors, adjudicative panels, regulatory adjudicators, Clerk, disciplinary counsel, special conflicts disciplinary counsel, adjunct disciplinary counsel, Bar staff, or any other individual or entity acting under authority of these Rules are absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant, witness, or other person providing information.

(b) Attorney-Client Privilege and Duty of Confidentiality. A licensed legal professional may not assert the attorney-client privilege or other prohibitions on revealing information relating to the representation of a client as a basis for refusing to provide information that the licensed legal professional is obligated to provide under these Rules, including information made confidential by any applicable rules of professional conduct, except as permitted by Rules 5.6(b) and 5.7(c). Providing information to disciplinary counsel or a regulatory adjudicator under these Rules is not prohibited by RPC 1.6 or 1.9 or LLLT RPC 1.6 or 1.9 and does not waive any attorney-client privilege.

(c) Bar's Duty of Confidentiality.

(1) If a licensed legal professional provides and identifies specific information that is privileged and requests that it be treated as confidential under these Rules, the Bar must maintain the confidentiality of the information.

(2) Disciplinary counsel receives, reviews, and holds attorney-client privileged and other confidential client information provided by a licensed legal professional under and in furtherance of the Supreme Court's authority to regulate the practice of law.

(3) No information identified as confidential under this Rule may be disclosed or released under Title 3 absent authorization under section (f) of this Rule unless the client or former client consents, which includes consent under Rule 5.2(a).

(d) Licensed Legal Professional's Own Confidential Information. Nothing in these Rules waives or requires waiver of a licensed legal professional's own privilege or other protection as a client against the disclosure of information relating to the representation.

(e) Privilege Against Self-Incrimination. A licensed legal professional's duty to cooperate and testify under these Rules is subject to the licensed legal professional's proper exercise of the privilege against self-incrimination.

(f) Disclosure of Confidential Information.

(1) Disciplinary counsel may move for authorization to disclose information identified as confidential client information under this Rule or Rule 3.1(b). The motion must clearly state the information that has been identified as confidential and the use for which disciplinary counsel seeks authorization. The procedures set forth in Rule 10.8 apply to motions under this Rule.

(2) In considering a motion to authorize disciplinary counsel to disclose information identified as confidential client information under this Rule, the regulatory adjudicator should consider factors including:

(A) the relevance and necessity of the disclosure of the information;

(B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;

(C) the availability of the information from other sources;

(D) the sensitivity of the information and potential impact on the client of the disclosure, including the client's right to effective assistance of counsel; and

(E) the expressed desires of the client.

(3) When deemed necessary by the regulatory adjudicator considering the motion, the regulatory adjudicator may conduct an in camera review of confidential client information.

(4) The regulatory adjudicator may grant or deny the motion in whole or in part, and may establish terms or conditions for the use of specific information. A ruling may take the form of, or may accompany, a protective order under Rule 3.4.

(5) Review of a ruling under this Rule may be sought under Rule 11.10.

RDI 2.14 RESTRICTIONS ON REPRESENTING OR ADVISING INDIVIDUALS UNDER THESE RULES

(a) Current Bar Officials and Adjudicators. Bar officers, the Bar Executive Director, Board of Governors members, regulatory adjudicators, and volunteer adjudicators cannot knowingly advise or represent individuals regarding pending or likely matters under these Rules, other than advising a person of the availability of complaint procedures or to secure the services of a lawyer.

(b) Former Bar Officials. After leaving office, Bar officers, the Bar Executive Director, and Board of Governors members cannot represent individuals in pending or likely matters under these Rules until three years have expired after departure from office.

(c) Special Conflicts Disciplinary Counsel. Special conflicts disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this Rule during the term of their appointment.

(d) Adjunct Disciplinary Counsel. Adjunct disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this Rule only while assigned to a matter under Rule 2.11.

RDI 2.15 REMOVAL OF APPOINTEES

The power granted by this Title to any person or entity to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform the duties of the appointment, or for any other cause, and to fill the resulting vacancy.

TITLE 3 – DISCIPLINARY AND INCAPACITY INFORMATION

RDI 3.1 CONFIDENTIALITY

(a) General. Matters and information made confidential under these Rules are held by the Bar under the authority of the Supreme Court. Confidential information must not be disclosed or released except as authorized by these Rules. The complainant, respondent, or any witness may disclose any information in their possession regarding a disciplinary or incapacity matter except as prohibited by Rule 3.4, court order, or other law.

(b) Client Information. When a licensed legal professional provides information to the Bar and identifies that information as privileged or confidential client information under Rule 2.13(c), that information may not be released under this Title unless the client consents, including consent under Rule 5.2(a), or disciplinary counsel obtains an order authorizing such disclosure under Rule 2.13(f).

(c) Information Not Subject to Subpoena. Information made confidential under these Rules is not subject to a subpoena or order requiring disclosure in any civil, criminal, or other proceeding except by leave of the Supreme Court upon a showing of compelling need.

(d) Wrongful Release. Disclosure or release of information made confidential by these Rules, except as permitted by these Rules, is strictly prohibited. If the person is a licensed legal professional, wrongful disclosure or release may be grounds for discipline.

RDI 3.2 PUBLIC AND CONFIDENTIAL EVENTS

(a) Open to the Public. Except as otherwise provided in these Rules or as ordered by a regulatory adjudicator or the Supreme Court, the following events in disciplinary proceedings are open to the public:

(1) hearings and motion hearings; and

(2) oral arguments before an Appeal Panel.

(b) Closed to the Public. Except as otherwise provided in these Rules or as ordered by the Supreme Court, all events that are not open to the public under section (a) of this Rule are closed to the public, including but not limited to the following:

(1) ORA adjudicative panel deliberations;

(2) Volunteer Selection Board deliberations;

(3) hearings, motions, and conferences before a regulatory adjudicator in incapacity proceedings;

(4) oral arguments before an Appeal Panel in incapacity proceedings;

(5) motion hearings and oral arguments on interlocutory review prior to an order authorizing the filing of statement of charges;

(6) review of material breach determination in diversion matters;

(7) oral presentations regarding a stipulation;

(8) motion hearings appointing custodian;

(9) settlement conferences; and

(10) any event or portion of an event subject to a protective order.

(c) Supreme Court Proceedings. Except as otherwise provided in these Rules or by order of the Supreme Court, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Upon motion of a party in an incapacity proceeding under Title 8, the Supreme Court may take additional measures to ensure the confidentiality of information.

RDI 3.3 PUBLIC AND CONFIDENTIAL INFORMATION

(a) Public Information. The following information is public, subject to limitation by protective order, other provisions in these Rules, other applicable laws, order of a regulatory adjudicator, or court order:

(1) statements of concern and any related filed documents made public under Rule 3.7;

(2) orders of an Authorization Panel authorizing the filing of a statement of charges;

(3) pleadings, orders, notices, and documents filed with the Clerk in disciplinary proceedings;

(4) after a stipulation under Title 9 is approved by the ORA, (A) the record submitted to the ORA, (B) the order approving the stipulation, and (C) the stipulation;

(5) resignations in lieu of discipline under Rule 9.2;

(6) pleadings, orders, and documents filed with the Supreme Court, except in incapacity proceedings or information identified as confidential under Rules 7.3(c) and 7.4;

(7) orders appointing and discharging custodians under Rule 16.1, including the appointed custodian's name and contact information;

(8) the fact that a complainant has been determined to be a vexatious complainant and the order under Rule 5.5(g);

(9) the fact that a proceeding under Title 8 is pending or that a disciplinary proceeding has been stayed pending the outcome of a proceeding under Title 8;

(10) the fact that a licensed legal professional's license has been placed in incapacity inactive status or interim incapacity inactive status;

(11) the fact that a licensed legal professional's license has been suspended on an interim basis under Title 7;

(12) the fact that a matter has been diverted from disciplinary proceedings after an Authorization Panel has authorized the filing of a statement of charges; and

(13) the fact that a sanction or remedy has been imposed under Title 13.

(b) Confidential Information. All information not defined as public under section (a) of this Rule is confidential, including but not limited to:

(1) information made confidential by a protective order, other provisions in these Rules, other applicable laws, an order of a regulatory adjudicator, or a court order;

(2) discipline imposed under prior rules of this state that was confidential when imposed. A record of confidential discipline may be kept confidential during proceedings under these

Rules, or in connection with a stipulation under Rule 9.1, through a protective order under Rule 3.4;

(3) information identified by a licensed legal professional under Rule 2.13(c) to the Bar as privileged or confidential client information, unless disciplinary counsel obtains an order authorizing disclosure under Rule 2.13(f) or the client consents;

(4) information regarding matters under Title 5, except as identified in section (a) of this Rule;

(5) information regarding incapacity proceedings under Title 8, except as identified in section (a) of this Rule; and

(6) information regarding vexatious complainant proceedings under Rule 5.5, except as identified in section (a) of this Rule.

RDI 3.4 PROTECTIVE ORDERS

(a) Purpose. To protect a compelling interest and for good cause shown, upon motion, a regulatory adjudicator may enter a protective order prohibiting or limiting disclosure or release of specific information, documents, or pleadings and directing other actions necessary to implement the order.

(b) Motion. A motion for a protective order must comply with the procedures for written motions under Rule 10.8.

(c) Review. An Appeal Panel reviews decisions granting or denying a protective order or relief from a protective order if a written request for review is filed and served within five days of service of the decision. When a written request for review is filed, the Chief Regulatory Adjudicator assigns the matter to an Appeal Panel and establishes the timeline and terms for any additional briefing and oral argument.

(d) Relief from a Protective Order. A regulatory adjudicator may grant specific relief from a protective order on a showing of compelling need, provided the individual seeking relief establishes that reasonable efforts have been made to notify any person affected by the order.

(e) Disclosure Prohibited While Motion Pending. The filing of a motion for a protective order prohibits disclosure or release of the materials or information sought to be protected until an order deciding the motion is final. An order deciding the motion is final after the time for filing a request for review has expired or after a decision on review is filed and served.

RDI 3.5 RELEASE OF CONFIDENTIAL INFORMATION WITHOUT NOTICE

(a) Release upon Written Waiver. Upon written waiver by the licensed legal professional, the Bar may, without further notice to the licensed legal professional, release confidential disciplinary or incapacity information to any person or entity authorized by the licensed legal professional to receive the information.

(b) Investigative Release. Except as otherwise prohibited by these Rules, an order entered under Rule 3.4, court order, or other applicable law, the Bar may, without notice to a licensed legal professional, release confidential disciplinary and incapacity information as reasonably necessary to conduct an investigation, recruit counsel, or to keep a complainant advised of the status of a matter. When providing information to a complainant about the status of an incapacity matter, the information must be limited to the fact that a matter is under investigation or has been stayed or deferred.

(c) Other Release. Except as otherwise prohibited by these Rules, an order entered under Rule 3.4, court order, or other applicable law, when it appears the information will assist the recipient in performing the recipient's duties, the Bar may release confidential disciplinary or incapacity information related to a licensed legal professional or respondent without notice to that person as follows:

(1) to the Client Protection Board;

(2) to the Practice of Law Board;

(3) to the Character and Fitness Board;

(4) to other counsel performing duties under these Rules, including special conflicts disciplinary counsel, adjunct disciplinary counsel, and appointed incapacity counsel;

(5) to custodians appointed under Rule 16.1;

(6) to the Volunteer Selection Board;

(7) to the Bar's Board of Governors or officers, as deemed reasonably necessary by Chief Disciplinary Counsel;

(8) to any state, federal, or tribal court judicial officer if the information is relevant to the licensed legal professional's conduct before the court or to a judicial officer's reporting obligation under the Code of Judicial Conduct or other law;

(9) to authorities in any jurisdiction authorized to investigate alleged unlawful activity;

(10) to authorities in any jurisdiction authorized to investigate judicial or licensed legal professional misconduct or incapacity; or

(11) to any lawyer representing the Bar in any matter.

(d) Duty to Maintain Confidentiality. Any recipient of information under sections (c)(1)-(7) of this Rule must maintain the confidentiality of that information. Any recipient of information under sections (c)(8)-(11) must be notified of the Bar's confidentiality obligations under these Rules.

RDI 3.6 RELEASE OF CONFIDENTIAL INFORMATION WITH NOTICE

(a) Discretionary Release. Except as prohibited by Rule 3.4, the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information when it appears necessary to:

(1) protect the interests of clients or other persons, the public, or the integrity of the disciplinary process or the Bar;

(2) respond to specific inquiries about matters that are in the public domain; or

(3) correct a false or misleading public statement.

(b) Notice. A respondent must be given notice of a decision to release information under this Rule before its release unless the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or would be detrimental to the integrity of the disciplinary process or the Bar. Notice must be given seven days before release and must include a description of the information that will be released.

(c) Finality. A respondent may serve and file a motion for protective order under Rule 3.4 before the information is released. Otherwise, a decision to release information under this Rule is not subject to further review.

(d) Inability to Act. When the Chief Disciplinary Counsel is unable to act, or upon the request of the Chief Disciplinary Counsel, decisions under this Rule will be made by the Executive Director or a special conflicts disciplinary counsel assigned to the matter.

RDI 3.7 PUBLIC STATEMENT OF CONCERN

(a) Authority. To protect members of the public from a substantial threat, the Chief Disciplinary Counsel may file a proposed statement of concern with the Clerk based on information from a pending investigation into a respondent's apparent ongoing serious misconduct not otherwise made public by these Rules. The proposed statement must not disclose information protected by Rule 3.4.

(b) Procedure.

(1) A copy of the proposed statement of concern must be served on the respondent who is the subject of the statement of concern.

(2) The respondent may file an objection with the Clerk within seven days of the service of the proposed statement of concern. The respondent must serve the objection on the Office of Disciplinary Counsel.

(3) If a timely objection is filed, the Chief Regulatory Adjudicator determines the procedure for prompt consideration of the objection. The proposed statement of concern becomes a

public statement of concern only if the Chief Regulatory Adjudicator so orders. The Chief Regulatory Adjudicator's decision is not subject to further review.

(4) If no timely objection is filed, the proposed statement of concern becomes a public statement of concern seven days after service.

(c) Withdrawal. The Chief Disciplinary Counsel may withdraw a public statement of concern at any time by filing a notice of withdrawal with the Clerk. The respondent may at any time request that the Chief Regulatory Adjudicator order the public statement of concern withdrawn. The Chief Regulatory Adjudicator determines the procedure for prompt consideration of the request. If withdrawn, the public statement of concern is removed from the website maintained by the Bar for public information.

(d) Confidentiality. A proceeding under this Rule, including a proposed statement of concern and any documents filed in the proceeding, is confidential unless the proposed statement of concern is made public under section (b)(3) or (b)(4).

RDI 3.8 NOTICE OF DISCIPLINARY ACTION, RESIGNATION IN LIEU OF DISCIPLINE, INTERIM SUSPENSION, OR PLACEMENT IN INCAPACITY INACTIVE STATUS

(a) Notices. The Clerk must notify and send appropriate documentation to the following entities of the imposition of a disciplinary sanction, a placement of the respondent's license in incapacity inactive status, a resignation in lieu of discipline, or the filing of a statement of concern made public under Rule 3.7:

(1) the Supreme Court and the discipline authority or highest court in any jurisdiction where the licensed legal professional is believed to be admitted to practice law;

(2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit, as appropriate for the license type;

(3) the presiding judge of the superior court of the county in which the licensed legal professional maintained a practice, as appropriate for the license type; and

(4) the American Bar Association National Lawyer Regulatory Data Bank.

(b) Bar Publication and Website Notice.

(1) *Notice*. Notice of the imposition of any disciplinary sanction, resignation in lieu of discipline, interim suspension, information ordered published under Rule 9.3(b)(3), placement of a respondent's license in incapacity inactive status, or a statement of concern made public under Rule 3.7 must be published in the official publication of the Bar and on a website maintained by the Bar for public information. Notices should include sufficient information to adequately inform the public and the members of the Bar about any misconduct found, rules violated, and disciplinary sanction imposed. For a placement of a respondent's license in incapacity inactive status, no reference may be made to the specific incapacity. For an interim suspension, the basis of the interim suspension must be stated. Bar counsel must serve a copy of the draft notice under this section on respondent and disciplinary counsel under Rule 4.1. Disciplinary counsel or respondent may provide Bar counsel with comments on the draft notice, which must be received within ten days of service. Bar counsel must review comments timely received, but Bar counsel's decision about the content of the notice is not subject to further review.

(2) *Publication*. Notices published in the official publication of the Bar and posted on the Bar website may not be removed following publication, unless ordered by the Supreme Court or otherwise set forth in these Rules.

RDI 3.9 MAINTENANCE OF RECORDS

(a) Permanent Records. The Clerk's file, admitted exhibits, and transcripts of the proceedings are permanent records in any matter in which:

(1) the filing of a statement of charges was authorized,

(2) an incapacity proceeding was authorized or commenced,

(3) a sanction was imposed,

(4) a placement of a respondent's license in incapacity inactive status was ordered,

(5) the respondent resigned in lieu of discipline under Rule 9.2,

(6) a statement of concern was made public under Rule 3.7, or

(7) a custodian was appointed under Rule 16.1.

(b) Retention and Destruction of Complaint and Investigative Files. Except as specified below, file materials that are not permanent records under section (a) of this Rule may be destroyed three years after the matter is closed. File materials on a matter closed after a diversion may be destroyed no sooner than five years after the closure. File materials that are not permanent records must be destroyed on the schedule set forth above on the respondent's request unless the file materials are being used in an ongoing investigation or other good cause exists for retention. File materials related to records made permanent under section (a) of this Rule, including investigative files, may be retained indefinitely in disciplinary counsel's discretion.

(c) Retention and Destruction of Random Examination Files. In any random examination matter under Rule 15.1 that was concluded without an investigation being ordered, the file materials relating to the matter may be destroyed three years after the matter was concluded. For any random examination matter resulting in an ordered investigation, the materials related to the random examination matter will be made part of the disciplinary investigative file. A record, limited to the name of the lawyer, LLLT, LPO, law firm, or closing firm examined or re-examined under Rule 15.1, together with the date the examination or re-examination was concluded, will be maintained for a period of seven years for the purpose of determining prior examinations under Rule 15.1(c).

RDI 3.10 NO RETROACTIVE EFFECT

These Rules do not modify the public or confidential nature of information or pleadings made public or confidential under disciplinary or incapacity procedural rules in effect prior to enactment of these Rules.

TITLE 4 – GENERAL PROCEDURAL RULES

RDI 4.1 SERVICE OF PAPERS

(a) General. Whenever these Rules require service of papers or documents, service must be accomplished as provided in this Rule.

(b) Methods of Service.

(1) *Electronic Service*.

(A) The parties may consent in writing to electronic service of all papers or documents unless these Rules specifically provide for a different means of service. Electronic service is complete on transmission when made prior to 5:00 p.m. Pacific Time on a day that is not a Saturday, Sunday, or legal holiday. Service made on a Saturday, Sunday, legal holiday, or after 5:00 p.m. Pacific Time on any other day is deemed complete on the first day thereafter that is not a Saturday, Sunday, or legal holiday. If properly made, electronic service is presumed effective.

(B) The address for electronic service is as follows:

(i) If service is on the Office of Disciplinary Counsel, to the assigned disciplinary counsel's email address on file with the Bar, unless a different email address is designated by disciplinary counsel;

(ii) If service is on respondent or any lawyer representing the respondent, to the email address on file with the Bar, unless a different email address is provided in an answer to a statement of charges or in a notice of appearance by counsel.

(C) If a party agrees to electronic service under this Rule, the email address specified in section (b)(1)(B) of this Rule must be sufficient to receive electronic transmission of information and electronic documents.

(D) Consent to electronic service does not preclude service by other means.

(2) *Service by Mail*.

(A) If the parties do not consent to electronic service under section (b)(1) of this Rule, all

papers and documents must be served by mail unless these Rules specifically provide for a different means of service. Service by mail may be accomplished by postage-prepaid mail. If properly made, service by mail is complete on the date of mailing. Service by mail is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Service by mail may be by first class mail or by certified or registered mail, return receipt requested.

(C) The address for service by mail is as follows:

(i) If service is on the Office of Disciplinary Counsel, directed to the assigned disciplinary counsel at the address of the Bar, unless a different address is designated;

(ii) If service is on respondent or any lawyer representing the respondent, to the address on file with the Bar, unless a different address is provided in an answer to a statement of charges or in a notice of appearance by counsel.

(3) *Service by Delivery*. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

(4) *Personal Service*. If personal service is required under these Rules, it must be accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at the respondent's last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Bar, or to the respondent's resident agent whose name and address are on file with the Bar under APR 13(f).

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service on Guardian. If there is a court-appointed guardian or guardian ad litem for a respondent, service under sections (a) and (b) of this Rule above must also be made on the guardian or guardian ad litem.

(d) Proof of Service.

(1) If service is accomplished electronically or by mail, proof of service may be made by a certificate of service.

(2) If personal service is required, proof of service may be made by affidavit or declaration of service, sheriff's return of service, or a signed acknowledgment of service.

(3) Proof of service in all cases must be filed but need not be served.

RDI 4.2 FILING; ORDERS

(a) Filing Generally. Except in matters before the Supreme Court, whenever filing is required under these Rules, the document must be filed with the Clerk. Filing of documents for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(1) *Timing*. Any document is timely filed only if it is received by the Clerk within the time permitted for filing. A document received by the Clerk after 5:00 p.m. Pacific Time or on a Saturday, Sunday, or legal holiday is deemed filed on the first day thereafter that is not a Saturday, Sunday, or legal holiday.

(2) *Signing*. Documents filed with the Clerk must be signed by the party or person filing the document or the attorney of record for the party or person filing the document.

(3) *Electronic Filing*. The parties should file electronically. Electronic filing may be accomplished by email or an electronic system approved by the Clerk.

(4) *Refusal by Clerk*. The Clerk may refuse to accept for filing any document not in compliance with these Rules and must notify the parties of the refusal and the reason for the refusal.

(b) Filing of Orders. Any written order, decision, or ruling of the ORA must be filed with the Clerk.

(c) Service of Orders. The Clerk must serve any written order, decision, or ruling of the ORA on disciplinary counsel and the respondent or any lawyer representing the respondent. Unless the ORA orders otherwise, service by the Clerk should be made electronically as set forth in Rule 4.1(b)(1)(B).

(d) Respondents Who Are Not Bar Members. If a respondent is not licensed to practice law in Washington and does not have a mailing address or an email address on file with the Bar, the respondent must provide the disciplinary counsel or the Clerk with a mailing address and an email address to receive service of papers. In the absence of a mailing address or email address provided by the respondent, disciplinary counsel or the Clerk may serve the respondent at any reasonably ascertainable address where it appears the respondent receives mail or email.

RDI 4.3 PAPERS AND DOCUMENTS IN PROCEEDINGS

Except as otherwise provided in Titles 11 or 12, all pleadings, documents, or other papers filed in proceedings must be legibly written or typed using no smaller than 12-point font and prepared on 8½ by 11 inch paper or the electronic equivalent.

RDI 4.4 COMPUTATION OF TIME

CR 6(a) and (e) govern the computation of time under these Rules.

RDI 4.5 EXTENSION OR REDUCTION OF TIME IN PROCEEDINGS

In any proceeding, except for notices of appeal or matters pending before the Supreme Court, the ORA may, on its own initiative or on motion of a party, enlarge or shorten the time within which an act must be done in a particular case for good cause.

RDI 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Upon a showing of good cause, disciplinary counsel or a regulatory adjudicator may issue a subpoena to compel the attendance of witnesses or production of documents in this state for

use in disciplinary or incapacity proceedings in another jurisdiction. The person seeking the subpoena must certify that the subpoena has been approved or authorized under the law or disciplinary rules of the other jurisdiction. Service, enforcement, and challenges to a subpoena issued under this Rule are governed by the provisions of these Rules.

RDI 4.7 ENFORCEMENT OF SUBPOENAS

Any person who fails, without adequate excuse, to obey a subpoena served upon that person under these Rules may be deemed in contempt of the Washington Supreme Court. To enforce subpoenas issued under these Rules, a party must file a petition for an order to show cause with the Supreme Court. The petition must (1) be accompanied by a copy of the subpoena and proof of service; (2) state the specific manner of the lack of compliance; and (3) specify the relief sought. The person subject to the subpoena may file an answer to the petition within seven days of service. The Court considers the petition and any answer and issues an order granting or denying the relief sought.

RDI 4.8 SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION

Service and filing of papers under these Rules by an inmate confined in an institution must conform to the requirements of GR 3.1.

RDI 4.9 REDACTION OR OMISSION OF PERSONAL IDENTIFIERS

The filing party is responsible for redacting or omitting from all publicly filed exhibits, documents, and pleadings the following personal identifiers: social security numbers, financial account numbers, and driver's license numbers. When it is not feasible to redact or omit a personal identifier, the filing party must seek a protective order under Rule 3.4 to have the document filed under seal.

TITLE 5 – REVIEW, INVESTIGATION, AND COMPLAINT PROCEDURES

RDI 5.1 INVESTIGATIVE AUTHORITY

(a) Authority. Disciplinary counsel may take appropriate steps to investigate any alleged or apparent misconduct by, or incapacity to practice law of, a licensed legal professional whether disciplinary counsel learns of it by complaint or otherwise.

(b) Submitting a Complaint. Any person or entity may submit to the Office of Disciplinary Counsel a written complaint concerning the misconduct or incapacity to practice law of a licensed legal professional. Disciplinary counsel must review the information to determine whether an investigation or further action is warranted.

RDI 5.2 COMPLAINANT CONSENT TO DISCLOSURE AND EXCEPTIONS

(a) Consent to Disclosure. By submitting a complaint, the complainant consents to the following:

(1) all information the complainant submits may be disclosed to the respondent or to any person eligible to receive information under these Rules; and

(2) the respondent or any other licensed legal professional contacted by the complainant may disclose to disciplinary counsel any information relevant to the investigation.

(b) Consent Does Not Extend to Other Forums. Consent to disclosure under this Rule does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

(c) Withholding Information. Disciplinary counsel has discretion to withhold information in whole or in part from the respondent or an individual otherwise eligible to receive it when disciplinary counsel deems it necessary to protect a privacy, safety, or other compelling interest of a complainant or other person.

(d) Confidential Source. If a person or entity submits a complaint and asks to be treated as a confidential source, the person's identity may not be disclosed during an investigation or proceeding unless ordered by a regulatory adjudicator as necessary for the respondent to

conduct a proper defense. A confidential source is not entitled to the notification required under Rule 5.12.

RDI 5.3 REQUEST FOR PRELIMINARY RESPONSE

Disciplinary counsel may request a written preliminary response from a respondent to information obtained under Rule 5.1. If disciplinary counsel requests only the respondent's written preliminary response and does not request specific information or specific records, files, or accounts, the request is not subject to objection under Rule 5.6(b).

RDI 5.4 DEFERRAL BY DISCIPLINARY COUNSEL

(a) Deferral. Disciplinary counsel may defer action under Rule 5.1(b) or investigation under this Title:

(1) if it appears that the allegations are related to pending civil or criminal litigation;

(2) if it appears that the respondent lacks the physical or mental capacity to respond;

(3) if an incapacity proceeding under Title 8 is pending; or

(4) for other good cause.

When making a deferral decision, disciplinary counsel considers whether deferral will endanger the public.

(b) Notice and Review. Disciplinary counsel must inform the respondent and may inform the complainant of a deferral decision. A deferral decision is not subject to review.

RDI 5.5 VEXATIOUS COMPLAINANTS

(a) Definition. A "vexatious complainant" is a complainant who has engaged in a frivolous or harassing course of conduct relating to the submission of complaints that so departs from a reasonable standard of conduct as to render the complainant's conduct abusive to the disciplinary system or participants in the disciplinary system.

(b) Motion. Either disciplinary counsel or a respondent may file a motion with the ORA to declare the complainant vexatious. The filing of a motion does not suspend a respondent's duties under these Rules. The moving party may request a temporary order stating that

disciplinary counsel need not accept, acknowledge, review, or investigate complaints from the alleged vexatious complainant.

(c) Requirements of Motion. The motion must set forth with particularity the facts establishing that the complainant's conduct is vexatious and identify the relief sought.

(d) Service. The moving party must serve a copy of the motion on the complainant. If the motion is filed by a respondent, the motion must also be served on disciplinary counsel. Disciplinary counsel may notify any current or former respondent against whom a complaint has been filed by the alleged vexatious complainant of the motion.

(e) Response to Motion. The complainant or disciplinary counsel may file a written response no later than 20 days after service of the motion.

(f) Temporary Order. During the pendency of the motion, the ORA may issue a temporary order stating that disciplinary counsel need not accept, acknowledge, review, or investigate complaints from the alleged vexatious complainant.

(g) Order. If the ORA finds that the complainant's conduct is vexatious, the ORA must issue findings of fact and a separate order relieving disciplinary counsel of the obligation to accept, acknowledge, review, or investigate complaints from the vexatious complainant and any other necessary and proper relief. The relief ordered must be no broader than necessary to prevent the harassment and abuse found. If the ORA finds that the complainant's conduct is not vexatious, the ORA must issue an order denying the motion.

(h) Confidentiality. The fact that a complainant has been determined to be a vexatious complainant and the order are public information. All other proceedings and documents related to a motion under this Rule are confidential.

(i) Review by Court. The moving party, the complainant, or disciplinary counsel may seek review of the ORA's order by filing a petition for discretionary review under the procedures set forth in Rule 12.4. No other appeal of the order is allowed. Information made confidential under these Rules remains confidential in any Supreme Court proceeding.

RDI 5.6 INVESTIGATIVE INQUIRIES AND OBJECTIONS

(a) General Investigative Inquiries. Upon inquiry or request by disciplinary counsel, any licensed legal professional must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

(2) permit inspection and copying of requested records, files, and accounts;

(3) furnish copies of requested records, files, and accounts;

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties, including requests directed to a respondent under Rule 2.12(d); and

(5) comply with investigatory subpoenas under Rule 5.7.

(b) Objections. Within 30 days of service of a written investigative inquiry or request under section (a) of this Rule, a licensed legal professional may serve a written objection on disciplinary counsel. An objection is reviewed by the ORA under Rule 5.8.

RDI 5.7 INVESTIGATIVE SUBPOENAS AND DEPOSITIONS

(a) Procedure. Before filing a statement of charges, disciplinary counsel may issue a subpoena for a deposition or to obtain documents without a deposition. CR 30 and 31 provide guidance for depositions under this Rule. The respondent need not be given notice of a subpoena issued under section (b) of this Rule.

(b) Subpoenas. Disciplinary counsel may issue a subpoena to compel a respondent or a witness to (1) attend a deposition; (2) produce books, documents, or other evidence at a deposition; or (3) produce books, documents, or other evidence without a deposition. CR 45 provides guidance for subpoenas issued under this Rule, but the notice required by CR 45(b)(2) need not be given. Subpoenas may be enforced as set forth in Rule 4.7.

(c) Objections to Subpoenas and Deposition Requests or Inquiries.

(1) *Objections*. For good cause, the subject of a subpoena may object to an investigative subpoena or a request or inquiry by disciplinary counsel during a deposition under this Rule.

Any such objection must be in writing or on the record and is reviewed under Rule 5.8.

(2) *Timeliness of Objections*. An objection to a subpoena under this Rule is timely if made prior to the date specified for production or the date of the deposition. An objection to a request or inquiry made by disciplinary counsel during the course of a deposition is timely only if made in response to the request or inquiry during the deposition. A timely objection suspends any duty to respond to the subpoena or to the request or inquiry until a ruling has been made.

RDI 5.8 REVIEW OF OBJECTIONS

(a) Review Authorized. On motion, the ORA may hear the following matters:

(1) Objections to written investigative inquiries under Rule 5.6 and

(2) Objections to investigative subpoenas or disciplinary counsel inquiries or requests made at a deposition under Rule 5.7.

(b) Procedure.

(1) The person objecting must file a motion seeking review of the objection within 15 days of the date of the objection. If no motion is filed within 15 days, the objection is deemed abandoned.

(2) A motion seeking review of an objection must clearly and specifically set out what is being objected to and the basis for the objection.

(3) In considering an objection to a written investigative inquiry, subpoena, or disciplinary counsel inquiry or request made at a deposition under this Rule, the ORA should consider the following factors:

(A) the relevance and necessity of the information to the investigation;

(B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;

(C) the availability of the information from other sources;

(D) the sensitivity of the information and potential impact on a client, including the client's right to effective assistance of counsel;

(E) the expressed desires of a client;

(F) whether the objection was made before the due date of the request or inquiry; and

(G) whether the burden of producing the requested information outweighs the likely utility of the information to the investigation.

(4) In ruling on an objection under this Rule, the ORA may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. When appropriate, a ruling may take the form of, or may accompany, a protective order under Rule 3.4.

(5) Review of a ruling under this Rule may be sought under Rule 11.10.

RDI 5.9 COOPERATION

(a) Duty to Respond. A licensed legal professional, whether or not a respondent as defined in Rule 2.12(a), must promptly respond to requests, inquiries, and subpoenas from disciplinary counsel, subject to Rules 2.13, 5.3, 5.6, and 5.7.

(b) Noncooperation Deposition. If a licensed legal professional has not complied with any request made under this Title for more than 30 days from the date of the request, disciplinary counsel may notify the licensed legal professional that failure to comply within 10 days may result in the licensed legal professional's deposition or subject the licensed legal professional to interim suspension under Rule 7.2. Ten days after this notice, disciplinary counsel may serve the licensed legal professional with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the licensed legal professional's continued failure to cooperate may be conducted at any place in Washington State.

(c) Costs and Expenses.

(1) A licensed legal professional who has been served with a subpoena under this Rule is liable for the actual costs of the deposition, including but not limited to service fees, court

reporter fees, travel expenses, the cost of transcribing the deposition if ordered by disciplinary counsel, and a reasonable attorney fee of $750.

(2) The procedure for assessing costs and expenses is as follows:

(A) Disciplinary counsel applies to the ORA by itemizing the costs and expenses and stating the reasons for the deposition.

(B) The licensed legal professional has 10 days to respond to disciplinary counsel's application.

(C) The ORA by order assesses appropriate costs and expenses. The order assessing costs and expenses is not subject to further review.

(d) Grounds for Discipline. A licensed legal professional's failure to cooperate fully and promptly with any requests, inquiries, or subpoenas as required by these Rules is also grounds for discipline.

RDI 5.10 REPORTING INVESTIGATIONS TO AN AUTHORIZATION PANEL

(a) Request to an Authorization Panel. Disciplinary counsel may file a request for an order authorizing the filing of a statement of charges or the initiation of incapacity proceedings. The request must set forth the basis for the disciplinary or incapacity proceeding. Disciplinary counsel must file the request with the Clerk and serve the request on the respondent.

(b) Response. A respondent may file with the Clerk a written response to disciplinary counsel's request within 15 days of service of the request. The respondent must serve any response on disciplinary counsel.

(c) Reply. Disciplinary counsel may file with the Clerk a reply to the respondent's response within five days of service of the response. Disciplinary counsel must serve any reply on the respondent.

(d) Standard. An Authorization Panel must authorize the filing of a statement of charges if, based on existing law or a good faith argument for an extension of existing law, sufficient

information exists whereby a reasonable trier of fact could find one or more of the alleged rule violations by a clear preponderance of the evidence, even if that evidence is disputed. The standard for authorization to initiate incapacity proceedings is set forth in Rule 8.2(a).

(e) Order. After considering materials filed by disciplinary counsel and the respondent under this Rule, an Authorization Panel issues an order:

(1) authorizing the filing of a statement of charges or the initiation of incapacity proceedings, as requested by disciplinary counsel;

(2) denying the request to file a statement of charges, with prejudice; or

(3) denying the request to file a statement of charges or to initiate incapacity proceedings, without prejudice to the filing of a subsequent request based on the presentation of additional information.

An order denying the request must include an explanation of the reasons for the denial and the determination on prejudice. Any order denying the request with prejudice must be transmitted by the Clerk to the Court, where it will be circulated among the justices for informational purposes.

(f) Finality. The Authorization Panel's order is not subject to review.

RDI 5.11 CLOSURE BY DISCIPLINARY COUNSEL

(a) Closure Without Investigation. Disciplinary counsel may close a complaint after a determination that no investigation or further action is warranted.

(b) Closure of Investigation. Disciplinary counsel may close an investigation and any related complaints after a determination that no further action is warranted.

(c) Finality. Closure under section (a) or (b) of this Rule is not subject to review. If disciplinary counsel receives information about a closed matter, disciplinary counsel may consider that information to determine what, if any, action is appropriate.

(d) Closure Not Required. None of the following alone requires disciplinary counsel to close a complaint or investigation: the unwillingness of a complainant to cooperate with

disciplinary counsel, the withdrawal of a complaint, a compromise between the complainant and the respondent, or restitution by the respondent.

RDI 5.12 NOTIFICATION

(a) Closing. Disciplinary counsel must notify the respondent and complainant after a complaint or an investigation has been closed under Rule 5.11.

(b) Other Notification. Disciplinary counsel must notify the respondent and complainant after the results of an investigation have been reported to an Authorization Panel under Rule 5.10(a). Disciplinary counsel must notify the respondent and may notify the complainant that a matter has been deferred under Rule 5.4. Disciplinary counsel must notify the complainant after a matter has been diverted under Title 6 or resolved without a hearing under Title 9.

TITLE 6 – DIVERSION

RDI 6.1 GENERAL

(a) Definition. Diversion is a process that may resolve a matter without further investigation or proceedings and without a public disciplinary sanction. Disciplinary counsel may offer diversion to a respondent who commits a less serious violation of the applicable rules of professional conduct. Disciplinary counsel and respondent enter into a contract setting forth conditions that respondent must satisfy. Successful completion of a diversion contract results in closure of a matter with no further action.

(b) Timing. Disciplinary counsel may offer diversion to a respondent at any time but no later than 60 days after serving a statement of charges.

RDI 6.2 LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction that restricts a respondent's license to practice law. Conduct is not ordinarily considered less serious misconduct if the misconduct:

(a) involves the misappropriation of funds;

(b) results in or is likely to result in substantial prejudice to a client or other person;

(c) is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;

(d) involves dishonesty, deceit, fraud, or misrepresentation;

(e) constitutes a felony as defined in Rule 1.3(f);

(f) is part of a pattern of similar misconduct; or

(g) involves knowing and repeated practice outside the scope of the respondent's license to practice law.

RDI 6.3 FACTORS FOR DIVERSION

If the misconduct is less serious misconduct under Rule 6.2, disciplinary counsel considers the following factors in determining whether to offer diversion to a respondent:

(a) whether the sanction for the alleged violations is likely to be no more severe than a reprimand;

(b) whether participation in diversion is likely to improve the respondent's future professional conduct and protect the public; and

(c) whether the respondent previously participated in diversion.

RDI 6.4 DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel and the respondent negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Requirements. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel;

(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a monitor and the monitor's responsibilities. If a monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disciplinary matters. Except as specifically authorized by the Rules for Discipline and Incapacity or by agreement, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract";

(4) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;

(5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the matter to be diverted;

(6) include a specific acknowledgment that a material violation of a term of the contract may result in termination of the contract under Rule 6.7(b); and

(7) include a specific acknowledgment that the diversion contract and the supporting declaration are subject to release under Rule 3.6.

(c) Optional Terms. Diversion may include:

(1) fee arbitration;

(2) arbitration;

(3) mediation;

(4) office management assistance;

(5) assistance programs for licensed legal professionals;

(6) psychological and behavioral counseling;

(7) monitoring;

(8) restitution;

(9) continuing legal education programs;

(10) a plan for the respondent to transition out of practice;

(11) ethics consultation; or

(12) any other program or corrective course of action agreed to by disciplinary counsel and the respondent to address the respondent's misconduct.

(d) Limitations. A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties, or liabilities outside of those stated in the diversion contract or provided by this Title.

(e) Amendment. The contract may be amended at any time by written agreement of the respondent and disciplinary counsel.

RDI 6.5 DECLARATION SUPPORTING DIVERSION

A diversion contract must be supported by a declaration approved by disciplinary counsel and signed by the respondent setting forth the respondent's misconduct related to the matter or matters to be diverted.

RDI 6.6 STATUS OF INVESTIGATION OR PROCEEDINGS DURING DIVERSION

After the respondent and disciplinary counsel execute a diversion contract, the investigation or proceeding is stayed pending completion of diversion.

RDI 6.7 COMPLETION OR TERMINATION OF DIVERSION

(a) Successful Completion. Upon disciplinary counsel's determination that diversion has been successfully completed, any investigation that was stayed pending completion of diversion must be closed under Rule 5.11. Any proceeding that was stayed pending completion of diversion must be dismissed by order of a regulatory adjudicator upon notice from disciplinary counsel that the diversion was successfully completed. A proceeding dismissed under this Rule becomes final without entry of a final order under Rule 13.1(a). A respondent who successfully completes diversion cannot be disciplined based solely on the same facts and violations set forth in the diversion contract and respondent's declaration.

(b) Termination for Material Breach. If disciplinary counsel determines that a respondent has materially breached the contract, disciplinary counsel may terminate the diversion. Disciplinary counsel must notify the respondent of termination from diversion. Unless review is sought under section (c) of this Rule, disciplinary counsel resumes any matter that was stayed.

(c) Review by the ORA. A regulatory adjudicator reviews disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Clerk within 15 days of notice to the respondent of the determination for which review is sought. A timely request for review stays further action on the matter until the regulatory adjudicator rules on the request. Determinations by a regulatory adjudicator under this section are not subject to further review.

RDI 6.8 CONFIDENTIALITY

Absent consent of the respondent, the fact of diversion and the diversion documents are confidential and must not be disclosed except as follows:

(a) Notification to Complainant. After disciplinary counsel and the respondent execute a diversion contract, disciplinary counsel must notify the complainant that a matter has been diverted.

(b) Notification to Persons Providing Services under the Contract. The diversion contract and declaration may be disclosed to individuals or entities who will provide services or administration in connection with the diversion contract.

(c) Following Material Breach. If diversion is terminated due to a material breach, the diversion contract and declaration are admissible into evidence in any disciplinary or incapacity proceeding regarding the matter that had been diverted.

(d) Discretionary Release. Release of the diversion contract and supporting declaration may be authorized under Rule 3.6 provided that the respondent is given notice of the decision to make a discretionary release and a reasonable opportunity to seek a protective order under Rule 3.4.

TITLE 7 – INTERIM SUSPENSION

RDI 7.1 DEFINITION

An interim suspension is a suspension for an indefinite period of time for one or more of the reasons set forth in Rule 7.2. An interim suspension remains in effect until terminated as provided in Rule 7.5. An interim suspension is not a disciplinary sanction.

RDI 7.2 GROUNDS FOR INTERIM SUSPENSION

(a) Risk to Public. During the pendency of any disciplinary investigation or proceeding, disciplinary counsel may petition the Court for, and the Court may order, an interim suspension if it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public.

(b) Recommendation for Disbarment. Following entry of an Appeal Panel decision recommending a respondent's disbarment, disciplinary counsel must petition the Court for an interim suspension. However, if the decision recommending disbarment is not appealed and becomes final or if the respondent is otherwise suspended, disciplinary counsel need not file the petition or may withdraw a petition already filed. In ruling on the petition, the Court must order an interim suspension unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

(c) Failure to Cooperate. When a licensed legal professional has failed, without good cause, to comply with an obligation to appear or provide information or documents under Rules 5.3, 5.6, 5.7, 5.9, 8.2(d), 8.2(f)(6), 8.4(e), 8.4(f)(6), or 15.2, disciplinary counsel may petition the Court for an interim suspension. The Court may order an interim suspension if it finds that the respondent has so failed to comply. If a timely objection under Rule 5.8 to an inquiry, request, or subpoena has been asserted or a timely motion for review of an objection is pending, a petition for interim suspension under this section may not be filed until the decision is final.

(d) Conviction of a Felony. If a licensed legal professional is convicted of a felony, disciplinary counsel must petition the Court for an interim suspension. A petition to the Supreme Court for interim suspension under this Rule must include a copy of any available document establishing the fact of the conviction. The Court must order an interim suspension unless the Court finds that the crime did not constitute a felony or that the respondent is not the individual convicted.

(1) *Definition of Conviction*. Conviction for the purposes of this section is defined in Rule 1.3(f).

(2) *Definition of Felony*. Felony means (A) any crime denominated as a felony in the jurisdiction in which it is committed or (B) any crime that would be classified as a felony in Washington State even if not denominated as a felony in the jurisdiction where the crime was committed.

(3) *Reporting of Felony Conviction*. When a licensed legal professional is convicted of a felony, the licensed legal professional must report the conviction to the Office of Disciplinary Counsel within 30 days of the conviction.

(4) *Statement of Charges*. Disciplinary counsel must also file a statement of charges regarding the licensed legal professional's felony conviction. A petition for interim suspension under this section may be filed before the statement of charges.

(e) Failure to Comply with Probation. When a licensed legal professional has failed, without good cause, to comply with an obligation imposed by a probation order under Rule 13.6, disciplinary counsel may petition the Court for an interim suspension. The Court may order an interim suspension if it finds that the respondent has so failed to comply.

RDI 7.3 INTERIM SUSPENSION PROCEDURE

(a) Petition. An interim suspension proceeding commences when disciplinary counsels files a petition for interim suspension with the Court. A petition must set forth the grounds for the interim suspension and may be supported by argument, documents, and declarations filed

with the petition. A petition may be based on one or more of the grounds set forth in Rule 7.2. A copy of the petition must be personally served on the respondent and proof of service filed with the Court.

(b) Answer to Petition and Reply. The respondent may file an answer to the petition. An answer may be supported by argument, documents, and declarations filed with the answer. The answer must be filed with the Court and served on disciplinary counsel within 10 days of service of the petition. Disciplinary counsel's reply, if any, must be filed with Court and served on the respondent within seven days of service of the answer. Proof of service must be filed with the Court.

(c) Confidentiality. When a party identifies information or documents that are otherwise confidential under these Rules, the Court must take measures to maintain the confidentiality of the information or documents in accordance with the confidentiality provisions of Rule 3.3(b).

(d) Consideration. The Supreme Court decides a petition without oral argument, unless the Court orders otherwise. Either party may request oral argument at the time the petition or answer is filed. If a request for oral argument is granted, the Supreme Court Clerk will notify disciplinary counsel and the respondent. The argument will be held on the date and time directed by the Supreme Court Clerk.

(e) Expedited Review. Petitions seeking interim suspension under this Title receive expedited consideration, ordinarily no later than seven days from the deadline for filing of a reply or, if oral argument is ordered under section (d) of this Rule, the date set for an oral argument.

(f) Procedure During Court Recess. When a petition seeking interim suspension under this Title is filed during a recess of the Supreme Court, the Chief Justice, the Associate Chief Justice, or the senior Justice under SAR 10 may rule on the petition for interim suspension, subject to review by the full Court on motion for reconsideration.

(g) Order. The Court decides a petition by an order granting or denying an interim suspension. An order granting interim suspension must state the section of Rule 7.2 that forms the basis for the interim suspension. An interim suspension is effective on the date set by the Supreme Court's order, which will ordinarily be seven days after the date of the order. If no date is set, an interim suspension is effective seven days after the date of the Court's order.

(h) Duties on Interim Suspension. A licensed legal professional whose license is suspended under this Rule is subject to all the duties and restrictions in Title 14 of these Rules.

RDI 7.4 STIPULATION TO INTERIM SUSPENSION

At any time, a respondent and disciplinary counsel may stipulate to an interim suspension of the respondent's license during the pendency of any investigation or proceeding. A stipulation must set forth a factual basis for the interim suspension for one or more of the reasons set forth in Rule 7.2. A stipulation is filed with the Supreme Court for expedited consideration and entry of an appropriate interim suspension order. Stipulations under this Rule are public upon filing with the Court except that information or documents identified as confidential under these Rules remain so and the Court must take measures to maintain the confidentiality of the information or documents.

RDI 7.5 TERMINATION OF INTERIM SUSPENSION

(a) Motion by Respondent.

(1) *Motion and Answer*. A respondent may at any time file a motion to terminate an interim suspension. The motion should make a showing that the basis for the interim suspension no longer exists or for other good cause to terminate the interim suspension.

(2) *Court Action*. The procedures for filing, service, and consideration of a motion to terminate an interim suspension are governed by RAP 17.4.

(b) Notification from Disciplinary Counsel. Upon notice from disciplinary counsel that the conditions for termination of the interim suspension have been satisfied or that the basis for the interim suspension no longer exists, the Court may issue an order terminating the interim suspension.

(c) Agreed Terminations. If the respondent and disciplinary counsel agree to termination of an interim suspension, the Court may issue an order terminating the interim suspension upon the filing of a joint motion for termination.

(d) Order of Termination. The Court's order terminating an interim suspension must state that reinstatement is conditioned upon compliance with the procedures for reinstatement from suspension as set forth in the Bar's Bylaws or applicable court rules.

TITLE 8 – INCAPACITY PROCEEDINGS

RDI 8.1 INCAPACITY INACTIVE STATUS

(a) Definition. A respondent's license may be placed in incapacity inactive status following an adjudicative determination that a respondent lacks the mental or physical capacity to practice law, respond to a disciplinary investigation, or defend a disciplinary proceeding, or for any of the reasons specified in Rule 8.5. Placement in incapacity inactive status is not discipline.

(b) Supreme Court Final Order. The Supreme Court's final order in an incapacity proceeding is an order or opinion that places a respondent's license in incapacity inactive status, dismisses the matter, or otherwise concludes the proceeding. Except as otherwise provided in these Rules, upon entry of the Court's final order, the matter is not subject to further review under these Rules. A placement of a respondent's license on incapacity inactive status is effective on the date of the Supreme Court's order or opinion. After the final order is issued, the ORA or the Court may hear and decide post-judgment issues authorized by these Rules. A motion for reconsideration under Rule 12.9 does not stay the judgment or delay the effective date of a final order unless the Court enters a stay.

RDI 8.2 INCAPACITY PROCEEDINGS BASED ON DISCIPLINARY COUNSEL'S INVESTIGATION

(a) Incapacity Proceedings Ordered by Authorization Panel. Unless Rule 8.5 applies, when disciplinary counsel obtains information that a licensed legal professional may lack the mental or physical capacity to practice law, disciplinary counsel reviews and may investigate the matter. If, after an investigation, there is evidence sufficient to warrant an adjudicative determination of the respondent's capacity to practice law, then disciplinary counsel reports the matter to an Authorization Panel using the procedures set forth in Rule 5.10. Subject to Rules 5.2(d) and 3.4, the respondent and any guardian or guardian ad litem appointed for the respondent must be provided with a complete copy of disciplinary counsel's report. The

Authorization Panel must issue an order authorizing disciplinary counsel to initiate an incapacity proceedings if it appears there is reasonable cause to believe that the respondent lacks the mental or physical capacity to practice law. Any pending disciplinary investigations may be deferred under Rule 5.4.

(b) Initial Pleadings.

(1) *Statement of Alleged Incapacity*. Disciplinary counsel files a statement of alleged incapacity with the Clerk after the Authorization Panel issues an order authorizing the initiation of incapacity proceedings. The statement of alleged incapacity must set forth facts sufficient to inform the respondent of the basis for the allegation of incapacity and state that the issue to be decided is whether the respondent lacks the mental or physical capacity to practice law. The incapacity proceedings commence upon the filing of the statement of alleged incapacity. The statement of alleged incapacity must be personally served on the respondent or any guardian or guardian ad litem.

(2) *Response to Statement of Alleged Incapacity*. Any response to the statement of alleged incapacity must be filed within 30 days after service or after counsel is appointed under Rule 8.6, whichever is later.

(c) Placement in Interim Incapacity Inactive Status.

(1) *Procedure*. When an Authorization Panel authorizes the initiation of incapacity proceeding, disciplinary counsel must file with the Supreme Court a petition to place the respondent's license in interim incapacity inactive status unless the respondent's license has already been placed in this status. The procedures of Rule 7.3 govern the proceedings under this section, except that the respondent must be represented by counsel as provided by Rule 8.6.

(2) *Standard*. The Court must order that the respondent's license be placed in interim incapacity inactive status unless the respondent shows by a clear preponderance of the

evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

(3) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, when a respondent's license is placed in interim incapacity inactive status under this Rule, the license remains in that status until a hearing decision becomes final under Rule 8.1(b) or until after all appellate proceedings have concluded, whichever is later.

(d) Health Records, Releases, and Examination.

(1) *Duty to Provide Release and Records*. Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(2) *Order Limiting Scope or Extending Time*. Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations or extend the time for providing the releases or authorizations for good cause shown.

(3) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses, to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

(e) Failure to Appear or Cooperate. If a respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may petition the Supreme Court for the

respondent's interim suspension under Rule 7.2(c). The procedures of Title 7 apply subject to the confidentiality provisions of Rule 3.3(b)(5).

(f) Procedures for Incapacity Hearing.

(1) *Not Disciplinary Proceedings*. Incapacity proceedings under this Title are not disciplinary proceedings.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Disciplinary counsel has the burden of proof by a clear preponderance of the evidence.

(6) *Duty to Appear*. The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for interim suspension.

(g) Hearing Decision. A hearing adjudicator's decision must be in the form of written findings of fact, conclusions of law, and recommendation. If the hearing adjudicator finds that the respondent lacks the capacity to practice law, the hearing adjudicator recommends that the respondent's license be placed in incapacity inactive status. If the hearing adjudicator finds the evidence is insufficient to prove the respondent lacks the capacity to practice law, the hearing adjudicator recommends dismissal of the incapacity proceeding. Except as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

(h) Transmittal to the Court. If no party files a notice of appeal of a hearing decision under section (g) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.3 INCAPACITY PROCEEDINGS BASED ON RESPONDENT'S ASSERTION

(a) Incapacity Proceeding Ordered after Respondent's Assertion. If, during the course of a disciplinary investigation or proceeding, a respondent asserts a lack of mental or physical capacity to respond to the disciplinary investigation or defend the disciplinary proceeding, or to assist counsel in responding to the disciplinary investigation or defending the disciplinary proceeding, a regulatory adjudicator or the Supreme Court must order the initiation of incapacity proceedings. If the Court issues the order, it refers the matter to the ORA for further proceedings under this Rule.

(b) Method of Assertion. The respondent must serve a written assertion on disciplinary counsel or make the assertion on the record at a deposition or hearing. The assertion must be filed with the Clerk or, if the matter is pending before the Supreme Court, with the Court.

(c) Contents of Order; Advisement; Effective Date; Notice.

(1) *Contents of Order*. The order under section (a) of this Rule must state that the issues to be determined are whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding.

(2) *Advisement*. The order must include a written advisement substantially in the following form:

(A) that making the assertion will result in placement of the respondent's license in interim incapacity inactive status on the effective date of the order and the respondent will be ineligible to practice law;

(B) that the respondent will be required to provide medical documentation to support the assertion within 30 days of the effective date of the order for incapacity proceedings;

(C) that the respondent may be required to furnish written releases and authorizations for additional medical, psychological, or psychiatric records relevant to the assertion;

(D) that the respondent may be required to submit to an independent medical examination;

(E) that the respondent will have the burden of proving by a preponderance of the evidence the incapacity in the proceeding;

(F) that any disciplinary proceeding pending against the respondent will be stayed during the incapacity proceeding;

(G) that disciplinary counsel has the discretion to defer any pending disciplinary investigation;

(H) that counsel will be appointed for the respondent for the incapacity proceeding and any disciplinary investigation that is not deferred while incapacity proceedings are pending, and that the respondent will be deemed to have consented to appointment of counsel at the Bar's expense; and

(I) that the respondent's failure to appear or cooperate with any order or duty under this Rule, or failure to cooperate with counsel, may result in disciplinary counsel filing a dismissal motion as provided in Rule 8.3(g).

(3) *Effective Date of Order*. An order commences the incapacity proceeding and is effective seven days after the date of the order, unless the Court or regulatory adjudicator orders an earlier effective date.

(4) *Notice to Respondent*. The order serves as notice to respondent of the issues to be adjudicated. Disciplinary counsel need not file a statement of alleged incapacity.

(d) Effect of Incapacity Proceeding on Pending Disciplinary Matters. Pending the outcome of the incapacity proceeding, the regulatory adjudicator or the Supreme Court must

stay any disciplinary proceeding pending against the respondent. Disciplinary counsel may defer action as provided in Rule 5.4.

(e) Interim Incapacity Inactive Status.

(1) *Immediate Placement*.

(A) Order Entered by Regulatory Adjudicator. When a regulatory adjudicator orders an incapacity proceeding, disciplinary counsel must transmit the order to the Supreme Court after the order becomes effective under section (c)(3) of this Rule. On receipt of the order, the Court must order that the respondent's license be placed in interim incapacity inactive status.

(B) Order Entered by Supreme Court. When the Supreme Court orders an incapacity proceeding, it also must order that the respondent's license be placed in interim incapacity inactive status as of the effective date of the order.

(2) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, a respondent whose license is placed in interim incapacity inactive status under this Rule remains in that status until the incapacity proceeding is terminated under section (g) of this Rule, a hearing decision becomes final under Rule 8.1(b).

(f) Health Records, Releases, and Examination.

(1) *Duty to Provide Records within 30 Days*. The respondent must provide disciplinary counsel with medical, psychological, or psychiatric records sufficient to reasonably support the assertion within 30 days of the effective date of the order for incapacity proceedings.

(2) *Duty to Provide Release and Records on Request*. Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(3) *Order Limiting Scope or Extending Time*. Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations or extend the time for providing the releases or authorizations for good cause shown.

(4) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses, to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

(g) Failure to Appear or Cooperate. If the respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may file a motion to dismiss the incapacity proceeding and resume any disciplinary proceedings that have been stayed. The hearing adjudicator must grant the motion absent compelling justification for the failure to appear or cooperate. An order granting the motion is without prejudice to initiation of incapacity proceedings under Rules 8.2(a) or 8.4(a).

(h) Procedures for Incapacity Hearing.

(1) *Not Disciplinary Proceedings*. An incapacity proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Respondent has the burden of proof by a preponderance of the evidence.

(6) *Duty to Appear*. The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for dismissal of the incapacity proceeding under section (g) of this Rule.

(i) Hearing Decision. The hearing officer makes findings and recommendations as set forth in this section. Except as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

(1) *Respondent Has Capacity to Respond or Defend*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding without the assistance of counsel, the hearing adjudicator recommends that the incapacity proceedings be dismissed and that any pending disciplinary investigations or proceedings resume without appointment of counsel.

(2) *Respondent Requires the Assistance of Counsel*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding but requires the assistance of counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary investigations or proceedings resume, and (C) counsel be appointed for any pending disciplinary investigation or proceedings.

(3) *Respondent Lacks Capacity to Respond or Defend and Lacks the Capacity to Assist Counsel*. If the hearing adjudicator finds that the respondent lacks the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding and lacks the capacity to

assist counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings be stayed, and (C) any pending disciplinary investigations be deferred.

(j) Transmittal to the Court. If no party files a notice of appeal of a hearing decision under section (i) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.4 INCAPACITY PROCEEDINGS BASED ON REGULATORY ADJUDICATOR OR SUPREME COURT ORDER

(a) Order by Regulatory Adjudicator or Supreme Court. Unless Rule 8.2 applies, on motion by disciplinary counsel or on its own initiative, the Supreme Court or a regulatory adjudicator must order an incapacity proceeding if it determines that there is reasonable cause to believe that the respondent lacks the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. When a regulatory adjudicator is serving as a settlement officer, Rule 10.11(h)(4)(D) rather than this Rule applies. If the Court issues the order, it refers the matter to the ORA for further proceedings under this Rule.

(b) Contents of Order; Statement of Alleged Incapacity; Response.

(1) *Contents*. The order must state that the issues to be determined are whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. It must also set forth the factual basis for the determination under section (a) of this Rule that an incapacity proceeding is warranted.

(2) *Statement of Alleged Incapacity*. Disciplinary counsel files a statement of alleged incapacity after the order under section (a) of this Rule. The statement of alleged incapacity must set forth facts sufficient to inform the respondent of the basis for the allegation of incapacity and state that the issue to be decided is whether the respondent has the mental or physical capacity to respond to a disciplinary investigation or defend a disciplinary proceeding, or to assist counsel in responding to a disciplinary investigation or defending a disciplinary proceeding. The incapacity proceeding commences upon the filing of the statement of alleged incapacity. The statement of alleged incapacity must be personally served on the respondent or any guardian or guardian ad litem.

(3) *Response to Statement of Alleged Incapacity*. Any response to the statement of alleged incapacity must be filed within 20 days after service or after counsel is appointed under Rule 8.6, whichever is later.

(c) Effect of Incapacity Proceeding on Pending Disciplinary Matters. Pending the outcome of the incapacity proceeding, the regulatory adjudicator or the Supreme Court must stay any disciplinary proceeding pending against the respondent. Disciplinary counsel may defer action as provided in Rule 5.4.

(d) Interim Incapacity Inactive Status.

(1) *Procedure*.

(A) Order Entered by Regulatory Adjudicator. When a regulatory adjudicator orders incapacity proceedings under this Rule, disciplinary counsel must file with the Supreme Court a petition to place the respondent's license in interim incapacity inactive status unless the respondent's license has already been placed in this status. Unless the Court orders otherwise, Rule 7.3 governs the proceedings under this section, except that the respondent must be represented by counsel as provided by Rule 8.6.

(B) Order Entered by Supreme Court. When the Supreme Court orders incapacity proceedings under this Rule, the Court must issue an order to show cause why respondent's

license to practice law should not be placed in interim incapacity inactive status. The order will set the schedule for filing an answer and reply to the show cause order. The Supreme Court decides the matter without oral argument, unless the Court orders otherwise. Either party may request oral argument at the time the answer or reply is filed. If a request for oral argument is granted, the Supreme Court Clerk will notify disciplinary counsel and the respondent. The argument will be held on the date and time directed by the Supreme Court Clerk. The respondent must be represented by counsel in the show cause proceeding as provided by Rule 8.6.

(2) *Standard*. The Court must order that the respondent's license be placed in interim incapacity inactive status under this Rule unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public.

(3) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, a respondent's license that is placed in interim incapacity inactive status under this Rule remains in that status until a hearing decision becomes final under Rule 8.1(b).

(e) Health Records, Releases, and Examination.

(1) *Duty to Provide Release and Records*. Within 30 days of a request by disciplinary counsel, the respondent must provide disciplinary counsel with (A) relevant medical, psychological, or psychiatric records, and (B) written releases and authorizations to permit disciplinary counsel access to medical, psychological, or psychiatric records that are reasonably related to the incapacity proceeding.

(2) *Order Limiting Scope or Extending Time*. Upon motion by respondent, the hearing adjudicator may issue an order limiting the scope of the releases or authorizations or extend the time for providing the releases or authorizations for good cause shown.

(3) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses to disciplinary counsel and the respondent's counsel. The report is admissible at the incapacity hearing. The Bar pays the expenses of independent medical examinations and reports ordered under this Rule.

(f) Failure to Appear or Cooperate. If a respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may petition the Supreme Court for the respondent's interim suspension under Rule 7.2(c). The procedures of Title 7 apply subject to the confidentiality provisions of Rule 3.3(b)(5).

(g) Procedures for Incapacity Hearing.

(1) *Not Disciplinary Proceedings*. An incapacity proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. By order entered on the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Disciplinary counsel has the burden of proof by a clear preponderance of the evidence.

(6) *Duty to Appear*. The respondent must appear at the incapacity hearing. Failure to attend the hearing, without good cause, may be grounds for interim suspension.

(h) Hearing Decision. The hearing officer makes findings and recommendations as set forth in this section. Except as specified in this Rule, the hearing decision is governed by the procedures of Rule 10.15.

(1) *Respondent Has Capacity to Respond or Defend*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding without the assistance of counsel, the hearing adjudicator recommends that the incapacity proceedings be dismissed and that any pending disciplinary investigations or proceedings resume without appointment of counsel.

(2) *Respondent Requires the Assistance of Counsel*. If the hearing adjudicator finds that the respondent has the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding but requires the assistance of counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings resume, and (C) counsel be appointed for any pending disciplinary investigation or proceedings.

(3) *Respondent Lacks Capacity to Respond or Defend and Lacks the Capacity to Assist Counsel*. If the hearing adjudicator finds that the respondent lacks the capacity to respond to the disciplinary investigation or defend the disciplinary proceeding and lacks the capacity to assist counsel, the hearing adjudicator recommends that (A) the respondent's license be placed in incapacity inactive status, (B) any pending disciplinary proceedings be stayed, and (C) any pending disciplinary investigations be deferred.

(i) Transmittal to the Court. If no party files a notice of appeal of a hearing decision under section (h) within the time permitted by Rule 8.7, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.5 PLACEMENT IN INCAPACITY INACTIVE STATUS BASED ON ADJUDICATED GROUNDS

(a) Adjudicated Grounds. The Court must order that a licensed legal professional's license to practice law be placed in incapacity inactive status upon receipt from the Bar of a certified copy of the judgment, order, or other appropriate document demonstrating that the licensed legal professional currently lacks the mental or physical capacity to practice law because the person:

(1) was found to be incapable of assisting in the person's own defense in a criminal action;

(2) was acquitted of a crime based on insanity;

(3) has a guardian, but not a limited guardian, appointed for the person's estate or person on a judicial finding of incapacity; or

(4) was involuntarily committed to a mental health facility for more than 14 days under RCW 71.05.

(b) Notice. The Court must notify the incapacitated licensed legal professional and any guardian or guardian ad litem of the order that the respondent's license be placed in incapacity inactive status. Notice must also be provided under Rule 3.8.

RDI 8.6 REPRESENTATION BY COUNSEL

(a) Representation by Counsel. All respondents in incapacity proceedings under Rules 8.2, 8.3, 8.4, and 8.11 must be represented by counsel throughout the proceeding and for purposes of compliance with Title 14.

(b) Appointment of Counsel. Upon entry of an order under Rule 8.2(a), 8.3(a), 8.4(a), or 8.11(b), the Chief Regulatory Adjudicator must promptly appoint an active lawyer member of the Bar as counsel for the respondent in any proceeding ordered under this Title and any disciplinary matters that are not deferred while the incapacity proceeding is pending. An order appointing counsel under this Rule constitutes authority to act on behalf of the

respondent in any incapacity or related proceeding whether or not the respondent expressly consents to the representation. If other counsel appears, the appointment will be rescinded.

(c) Compensation of Counsel. The Bar administers compensation for counsel appointed under this Rule.

(d) Withdrawal of Appointed Counsel. Counsel appointed under this Rule may withdraw only upon authorization from the Chief Regulatory Adjudicator upon a showing of good cause, or when substitute counsel has appeared. If the Chief Regulatory Adjudicator authorizes appointed counsel to withdraw for good cause and substitute counsel has not appeared, the Chief Regulatory Adjudicator must appoint new counsel unless section (e) applies.

(e) When Appointment of New Counsel Found Futile.

(1) *Application*. This section applies to counsel appointed to represent respondents in proceedings under Rules 8.2 and 8.4.

(2) *Findings and Order Required*. If the Chief Regulatory Adjudicator determines that appointment of counsel would be futile because there is no reasonable chance that other counsel will be able to effectively represent the respondent, the Chief Regulatory Adjudicator may issue an order recommending that the respondent's license be placed in interim incapacity inactive status and that any proceeding under this Title be stayed. The proceeding will be stayed until such time as counsel appears or can be appointed. The order must be accompanied by findings with a factual basis to support the conclusion that appointment of counsel would be futile.

(3) *Review by Appeal Panel*. An Appeal Panel must review the Chief Regulatory Adjudicator's order without further briefing or argument based solely on the record before the Chief Regulatory Adjudicator. It may affirm the order, direct that new counsel be appointed and that the proceeding not be stayed, set conditions for the appointment of new counsel in the future, or enter any other appropriate order.

(4) *Transmittal to Supreme Court*. If the Appeal Panel affirms the order of the Chief Regulatory Adjudicator, the Clerk must transmit the order to the Supreme Court. On receipt of the order, if the respondent's license is not already in interim incapacity inactive status, the Court must order that the respondent's license be placed in interim incapacity inactive status.

(5) *Duration of Interim Incapacity Inactive Status*. Unless the Supreme Court orders otherwise, when a respondent's license is placed in interim incapacity inactive status under this Rule, the license remains in that status until the incapacity proceeding has been concluded.

(f) Protective Action under RPC 1.14. Nothing in this Title precludes respondent's counsel from taking reasonably necessary protective action under RPC 1.14.

RDI 8.7 APPEAL TO AN APPEAL PANEL

(a) Procedures for Appeal. Either party may appeal a hearing decision under Rule 8.2(g), 8.3(i), or 8.4(h) by filing a notice of appeal with the Clerk within 30 days of service of the hearing decision. There is no right of appeal of other orders or decisions entered under Title 8, except as specified in Rule 8.11. For procedural purposes, the provisions of Title 11 govern the appeal. Interlocutory review of orders or decisions not appealable as a matter of right under this Rule is governed by Rule 11.10.

(b) Transmittal to Court. If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rule 8.8, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

RDI 8.8 APPEAL TO THE SUPREME COURT

(a) Procedures for Appeal. Either party may appeal an order of the Appeal Panel under Rule 8.7 to the Supreme Court within 30 days of service of the Appeal Panel's decision.

There is no other right of appeal. The procedures of Title 12 that are applicable to an appeal of disciplinary suspension or disbarment recommendations govern the appeal.

(b) Petition for Interim Incapacity Inactive Status. If a respondent appeals the decision of the Appeal Panel, disciplinary counsel must petition the Supreme Court for an order that the respondent's license be placed in interim incapacity inactive status for the duration of the proceedings. The Court must order that the respondent's license be placed in interim incapacity inactive status unless the respondent shows by a clear preponderance of the evidence that the respondent's continued practice of law will not be detrimental to the purposes of ensuring the integrity of the legal profession and protecting the public. If the Panel's decision is not appealed and becomes final, or if the respondent's license is already in interim incapacity inactive status, the petition need not be filed or, if filed, may be withdrawn. The procedures of Rule 7.3 govern such a petition, except that the respondent must be represented by counsel.

(c) Petition for Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Appeal Panel decisions under Rule 8.7 not subject to appeal under section (a) of this Rule. The procedures of Rule 12.4 apply to petitions under this Rule.

RDI 8.9 STIPULATIONS

(a) Parties May Stipulate. At any time, the parties may stipulate that the respondent's license be placed in incapacity inactive status. Stipulations to interim incapacity inactive status are governed by section (i) of this Rule. The parties should endeavor to include evidence sufficient for the regulatory adjudicator to make a determination regarding the existence of the incapacity.

(b) Respondent Must Be Represented by Counsel. Respondent must be represented by counsel to negotiate and enter into a stipulation under this Rule. If the respondent is not represented by counsel, disciplinary counsel must file a motion to appoint counsel for the

respondent for the purpose of negotiating and entering into the stipulation. The provisions of Rule 8.6 apply to appointed counsel under this Rule.

(c) Requirements for Stipulations to Incapacity Inactive Status. Stipulations to placement of a respondent's license in incapacity inactive status must:

(1) state that the stipulation is not binding on the parties as a statement of all existing facts relating to the incapacity of the respondent and that any additional existing facts may be proved in a subsequent incapacity proceeding;

(2) fix any costs and expenses and any interest thereon to be paid by the respondent;

(3) include the signature of the respondent, respondent's counsel, and disciplinary counsel;

(4) state the nature of the respondent's incapacity, supported by medical, psychological, or psychiatric evidence; and

(5) state the nature of any pending disciplinary proceedings that will be stayed and any disciplinary investigation that will be deferred as a result of the placement of a respondent's license in incapacity inactive status.

(d) Review of Stipulations to Incapacity Inactive Status.

(1) *Process*. Stipulations to incapacity inactive status under this Rule must be reviewed by a regulatory adjudicator. A regulatory adjudicator reviews a stipulation based solely on the record agreed to by the parties and enters an appropriate order.

(2) *Standards*. A regulatory adjudicator must approve a stipulation where the stipulated facts provide a factual basis for the stipulated resolution.

(3) *Possible dispositions*. A regulatory adjudicator may approve or reject a stipulation. An order rejecting a stipulation must state the reason for the rejection.

(e) Reconsideration. Within 14 days of service of an order rejecting a stipulation, the parties may file a joint motion for reconsideration, which may include a request to make an oral presentation in support of the motion.

(f) Effect of Rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

(g) Transmittal to Court. After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of a final order under Rule 8.1(b) or other appropriate order.

(h) Applicability to Respondents Only. This Rule applies only to respondents as defined by Rule 2.12(a). Placement in incapacity inactive status for licensed legal professionals who are not respondents as defined by Rule 2.12(a) is governed by APR 30.

(i) Stipulations to Interim Incapacity Inactive Status. At any time, a respondent and disciplinary counsel may stipulate to placement of the respondent's license in interim incapacity inactive status during the pendency of any incapacity proceeding. Stipulations to placement of a respondent's license in interim incapacity inactive status must state that an incapacity proceeding has been ordered and that the respondent's license will remain in interim incapacity inactive status until the incapacity proceeding is final absent other order from the Court. A stipulation to interim incapacity inactive status is filed with the Supreme Court for expedited consideration and entry of an appropriate order.

RDI 8.10 COSTS IN INCAPACITY PROCEEDINGS

When a proceeding under this Title is final, costs and expenses may be assessed in accordance with the procedures set forth in Rule 13.8.

RDI 8.11 RETURN FROM INCAPACITY INACTIVE STATUS

(a) Petition. To return to a different license status, a licensed legal professional whose license was placed in incapacity inactive status under this Title or APR 30 must file a petition with the Clerk and serve it on disciplinary counsel. This Rule does not apply to interim incapacity inactive status ordered under this Title.

(1) *Content of Petition*. The petition must be in writing and include the following information:

(A) a signed statement by a physician or by a mental health professional as defined by RCW Title 71 that specifically (i) identifies the basis for the placement of the respondent's license in incapacity inactive status and addresses how the incapacity has been resolved and (ii) expresses that the respondent has the current capacity to practice law. The statement must be signed by the physician or mental health professional no more than three months before the date the petition is filed;

(B) a list of all physicians and mental health professionals as defined by RCW Title 71 who have treated or evaluated the respondent for the incapacity since the date of the placement; and

(C) copies of the written authorizations referenced in section (a)(2) of this Rule.

(2) *Waiver of Privilege and Authorization for Release of Records*. By filing a petition, the respondent:

(A) waives any privilege as to any medical, psychological, or psychiatric treatment, information, or records reasonably related to the respondent's capacity or incapacity to practice law; and

(B) agrees to provide upon request a written authorization for each physician and mental health professional as defined by RCW Title 71 who treated or evaluated the respondent for the incapacity since the placement, or within the last five years, whichever is shorter, to provide information and records reasonably related to the respondent's capacity or incapacity to practice law.

(b) Appointment of Counsel. On receipt of a petition, the Chief Regulatory Adjudicator must appoint counsel for the respondent in accordance with the procedures set forth in Rule 8.6 unless counsel has already appeared.

(c) Review and Action by the Chief Regulatory Adjudicator. The Chief Regulatory Adjudicator reviews the petition to determine whether it contains the information required under section (a) of this Rule. If the petition does not contain the required information, the Chief Regulatory Adjudicator enters an order dismissing the petition or requesting additional information from respondent's counsel. If the petition does contain the required information, the Chief Regulatory Adjudicator:

(1) orders that a hearing be held on whether the respondent has the current capacity to practice law; and

(2) assigns a hearing adjudicator to conduct the hearing.

(d) Stipulation.

(1) *Parties May Stipulate*. After counsel appears or is appointed for the respondent, disciplinary counsel and the respondent may enter into a stipulation that the petition be granted. Any stipulation must be supported by medical, psychological, or psychiatric evidence that the respondent has the current capacity to practice law.

(2) *Review of Stipulations*.

(A) Review by a Regulatory Adjudicator. A regulatory adjudicator reviews the stipulation based solely on the record agreed to by the parties.

(B) Possible Dispositions. The regulatory adjudicator may either approve or reject the stipulation. An order rejecting a stipulation must state the reason for the rejection and should set forth any changes to the stipulation that would result in the stipulation's approval.

(C) Effect of Rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

(3) *Transmittal to Court*. After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of an order approving or rejecting the stipulation or providing other appropriate relief.

(e) Hearing on Petition.

(1) *Not Disciplinary Proceedings*. A proceeding under this Title is not a disciplinary proceeding.

(2) *Procedural Rules*. Except as specified or when inconsistent with the purposes of this Title, proceedings under this Rule are conducted using the procedural rules for disciplinary proceedings.

(3) *Case Caption*. The respondent's initials are to be used in the case caption rather than the respondent's full name.

(4) *Scheduling Conference*. On the initiative of the hearing adjudicator or on motion of a party, the hearing adjudicator may order a scheduling conference to consider the setting of the hearing date and appropriate prehearing deadlines, the entry of a prehearing scheduling order, and other matters that may aid in the disposition of the proceeding.

(5) *Burden and Standard of Proof*. Respondent has the burden of proof by a preponderance of the evidence.

(6) *Independent Medical Examination*. Upon motion by disciplinary counsel, the hearing adjudicator may order a respondent to submit to examinations of the respondent's physical or mental health condition. Examinations are conducted by a physician or by a mental health professional, as defined by RCW Title 71. Unless waived by the parties, an examiner must submit a written report of the examination, including the results of any tests administered and any diagnoses to disciplinary counsel and the respondent's counsel. The report is admissible at the hearing under this Rule. The Bar pays the expenses of an independent medical examination and reports ordered under this Rule.

(7) *Failure to Appear or Cooperate*. If the respondent fails to appear or cooperate with any order or duty under this Rule, disciplinary counsel may file a motion to dismiss the proceedings on the petition. The hearing adjudicator must grant the motion absent compelling justification for the failure to appear or cooperate.

(8) *Hearing Decision*. The hearing adjudicator determines whether the respondent has the current capacity to practice law.

(A) Current Capacity Proven. If the hearing adjudicator finds that the respondent has the current capacity to practice law, the hearing adjudicator must enter an order recommending that the petition be granted.

(B) Current Capacity Not Proven. If the hearing adjudicator finds that the respondent does not have the current capacity to practice law, the hearing adjudicator must enter an order recommending that the petition be denied and the proceeding be dismissed.

(9) *Transmittal to the Court*. If no party files a notice of appeal of a hearing decision under this Rule within the time permitted by Rule 11.2, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of an order approving or rejecting the hearing decision or another appropriate order.

(f) Appeal to an Appeal Panel. Either party may appeal a hearing decision under section (e)(8) of this Rule by filing a notice of appeal with the Clerk within 30 days of service of the hearing decision. For procedural purposes, the provisions of Title 11 govern the appeal. Interlocutory review of orders or decisions not appealable as a matter of right under this Rule is governed by Rule 11.10.

(g) Appeal to the Court. Either party may appeal an order of the Appeal Panel under section (f) of this Rule to the Supreme Court within 30 days of service of the Appeal Panel's order. There is no right of appeal to the Supreme Court of other orders or decisions entered under this Rule. The procedures of Title 12 that are applicable to appeal of disciplinary suspension or disbarment recommendations govern the appeal.

(h) Transmittal to Court. If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rules 12.3 and 12.4, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of

the appellate and hearing decisions to the Supreme Court for entry of an order approving or rejecting the appellate decision or another appropriate order.

(i) Petition Granted. Following a final order granting a petition or approving a stipulation and the respondent's compliance with the procedures for status changes as set forth in the Bar's Bylaws, applicable court rules, and section (j) of this Rule, the Bar restores the respondent's license to its most recent status other than incapacity inactive status. If a respondent's most recent license status was active, then the license status may be changed to inactive status at the respondent's request. If a disciplinary proceeding has been stayed or a disciplinary investigation has been deferred because of the placement of the respondent's license in incapacity inactive status, the proceeding or investigation resumes.

(j) Client Protection Fund Certification. If the Client Protection Fund paid an applicant based on the respondent's conduct, the respondent must obtain a certification from Bar counsel that respondent has paid restitution to the Client Protection Fund or is current with a periodic payment plan. Disputes regarding payment plans are resolved under the procedures set forth in Rule 13.7(c)(2).

TITLE 9 – RESOLUTIONS WITHOUT HEARING

RDI 9.1 STIPULATIONS

(a) Scope and Timing. Any disciplinary matter or proceeding may be resolved by stipulation at any time subject to approval under section (d) or (g) of this Rule.

(b) Form. A stipulation must include the following:

(1) the respondent's current license status;

(2) sufficient stipulated facts about the respondent's particular acts or omissions to permit a regulatory adjudicator or the Court to make a determination under section (d) or (g) of this Rule;

(3) the respondent's prior record of discipline or its absence;

(4) an analysis of the sanction using the American Bar Association Standards for Imposing Lawyer Sanctions, including the presumptive sanction for the misconduct and the effect of any aggravating and mitigating factors;

(5) the stipulated disposition or discipline, and for stipulations to disciplinary suspension or disbarment, any conditions for reinstatement;

(6) a statement that the stipulation is not binding on either party as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding;

(7) any costs, expenses, and restitution and any interest thereon to be paid by the respondent; and

(8) terms of probation or other provisions, if appropriate.

The stipulation also may include other terms as agreed to by the parties.

(c) Stipulation to Allegations in Lieu of Admissions. With consent of disciplinary counsel, a respondent may agree to stipulate to alleged facts or violations in lieu of admitting to facts or violations. A respondent who enters into such a stipulation must agree that (1) there is a substantial likelihood that disciplinary counsel would be able to prove the alleged

facts and violations by a clear preponderance of the evidence, and (2) the facts and violations will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

(d) Review of Stipulations.

(1) *Process*. Except as provided in section (g) of this Rule, all stipulations under this Rule must be reviewed by a regulatory adjudicator. A regulatory adjudicator reviews a stipulation based solely on the record agreed to by the parties. The parties may jointly request, or the regulatory adjudicator may order, an oral presentation regarding the stipulation.

(2) *Standards*. A regulatory adjudicator must approve a stipulation where the stipulated facts provide a factual basis for the agreed violation(s) and the agreed sanction or resolution is consistent with the ABA Standards for Imposing Lawyer Sanctions and Rules 13.1-13.5.

(3) *Possible Dispositions*. A regulatory adjudicator may approve or reject a stipulation. An order rejecting a stipulation must state the reason for the rejection and should set forth any changes to the sanction or remedies that would result in the stipulation's approval.

(e) Reconsideration. Within 14 days of service of an order rejecting a stipulation, the parties may file a joint motion for reconsideration, which may include a request to make an oral presentation in support of the motion.

(f) Transmittal to Court. After the stipulation is approved by a regulatory adjudicator, the Clerk transmits the stipulation, together with all materials that were submitted to the regulatory adjudicator, to the Supreme Court for entry of a final order under Rule 13.1(a) or other appropriate order.

(g) Matters Pending Before the Supreme Court. When a matter is pending before the Court, any stipulation to resolve the matter must be submitted to the Court. The Court will consider the stipulation and enter an order approving or rejecting the stipulation.

(h) Effect of Rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any proceeding under these Rules.

(i) Costs. A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of Rule 13.8 and is not subject to further review.

(j) Failure to Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

RDI 9.2 RESIGNATION IN LIEU OF DISCIPLINE

(a) Grounds. A respondent who chooses not to contest or defend against allegations of misconduct may, with disciplinary counsel's approval, permanently relinquish the respondent's license to practice law and permanently resign from the practice of law in Washington in lieu of further disciplinary proceedings. If a disciplinary investigation or proceeding is pending, resignation in lieu of discipline under this Rule is the only available means to resign from the practice of law.

(b) Process. Respondent notifies disciplinary counsel that the respondent seeks to resign in lieu of discipline. If disciplinary counsel approves, disciplinary counsel prepares a statement of alleged misconduct, a declaration of costs, and a proposed resignation form. After receiving the statement and the declaration of costs, if any, the respondent may resign by signing and submitting to disciplinary counsel the resignation form prepared by disciplinary counsel, sworn to or affirmed under oath, which must include the following:

(1) Disciplinary counsel's statement of alleged misconduct.

(2) Respondent's statement that the respondent is aware of the allegations in the statement of alleged misconduct and that, rather than defend against the allegations, the respondent chooses to relinquish permanently the respondent's license to practice law and permanently resign from the practice of law in Washington.

(3) Respondent's acknowledgment that the resignation is permanent, including the statement: "I understand that my resignation is permanent and that I can never apply for admission or reinstatement to the practice of law in Washington. If the Washington Supreme Court

changes this Rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I submit an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based."

(4) Respondent's agreement:

(A) to notify all other jurisdictions in which the respondent is or has been licensed to practice law of the resignation in lieu of discipline;

(B) to seek to resign permanently from the practice of law in any other jurisdiction in which the respondent is licensed;

(C) to acknowledge that the resignation could be treated as a disbarment by all other jurisdictions;

(D) to refrain from seeking a license to practice law in any other jurisdiction;

(E) to notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent's license to practice law of the resignation in lieu of discipline;

(F) to seek to relinquish any professional license that is predicated on the respondent's license to practice law;

(G) to disclose the resignation in lieu of discipline when applying for any employment or license in response to any question regarding disciplinary action or the status of the respondent's license to practice law;

(H) to pay expenses under Rule 13.8(c) in the amount of $3,000 or consent to entry of an order assessing expenses in the amount of $3,000 under Rule 13.8(e);

(I) to pay any restitution or costs and any interest thereon as agreed or as ordered by a regulatory adjudicator under section (f) of this Rule;

(J) to be subject to all restrictions that apply to a disbarred licensed legal professional under Title 14; and

(K) to provide disciplinary counsel with copies of any notifications required under this Rule and any responses.

(c) Public Filing. A resignation that meets the requirements set forth above and that is approved by disciplinary counsel will be filed by disciplinary counsel with the Clerk as a public and permanent record of the Bar. The Clerk must notify the Supreme Court of a resignation under this Rule.

(d) Effect. A resignation under this Rule is effective upon its filing with the Clerk and becomes final without entry of a final order under Rule 13.1(a). Upon filing, the respondent's license to practice law is terminated. All disciplinary proceedings against the respondent terminate, although disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances in order to create a record of the respondent's conduct. Upon filing of the resignation, the respondent must comply with the same duties as a disbarred licensed legal professional under Title 14 and comply with all restrictions that apply to a disbarred licensed legal professional. The notices under Rule 3.8 must be made for resignations in lieu of discipline.

(e) Resignation Is Permanent. Resignation under this Rule is permanent. A respondent who has resigned under this Rule will never be eligible for any license to practice law in Washington.

(f) Order for Costs and Restitution. Within one year of filing of the resignation, disciplinary counsel or Bar counsel may file with the Chief Regulatory Adjudicator any claims for restitution or for costs not resolved by agreement under section (b) of this Rule. Within 30 days of service of the claim upon the respondent, a respondent may file a written objection and serve it on counsel who filed the claim. An objection is reviewed as provided in Rule 13.8(f). The Chief Regulatory Adjudicator's order is not subject to further review, is

the final assessment of restitution or costs for the purposes of Rules 13.7 and 13.8, and may be enforced as any other order for restitution or costs. The record before the ORA is public information under Rule 3.3(a).

RDI 9.3 RECIPROCAL DISCIPLINE, RECIPROCAL RESIGNATION IN LIEU OF DISCIPLINE, AND RECIPROCAL PLACEMENT IN INCAPACITY INACTIVE STATUS

(a) Duty to Self-Report, Timing. Within 30 days of being publicly disciplined, resigning in lieu of discipline or its equivalent, placement of a license in incapacity inactive status or its equivalent in another jurisdiction, or revocation of military certification, a licensed legal professional admitted to practice in this state must inform the Office of Disciplinary Counsel of the public discipline, resignation in lieu of discipline, placement of the license in incapacity inactive status, or revocation of military certification. For purposes of this Rule:

(1) "Public discipline" means a public order of discipline or probation in another jurisdiction.

(2) "Jurisdiction" means any court or body authorized to conduct disciplinary proceedings against licensed legal professionals in the United States or any other country, including any state, province, territory, or commonwealth of the United States or any other country; any federal court; the District of Columbia; any administrative agency or tribal government; or the United States Armed Forces.

(b) Reciprocal Discipline, Reciprocal Placement of a License in Incapacity Inactive Status, or Publication.

(1) Reciprocal discipline may be imposed whenever a licensed legal professional has been disbarred or suspended in another jurisdiction unless the period of disciplinary suspension is fully stayed. For purposes of this Rule, resignation in lieu of discipline or its equivalent in another jurisdiction is treated as an order of disbarment from that jurisdiction. For purposes of this Rule, a disciplinary suspension is fully stayed when there is no period of actual suspension.

(2) Reciprocal placement of a license in incapacity inactive status may be imposed when a license has been placed in incapacity inactive status or its equivalent in another jurisdiction.

(3) For all other public discipline, including fully stayed suspensions or probation, the Court may order that information about the discipline in the other jurisdiction be published under Rule 3.8(b).

(c) Obtaining and Filing Order. Upon notification from any source that a licensed legal professional admitted to practice in Washington State was publicly disciplined or resigned in lieu of discipline or its equivalent, or whose license was placed in incapacity inactive status or its equivalent in another jurisdiction, disciplinary counsel must obtain a copy of the order or resignation. Disciplinary counsel files the order or resignation with the Supreme Court except in circumstances set forth in section (*l*) of this Rule.

(d) Consent to Reciprocal Discipline or Publication. Notwithstanding the procedures set forth below, a respondent may consent to the imposition of reciprocal discipline under section (b)(1) of this Rule or publication of information under section (b)(3) of this Rule without the need for an order to show cause under section (e). The respondent must communicate such consent to the Court and disciplinary counsel in writing and, if applicable, may include a motion for concurrent suspension under section (j)(2) of this Rule. If that occurs, the Court enters an appropriate order.

(e) Order to Show Cause. Upon receipt of a copy of an order demonstrating that a respondent has been subject to public discipline, a resignation in lieu of discipline or its equivalent, or an order of placement of the respondent's license in incapacity inactive status or its equivalent in another jurisdiction, the Court issues an order to show cause. Disciplinary counsel must personally serve the following on the respondent under Rule 4.1(b)(4): the order to show cause, a copy of the order or resignation from the other jurisdiction, and a copy of this Rule.

(1) For disbarments, disciplinary suspensions other than fully-stayed suspensions, and placement of a respondent's license in incapacity inactive status or its equivalent in another jurisdiction, the order directs the respondent to show cause why the Court should not impose the same or equivalent sanction or suspension or placement of the respondent's license in incapacity inactive status.

(2) For resignations in lieu of discipline or its equivalent in another jurisdiction, the order directs the respondent to show cause why the Court should not impose the sanction of disbarment.

(3) For all other cases, the order directs the respondent to show cause why the Court should not order publication of information about the discipline under section (b)(3) of this Rule.

(4) Notwithstanding the above, on the request of disciplinary counsel, the order may direct disciplinary counsel to show cause why the sanction imposed should be greater than that imposed in the other jurisdiction.

(f) Response to Order to Show Cause. The party responding to the order to show cause must respond within 30 days of service of the order. If applicable, when a respondent is responding to an order to show cause regarding a sanction of suspension, the respondent may include a motion for concurrent suspension under section (j)(2) of this Rule.

(g) Reply. The other party may reply to the response to the order to show cause within 30 days of service of the response.

(h) Burden. The burden is on the party seeking a different result in Washington State to demonstrate that imposing the same or equivalent sanction or suspension under section (b)(1), ordering the equivalent placement in incapacity inactive status under section (b)(2) of this Rule, or ordering publication under section (b)(3) of this Rule, is not appropriate given the factors set forth in sections (i)(1) or (i)(2) of this Rule.

(i) Supreme Court Action.

(1) The Court must enter an order imposing reciprocal discipline or reciprocal placement of a

respondent's license in incapacity inactive status, or order for publication as set forth in section (b) of this Rule, unless the Court finds that it clearly appears on the face of the record on which the public discipline or placement of a respondent's license in incapacity inactive status is based that:

(A) the procedure so lacked notice or opportunity to be heard that it denied due process;

(B) the proof of misconduct or incapacity was so infirm that the Court is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or incapacity;

(C) the imposition of the same or equivalent discipline or placement in incapacity inactive status would result in grave injustice;

(D) the established misconduct warrants substantially different discipline in this state;

(E) the reason for the original placement of the respondent's license in incapacity inactive status or its equivalent no longer exists; or

(F) appropriate discipline has already been imposed in Washington State for the misconduct.

(2) For resignations in lieu of discipline or their equivalent, the Court enters an order disbarring the respondent unless the Court finds that disbarment would result in grave injustice and a disposition other than disbarment will not place the public at risk.

(3) If the Court determines that any of the factors under sections (i)(1) or (i)(2) of this Rule exist, it enters an appropriate order.

(4) If the Court orders further proceedings to determine if the respondent's license should be placed in incapacity inactive status, the provisions of Rule 8.6 as to appointment of counsel will apply.

(j) Effective Date.

(1) *Generally*. The effective date of the reciprocal discipline or placement of the respondent's license in incapacity inactive status is the date set by the Court's order, which ordinarily will be seven days after the date of the order. If no date is set, the effective date is seven days after the date of the Court's order.

(2) *Motion for Concurrent Suspension*.

(A) When the reciprocal discipline sanction is suspension, a respondent may file a written motion, served on disciplinary counsel, asking the Court to order that the reciprocal suspension run concurrently with the suspension ordered by the other jurisdiction.

(B) The Court may grant such a motion only if the respondent timely self-reported the discipline under section (a) of this Rule and the motion is accompanied by the respondent's declaration, under penalty of perjury, that the respondent has not practiced law in Washington State at any time following the effective date of the suspension ordered by the other jurisdiction.

(C) When a motion under this section is granted by the Court, the effective date of the reciprocal suspension is the same as provided for under section (j)(1) of this Rule. Notwithstanding the effective date of the reciprocal suspension, the respondent is eligible for reinstatement under Rule 13.3(c) at the conclusion of the term of suspension ordered in the other jurisdiction.

(k) Conclusive Effect. Except as this Rule otherwise provides or the Court orders, a final adjudication in another jurisdiction that a respondent committed misconduct or that the respondent's license should be placed in incapacity inactive status or its equivalent conclusively establishes the misconduct or the incapacity for purposes of a disciplinary or incapacity proceeding in Washington State.

***(l)* Prior Matter in Washington**. No action will be taken against a licensed legal professional under this Rule when the licensed legal professional has been the subject of discipline, resignation in lieu of discipline, placement of the licensed legal professional's license in incapacity inactive status, or other final disposition of a complaint, disciplinary proceeding, or incapacity proceeding in Washington State arising out of the same circumstances that are the basis for discipline, resignation in lieu of discipline, or placement

of the licensed legal professional's license in incapacity inactive status in another jurisdiction.

(m) Expenses. In any matter under this Rule resulting in reciprocal discipline and requiring briefing at the Supreme Court, costs and expenses may be assessed in favor of the Bar under the procedures of RAP Title 14, except that "costs" as used in that Title means any costs and expenses allowable under Rule 13.8. Expenses assessed under this Rule may equal the actual expenses incurred by the Bar, but in any case cannot be less than $3,000.

TITLE 10 – HEARING PROCEDURES

RDI 10.1 GENERAL PROCEDURE

(a) Commencement of Proceedings. A disciplinary proceeding commences when the statement of charges is filed.

(b) Hearing Adjudicator Authority. In addition to the powers specifically provided in these Rules, the hearing adjudicator may make any ruling that appears necessary and appropriate to ensure a fair and orderly proceeding. In making any ruling, the hearing adjudicator should consider that disciplinary proceedings are neither civil nor criminal but are sui generis proceedings governed by these Rules. If appropriate and not inconsistent with these Rules, the Superior Court Civil Rules (CR) may provide guidance.

(c) Cooperation of the Parties. All parties and their counsel should reasonably cooperate with each other and the ORA in all matters. These Rules should be construed and administered consistently with this principle to secure the just, speedy, and inexpensive determination of every action.

(d) Failure to Comply with Hearing Adjudicator Orders. The parties must comply with all orders made by a hearing adjudicator. A hearing adjudicator may draw adverse inferences as appear warranted by any failure to comply.

RDI 10.2 HEARING ADJUDICATOR ASSIGNMENT

(a) Assignment. The Chief Regulatory Adjudicator assigns a hearing adjudicator from those eligible under Rule 2.3.

(b) Disqualification.

(1) *Disqualification for Cause*. Either party may move to disqualify any assigned hearing adjudicator for good cause. A motion under this section must be filed and served promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(2) *Decision*. The Chief Regulatory Adjudicator decides all disqualification motions unless the hearing adjudicator whose disqualification is sought is the Chief Regulatory Adjudicator. In such a case, another regulatory adjudicator decides the motion. The decision on a motion to disqualify is not subject to interlocutory review. After disqualification of the assigned hearing adjudicator, the adjudicator deciding the motion assigns a replacement.

RDI 10.3 FILING OF CHARGES

(a) Statement of Charges.

(1) *Filing*. Disciplinary counsel files a statement of charges with the Clerk after the Authorization Panel issues an order authorizing the filing of a statement of charges.

(2) *Service*. Disciplinary counsel must personally serve the statement of charges on the respondent with a notice to answer in the form prescribed by Rule 10.4.

(3) *Content*. The statement of charges must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the charges and counts of misconduct, which must include one or more charged rule violations. Disciplinary counsel must sign the statement of charges, but it need not be verified.

(b) Consolidation, Joinder, and Severance.

(1) *Consolidation*. After disciplinary counsel has filed statements of charges in two or more proceedings against the same respondent, a party may move for the proceedings to be consolidated.

(2) *Joinder*. After disciplinary counsel has filed statements of charges in proceedings against two or more respondents and the matters arise from the same or related underlying facts, a party may move for the proceedings to be joined into a single proceeding.

(3) *Severance.* After disciplinary counsel has filed a statement of charges, a party may move for separate hearings on counts of misconduct alleged in the statement of charges.

(4) *Consideration of Motion*. The Chief Regulatory Adjudicator considers motions for consolidation, joinder, or severance under this section and should grant a motion if, in the

Chief Regulatory Adjudicator's discretion, it will promote a fair and efficient determination of the issues or is necessary to avoid prejudice to a party.

(5) *Effect of Order*. An amended statement of charges resulting from any consolidation, joinder, or severance ordered under this Rule is not subject to a motion to strike under Rule 10.7(c).

RDI 10.4 NOTICE TO ANSWER

The notice to answer must be substantially in the following form:

BEFORE THE OFFICE OF THE REGULATORY ADJUDICATOR

UNDER THE WASHINGTON SUPREME COURT'S

RULES FOR DISCIPLINE AND INCAPACITY

In re	) NOTICE TO ANSWER;
	) NOTICE OF DEFAULT PROCEDURE
_____,	)
[license # and type].	)

To: The above named respondent:

A[n] [amended] statement of charges has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the [amended] statement of charges within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Office of the Regulatory Adjudicator, [insert address] and by serving a copy on disciplinary counsel at the address[es] given below. Requirements for the answer are set forth in Rule 10.5 of the Rules for Discipline and Incapacity (RDI). Failure to file an answer may result in the entry of an order of default under RDI 10.6 and the imposition of disciplinary sanctions or remedies against you.

Notice of default procedure: Your default may be entered for failure to file a written answer to this [amended] statement of charges within 20 days of service as required by RDI 10.6. THE ENTRY OF AN ORDER OF DEFAULT WILL RESULT IN THE ALLEGED FACTS AND COUNTS OF MISCONDUCT IN THE [AMENDED] STATEMENT OF CHARGES BEING DEEMED ADMITTED AND ESTABLISHED and sanctions and remedies being imposed or recommended based on the admitted counts of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under RDI 10.6(c). The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by RDI 10.6(b)(2).

Dated this _____ day of _____, 20___.

_____

Disciplinary Counsel, Bar No.

Address: _____

Telephone: _____

Email: _____

RDI 10.5 ANSWER; RESPONDENT'S MOTION TO DISMISS

(a) Time to Answer. Within 20 days of service of a statement of charges or amended statement of charges and a notice to answer, the respondent must file and serve an answer. Failure to file an answer to a statement of charges or amended statement of charges may be grounds for discipline or for an order of default under Rule 10.6. The filing of a motion to dismiss under section (d) of this Rule stays the time for filing an answer until the motion is decided.

(b) Content of Answer. The answer must contain:

(1) a specific denial or admission of each alleged fact and count of misconduct in the statement of charges in a manner similar to that described in CR 8(b). Alleged facts and counts of misconduct in the statement of charges are admitted when not denied in the answer;

(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition;

(3) a statement as to whether respondent consents to service by email under Rule 4.1; and

(4) an address or, if respondent consents to service by email, an email address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent when personal service is not required under these Rules.

(c) Filing and Service of Answer. The answer must be filed and served under Rules 4.1 and 4.2.

(d) Motion to Dismiss on Face of Statement of Charges.

(1) *Grounds for Motion*. A respondent may move to dismiss one or more charged rule violations in a statement of charges on grounds that the facts alleged in the statement of charges, if deemed to be true, would be insufficient to establish the charged rule violations.

(2) *Timing*. A motion to dismiss under this section must be filed within the time for filing of the answer to a statement of charges or amended statement of charges, and may be filed in lieu of filing an answer.

(3) *Procedure*. Rule 10.8 applies to motions under this Rule. No factual materials outside the statement of charges may be presented or considered.

(4) *Partial Dismissal*. If the hearing adjudicator dismisses one or more but not all of the charged rule violations, either party may request review within 10 days of service of the order. If review is requested under this section, the Chief Regulatory Adjudicator must assign the matter to an Appeal Panel for review, specify the issue or issues as to which review is granted, and establish the timeline and terms for any additional briefing and oral argument.

(5) *Dismissal of All Counts*. If the hearing adjudicator dismisses all counts, the order of dismissal is treated as a hearing decision under Rule 10.15.

(6) *Filing Answer After Decision*. If the motion does not result in the dismissal of all counts of misconduct, the respondent must file and serve an answer to the remaining alleged facts and counts of misconduct within 10 days of service of the ruling on the motion, unless either party has requested review under section (d)(4) of this Rule or filed a motion for interlocutory review under Rule 11.10 of an order denying the motion. After review, the respondent must file and serve an answer to any remaining alleged facts and counts of misconduct within 10 days of service of the Appeal Panel's decision.

RDI 10.6 DEFAULT

(a) Entry of Default.

(1) *Timing*. If a respondent, after being served with a notice to answer as provided in Rule 10.4 or 10.7, fails to file an answer to a statement of charges or an amended statement of charges within the time provided by these Rules, disciplinary counsel may file a motion for an order of default.

(2) *Motion*. The motion for an order of default must be served on the respondent and must include the following:

(A) the dates of filing and service of the notice to answer, the statement of charges, and any amended statement of charges;

(B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by Rule 10.5 and that disciplinary counsel seeks an order of default under this Rule;

(C) notice that upon entry of an order of default, the alleged facts and counts of misconduct in the statement of charges and any amended statement of charges will be deemed admitted and established, and sanctions and remedies may be imposed or recommended based on the admitted facts and rule violations; and

(D) a copy of this Rule.

(3) *Entry of Order of Default*. If the respondent fails to file a written answer to the statement of charges or amended statement of charges within seven days of service of the motion for entry of an order of default, the hearing adjudicator, on proof of service of the motion, must enter an order finding the respondent in default.

(4) *Effect of Order of Default*. Upon entry of an order of default, the alleged facts and counts of misconduct in the statement of charges and any amended statement of charges are deemed admitted and established for the purpose of imposing discipline, and the respondent may not participate further in the proceedings unless the order of default is vacated under this Rule.

(b) After Entry of an Order of Default.

(1) *Service*. The Clerk serves the order of default under Rule 4.2(c).

(2) *No Further Notices*. Notwithstanding any other provision of these Rules, after entry of an order of default, no further notices, motions, documents, papers, or transcripts need be served on the respondent except for copies of the decisions of the hearing adjudicator, the Appeal Panel, and the Court.

(3) *Hearing Adjudicator Decision on Default*. Within 20 days after entry of the order of default, disciplinary counsel may present additional evidence and briefing relevant to the sanction, restitution, or other remedies. Within 60 days of the filing of the order of default, the hearing adjudicator must enter findings of fact, conclusions of law, and recommendation based on the facts and rule violations established under section (a) of this Rule and any additional evidence submitted.

(c) Vacating the Order of Default.

(1) *Motion To Vacate Order of Default*. Subject to the limitations in section (c)(2) of this Rule, a respondent may move to vacate the order of default and any decision of the hearing adjudicator arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) a proceeding against a respondent who was, at the time of the default, incapable of conducting a defense due to incapacity;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct in connection with the underlying disciplinary proceeding;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) *Time*. For grounds (c)(1)(A) and (C), the motion must be made within one year after entry of the default. For ground (c)(1)(B), the motion must be made within one year after the incapacity ceases. For all other grounds, the motion must be made within a reasonable time. If a matter is pending with or has been decided by the Supreme Court, the respondent must obtain leave from the Court before moving to vacate the order of default. A respondent seeking leave from the Court must provide notice to disciplinary counsel.

(3) *Burden of Proof*. The respondent bears the burden of proving the grounds for vacating the order of default by a clear preponderance of the evidence.

(4) *Service and Contents of Motion*. The motion to vacate the order of default must be filed and served under Rules 4.1 and 4.2 and be accompanied by a copy of the respondent's proposed answer to each statement of charges for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that the respondent asserts as mitigation. The motion must be supported by a declaration showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for vacating the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) *Response to Motion*. Within 10 days of filing and service of the motion to vacate the order of default, disciplinary counsel may file and serve a written response.

(6) *Decision*. A hearing adjudicator decides a motion to vacate the order of default on the written record without oral argument. Pending a ruling on the motion, the hearing adjudicator may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing adjudicator has discretion to order appropriate conditions. If the respondent proves that the order of default was entered as a result of a mental or physical incapacity that made the respondent incapable of conducting a defense, the order of default must be vacated.

(7) *Review of Decision*. A party may seek review of a decision under this Rule using the procedures of Rule 11.10. If review under Rule 11.10 is denied, there is no further review.

(d) Order of Default Not Authorized in Incapacity Proceedings. The default procedure in this Rule does not apply to incapacity proceedings under Title 8.

RDI 10.7 AMENDMENT OF STATEMENT OF CHARGES

(a) Amending the Statement of Charges. Disciplinary counsel may file an amended statement of charges at any time.

(b) Service. Disciplinary counsel serves an amended statement of charges and the notice to answer on the respondent as provided in Rule 4.1. An amended statement of charges need not be personally served.

(c) Motion to Strike. The respondent may, within 10 days of service of the amended statement of charges, file a motion to strike any amendments to the statement of charges. A hearing adjudicator will consider the motion under the procedure provided by Rule 10.8. Such motions should only be granted upon a clear showing of prejudice to the respondent.

(d) Answer. The respondent must file an answer to the amended statement of charges under the procedures of Rule 10.5. Any part of a previous answer may be incorporated by reference. A timely filed motion under section (c) of this Rule stays the time for filing the answer until the motion is decided. Regardless of whether the respondent has filed an answer to any previous statement of charges, failure to file an answer to an amended statement of charges may be grounds for discipline or for an order of default of the entire proceeding under Rule 10.6.

RDI 10.8 GENERAL RULES FOR MOTIONS

(a) Definition. A motion is an application to the hearing adjudicator for an order or other relief. The motion, unless made during a hearing, must be in writing and state with particularity the grounds for the motion and the relief sought.

(b) Filing and Service. Motions must be filed and served as required by Rules 4.1 and 4.2.

(c) Response. The opposing party has 10 days from service of a motion to respond, unless the time is altered by the hearing adjudicator for good cause.

(d) Reply. The moving party has seven days from service of the response to reply unless the time for reply is altered by the hearing adjudicator for good cause.

(e) Consideration of Motion. Upon expiration of the time for reply, the hearing adjudicator should promptly rule on the motion, with or without argument at the hearing adjudicator's discretion. Argument on a motion may be heard by conference call or by other electronic means. At the request of a party or at the discretion of the hearing adjudicator, any hearing on the motion may be recorded as provided in Rule 10.12(h).

(f) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(g) Motion for Reconsideration. Either party may file a motion for reconsideration of a hearing adjudicator's ruling on a motion. The motion must be filed and served no later than 10 days after service of the ruling on the moving party. Sections (a) through (f) of this Rule

apply to motions for reconsideration. A party may not file a motion for reconsideration of a ruling that has already been reconsidered at the request of that party.

(h) Chief Regulatory Adjudicator Authority. Before the assignment of a hearing adjudicator, the Chief Regulatory Adjudicator may rule on any prehearing motion.

RDI 10.9 SPECIFIC MOTIONS

(a) Motion for Finding of Misconduct on the Pleadings. Within 30 days of the filing of the answer to a statement of charges or amended statement of charges, disciplinary counsel may move for an order finding misconduct based on the pleadings. No factual materials outside the statement of charges or amended statement of charges and the answer(s) may be presented or considered. In ruling on this motion, the hearing adjudicator may find that all or some of the charged rule violations in the statement of charges are established. A hearing will be held to determine any facts or violations not established and to determine the appropriate sanction.

(b) No Summary Judgment. A party may not move for summary judgment.

(c) Collateral Estoppel. Either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding.

(d) Voluntary Dismissal. Disciplinary counsel may move to dismiss the proceeding at any time. A hearing adjudicator must enter an order dismissing the proceeding without prejudice unless the hearing adjudicator finds good cause to dismiss with prejudice. An order of dismissal with prejudice is treated as a hearing decision under Rule 10.15.

(e) Procedure. Rule 10.8 applies to motions under this Rule.

RDI 10.10 DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should reasonably cooperate in the mutual informal exchange of relevant non-privileged information to facilitate the expeditious, economical, and fair resolution of the case.

(b) Discovery.

(1) *Requests for Admission*. After a statement of charges is filed, the parties may request admissions in the manner provided by CR 36. Under appropriate circumstances, the hearing adjudicator may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(2) *Other Discovery*. Formal discovery, other than requests for admission, is available only by order of the hearing adjudicator or stipulation of the parties. Absent a stipulation, after a statement of charges is filed either party may file a motion under Rule 10.8 seeking authorization to conduct one or more of the methods of discovery available under CR 27-31 and 33-35. The hearing adjudicator has discretion to grant or deny the motion and must consider the following factors:

(A) the necessity of the information sought and whether it is available by other means;

(B) the nature and complexity of the case;

(C) the seriousness of the charges;

(D) the formal and informal discovery that has already occurred;

(E) the burden on the party or witness from whom the information is sought;

(F) the possibility of unfair surprise;

(G) the risk of undue expense or delay;

(H) the effect of the requested discovery on the orderly and prompt conduct of the proceeding; and

(I) the interests of justice.

(3) *Limitations*. The hearing adjudicator may impose conditions or limitations on discovery or requests for admission to assure an expeditious, economical, and fair proceeding

(c) Discovery of Hearing Preparation Materials. When discovery has been authorized under section (b) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable and prepared in anticipation of litigation or for hearing by or for

another party or by or for that other party's representative (including a party's lawyer, investigator, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing adjudicator must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a lawyer or other representative of a party concerning the litigation. In interpreting the provisions of this section, CR 26(b)(4) may be looked to for guidance.

(d) Subpoenas. When necessary to obtain discovery authorized under section (b) of this Rule, subpoenas may be issued as under CR 45. Subpoenas may be enforced under Rule 4.7.

(e) Depositions Outside of State. A certified copy of the order of a hearing adjudicator is sufficient to authorize a deposition outside Washington State.

(f) Duty to Cooperate. Parties must respond to authorized discovery requests and comply with the hearing adjudicator's orders regarding discovery. The hearing adjudicator may draw adverse inferences as appear warranted by the failure of either party to respond to authorized discovery.

RDI 10.11 SCHEDULING OF HEARING

(a) Hearing Location. Absent agreement of all parties and the hearing adjudicator, all disciplinary hearings must be held in Washington State, with a presumption that hearings will be held at the Bar offices. The ORA must make the arrangements for the hearing facilities.

(b) Scheduling Conference. No later than 30 days after the filing of the respondent's answer, the hearing adjudicator must convene an initial scheduling conference of the parties to discuss:

(1) the hearing date, which must be within 180 days of the date of the initial scheduling conference unless good cause is shown to set the hearing at a later date or unless the hearing adjudicator has granted a motion under section (e) of this Rule;

(2) any necessary prehearing deadlines;

(3) the location of the hearing;

(4) the expected length of the hearing;

(5) the parties' expected discovery requests;

(6) whether a settlement conference would be useful in resolving the matter;

(7) whether the parties consent to electronic service; and

(8) any other relevant issues.

(c) Scheduling Order. The hearing adjudicator must enter an order setting the date, time, and place of the hearing. The scheduling order should include any prehearing deadlines the hearing adjudicator deems required by the complexity of the case, as well as a determination regarding a settlement conference under section (h) of this Rule. The Scheduling Order generally should be in the following form with the following timelines:

SETTLEMENT CONFERENCE DETERMINATION:

[ ] The hearing adjudicator finds that this case may benefit from a settlement conference, and a settlement officer should be appointed.

ELECTRONIC SERVICE:

[ ] The parties consent to electronic service of papers or documents under Rule 4.1(b).

IT IS ORDERED that the hearing is set to begin at [time] on [Hearing Date (H)] and each day thereafter until adjourned by the hearing adjudicator, at [location], and the parties must comply with prehearing deadlines as follows:

1. Witnesses. A preliminary list of primary witnesses, including addresses and phone numbers, and a designation of whether the witness is a fact witness, character witness, or expert witness, must be filed and served by [H-12 weeks].

2. Discovery. Discovery authorized under Rule 10.10(b), if any, must be completed by [H-6 weeks].

3. Motions. Prehearing motions, other than motions to bifurcate under Rule 10.14, must be served by [H-4 weeks]. Absent agreement of the parties, an exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing adjudicator unless the motion concerns the exhibit's admissibility. The hearing adjudicator will advise the parties whether oral argument is necessary, and, if so, the date and time of the argument.

4. Exhibits. Lists of proposed exhibits must be exchanged by [H-3 weeks].

5. Service of Exhibits. Copies of proposed exhibits must be exchanged by [H-2 weeks]. The parties should redact the following personal identifiers from the proposed hearing exhibits: Social Security numbers, financial account numbers, and driver's license numbers

6. Final Witness List. A final witness list, including a final summary of the expected testimony of each witness, must be exchanged by [H-2 weeks]. A copy of the final witness list, excluding the summary of expected testimony, must be filed and served by [H-2 weeks].

7. Objections. Objections to proposed exhibits, including grounds other than relevancy, must be exchanged by [H-1 week].

8. Briefs. Any hearing brief must be filed and served by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing adjudicator before the hearing.

(d) Failure to Comply with Scheduling Order. If a party fails to comply with a provision of the scheduling order, the hearing adjudicator may exclude witnesses, testimony, exhibits, or other evidence, and take such other action as may be appropriate.

(e) Motion for Hearing within 120 Days. A respondent may move for a hearing date within 120 days of the initial scheduling conference under section (b) of this Rule. Such a motion may be made no later than the date of the initial scheduling conference convened under section (b) of this Rule. A motion under this Rule must be granted unless disciplinary counsel shows good cause for setting the hearing at a later date. Rule 10.8 applies to motions under this Rule, except that the motion may be made orally during the initial scheduling conference.

(f) Notice. Service of an order setting a date, time, and place for the hearing constitutes notice of the hearing.

(g) Continuance. Either party may move for a continuance of the hearing date. The hearing adjudicator has discretion to grant the motion for good cause shown.

(h) Settlement Conference Process.

(1) *Order*. In all disciplinary proceedings under this Title, the hearing adjudicator should order a settlement conference unless it appears that such a conference would not be helpful. Settlement conferences may not be ordered in incapacity proceedings under Title 8.

(2) *Assignment of Settlement Officer*. Following a hearing adjudicator's order for a settlement conference, the Chief Regulatory Adjudicator must assign a settlement officer to conduct the settlement conference. The Chief Regulatory Adjudicator may assign a regulatory adjudicator under Rule 2.3 or volunteer adjudicator under Rule 2.6(a)(2) to serve as a settlement officer. Following a settlement conference, the settlement officer who conducted the settlement conference may not serve as an adjudicator in the same disciplinary proceeding without the consent of all parties.

(3) *Timing*. Unless agreed to by the parties, a settlement conference if ordered must be held no later than 45 days prior to the hearing date.

(4) *Confidentiality*.

(A) Conference and Communications Confidential. Settlement conferences are closed to the

public. Except as provided in section (h)(4)(C) of this Rule, all communications relating to the settlement conference, whether oral or written and including pre- and post-settlement conference conversations and exchanges of information, are confidential and may not be disclosed or released unless specifically authorized by the Chief Regulatory Adjudicator on a showing of compelling need and following notice to the participants. Statements of child or elder abuse or threats to commit future crimes or cause serious bodily injury are not subject to the foregoing restrictions on disclosure or release.

(B) Evidentiary Use of Settlement Conference Information. Any statements or admissions made during the course of the settlement conference, or documents prepared solely for purposes of the settlement conference process, will not be admissible in evidence or used for impeachment in any disciplinary or other proceeding. Neither the parties nor the settlement officer may be subpoenaed or otherwise compelled to testify or produce information regarding the settlement conference in any disciplinary or other proceeding except as specifically authorized by the Chief Regulatory Adjudicator on a showing of compelling need and following notice to the participants.

(C) Settlement Agreement. Any stipulation resulting from a settlement conference is subject to approval under Rule 9.1 and, if approved, becomes public under Rule 3.3. If the parties agree to the respondent's resignation in lieu of discipline following a settlement conference, Rule 9.2 governs the resignation. A resignation in lieu of discipline is public under Rule 3.3.

(D) Information Indicating Potential Incapacity. Notwithstanding the provisions of sections (h)(4)(A) and (B), a settlement officer who has reasonable cause to believe that the respondent lacks the mental or physical capacity to defend a disciplinary proceeding or to assist counsel in defending a disciplinary proceeding must provide information from the settlement conference to the Chief Regulatory Adjudicator for further proceedings under Rule 8.4(a).

RDI 10.12 HEARING

(a) Representation. The respondent may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing under Rule 10.11(f) must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. A respondent who fails to attend the hearing, without good cause, forfeits any right to appeal the hearing decision except as to the issue of good cause.

(c) Procedures If Respondent Fails to Attend. If a respondent given notice of a hearing under Rule 10.11(f) fails to attend the hearing without good cause, the hearing may proceed, and the hearing adjudicator:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked of the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) the affidavit or declaration shows affirmatively that the witness could testify competently to the stated facts.

(d) Respondent Must Testify if Called.

(1) *Testimony Required*. A respondent given notice of a hearing under Rule 10.11(f) must testify if called as a witness by disciplinary counsel.

(2) *Consequences of Refusal*. If a respondent refuses to testify, the hearing adjudicator may:

(A) draw an adverse inference from the respondent's refusal to testify as to any questions that might have been asked of the respondent; and

(B) consider the refusal an aggravating factor in determining the appropriate sanction for any misconduct found.

(3) *Subpoena Optional*. Disciplinary counsel may, but is not required to, issue a subpoena to compel the respondent's testimony.

(4) *Privilege Against Self-Incrimination*. This rule does not preclude the respondent's proper exercise of any privilege against self-incrimination.

(e) Respondent Must Bring Requested Materials. Disciplinary counsel may request that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these Rules. The request must be in writing and served on the respondent at least three days before the hearing. Absent good cause, the respondent must comply with this request.

(f) Witnesses at Hearing. Except as provided in section (c)(2) of this Rule, witnesses must testify under oath. Testimony may be submitted by deposition, in the hearing adjudicator's discretion as guided by CR 32. If ordered by the hearing adjudicator, testimony may be taken by telephone or other contemporaneous electronic means. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(g) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this Rule and with all lawful orders made by the hearing adjudicator under this Rule. Subpoenas may be enforced under Rule 4.7.

(h) Hearing Record. Disciplinary hearings must be recorded in writing by a court reporter or recorded by electronic means. The ORA must make arrangements for recording the hearing. A court reporter must prepare and certify a hearing transcript and submit it to the Clerk. The Clerk files the hearing transcript and serves it on the parties. The hearing transcript is the official record of the hearing.

(i) Prior Disciplinary Record. The respondent's record of prior discipline, or the fact that the respondent has no prior discipline, must be made a part of the hearing record before the hearing adjudicator files a recommendation.

RDI 10.13 EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing adjudicators should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis proceedings to determine if a respondent's conduct should have an impact on the respondent's license to practice law.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing a charged rule violation by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a statement of charges alleges an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing that (1) the respondent is guilty of the crime, (2) the respondent violated the statute on which the conviction was based, and (3) all essential elements of the crime of which the respondent was convicted have been established.

(d) Evidentiary Rules. Except as provided in section (d)(4) of this Rule, the Washington Rules of Evidence (ER) do not apply, but the hearing adjudicator may consider them as guidance in making evidentiary rulings. The following evidentiary rules apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs;

(2) evidence may be excluded if it is irrelevant, immaterial, or unduly repetitious;

(3) documents may be admitted in the form of copies or excerpts; and

(4) a hearing adjudicator may take judicial notice of adjudicative facts as described in ER 201.

RDI 10.14 BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the hearing date, either party may request that the disciplinary proceeding be bifurcated. The hearing

adjudicator must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to ensure a fair and orderly hearing because of the respondent's record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) *Violation Hearing*.

(A) A bifurcated proceeding begins with an initial violation hearing to make factual determinations and legal conclusions as to the charged rule violations, including the mental state necessary for the violations. During the violation hearing, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) Following the violation hearing, the hearing adjudicator files findings of fact and conclusions of law.

(i) If no violation is found, the hearing adjudicator enters findings of fact, conclusions of law, and a recommendation for dismissal, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under Rule 10.15(b), or after ruling on that motion, the findings of fact and conclusions of law as to those violations are not subject to reconsideration by the hearing adjudicator.

(2) *Sanction Hearing*. If any violation is found, a sanction hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings of fact and conclusions of law as to the violations found under section (b)(1)(B)(ii) of this Rule. At the conclusion of the sanction

hearing, the hearing adjudicator files findings of fact and conclusions of law as to sanction and a recommendation, which, together with the previously filed findings of fact and conclusions of law, is the hearing decision of the hearing adjudicator.

(3) *Timing*. If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing adjudicator must set a date and place for the sanction hearing that should be no later than 60 days after the date set for the commencement of the violation hearing.

RDI 10.15 HEARING DECISION

(a) Hearing Decision. A hearing adjudicator's decision must be in the form of written findings of fact, conclusions of law, and recommendation. The hearing decision should be filed with the Clerk within 30 days after the hearing transcript is filed. Either party may file proposed findings of fact, conclusions of law, and recommendation within 20 days after the disciplinary hearing is concluded or as otherwise ordered by the hearing adjudicator.

(b) Amendment.

(1) *Timing of Motion*. Either party may move to modify, amend, or correct the hearing decision as follows:

(A) In a proceeding not bifurcated, within 15 days of service of the hearing decision;

(B) In a bifurcated proceeding, within 15 days of service of:

(i) the findings of fact and conclusions of law regarding violations; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings of fact or conclusions of law.

(2) *Procedure*. Rule 10.8 governs this motion. The hearing adjudicator should rule on the motion within 15 days after the filing of a timely reply or after the period to file a reply under Rule 10.8(c) has expired. The ruling may deny the motion or may amend, modify, or correct the hearing decision.

(3) *Effect of Failure to Move*. Failure to move for modification, correction, or amendment does not affect any subsequent appellate review.

(c) Appeal. Rule 11.2 governs notices of appeal of a hearing decision.

(d) Transmittal to Court. If no party files a notice of appeal of a hearing decision within the time permitted by Rule 11.2, the Clerk transmits a copy of the hearing decision to the Supreme Court for entry of a final order under Rule 13.1(a) or other appropriate order.

TITLE 11 – APPEAL TO THE APPEAL PANEL

RDI 11.1 SCOPE OF TITLE

This Title provides the procedure for appeals of a hearing decision and interlocutory review of acts or rulings of a regulatory adjudicator. For purposes of this Title, the term "party" includes individuals seeking or responding to review under Rule 3.4. The Rules of Appellate Procedure serve as guidance for review under this Title except as to matters specifically dealt with in these Rules.

RDI 11.2 DECISIONS SUBJECT TO APPEAL

(a) Decision. For purposes of this Title, "hearing decision" means:

(1) the hearing adjudicator's findings of fact, conclusions of law, and recommendation under Rules 8.2(g), 8.3(i), 8.4(h), and 10.15. If either party properly files a motion to amend under Rule 10.15(b), the "hearing decision" includes the ruling on the motion;

(2) a decision dismissing all counts under Rule 10.5(d);

(3) a decision dismissing the proceeding with prejudice under Rule 10.9(d); or

(4) the hearing adjudicator's decision on a petition to return from incapacity inactive status under Rule 8.11(e)(8).

(b) Time to File Notice. A notice of appeal must be filed with the Clerk within 30 days of service of the hearing decision on the parties.

(c) Cross Appeal. If a party files a timely notice of appeal and the other party wants relief from the hearing decision, the other party must file a notice of appeal with the Clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) within the time set forth in section (b) of this Rule for filing a notice of appeal.

RDI 11.3 RECORD ON APPEAL, DESIGNATION, AND PREPARATION

(a) Terminology. By analogy to the RAP, the Appeal Panel is considered the appellate court, the Clerk is considered the trial court clerk, and documents in the Clerk's file are considered the clerk's papers.

(b) Record on Appeal. The record on appeal consists of documents from the Clerk's file designated by the parties, exhibits designated by the parties, the hearing decision, and the hearing transcript.

(c) Designation of Record. A party must file its designation at or before the time it files its first brief.

(d) No Additional Evidence. Evidence not presented to the hearing adjudicator must not be designated by the parties or presented to the Appeal Panel.

(e) Preparation of Record. The Clerk prepares the record on appeal and distributes it to the Appeal Panel. The Clerk provides the parties with a copy of the index of the Clerk's file documents and a cover sheet listing the exhibits.

RDI 11.4 BRIEFS

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Opening Brief

[Name of Party] Response

[Name of Party] Reply

(b) Content of Briefs.

(1) *Opening Brief*. The opening brief should contain under appropriate headings and in the order here indicated:

(A) Title Page. A title page, which is the cover.

(B) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where cited.

(C) Introduction. A concise introduction. This section is optional. The introduction need not contain citations to the record or authority.

(D) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

(E) Argument. The argument section must identify the issues for review and present argument in support of the issues, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The parties should include a concise statement of the standard of review as to each issue.

(F) Conclusion. A short conclusion stating the precise relief sought.

(G) Appendix. An appendix to the brief if deemed appropriate by the party filing the brief. An appendix may not include evidence not presented to the hearing adjudicator.

(2) *Response*. The response should conform to section (b)(1) of this Rule and answer the opening brief.

(3) *Reply*. A reply brief should conform with sections (A), (B), (E), (F), and (G) of section (b)(1) of this Rule and be limited to a response to the issues in the response brief.

(c) Timing of Briefs.

(1) *Opening Brief*. The party filing the notice of appeal must file an opening brief within 45 days of service on the parties of a copy of the transcript by the Clerk or the filing of the notice of appeal, whichever is later. Failure to file an opening brief within the required period constitutes an abandonment of the appeal.

(2) *Response*. Any response of the opposing party must be filed within 30 days from service of the opening brief.

(3) *Reply*. Any reply of the appealing party must be filed within 30 days of service of the response.

(d) Procedure When Both Parties Appeal. When both parties file notices of appeal, the party filing first is considered the appealing party. In these situations, the responding party

may raise its own issues on appeal, and the appealing party has an additional five days to file the reply permitted by section (b)(3) of this Rule.

(e) References to the Record. Briefs filed under this Rule must specifically refer to the record if available, using the designations TR for transcript, EX for exhibit, and CF for Clerk's file document.

(f) Formatting Requirements and Length of Briefs. Briefs must conform with the formatting requirements of RAP 18.17, except that (1) the opening and response briefs must not exceed 8,750 words (word processing software) or 35 pages (typewriter or hand-written), and (2) the reply brief must not exceed 2,500 words (word processing software) or 10 pages (typewriter or hand-written). For compelling reasons, the Appeal Panel may grant a motion to file an over-length brief. The Clerk must return over-length briefs presented for filing without a motion. The Clerk must provide a copy of this Rule to the party with the original unfiled brief.

RDI 11.5 SUPPLEMENTING THE RECORD

The record on appeal may be supplemented in the following ways:

(a) As of Right. A party may supplement its designation of the record before or with the filing of the party's last brief.

(b) On Motion. After a party files its last brief, a party may file a motion with the Appeal Panel to supplement the record. Leave to supplement the record should be freely granted.

(c) Sua Sponte. With notice to the parties, the Appeal Panel may supplement the record with any portion of the record before the hearing adjudicator.

RDI 11.6 REQUEST FOR THE TAKING OF ADDITIONAL EVIDENCE

(a) Timing and Content of Request. Any time prior to the deadline for filing of the party's last brief, a party by written motion may request the taking of additional evidence based on newly discovered evidence. The motion must be supported by a declaration describing in

detail the additional evidence and any reasons why it was not presented at the hearing and must address the factors listed in section (b) of this Rule.

(b) Remedy Limited. The Appeal Panel may direct that additional evidence on the merits of the case be taken prior to the decision of the case on appeal if:

(1) additional proof of facts is needed to fairly resolve the issues on appeal,

(2) the additional evidence would probably change the hearing decision being appealed,

(3) it is equitable to excuse a party's failure to present the evidence to the hearing adjudicator,

(4) the appellate remedy of granting a new hearing is inadequate or unnecessarily expensive, and

(5) it would be inequitable to decide the case solely on the evidence already taken by the hearing adjudicator.

(c) Where Taken. The Appeal Panel will ordinarily direct the hearing adjudicator to take additional evidence and find the facts based on that evidence.

(d) Effect on Pending Appeal. The pending appeal will be stayed if the Appeal Panel directs that additional evidence be taken.

RDI 11.7 APPELLATE DECISION

(a) Basis for Appellate Decision. The Appeal Panel considers the hearing decision, the parties' briefs filed under Rule 11.4, and the record on appeal. Except as provided in section (b) of this Rule, the Appeal Panel will decide a case only on the basis of issues set forth by the parties in their briefs.

(b) Issues Raised by the Appeal Panel. If the Appeal Panel concludes that an issue that is not set forth in the briefs should be considered to properly decide a case, it may notify the parties and give them an opportunity to present written argument on the issue raised by the Appeal Panel.

(c) Standards of Review. The Appeal Panel reviews findings of fact for substantial evidence. It reviews conclusions of law and recommendations de novo. Evidence not presented to the hearing adjudicator cannot be considered by the Appeal Panel.

(d) Oral Argument.

(1) *Request by Party or Panel*. The Appeal Panel hears oral argument if requested by a party who has filed a brief or if ordered by the Panel.

(2) *Timing of Request*. A party's request must be filed no later than the deadline for that party to file its last brief, including a response or reply, under Rule 11.4.

(3) *Setting and Notice of Argument*. Notice of oral argument issued by the Clerk sets the date, time, place, and terms for oral argument. The Clerk serves notice on the parties no later than 30 days before the scheduled argument.

(4) *Rescheduling*. A request to reschedule oral argument must be made by motion filed with the Clerk within 15 days of receipt of the notice setting the date for oral argument, except upon a showing of good cause.

(5) *Procedure*. Each party has 15 minutes to present oral argument. For compelling reasons, the Appeal Panel may grant a motion for additional oral argument time. The motion should be filed with the request for oral argument. If either party fails to appear for argument at the scheduled time, the Appeal Panel may consider the case without oral argument.

(6) *Record*. Arguments before the Appeal Panel must be recorded in writing by a court reporter or by electronic means. The ORA must make arrangements for recording the argument. Within 15 days of the conclusion of the argument, a verbatim report of proceedings must be prepared and certified by a court reporter and filed with the Clerk, who will serve it on the parties. The verbatim report is the official record of the argument.

(e) Action by the Appeal Panel. Consistent with the standards of review in section (c) of this Rule, the Appeal Panel may reverse, affirm, or modify the hearing decision on appeal and take any other action as the merits of the case and the interest of justice may require.

(f) Appellate Decision. The Appeal Panel must file an appellate decision in the form of a written order or opinion stating the reasons for its decision. The appellate decision must set forth the result favored by each panel member. Any dissent must set forth the result favored by the dissenting panel member(s). The Clerk serves the appellate decision on the parties.

(g) Appeal or Review. Rules 12.3 and 12.4 govern notices of appeal or petitions for discretionary review of appellate decisions.

(h) Transmittal to Court. If no party files a notice of appeal or petition for discretionary review of an appellate decision within the time permitted by Rules 12.3 and 12.4, or upon the Supreme Court's denial of a petition for discretionary review, the Clerk transmits a copy of the appellate and hearing decisions to the Supreme Court for entry of a final order under Rule 13.1(a) or 8.1(b), or other appropriate order.

RDI 11.8 MODIFICATION OF REQUIREMENTS

Upon written motion filed with the Clerk by a party for good cause shown, or on its own initiative, the ORA may modify the time periods in Title 11 and make other orders as appear appropriate to ensure fair and orderly consideration of the appeal. However, the time period for filing a notice of appeal in Rule 11.2(b) may not be extended or altered.

RDI 11.9 MOTIONS

(a) Content of Motion. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Filing and Service. Motions for matters pending with the Appeal Panel must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by Rule 4.1.

(c) Response. A party may file a written response to the motion. A response must be served and filed within 10 days of service of the motion, unless the time is modified by the Chair of the Appeal Panel for good cause.

(d) Reply. The moving party may file a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is modified by the Chair of the Appeal Panel for good cause.

(e) Length of Motion, Response, and Reply. A motion, response, and reply must conform with the formatting requirements of RAP 18.17, except that (1) the motion and response must not exceed 2,500 words (word processing software) or 10 pages (typewriter or hand-written), and (2) the reply must not exceed 1,250 words (word processing software) or 5 pages (typewriter or hand-written). For good cause, the Chair of the Appeal Panel may grant a motion to file an over-length motion, response, or reply.

(f) Consideration of Motion. Upon expiration of the time for reply, the Chair of the Appeal Panel must promptly rule on the motion or refer the motion to the full Panel for decision. A motion will be decided without oral argument, unless the Chair of the Appeal Panel directs otherwise.

(g) Ruling. A motion is decided by written order filed with and served by the Clerk under Rule 4.2.

(h) No Appeal Panel Convened. When a motion is filed before an Appeal Panel is convened, the Chief Regulatory Adjudicator may perform all functions of the Chair under this Rule.

RDI 11.10 INTERLOCUTORY REVIEW

(a) General. Unless these Rules provide otherwise, a party may file a motion seeking interlocutory review by the Appeal Panel of any act or ruling of a regulatory adjudicator that is not appealable as a matter of right.

(b) Considerations Governing Acceptance of Review. Interlocutory review may be granted only in the following circumstances:

(1) A regulatory adjudicator has committed an obvious error that would render further proceedings useless;

(2) A regulatory adjudicator has committed probable error and the ruling of the regulatory adjudicator substantially alters the status quo or substantially limits the freedom of a party to act;

(3) A regulatory adjudicator has so far departed from the accepted and usual course of disciplinary proceedings as to call for review by the Appeal Panel; or

(4) A regulatory adjudicator has certified, or all the parties have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate resolution of the proceedings.

(c) Procedure.

(1) *Motion*. A party seeks interlocutory review by motion under the procedures of Rule 11.9, except that the Chief Regulatory Adjudicator decides the motion. The motion must include a copy of the ruling that the party wants reviewed, a copy of any order granting or denying motions made with respect to that ruling, and a copy of parts of the record relevant to the act or ruling.

(2) *Timing and Service*. The motion must be filed with the Clerk and served on the opposing party within the later of (A) 15 days of the act or ruling that the party wants reviewed, or (B) 15 days of entry of an order deciding a timely motion for reconsideration under Rule 10.8(g).

(3) *Proceedings Not Stayed*. A party's motion for interlocutory review does not stay the regulatory adjudicator's act or ruling, any proceedings, or any pre-hearing deadlines unless the regulatory adjudicator or the Chief Regulatory Adjudicator issues a stay or the Chief Regulatory Adjudicator grants review.

(d) Effect of Denial of Interlocutory Review. The denial of interlocutory review does not affect the right of a party to obtain later review of the act or ruling or the issues pertaining to it.

(e) Acceptance of Review. Upon accepting interlocutory review, the Chief Regulatory Adjudicator assigns the matter to an Appeal Panel, specifies the issue or issues as to which review is granted, and establishes the timeline and terms for any additional briefing and oral argument.

TITLE 12 – REVIEW BY SUPREME COURT

RDI 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this Title except as to matters specifically dealt with in these Rules. For purposes of this Title, the term "party" includes individuals seeking or responding to review under Rule 3.4.

RDI 12.2 METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Appeal Panel Decision. The methods for seeking Supreme Court review of an Appeal Panel decision entered under Rule 11.7(f) are: (1) review as a matter of right, called "appeal," and (2) review with Court permission, called "discretionary review." Both "appeal" and "discretionary review" are called "review."

(b) Power of Court Not Affected. This Rule does not affect the Court's power to review any decision by an Appeal Panel or regulatory adjudicator and to exercise its inherent and exclusive jurisdiction over the discipline and incapacity system.

RDI 12.3 APPEAL

(a) Right to Appeal. The respondent or disciplinary counsel has the right to appeal an Appeal Panel decision recommending disciplinary suspension or disbarment. There is no other right of appeal except as specified in Title 8.

(b) Notice of Appeal; Timing. The appealing party must file a notice of appeal within 30 days of service of the Appeal Panel's decision.

(c) Where to File Notice of Appeal; Service. A party files the notice of appeal with the ORA Clerk and must serve the other party.

(d) Filing Fee. A party filing a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the ORA Clerk by check made payable to the Washington Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Cross Appeal. If a party files a timely notice and the other party wants relief from the Appeal Panel decision, the other party must file a notice of appeal with the ORA Clerk within 14 days after service of the first notice of appeal. A party filing a cross notice of appeal must serve the other party but need not pay a filing fee.

RDI 12.4 DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Appeal Panel decisions or orders not subject to appeal under Rule 12.3. The Court accepts discretionary review only if:

(1) the Appeal Panel's decision or order is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;

(3) there is no substantial evidence in the record to support a material finding of fact on which the Appeal Panel's decision or order is based; or

(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Discretionary Review; Timing. A party may seek discretionary review by filing a petition for discretionary review with the ORA Clerk within 30 days of service of the Appeal Panel's decision or order.

(c) Where to File Petition for Discretionary Review; Service. A party files a petition for discretionary review with the ORA Clerk and must serve the other party.

(d) Filing Fee. A party filing a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the ORA Clerk by check made payable to the Washington Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Content of Petition; Answer; Service; Decision. A petition for discretionary review should conform substantially to RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in RAP 13.4 to the Court of Appeals are considered

references to the Appeal Panel. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) – (h) governs answers and replies to petitions for discretionary review and related matters including service and decision by the Court.

(f) Form and Length. The petition for review, answer, or reply must comply with the form requirements of RAP 13.4(e) and the length limits of RAP 13.4(f).

(g) Cross Petition. If a party files a timely petition for discretionary review and the other party wants relief from the Appeal Panel's decision, the other party must file a petition for discretionary review with the ORA Clerk within the later of (1) 14 days after service of the first petition, or (2) the time for filing a petition under section (b) of this Rule. A party filing a cross petition must serve the other party but need not pay a filing fee. The form and length requirements of RAP 13.4(e) and RAP 13.4(f) apply.

(h) Acceptance of Review. The Court accepts discretionary review of an Appeal Panel decision by granting a petition for discretionary review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

RDI 12.5 RECORD TO SUPREME COURT

(a) Transmittal. The ORA Clerk should transmit the record, including the filing fee, to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Appeal Panel, if any. Notwithstanding these deadlines, the ORA Clerk should not transmit the record to the Supreme Court prior to payment of the filing fee or receipt of proof that the Supreme Court has waived the filing fee.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;

(2) the Appeal Panel's decision or order;

(3) the record before the Appeal Panel;

(4) the transcript of any oral argument before the Appeal Panel; and

(5) any other portions of the record before the ORA, including the Clerk's file or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The ORA Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within 10 days of entry of an order assessing costs under Rule 13.8(e), the ORA Clerk should transmit the order to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under Rule 13.8(d).

(e) Additions to Record. A party may request that the ORA Clerk transmit additional portions of the record to the Court prior to or with the filing of the party's last brief. The party must file a copy of any such request with the Court. Thereafter, a party may move the Court for an order directing the transmittal of additional portions of the record to the Court.

(f) Confidentiality. When a party identifies information or documents that are otherwise confidential under these Rules, the Court must take measures to maintain the confidentiality of the information or documents.

RDI 12.6 BRIEFS

(a) Brief Required. The party seeking review must file a brief stating the party's objections to the Appeal Panel's decision or order.

(b) Time for Filing. The brief of the party seeking review must be filed with the Supreme Court within 30 days of service under Rule 12.5(c) of the list of portions of the record transmitted to the Court, unless the Court directs otherwise.

(c) Answering Brief. Any answering brief of the other party must be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. Any reply brief of a party seeking review must be filed with the Court 20 days after service of the answering brief. A reply brief must be limited to a response to the issues in the answering brief.

(e) Briefs When Both Parties Seek Review. When both the respondent and disciplinary counsel seek review of an Appeal Panel decision or order, the respondent is deemed the party seeking review for the purposes of this Rule. In that case, disciplinary counsel may file a surreply to the respondent's reply brief. The surreply brief must be filed with the Court within 20 days after service of the respondent's reply brief.

(f) Form of Briefs. Unless otherwise ordered by the Court, briefs filed under this Rule must conform to the requirements of RAP 10.3 and 10.4. Documents filed with the ORA Clerk are known as Clerk's file documents and should be abbreviated CF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Supreme Court Clerk. The Supreme Court Clerk reproduces and distributes briefs as provided in RAP 10.5.

RDI 12.7 ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under RAP Title 11, unless the Court directs otherwise.

(b) Priority. Disciplinary and incapacity proceedings have priority and are set upon compliance with the above Rules.

RDI 12.8 ENTRY OF ORDER OR OPINION

Following consideration of a matter by the Court, the Court enters a final order under Rule 13.1(a) or 8.1(b), or another appropriate order.

RDI 12.9 MOTION FOR RECONSIDERATION

A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment or delay the effective date of a an order or opinion under Rule 12.8 unless the Court enters a stay.

RDI 12.10 VIOLATION OF RULES

The Court may sanction a party under RAP 18.9 for violation of Rules in this Title.

TITLE 13 – SANCTIONS AND REMEDIES

RDI 13.1 FINAL ORDER; SANCTIONS AND REMEDIES

(a) Supreme Court Final Order. The Supreme Court's final order in a disciplinary proceeding is an order or opinion that imposes sanctions or remedies under this Rule, declines to impose sanctions or remedies under this Rule, dismisses the matter, or otherwise concludes the proceeding. Except as otherwise provided in these Rules, upon entry of the Court's final order, the matter is not subject to further review under these Rules and any sanctions or remedies are imposed on the effective date as set forth in this Title. After the final order is issued, the ORA or the Court may hear and decide post-judgment issues authorized by these Rules. A motion for reconsideration under Rule 12.9 does not stay the judgment or delay the effective date of a final order unless the Court enters a stay.

(b) Sanctions. Upon an adjudication or stipulation under these Rules that a respondent has committed an act of misconduct, the Court may impose one or more of the following public sanctions:

(1) Disbarment;

(2) Disciplinary suspension;

(3) Reprimand; or

(4) Admonition.

The American Bar Association Standards for Imposing Lawyer Sanctions are used to determine the appropriate sanction.

(c) Remedies. Upon imposition of a sanction, the Court may impose one or more of the following public remedies:

(1) Probation;

(2) Restitution;

(3) Limitation on practice;

(4) Continuing legal education;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of protecting the public and maintaining the integrity of the legal profession.

RDI 13.2 DISBARMENT

(a) Definition. A sanction of disbarment is the revocation of a respondent's license to practice law in this state.

(b) Effective Date. Disbarment is effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, disbarment is effective seven days after the date of the Court's order or opinion.

(c) Reinstatement from Disbarment. A person who is disbarred may seek reinstatement under APR 25.

RDI 13.3 DISCIPLINARY SUSPENSION

(a) Definition. A disciplinary suspension is a suspension imposed as a sanction under these Rules. A disciplinary suspension is for a fixed period of time not to exceed three years.

(b) Effective Date. A disciplinary suspension is effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, a disciplinary suspension is effective seven days after the date of the Court's order or opinion.

(c) Reinstatement from Disciplinary Suspension.

(1) A respondent may apply to reinstate the respondent's license to practice law to either active status or inactive status.

(2) A respondent must file an application for reinstatement with the Bar and comply with applicable court rules and the Bar's Bylaws for reinstatement from disciplinary suspension.

(3) A respondent may not be reinstated without disciplinary counsel's certification that the respondent has complied with any pre-conditions to reinstatement or other specific conditions ordered.

(4) If the Client Protection Fund paid an applicant due to a respondent's misconduct, the respondent must obtain a certification from Bar counsel establishing that the respondent has paid restitution to the Client Protection Fund or is current with any restitution payment plan.

(5) A respondent may ask the ORA to review an adverse determination by disciplinary counsel or Bar counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the ORA may modify the terms of the payment plan if warranted. The ORA determines the procedure for this review. The ORA's ruling is not subject to further review.

(6) When the respondent has complied with all conditions for reinstatement and the term of disciplinary suspension is complete, the Bar files a recommendation for reinstatement with the Supreme Court for entry of an appropriate order.

RDI 13.4 REPRIMAND

(a) Definition. A reprimand is a sanction that declares that the respondent violated the rules of professional conduct. A reprimand does not restrict the respondent's authorization to practice law. Unless otherwise ordered by the Court, a reprimand must include a term of probation under Rule 13.6.

(b) Effective Date of Reprimand. A reprimand is effective on the date of the Supreme Court's order or opinion.

RDI 13.5 ADMONITION

(a) Definition. An admonition is a sanction that declares that the respondent violated the rules of professional conduct. An admonition does not restrict the respondent's authorization to practice law and is imposed when a sanction less than reprimand is appropriate.

(b) Effective Date of Admonition. An admonition is effective on the date of the Supreme Court's order or opinion.

RDI 13.6 PROBATION

(a) Definition. An order imposing a sanction under Rule 13.1 may include a term of probation for a fixed period of two years or less that includes complying with specific conditions ordered under section (b) of this Rule.

(b) Conditions of Probation. Conditions of probation may include, but are not limited to:

(1) alcohol or drug treatment;

(2) continuing legal education;

(3) medical treatment;

(4) psychological or psychiatric treatment;

(5) practice monitoring;

(6) professional office practice or management counseling;

(7) periodic audits or reports; or

(8) any other program or corrective course of action to address the respondent's misconduct.

(c) Failure to Comply. Failure to comply with a condition of probation may be grounds for an interim suspension under Rule 7.2 and may be grounds for discipline.

(d) Public Information. The fact that a respondent is or was on probation, the length of probation, and the conditions of probation are public information subject to Rule 3.3(a). All other information and documents related to the supervision of probation are not public information. In any proceeding under section (c) of this Rule, information relating to the probation is admissible into evidence in any ensuing disciplinary proceeding.

RDI 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent sanctioned under Rule 13.1 may be ordered to make restitution to the Client Protection Fund or to persons or entities financially injured by the respondent's conduct.

(b) Payment of Restitution. A respondent ordered to make restitution, including restitution to the Client Protection Fund, must do so within 90 days of the date on which the decision

requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan.

(c) Periodic Payment Plan.

(1) Disciplinary counsel, or Bar counsel on behalf of the Client Protection Fund, may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing a present inability to pay restitution. A decision to enter into a periodic payment plan and the determination of the payment plan's terms are made after consideration of the following factors:

(A) whether the respondent promptly requested a reasonable periodic payment plan;

(B) whether, to date, the respondent has made a good faith effort to make payments;

(C) whether the respondent has or sought other sources for payment of the restitution; and

(D) whether the suggested payment plan will allow for restitution to be paid in full in a reasonable amount of time.

(2) A respondent may file a motion with the ORA to request review of an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chief Regulatory Adjudicator directs the procedure for this review. The regulatory adjudicator's ruling is not subject to further review.

(d) Interest. The respondent must pay interest on any amount not paid within 90 days of the date on which the restitution order is final at the maximum rate permitted under RCW 19.52.020. Any payment plan entered into under this Rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(e) Failure to Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan, may be grounds for discipline.

(f) Restitution in Other Cases. Determination of the amount of restitution and any interest thereon in discipline cases resolved by stipulation is governed by Rule 9.1. Determination of

the amount of restitution and any interest thereon in discipline cases resolved by resignation in lieu of discipline is governed by Rule 9.2.

(g) Money Judgment for Restitution. No sooner than 90 days after a restitution order is final, a restitution beneficiary, including the Client Protection Fund, may apply to the Supreme Court Clerk or commissioner for a money judgment if the respondent has failed to pay restitution and interest thereon as provided by this Rule. The beneficiary must obtain a declaration from disciplinary counsel stating that the restitution order is final and that the respondent has failed to pay all or part of the restitution or is not current on a periodic payment plan. The beneficiary must serve the application for a money judgment and declaration of disciplinary counsel on the respondent and on disciplinary counsel under Rule 4.1. The respondent may file an objection with the Supreme Court Clerk or commissioner within 20 days of service of the application. The objection must be served on the beneficiary and disciplinary counsel under Rule 4.1. The sole issue to be determined by the Supreme Court Clerk or commissioner is whether the respondent has complied with the duty to make restitution, including compliance with the terms of a periodic payment plan, under this Rule. The Supreme Court Clerk or commissioner may enter a money judgment in compliance with RCW 4.64.030 on the order for restitution if the respondent has failed to pay the restitution as provided by this Rule. The Supreme Court Clerk or commissioner notifies the beneficiary, the respondent, and disciplinary counsel of the judgment. Upon entry of the judgment, the Supreme Court Clerk or commissioner transmits the judgment to the clerk of the superior court in any county selected by the beneficiary and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

RDI 13.8 COSTS AND EXPENSES

(a) General. A respondent may be required to pay the Bar's costs and expenses as provided in this Rule.

(b) Costs Defined. The term "costs" for the purposes of this Rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Bar in the performance of its duties under these Rules, whether incurred before or after the filing of a statement of charges. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions, hearings, and oral arguments;

(2) process server charges;

(3) necessary travel expenses of regulatory adjudicators, disciplinary counsel, adjunct disciplinary counsel, special conflicts disciplinary counsel, investigators, and witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records;

(6) costs of supervising or monitoring probation imposed under Rule 13.6;

(7) fees, costs, and expenses of a lawyer appointed under Title 8; and

(8) costs of copying materials.

(c) Expenses Defined. "Expenses" for the purposes of this Rule means a charge for the Office of Disciplinary Counsel's attorney and staff time, in the following amounts:

(1) in a matter without review by an Appeal Panel, $3,000;

(2) in a matter with review by an Appeal Panel under Title 11, without appeal to the Supreme Court, $4,000; and

(3) in a matter in which a notice of appeal or petition for discretionary review was filed with the Supreme Court under Title 12, $6,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) *Timing*. Disciplinary counsel must file and serve a statement of costs and expenses with the Clerk no later than 45 days from the date of entry of a hearing decision if no appeal is filed under Rule 11.2. If an appeal is filed under Rule 11.2, disciplinary counsel must file

and serve a statement of costs and expenses with the Clerk no later than 45 days from the date of entry of the Appeal Panel's decision.

(2) *Clerk's Certification of Costs*. The Clerk must file and serve a certification of adjudicative costs itemizing the costs incurred by the ORA under section (b) of this Rule no later than 35 days from the date of entry of a hearing decision if no appeal is filed under Rule 11.2. If an appeal is filed under Rule 11.2, the Clerk must file and serve a certification of adjudicative costs no later than 35 days from the date of entry of the Appeal Panel's decision.

(3) *Content*. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed by the Bar and also state the expenses requested. The statement of costs and expenses may incorporate by reference the Clerk's certification of costs.

(4) *Exceptions*. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) *Reply*. Disciplinary counsel may file a reply no later than 10 days from service of any exceptions.

(e) Assessment. The hearing adjudicator, or other regulatory adjudicator as assigned by the Chief Regulatory Adjudicator, enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Costs Order.

(1) *Request for Review by Chief Regulatory Adjudicator*. Within 20 days of service on the respondent of the order assessing costs and expenses, a party may file a request for review of the order by the Chief Regulatory Adjudicator.

(2) *Action by Chief Regulatory Adjudicator*. Upon the timely filing of a request, the Chief Regulatory Adjudicator reviews the order assessing costs and expenses based on disciplinary counsel's statement of costs and expenses and any exceptions or reply, the decision of the regulatory adjudicator, and any written statement filed by either party. The Chief Regulatory

Adjudicator may approve or modify the order assessing costs and expenses. The Chief Regulatory Adjudicator's decision is not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court under Title 12, any order assessing costs and expenses under section (e) of this Rule and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion or order by the Court imposing a sanction, costs and expenses may be assessed in favor of the Bar under the procedures of RAP Title 14, except that "costs" as used in that Title means any costs and expenses allowable under this Rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if the respondent demonstrates by a preponderance of the evidence that it would be in the interests of justice to do so.

(i) Payment of Costs and Expenses. A respondent ordered to pay costs and expenses must do so within 90 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(j) Periodic Payment Plan.

(1) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing a present inability to pay assessed costs and expenses. A decision to enter into a periodic payment plan and the determination of the payment plan's terms are made after consideration of the following factors:

(A) whether the respondent promptly requested a reasonable periodic payment plan;

(B) whether, to date, the respondent has made good faith efforts to make payments;

(C) whether the respondent has or sought other sources for payment of the assessment; and

(D) whether the suggested payment plan will allow for costs and expenses to be paid in full in a reasonable amount of time.

(2) A respondent may file a motion with the ORA to request review of an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chief Regulatory Adjudicator directs the procedure for this review. The regulatory adjudicator's ruling is not subject to further review.

(k) Interest. The respondent must pay interest on any amount not paid within 90 days of the date on which the order assessing costs and expenses is final at the maximum rate permitted under RCW 19.52.020. Any payment plan entered into under this Rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(*l*) Failure to Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(m) Expenses in Other Cases. Determination of the amount of expenses assessed and any interest thereon in other matters is governed as follows:

(1) for discipline cases resolved by stipulation, by Rule 9.1;

(2) for discipline cases resolved by resignation in lieu of discipline, by Rule 9.2;

(3) for reciprocal discipline cases, by Rule 9.3;

(4) for incapacity cases resolved by stipulation, by Rule 8.9; and

(5) for a respondent's failure to cooperate, by Rule 5.9(c).

(n) Money Judgment for Costs and Expenses. No sooner than 90 days after an assessment of costs and expenses is final, including an assessment resulting from a proceeding as identified in section (m) of this Rule, disciplinary counsel may apply to the Supreme Court Clerk or commissioner for a money judgment if the respondent has failed to pay the costs and expenses as provided by this Rule. Disciplinary counsel must serve the application for a money judgment on the respondent under Rule 4.1. The respondent may file an objection with the Supreme Court Clerk or commissioner within 20 days of service of the application.

The sole issue to be determined by the Supreme Court Clerk or commissioner is whether the respondent has complied with the duty to pay costs and expenses, including compliance with the terms of a periodic payment plan, under this Rule. The Supreme Court Clerk or commissioner may enter a money judgment in compliance with RCW 4.64.030 if the respondent has failed to pay the costs and expenses as provided by this Rule. The Supreme Court Clerk or commissioner notifies disciplinary counsel and the respondent of the judgment. Upon entry of the judgment, the Supreme Court Clerk or commissioner transmits the judgment to the clerk of the superior court in any county selected by disciplinary counsel and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

(o) Action to Enforce Judgment for Costs and Expenses. At any time following the entry of a judgment under section (n) of this Rule, the Bar is authorized to commence a judicial action to enforce and collect the judgment. Upon recommendation of the Chief Disciplinary Counsel, the Executive Director may engage the services of lawyer to represent the Bar in efforts to collect a judgment entered under section (n) or this rule or a collection action authorized by this Rule.

TITLE 14 – DUTIES ON DISBARMENT, RESIGNATION IN LIEU, SUSPENSION FOR ANY REASON, OR INCAPACITY INACTIVE STATUS

RDI 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must, upon request, provide each client or the client's substituted licensed legal professional with the client's assets, files, and other documents in the respondent's possession, regardless of any possible claim of lien under RCW 60.40.

(b) Required Notices. A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must within 10 days of the effective date of the disciplinary suspension, disbarment, resignation, or status change:

(1) notify every current client in writing of the following:

(A) the respondent's suspension, disbarment, resignation in lieu of discipline, or status change to incapacity inactive status;

(B) the respondent's inability to practice law and the advisability of seeking legal services elsewhere; and

(C) if the client is involved in litigation or administrative proceedings, the advisability of seeking the prompt substitution of another licensed legal professional.

(2) notify the Court or agency of the respondent's inability to practice law if a client is involved in litigation or administrative proceedings;

(3) notify any co-counsel or licensed legal professional assisting the respondent in providing legal services to a current client of the respondent's inability to practice law; and

(4) notify any licensed legal professional for each adverse party in pending litigation or administrative proceedings, and any unrepresented adverse party, of the respondent's

suspension, disbarment, resignation in lieu of discipline, or status change and the respondent's inability to practice law.

(c) Address of Client. When providing the notices required by this Rule, a respondent must, to the extent consistent with the interests of the client and subject to the limitations of RPC 1.6 and 1.9 or LLLT RPC 1.6 and 1.9, take steps to ensure that adverse parties, co-counsel, courts, and agencies have information sufficient to effect service on the client.

RDI 14.2 RESPONDENT TO DISCONTINUE PRACTICE

(a) Discontinue Practice. After the effective date of the suspension, disbarment, resignation in lieu of discipline, or a status change to incapacity inactive status, respondents must:

(1) not practice law,

(2) not hold themselves out as authorized to practice law in Washington State, and

(3) take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on them as authorized to practice law.

(b) Continuing Duties to Former Clients. A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status is not precluded from disbursing assets to clients or other persons or providing information on the facts, theory, and status of a case to a succeeding licensed legal professional, but the respondent cannot be involved in any discussion regarding matters occurring after the effective date of the suspension, disbarment, resignation in lieu of discipline, or status change to incapacity inactive status. The respondent must provide this information on request and without charge.

RDI 14.3 DECLARATION OF COMPLIANCE

Within 25 days of the effective date of a respondent's disbarment, suspension, resignation in lieu of discipline, or status change to incapacity inactive status under these Rules or the APR, the respondent must serve on disciplinary counsel or Bar counsel a declaration stating that the respondent has fully complied with the provisions of this Title. The declaration must also

provide a mailing address where communications to the respondent may thereafter be directed. The respondent must attach to the declaration copies of the form letters of notification sent to the respondent's clients and opposing licensed legal professionals or parties and copies of letters to any court or tribunal, together with a list of names and addresses of all clients and opposing licensed legal professionals or parties to whom notices were sent. The declaration is confidential information except the respondent's mailing address is treated as a change of mailing address under APR 13(b).

RDI 14.4 RESPONDENT TO KEEP RECORDS OF COMPLIANCE

A respondent who has been suspended from the practice of law, has been disbarred, has resigned in lieu of discipline, or whose license has been placed in incapacity inactive status must maintain written records of the steps taken by the respondent under this Title, so that proof of compliance will be available in any subsequent proceeding.

TITLE 15 –RANDOM EXAMINATIONS, OVERDRAFT NOTIFICATION, AND IOLTA

RDI 15.1 RANDOM EXAMINATION OF BOOKS AND RECORDS

(a) Authorization. The Office of Disciplinary Counsel is authorized to examine and reexamine the books and records of any lawyer, LLLT, LPO, law firm, or closing firm to determine whether the lawyer, LLLT, LPO, law firm, or closing firm is complying with RPC 1.15A and 1.15B, or LLLT RPC 1.15A and 1.15B, or LPORPC 1.12A and 1.12B and other rules of professional conduct referencing those rules. An examination or reexamination of the books and records of a closing firm must be limited as described in section (c)(2) of this Rule.

(b) Definitions.

(1) As used in this Title, "law firm" has the same meaning as defined in RPC 1.0A(c) except that lawyers employed in the legal department of a closing firm are not considered a law firm under these Rules.

(2) As used in this Title, "closing firm" means any bank, depository institution, escrow agent, title company, or other business, whether public or private, that employs, or contracts for the services of, a lawyer or LPO for the purpose of providing real or personal property closing services for a transaction. For purposes of this section, the term "other business" does not include law firms.

(c) Selection.

(1) *Method*. The selection of lawyers, LLLTs, and LPOs to be examined will be limited to those whose licenses are on active status and will utilize the principle of random selection by license number.

(2) *Law Firms and Closing Firms*. If the license number randomly selected is that of a lawyer, LLLT, or LPO who is an employee or member of a law firm, the entire law firm is subject to examination or reexamination under Rule 15.1(d). If the license number randomly

selected is that of a lawyer or LPO who is an employee or member of a closing firm, only those books and records relating to transactions in which the randomly selected lawyer or LPO provided real or personal property closing services are subject to examination or reexamination.

(3) *Exclusions*.

(A) A lawyer, LLLT, or LPO will not be subject to a random examination when the lawyer, LLLT, or LPO is one of the following at the time of the random selection: employed by the Bar; a justice or staff lawyer of the Supreme Court; a governor or governor-elect of the Board of Governors; a regulatory adjudicator; a volunteer adjudicator; an adjunct disciplinary counsel; a special conflicts disciplinary counsel; an appointed counsel under these Rules; or a respondent in a disciplinary or incapacity investigation or proceeding. An exclusion under this section is not imputed to any other lawyer, LLLT, or LPO even if an employee or member of the same law firm or closing firm as a lawyer, LLLT, or LPO who would be excluded under this Rule.

(B) If the lawyer, LLLT, LPO, law firm, or closing firm has been randomly examined under this Rule within seven years preceding the current random selection, the lawyer, LLLT, LPO, law firm, or closing firm will not be subject to random examination.

(4) *Notice of Random Selection*. The Office of Disciplinary Counsel must provide written notification of the selection to the lawyer, LLLT, LPO, law firm, or closing firm.

(5) *Challenges*. Within 30 days of the date of the notice of selection, the lawyer, LLLT, LPO, law firm, or closing firm may file with the Clerk a written request that a regulatory adjudicator review the selection. A regulatory adjudicator's decision under this Rule is not reviewable.

(d) Examination and Reexamination. An examination denotes the initial review following the random selection of a lawyer, LLLT, or LPO. A reexamination denotes a further examination as provided for in sections (e)(2) or (f)(2) of this Rule. Examinations and

reexaminations under this Rule will entail a review and testing of the internal controls and procedures used by the lawyer, LLLT, LPO, law firm, or closing firm to receive, hold, disburse, and account for money or property as required by RPC 1.15A, LLLT RPC 1.15A, or LPORPC 1.12A, and a review of the records of the lawyer, LLLT, LPO, law firm, or closing firm as required by RPC 1.15B, LLLT RPC 1.15B, or LPORPC 1.15B.

(e) Conclusion. At the conclusion of an examination or reexamination, the Office of Disciplinary Counsel must do one of the following:

(1) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings and taking no further action;

(2) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings, recommending corrective action and requiring a reexamination of the books and records to commence within one year; or

(3) Issue a report to the lawyer, LLLT, LPO, law firm, or closing firm summarizing the findings and recommending an investigation under Title 5. The lawyer, LLLT, LPO, law firm, or closing firm may submit a response to the recommendation within 10 days of the issuance of the report.

(f) Regulatory Adjudicator Action on Report. The Office of Disciplinary Counsel must transmit a report under section (e)(3) and any response to the ORA for entry of an order. A regulatory adjudicator must do one of the following:

(1) order closure of the matter;

(2) order corrective action and a reexamination to commence within one year; or

(3) order an investigation under Title 5.

The action of a regulatory adjudicator under this Rule is not reviewable.

RDI 15.2 COOPERATION WITH EXAMINATION

(a) Cooperation Required. A lawyer, LLLT, and LPO must cooperate with an examination or reexamination under this Title, subject only to the proper exercise of any privilege against

self-incrimination, by:

(1) producing promptly all evidence, books, records, and papers requested for the examination or reexamination;

(2) furnishing promptly any explanations required for the examination or reexamination; and

(3) producing written authorization, directed to any bank or depository, authorizing the Office of Disciplinary Counsel to examine trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer, LLLT, LPO, law firm, or closing firm in the bank or depository.

(b) Failure to Cooperate.

(1) *Noncooperation Deposition*. If a lawyer, LLLT, or LPO has not complied with any request made under this Rule for more than 30 days, the Office of Disciplinary Counsel may notify the lawyer, LLLT, or LPO that failure to comply within 10 days may result in a deposition for failure to cooperate or interim suspension under Rule 7.2. Ten days after this notice, the Office of Disciplinary Counsel may serve the lawyer, LLLT, or LPO with a subpoena for a deposition. Any deposition conducted after the 10-day period and necessitated by the lawyer's, LLLT's or LPO's continued failure to cooperate may be conducted at any place in Washington State.

(2) *Costs and Expenses*.

(A) Regardless of the underlying matter's ultimate disposition, a lawyer, LLLT, or LPO who has been served with a subpoena under this Rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, the cost of transcribing the deposition if ordered by disciplinary counsel, and a reasonable attorney fee of $750.

(B) The procedure for assessing costs and expenses is as follows:

(i) The Office of Disciplinary Counsel applies to the ORA by itemizing the costs and expenses and stating the reasons for the deposition.

(ii) The lawyer, LLLT, or LPO has 10 days to respond to the Office of Disciplinary Counsel's application.

(iii) The ORA by order assesses appropriate costs and expenses. The order assessing costs and expenses is not subject to further review.

(3) *Grounds for Discipline*. A lawyer's, LLLT's, or LPO's failure to cooperate fully and promptly with an examination as required by this Rule is also grounds for discipline.

RDI 15.3 CONFIDENTIALITY

(a) Maintaining Client Confidentiality. In the course of conducting examinations and reexaminations under this Title, the Office of Disciplinary Counsel receives, reviews, and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. Providing information to the Office of Disciplinary Counsel or a regulatory adjudicator under these Rules is not prohibited by RPC 1.6 or 1.9 or LLLT RPC 1.6 or 1.9 and does not waive any attorney-client privilege. If the lawyer, LLLT, or LPO provides and identifies specific client information that is privileged and requests that it be treated as confidential, the Office of Disciplinary Counsel must maintain the confidentiality of the information unless the client consents to disclosure. Nothing in these Rules waives or requires waiver of any lawyer's, LLLT's, or LPO's own privilege or other protection as a client against the disclosure of information relating to the representation.

(b) Examination Confidential. All information related to an examination or reexamination under Rule 15.1, including any record maintained under Rule 3.9(c), is confidential and is held by the Office of Disciplinary Counsel and the ORA under the authority of the Supreme Court. Information related to examinations or reexaminations under Rule 15.1 is available only to the Office of Disciplinary Counsel; the lawyer, LLLT, LPO, law firm, or closing firm examined or reexamined; and the ORA. When a disciplinary investigation is ordered under Rule 15.1, the release provisions of Title 3 apply to all examination and reexamination

information that relates to the disciplinary investigation. Disciplinary counsel may make a motion under Rule 2.13(f) for authorization to disclose other confidential information.

RDI 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for trust accounts referred to in RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(i), a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against such a trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association upon request.

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

(A) the identity of the financial institution;

(B) the identity of (i) the lawyer, LLLT, or law firm, or (ii) the LPO or closing firm;

(C) the account number; and

(D) either:

(i) the amount of overdraft and date created; or

(ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Institution Costs. Nothing in these Rules precludes a financial institution from charging a particular lawyer, LLLT, LPO, law firm, or closing firm for the reasonable cost of producing the reports and records required by this Rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.15A(i)(1), LLLT RPC 1.15A(i)(1), LPORPC 1.12A(i)(1), and Rule 15.5(e).

(d) Duty to Notify the Office of Disciplinary Counsel. Every lawyer, LLLT, LPO, law firm, or closing firm that receives notification that any instrument presented against a trust account of the lawyer, LLLT, LPO, law firm, or closing firm was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the information required by section (b) of this Rule. The lawyer, LLLT, LPO, law firm, or closing firm must include a full explanation of the cause of the overdraft.

RDI 15.5 TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

(a) Legal Foundation of Washington. The Legal Foundation of Washington (Legal Foundation) was established by Order of the Washington Supreme Court to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

(1) *Administrative Responsibilities*. The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this Rule and Rule 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish IOLTA accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.

(2) *Annual Report*. The Legal Foundation must prepare an annual report to the Washington Supreme Court that summarizes the Foundation's income, grants, and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

(b) Definitions. The following definitions apply to this Rule:

(1) *United States Government Securities*. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.

(2) *Daily Financial Institution Repurchase Agreement*. A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be "well capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.

(3) *Money Market Funds*. A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars ($500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.

(4) *IOLTA*. As used in these Rules, the term IOLTA means interest on lawyer's trust accounts, interest on LLLT's trust accounts, and interest on LPO's trust accounts, as set forth in RPC 1.15A, LLLT RPC 1.15A, and LPORPC 1.12A, respectively, and Title 15 of these Rules.

(c) Authorized Financial Institutions. Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this Rule:

(1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;

(2) is authorized by law to do business in Washington;

(3) complies with all requirements set forth in section (d) of this Rule and Rule 15.4; and

(4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this Rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this Rule and Rule 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1) of this Rule. At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this Rule or Rule 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

(d) Requirements of All Trust Accounts. All trust accounts established pursuant to RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(i) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

(e) IOLTA Accounts. To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

(1) *Interest Comparability*. For accounts established pursuant to RPC 1.15A, LLLT RPC 1.15A, or LPORPC 1.12A, authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:

(A) Establish the IOLTA account as the comparable interest-paying product; or

(B) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or

(C) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.

(2) *Remit Interest to Legal Foundation of Washington*. Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, LLLT, LPO, law firm, or closing firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The

financial institution must notify each lawyer, LLLT, LPO, law firm, or closing firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.

(3) *Reasonable Account Fees*. Reasonable account fees may only include items deposited charges, per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, deposit insurance assessment fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, LLLT, LPO, law firm, or closing firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be deducted from interest or dividends earned on any other account or from the principal.

(4) *Comparable Accounts*. Subject to the requirements set forth in sections (d) and (e) of this Rule, an IOLTA account may be established as:

(A) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or

(B) A checking account paying preferred interest rates, such as a money market or indexed rates; or

(B) A government interest-bearing checking account such as an account used for municipal deposits; or

(D) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or

(E) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.

(5) Nothing in this Rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

TITLE 16 – COURT-APPOINTED CUSTODIANS

RDI 16.1 COURT-APPOINTED CUSTODIANS

(a) General. The Court may appoint one or more lawyers authorized to practice law in Washington State as custodian to protect clients' interests as set forth in this Rule.

(b) Procedure. Upon ex parte motion by Bar counsel, the Court may appoint a custodian whenever (1) a licensed legal professional who has resigned in lieu of discipline, or has been suspended, disbarred, or whose license has been placed in incapacity inactive status fails to carry out the obligations of Title 14 or fails to protect the clients' interests; (2) a licensed legal professional disappears, dies, or abandons practice; or (3) it reasonably appears that the licensed legal professional is otherwise incapable of meeting the licensed legal professional's obligations to clients.

(c) Custodianship Order. The order authorizes the custodian to obtain and review all records relevant to the custodianship and take one or more of the actions set forth below:

(1) *Files, Records, and Property*. The custodian takes possession of the necessary files, records, and property and takes action to protect the clients' interests as required by the Court's order or these Rules, including, but not limited to, returning files, records, and property to the client. Upon motion by the custodian, the Court may order destruction of files, records, or property as appropriate.

(2) *Trust Accounts*. If ordered by the Court, the custodian assumes control of client trust accounts. Any bank or other person honoring the authority of the custodian as granted by the Court is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis. Any unclaimed trust funds may be dealt with under the Uniform Unclaimed Property Act, Chapter 63.29 RCW.

(3) *Other*. The Court may enter orders to carry out the provisions and purposes of this Rule.

(d) Confidentiality.

(1) *Attorney-client Privilege and Duty of Confidentiality*. A custodian receives and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court's authority to regulate the practice of law. A custodian's possession of a client's file or other information does not waive the client's attorney-client privilege or other protections from disclosure of information. A custodian must maintain the confidentiality of information received under this Rule.

(2) *Disclosure to Disciplinary Counsel Permitted*. Notwithstanding the provisions of section (d)(1) of this Rule, a custodian must comply with requests and subpoenas from disciplinary counsel under these Rules.

(3) *Other Disclosure*. Other than the disclosure permitted in section (d)(2) of this Rule, the custodian must obtain an order from the Court before making any disclosure of the client's file or information relating to the client's representation.

(e) Discharge. On motion by Bar counsel or the custodian, the Court may discharge the custodian from further duties.

(f) Costs. The Bar pays reasonable costs incurred by the custodian. Payment of any costs incurred or reimbursed by the Bar under this Rule may be required as a condition of reinstatement from disbarment or disciplinary suspension, ordered as restitution to the Bar in a disciplinary proceeding, or claimed against the estate of a deceased or adjudicated incapacitated licensed legal professional.

(g) Records. The public or confidential nature of records or proceedings under this Rule is governed by Title 3. The Bar maintains a record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Court.

TITLE 17 – EFFECT OF THESE RULES ON PENDING MATTERS

RDI 17.1 EFFECT ON PENDING MATTERS

(a) Initial Enactment of the Rules for Discipline and Incapacity. These Rules in their entirety will apply to pending matters on the effective date as ordered by the Supreme Court with the following exceptions:

(1) if a matter is pending before a review committee of the Disciplinary Board or a discipline committee of the Limited License Legal Technician (LLLT) Board or the Limited Practice (LP) Board;

(2) if a hearing has been held or is in progress and no hearing decision has been filed by the hearing officer; and

(3) if a matter has been briefed or argued to the Disciplinary Board, LLLT Board, the LP Board, or to the Chair of any of these boards and no decision has been filed.

Under the above exceptions and under the supervision of the Supreme Court, the person or entity will continue in its responsibilities under the Rules for Enforcement of Lawyer Conduct, the Rules for Enforcement of Limited License Legal Technician Conduct, or the Rules for Enforcement of Limited Practice Officer Conduct until such time as the pending decision has been filed.

(b) Resolution of Disagreements. Except in matters pending before the Supreme Court, in the event of a disagreement about which rules apply, the Chief Regulatory Adjudicator will determine the appropriate procedure and has authority to enter orders as necessary and appropriate to ensure a fair and orderly proceeding.

(c) Subsequent Amendments. Any subsequent amendments to these Rules will apply to pending matters in their entirety on the effective date as ordered by the Supreme Court.

(d) Matters Pending Before the Court. Unless the Supreme Court orders otherwise, if a matter is pending before the Supreme Court, these Rules for Discipline and Incapacity and any subsequent amendments apply as of their effective date.

GR 9 COVER SHEET
Suggested

SUGGESTED CONFORMING AMENDMENTS TO OTHER COURT RULES RELATED TO SUGGESTED RULES FOR DISCIPLINE AND INCAPACITY (RDI)

ELC; ELPOC; ELLLTC; GR 1, 12.4. 12.5, and 24; RPC 1.0B, 1.6, 1.15A, 5.4, 5.6, 5.8, 8.1, 8.4, and 8.5; LLLT RPC 1.0B, 1.15A, 5.4, 5.8, and 8.4; LPORPC 1.0, 1.8, 1.10, and 1.12A; APR 1, 5, 8, 9, 12, 14, 15, 15 Procedural Regulation 6, 22.1, 23, 24.1, 24.2, 25.1, 25.5, and 28; and new APR 29 and 30

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C. Purpose

The proponent suggests a series of conforming amendments to other court rules as necessary to implement the new suggested disciplinary procedural rules for Washington State's discipline and incapacity system, the Rules for Discipline and Incapacity (RDI), should they be adopted.

If the suggested RDI are adopted, conforming amendments are necessary to other sets of rules that either cross-reference or give effect to the Rules for Enforcement of Lawyer Conduct (ELC), Rules for Enforcement of Limited Practice Officer Conduct (ELPOC), or Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC). Most of the conforming amendments are technical amendments that change citations and cross-references from the current rules to the

new suggested RDI. In addition, the names of entities and other terminology is amended to reflect the new terminology used in the RDI.

In addition, the conforming amendments capture any other technical updates needed such as updating names of other rule sets or cross-references that might have been overlooked from prior amendments to various rules over the years. A small number of substantive changes to rules other than the RDI have been suggested, as identified below.

ELC

If the Court elects to adopt these suggested rules, the ELC need to be rescinded in their entirety to be replaced by the RDI.

ELPOC

If the Court elects to adopt these suggested rules, the ELPOC need to be rescinded in their entirety to be replaced by the RDI.

ELLLTC

The ELLLTC were adopted by the Court not as published rules but as an interim provision until a set of disciplinary procedural rules was drafted to replace it. See *In re the Matter of— Enforcement of Limited License Legal Technician Conduct*, Order No. 25700-A-1136 (Jan. 7, 2006). If the Court elects to adopt these suggested rules, Order No. 25700-A-1136 needs to be rescinded.

RPC 1.0B(d), LPOROPC 1.0(f), LLLT RPC 1.0B(g)

The definition of LPO is amended due to prior amendments to the APR. Under those prior amendments, the term "certification" was changed to "license" and the APR 12 regulations were rescinded. The LPO definition is also added to the LLLT RPC because LPOs are now referenced in that set of rules also.

RPC 5.8, LLLT RPC 5.8, LPORPC 1.8

These rules prohibit licensed legal professionals from working with other licensed legal professionals who are disbarred or suspended or whose licenses have been revoked. The suggested amendments contain a significant change, which would limit the prohibition for suspension to a disciplinary suspension, i.e., the suggested amendments make it permissible to work with a licensed legal professional who is under an administrative suspension (e.g., suspended for failing to pay the license fee). The prohibition for LPOs remains limited to other LPOs.

GR 9 COVER SHEET

LPORPC 1.12A(i)

This rule is amended so that the text of the rule more closely mirrors the text of the lawyer RPC 1.15A(i) and LLLT RPC 1.15A(i).

APR 1(d)(5)

This new section adds a confidentiality provision relating to incapacity inactive status under APR 30, which is a new rule being suggested as part of this submission (see below).

APR 23(f)

The RDI do not contain procedures for disqualification. Instead, regulatory adjudicators look to the Code of Judicial Conduct (CJC). Thus, Character and Fitness Board members likewise should look to the CJC regarding disqualification when a complaint is filed against a board member.

APR 24.1 – APR 25.5

Currently under the APR, when the Character and Fitness Board recommends against admission in a reinstatement from disbarment proceeding, the petitioner has a right to an intermediate appeal to the Disciplinary Board. This intermediate appeal is unique to reinstatement after disbarment proceedings. For all other character and fitness matters, the only appeal is to the Washington Supreme Court. With the elimination of the Disciplinary Board under the RDI, and to make the reinstatement process more procedurally analogous to character and fitness matters generally, the intermediate appeal is removed from the APR in these suggested amendments. In addition, these suggested amendments reflect other procedural changes necessitated by the removal of the appeal to the Disciplinary Board. Some procedural amendments also reflect current practice in these proceedings.

APR 29 Lawyer Trust Account Declaration

This is a new rule. Currently, the trust account declaration requirement for lawyers is in the ELC. See ELC 15.5 (Declaration). For LLLTs and LPOs, it is in the APR. As an annual licensing requirement to practice law, this provision is best situated in the Admission and Practice Rules.

APR 30 Voluntary Incapacity Inactive Status

This is a new rule for voluntarily requesting incapacity inactive status. There are a few requests every year for incapacity inactive status (currently called disability inactive status). Under the current rules, the only way to accomplish this status change is under ELC 8.5 (Stipulated Transfer to Disability Inactive Status), which is a discipline-system process. This process is unnecessarily cumbersome and potentially stigmatizing for situations when a licensed legal

professional seeks only to demonstrate incapacity to practice law. Under this suggested rule, there would be a simple application process handled by the WSBA Regulatory Services Department. To prevent abuse, the licensed legal professional must not have any pending discipline or incapacity matters in order to use this new provision. In addition, the licensed legal professional must seek reinstatement in the same manner as any other licensed legal professional on incapacity inactive status.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

GR 1 CLASSIFICATION SYSTEM FOR COURT RULES

Part I: Rules of General Application

General Rules GR

Code of Judicial Conduct CJC

Discipline Rules for Judges DRJ

Board for Judicial Administration Rules BJAR

Admission ~~to~~and Practice Rules APR

Rules of Professional Conduct RPC

Limited License Legal Technician Rules of Professional Conduct LLLT RPC

Limited Practice Officer Rules of Professional Conduct LPORPC

~~Rules for Enforcement of Lawyer Conduct ELC~~Rules for Discipline and Incapacity RDI

~~Rules for Enforcement of Limited Practice Officer Conduct ELPOC~~

~~Rules for Enforcement of Limited License Legal Technician Conduct ELLLTC~~

Judicial Information System Committee Rules JISCR

Rules of Evidence ER

GR 12.4 WASHINGTON STATE BAR ASSOCIATION ACCESS TO RECORDS

(a) – (c) [Unchanged.]

(d) Bar Records—Right of Access.

(1) The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this rule, or any other state statute (including the Public Records Act, chapter 42~~,~~.56 RCW) or federal statute or rule as they would be applied to a public agency, or is made confidential by the Rules of Professional Conduct, the LLLT Rules of Professional Conduct, the LPO Rules of Professional Conduct, the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, the Admission ~~to~~ and Practice Rules and associated regulations, ~~the Rules for Enforcement of Limited Practice Officer Conduct,~~ General Rule 25, court orders or protective orders issued under those rules, or any

other state or federal statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests or threat to safety or by the above-referenced rules, statutes, or orders, the Bar shall delete identifying details in a manner consistent with those rules, statutes, or orders when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained in writing.

(2) In addition to exemptions referenced above, the following categories of Bar records are exempt from public access except as may expressly be made public by court rule:

(A) [Unchanged.]

(B) Specific information and records regarding

(i) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

(ii) application, investigation, and hearing or proceeding records relating to lawyer, Limited Practice Officer, or Limited License Legal Technician admissions, licensing or discipline, or that relate to the work of ~~ELC 2.5~~RDI 2.3 ~~hearing officers~~ regulatory adjudicators, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk Board, the Limited Practice Board, the MCLE Board, the Limited License Legal Technician Board, the Practice of Law Board, or the ~~Disciplinary Board~~ RDI 2.4 adjudicative panels in conducting investigations, hearings or proceedings; and

(iii) the work of the Judicial Recommendation Committee and the ~~Hearing Officer selection panel~~ RDI 2.5 Volunteer Selection Board, unless such records are expressly categorized as public information by court rule.

(C) – (F) [Unchanged].

(e) – **(j)** [Unchanged.]

GR 12.5 IMMUNITY

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission and Practice Rules~~,~~ or the Rules for Discipline and Incapacity ~~Rules for Enforcement of Lawyer Conduct, or the disciplinary rules for limited practice officers and limited license legal technicians,~~ shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

GR 24 DEFINITION OF THE PRACTICE OF LAW

(a) [Unchanged.]

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice law pursuant to Admission ~~to~~ and Practice Rules 3(g) (emeritus pro bono admission), 8 (~~special~~ limited admissions for: a particular ~~purpose or~~ action or proceeding; indigent representation; ~~educational purposes; emeritus membership;~~ house counsel), 9 (licensed legal interns), 12 (limited practice ~~for closing~~ officers), ~~or~~ 14 (~~limited practice for~~ foreign law consultants), or 28 (limited license legal technicians).

(2) – (11) [Unchanged.]

(c) – (f) [Unchanged.]

SUGGESTED AMENDMENTS TO THE ADMISSION AND PRACTICE RULES

Redline Version

APR 1 IN GENERAL; SUPREME COURT; PREREQUISITES TO THE PRACTICE OF LAW; COMMUNICATIONS TO THE BAR; CONFIDENTIALITY; DEFINITIONS

(a) – **(c)** [Unchanged]

(d) Confidentiality.

(1) – (4) [Unchanged].

(5) Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, the nature of the incapacity and all application records under this rule, including all supporting documentation and related investigation files and documents are confidential and shall be privileged against disclosure. The fact and date of placement in incapacity inactive status shall be subject to disclosure.

(e) [Unchanged.]

APR 5 PREADMISSION REQUIREMENTS: OATH: RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE LAW

(a) – **(g)** [Unchanged.]

(h) Oath for LPOs—Content of Oath.

OATH FOR LIMITED PRACTICE OFFICERS

STATE OF WASHINGTON

COUNTY OF _____

I, _____, do solemnly declare:

1. – 2. [Unchanged]

3. I will abide by the Limited Practice Officer Rules of Professional Conduct ~~and Rules for Enforcement of Limited Practice Officer Conduct~~ approved by the Supreme Court of the State of Washington.

4. – 5. [Unchanged]

I understand that I may incur personal liability if I violate the applicable standard of care of a Limited Practice Officer. Also, I understand that I have authority to act as a Limited Practice Officer only during the times that my financial responsibility coverage is in effect. If I am covered under my employer's errors and omissions insurance policy or by my employer's certificate of financial responsibility, my coverage is limited to services performed in the course of my employment.

_____

Signature Limited Practice Officer

Subscribed and sworn to before me this _____ day of _____, _____.

_____

JUDGE

(i) – **(m)** [Unchanged.]

APR 8 NONMEMBER LAWYER LICENSES TO PRACTICE LAW

(a) – **(b)** [Unchanged].

(c) Exception for Indigent Representation. A member in good standing of the bar of another state or territory of the United States or of the District of Columbia, who is eligible to apply for admission as a lawyer under APR 3 in this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defender's office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Bar, and the applicant shall be subject to the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity and to the Rules of Professional Conduct.

(2) – (4) [Unchanged.]

(d) – **(e)** [Unchanged.]

(f) Exception for House Counsel. A lawyer admitted to the practice of law in any jurisdiction may apply to the Bar for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by:

(i) – (iv) [Unchanged.]

(v) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) – (4) [Unchanged.]

(5) The practice of a lawyer licensed under this section shall be subject to the Rules of Professional Conduct, the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) – (8) [Unchanged.]

(g) [Unchanged].

APR 9 LICENSED LEGAL INTERNS

(a) – **(c)** [Unchanged.]

(d) Application. The applicant must submit an application on a form provided by the Bar and signed by both the applicant and the supervising lawyer.

(1) – (7) [Unchanged.]

(8) Once an application is accepted and approved and a license is issued, a Licensed Legal Intern is subject to the Rules of Professional Conduct and the Rules for ~~Enforcement of~~

~~Lawyer Conduct~~Discipline and Incapacity and to all other laws and rules governing lawyers admitted to the Bar of this state, and is personally responsible for all services performed as a Licensed Legal Intern. Any offense that would subject a lawyer admitted to practice law in this state to suspension or disbarment may ~~be punished by~~ result in termination of the Licensed Legal Intern's license, or suspension or forfeiture of the Licensed Legal Intern's privilege of taking the lawyer bar examination and being admitted to practice law in this state.

(9) [Unchanged.]

(e) [Unchanged.]

(f) Additional Obligations of Supervising Lawyer. Agreeing to serve as the supervising lawyer for a Licensed Legal Intern imposes certain additional obligations on the supervising lawyer. The failure of a supervising lawyer to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity. In addition to the duties stated or implied above, the supervising lawyer:

(1) – (10) [Unchanged.]

(g) – **(h)** [Unchanged.]

APR 12 LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a) [Unchanged.]

(b) Limited Practice Board.

(1) [Unchanged.]

(2) *Duties and Powers*.

(A) [Unchanged.]

(B) Grievances and discipline. The ~~LP Board's involvement in the~~ investigation, hearing and appeal procedures for handling complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice

Officer Rules of Professional Conduct shall be as established in the Rules for ~~Enforcement of Limited Practice Officer Conduct (ELPOC)~~Discipline and Incapacity.

(C) – (D) [Unchanged.]

(3) – (4) [Unchanged.]

(c) – ***(l)*** [Unchanged]

Comment

[Unchanged.]

APR 14 LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

(a) - (b) [Unchanged.]

(c) Procedure. The Bar shall approve or disapprove applications for Foreign Law Consultants licenses. Additional proof of any facts stated in the application may be required by the Bar. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Bar may deny the application. Upon approval of the application by the Bar, the Bar shall recommend to the Supreme Court that the applicant be granted a license for the purposes herein stated. The Supreme Court may enter an order licensing to practice those applicants it deems qualified, conditioned upon such applicant's:

(1) – (2) [Unchanged.]

(3) Filing with the Bar in writing his or her address in the State of Washington, or the name and address of his or her registered agent as provided in APR 13, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity, is familiar with their contents and agrees to abide by them.

(d) [Unchanged.]

(e) Regulatory Provisions. A Foreign Law Consultant shall be subject to the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity and the Rules of Professional

Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, except for the requirements of APR 11 relating to mandatory continuing legal education. Jurisdiction shall continue whether or not the Consultant retains the authority for the limited practice of law in this state, and regardless of the residence of the Consultant.

(f) – **(h)** [Unchanged.]

APR 15 CLIENT PROTECTION FUND

(a) – **(d)** [Unchanged.]

(e) Restitution. A lawyer, LLLT or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution.

(1) [Unchanged.]

(2) Lawyers, LLLTs or LPOs on disciplinary or administrative suspension, disbarred or revoked lawyers, LLLTs or LPOs, and lawyers, LLLTs or LPOs on any status other than incapacity~~disability~~ inactive must pay restitution to the Fund in full prior to returning to Active status, unless the ~~attorney~~licensed legal professional enters into a periodic payment plan with Bar counsel assigned to the Client Protection Board.

(3) A lawyer, LLLT or LPO who returns from ~~disability~~incapacity inactive status as to whom an award has been made shall be required to pay restitution if and as provided in Procedural Regulation 6(I).

(4) Restitution not paid within ~~30~~90 days of final payment by the Fund to an applicant shall accrue interest at the maximum rate permitted under RCW 19.52.050.

(5) – (6) [Unchanged.]

(f) – **(i)** [Unchanged.]

APR 15 CLIENT PROTECTION FUND (APR 15) PROCEDURAL REGULATIONS

Regulations 1-5 [Unchanged.]

Regulation 6. Procedures

(a) – (h) [Unchanged.]

(i) Deferred Disciplinary Proceedings; Lawyer, LLLT or LPO on ~~Disability~~ Incapacity Inactive Status.

(1) If an application relates to a lawyer, LLLT or LPO on ~~disability~~ incapacity inactive status, ~~and/~~or a disciplinary proceeding or investigation is deferred due to a lawyer's, LLLT's or LPO's transfer to ~~disability~~ incapacity inactive status, the Client Protection Board may act on the application when received or may defer processing the application for up to three years if the lawyer, LLLT or LPO remains on ~~disability~~ incapacity inactive status.

(2) A lawyer, LLLT or LPO on ~~disability~~ incapacity inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the Rules for ~~Enforcement of Conduct~~ Discipline and Incapacity ~~or other applicable discipline rules~~, request that the lawyer's, LLLT's, or LPO's obligation to make restitution for any applications approved while the lawyer, LLLT or LPO was on ~~disability~~ incapacity inactive status be reviewed.

(A) - (B) [Unchanged.]

(j) – **(k)** [Unchanged.]

Regulations 7-15 [Unchanged.]

APR 22.1. REVIEW OF APPLICATIONS

(a) – (e) [Unchanged].

(f) Scope of Inquiry into Health Diagnosis and Drug or Alcohol Dependence. When a basis for an inquiry by the Bar or the Character and Fitness Board has been established under section (e), any such inquiry must be narrowly, reasonably, and individually tailored and adhere to the following:

(1) - (3) [Unchanged.]

(4) Any testimony or records from medical or other treatment providers may be admitted into evidence at a hearing on, or review of, the Applicant's fitness and transmitted with the record on review to ~~the Disciplinary Board and/or~~ the Supreme Court. Records and testimony

regarding the Applicant's fitness shall otherwise be kept confidential in all respects and neither the records nor the testimony of the medical or treatment provider shall be discoverable or admissible in any other proceeding or action without the written consent of the Applicant.

APR 23. CHARACTER AND FITNESS BOARD

(a) – **(e)** [Unchanged.]

(f) Disqualification. A Character and Fitness Board member must adhere to Rule 2.11 of the Code of Judicial Conduct regarding disqualification, including ~~In the event a grievance~~ when a complaint is made to the Bar alleging an act of misconduct by a lawyer, LLLT or LPO member of the Character and Fitness Board~~, the procedures specified in ELC 2.3(b)(5) shall apply~~.

APR 24.1. HEARING PROCEDURE

(a) – **(e)** [Unchanged]

(f) Independent Medical Examination. An independent medical examination may be requested by the Character and Fitness Board only when a basis for an inquiry by the Character and Fitness Board exists under Rule 22.1(e) and only after testimony and evidence presented at the hearing has failed to resolve the Character and Fitness Board's reasonable concerns regarding the Applicant's ability to meet the essential eligibility requirements to practice law. If the applicant has not previously been requested to provide information under APR 22.1(f)(1), (2) and (3), the Character and Fitness Board shall provide the applicant with the opportunity to submit such information, within such reasonable timelines as the Character and Fitness Board shall establish, prior to requesting the independent medical examination.

(1) - (4) [Unchanged.]

(5) Confidentiality of IME: Any report and testimony of an examining professional may be admitted into evidence at a hearing on, or review of, the Applicant's fitness and transmitted with the record on review to ~~the Disciplinary Board and/or~~ the Supreme Court. Reports and

testimony regarding the Applicant's fitness shall otherwise be kept confidential in all respects and neither the report nor the testimony of the examining professional shall be discoverable or admissible in any other proceeding or action without the consent of the Applicant.

(6) [Unchanged.]

(g) Confidentiality: All hearings and documents before the Character and Fitness Board on applications for admission or licensure to practice law, enrollment in the law clerk program, and return to active membership are confidential, but may be provided to the ~~Disciplinary Board or~~ Supreme Court in connection with any appeal or review, or to other entities with the written consent of the applicant.

APR 24.2. DECISION AND RECOMMENDATION

(a) [Unchanged.]

(b) Action on Character and Fitness Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Applicant pursuant to Rule 23.5.

(1) [Unchanged.]

(2) If the Character and Fitness Board recommends against admission, the record and recommendation shall be retained in the office of the Bar unless the Applicant requests that it be submitted to the Supreme Court by filing a notice of appeal with the Character and Fitness Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Applicant ~~so requests~~ files a notice of appeal, ~~the Character and Fitness Board will transmit~~ the record, including the transcript, exhibits, and recommendation shall be transmitted to the Supreme Court for review and disposition. The Applicant must pay to the Supreme Court any fee required by the Court in connection with the appeal and review.

(3) If the Character and Fitness Board recommends against admission and the Applicant does not file a notice of appeal, then the Bar shall transmit the recommendation to the Supreme Court for disposition. The Supreme Court may request that the Bar transmit all or part of the record for the Court's consideration, or take such other action, including

scheduling the matter for appeal, as it deems appropriate based on the record and recommendation. If the Supreme Court approves the Board's recommendation against admission, it may enter an order to that effect and notify the Bar and the parties of the decision, without requiring further action.

(c) [Unchanged.]

APR 25.1. RESTRICTIONS ON REINSTATEMENT

(a) [Unchanged.]

(b) When Petition May Be Filed. No petition for reinstatement shall be filed within a period of five years after disbarment or within a period of two years after an adverse decision of the Supreme Court upon a former petition, or after an adverse recommendation of the Character and Fitness Board ~~or the Disciplinary Board~~ on a former petition ~~when that recommendation is not submitted to the Supreme Court~~. If prior to disbarment the lawyer, LLLT or LPO was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, or any comparable rule, the period of such suspension shall be credited toward the five years referred to above.

(c) When Reinstatement May Occur. No disbarred lawyer, LLLT or LPO may be reinstated sooner than six years following disbarment. If prior to disbarment the lawyer, LLLT or LPO was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for ~~Enforcement of Lawyer Conduct~~ Discipline and Incapacity, or any comparable rule, the period of such suspension shall be credited toward the six years referred to above.

(d) Payment of Obligations. No disbarred lawyer, LLLT or LPO may file a petition for reinstatement until costs and expenses and restitution ordered ~~by the Disciplinary Board or the Supreme Court~~ in the related disciplinary matter or a prior reinstatement proceeding have been paid and until amounts paid out of the Client Protection Fund for losses caused by the conduct of the Petitioner have been repaid to the ~~client protection fund~~ Client Protection

Fund, or until periodic payment plans for costs and expenses, restitution and repayment to the ~~client protection fund~~ Client Protection Fund have been entered into by agreement between the Petitioner and disciplinary counsel or bar counsel. A Petitioner may seek review ~~by the Chair of the Disciplinary Board~~ of an adverse determination by disciplinary counsel regarding the reasonableness of any such proposed periodic payment plan by following the procedures set forth in RDI 13.8(i). ~~Such review will proceed as directed by the Chair of the Disciplinary Board and the decision of the Chair of the Disciplinary Board is final unless the Chair of the Disciplinary Board determines that the matter should be reviewed by the Disciplinary Board, in which case the Disciplinary Board review will proceed as directed by the Chair and the decision of the Disciplinary Board will be final.~~

APR 25.5. ACTION BY CHARACTER AND FITNESS BOARD

(a) – **(c)** [Unchanged.]

(d) Action on Character and Fitness Board Recommendation. The recommendation of the Character and Fitness Board shall be served upon the Petitioner pursuant to Rule 23.5.

(1) If the Character and Fitness Board recommends reinstatement, the record, ~~and~~ recommendation, and all exhibits shall be transmitted to the Supreme Court for disposition.

(2) If the Character and Fitness Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar unless the Petitioner ~~requests that it be submitted to the Disciplinary Board by filing with the Clerk of the Disciplinary Board a request for Disciplinary Board review~~ files a notice of appeal with the Character and Fitness Board within 15 days of service of the recommendation of the Character and Fitness Board. If the Petitioner ~~so requests~~ files a notice of appeal, the record, including the transcript, exhibits, and recommendation shall be transmitted to the ~~Disciplinary Board~~ Supreme Court for review and disposition ~~and the review will be conducted under the procedure of rules 11. 9 and 11.12 of the Rules for Enforcement of Lawyer Conduct~~. The Petitioner must

pay to the Supreme Court any fee required by the Court in connection with the appeal and review.

(3) If the Character and Fitness Board recommends against reinstatement and the Petitioner does not ~~so request~~ file a notice of appeal, then the Bar shall transmit the recommendation to the Supreme Court for disposition. The Supreme Court may request that the Bar transmit all or part of the record for the Court's consideration and take such other action as it deems appropriate based on the record and recommendation, including scheduling the matter for appeal. ~~the record and~~ The recommendation and all related records shall be retained in the records of the Bar and the Petitioner shall ~~still~~ be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Character and Fitness Board. If the Supreme Court approves the Board's recommendation against admission, it may enter an order to that effect and notify the Bar and the parties of the decision, without requiring further action.

~~**(e) Action on Disciplinary Board Recommendation.** The recommendation of the Disciplinary Board shall be served upon the Petitioner. If the Disciplinary Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Disciplinary Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar unless the Petitioner requests that it be submitted to the Supreme Court by filing with the Clerk of the Disciplinary Board a request for Supreme Court review within 30 days of service of the recommendation. If the Petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Petitioner does not so request, the record and the recommendation shall be retained in the records of the Bar and the Petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Disciplinary Board under the procedure of rule 13.9 of the Rules for Enforcement of Lawyer Conduct.~~

APR 28 LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. [Unchanged.]

B. Definitions

(1) – (3) [Unchanged.]

(4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training, and work experience who is ~~authorized~~ licensed to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations.

(5) – (10) [Unchanged.]

C. – **O.** [Unchanged.]

APR 29 LAWYER TRUST ACCOUNT DECLARATION

Every active lawyer must annually certify compliance with Rules 1.15A and 1.15B of the Rules of Professional Conduct. The certification must be filed in a form and manner as prescribed by the Bar and must include the bank where each account is held and the account number. Failure to certify may result in suspension from practice under APR 17.

APR 30 VOLUNTARY INCAPACITY INACTIVE STATUS

(a) Basis. Except for matters governed by Title 8 of the Rules for Discipline and Incapacity, when a licensed legal professional has a mental or physical condition or disability that adversely affects the licensed legal professional's capacity to practice law, the licensed legal professional may submit an application to the Bar to have the license to practice law placed in incapacity inactive status if all requirements of this Rule are met.

(b) Requirements. In order to qualify for incapacity inactive status under this Rule, the licensed legal professional must:

(1) have a mental or physical condition or disability that adversely affects the licensed legal professional's capacity to practice law;

(2) not have any pending discipline or incapacity matters under the Rules for Discipline and Incapacity or have knowledge that a discipline matter is imminent;

(3) acknowledge that while on incapacity inactive status, the licensed legal professional will be prohibited from practicing law; and

(4) acknowledge that in order to return from incapacity inactive status, the licensed legal professional will be required to demonstrate that the basis for the incapacity has been resolved as set forth in RDI 8.11.

(c) Application. The application must be in a form and manner as prescribed by the Bar and must state the nature of the licensed legal professional's incapacity supported by current medical, psychological, or psychiatric evidence.

(d) Placement in Incapacity Inactive Status. Upon the licensed legal professional's compliance with sections (b) and (c) of this Rule, the Bar will place the licensed legal professional's license in incapacity inactive status. The licensed legal professional must comply with all duties under Title 14 of the Rules for Discipline and Incapacity. The Bar must comply with the notice requirements of RDI 3.8.

(e) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, the nature of the incapacity and all application records under this rule, including all supporting documentation and related investigation files and documents are confidential and shall be privileged against disclosure. The fact and date of placement in incapacity inactive status shall be subject to disclosure.

(f) Return from Incapacity Inactive Status. In order to return to a prior or other license status from incapacity inactive status, the licensed legal professional must demonstrate that the basis for the incapacity has been resolved as set forth in RDI 8.11.

RPC 1.0B ADDITIONAL WASHINGTON TERMINOLOGY

(a) – **(b)** [Unchanged.]

(c) "Limited License Legal Technician" or "LLLT" ~~denotes~~ means a person qualified by education, training, and work experience who is ~~authorized~~licensed to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(d) "Limited Practice Officer" or "LPO" ~~denotes~~ means a person who is licensed ~~in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice~~ Boardto engage in the limited practice of law as specified by APR 12.

(e) [Unchanged.]

Washington Comments

[Unchanged.]

RPC 1.6 CONFIDENTIALITY OF INFORMATION

[Unchanged.]

Comments

[1] – [20] [Unchanged.]

Additional Washington Comments (21-28)

[21] – [27] [Unchanged.]

[28] This Rule does not relieve a lawyer of his or her obligations under Rules ~~5.4(b)~~2.13(b) or 15.3(a) of the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity.

RPC 1.15A SAFEGUARDING PROPERTY

(a) – **(h)** [Unchanged.]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~ELC 15.7(d)~~RDI 15.5(d) and ~~ELC 15.7(e)~~15.5(e). In the exercise of

ordinary prudence, a lawyer may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~ELC 15.7(c)~~RDI 15.5(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ~~ELC~~RDI 15.4 and ~~ELC 15.7(e)~~15.5(e).

(2) – (3) [Unchanged.]

(4) The provisions of paragraph (i) do not relieve a lawyer or law firm from any obligation imposed by these Rules or the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity.

(j) [Unchanged.]

Washington Comments

[1] – [6] [Unchanged.]

[7] A lawyer may not use as a trust account an account in which funds are periodically transferred by the financial institution between a trust account and an uninsured account or other account that would not qualify as a trust account under this Rule or ~~ELC 15.7~~RDI 15.5.

[8] – [15] [Unchanged.]

[16] The term "closing firm" as used in this rule has the same definition as in RDI 15.1~~ELPOC 1.3(g)~~.

[17] [Unchanged.]

[18] When selecting a financial institution for purposes of depositing and holding funds in a trust account, a lawyer is obligated to exercise ordinary prudence under paragraph (i). All

trust accounts must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. See ~~ELC 15.7(d)~~RDI 15.5(d).

[19] Only those financial institutions authorized by the Legal Foundation of Washington (Legal Foundation) are eligible to offer trust accounts to Washington lawyers. To become authorized, the financial institution must satisfy the Legal Foundation that it qualifies as an authorized financial institution under ~~ELC 15.7(c)~~RDI 15.5(c) and must have on file with the Legal Foundation a current Overdraft Notification Agreement under ~~ELC~~RDI 15.4. A list of all authorized financial institutions is maintained and published by the Legal Foundation and is available to any person on request.

[20] Upon receipt of a notification of a trust account overdraft, a lawyer must comply with the duties set forth in ~~ELC~~RDI 15.4(d) (lawyer must promptly notify the Office of Disciplinary Counsel of the Washington State Bar Association and include a full explanation of the cause of the overdraft).

[21] – [22] [Unchanged.]

RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) [Unchanged.]

(2) a lawyer who purchases the practice of a deceased, ~~disabled~~incapacitated, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) – (5) [Unchanged.]

(b) – **(d)** [Unchanged.]

Comment

[Unchanged.]

RPC 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

[Unchanged].

Comments

[1] – [2] [Unchanged.]

[3] [**Washington revision**] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17, a lawyer's plea agreement in a criminal matter, or a stipulation under the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity.

Additional Washington Comment (4)

[4] [Unchanged.]

RPC 5.8 MISCONDUCT INVOLVING LAWYERS, ~~AND~~ LLLTS, AND LPOS NOT ACTIVELY LICENSED TO PRACTICE LAW

(a) [Unchanged.]

(b) A lawyer shall not engage in any of the following with a lawyer, ~~or~~ LLLT, or LPO who is disbarred or suspended for discipline, ~~or~~ who has resigned in lieu of disbarment or discipline, or whose license has been revoked for discipline or voluntarily cancelled in lieu of ~~discipline~~ revocation:

(1) – (5) [Unchanged.]

Washington Comments

[1] [Unchanged.]

[2] ~~The prohibitions in paragraph (b) of this Rule apply to suspensions, revocations, and voluntary cancellations in lieu of discipline under the disciplinary procedural rules applicable to LLLTs. See Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC)~~[Reserved].

RPC 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

[Unchanged.]

Comment

[1] – [3] [Unchanged.]

Additional Washington Comments (4-5)

[4] A lawyer's obligations under this Rule are in addition to the lawyer's obligations under the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity.

[5] [Unchanged.]

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) – **(k)** [Unchanged.]

(*l*) violate a duty or sanction imposed by or under the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ~~ELC 1.5~~RDI 1.6;

(m) – **(n)** [Unchanged.]

Comments

[Unchanged.]

Additional Washington Comments (6-8)

[Unchanged.]

RPC 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) – **(b)** [Unchanged.]

(c) Disciplinary Authority over Judges. Notwithstanding the provisions of Rule 8.4(m), a lawyer, while serving as a judge or justice as defined in RCW 2.64.010, shall not be subject to the disciplinary authority provided for in these Rules or the Rules for ~~Enforcement of Lawyer Conduct~~Discipline and Incapacity for acts performed in his or her judicial capacity or as a candidate for judicial office unless judicial discipline is imposed for that conduct by

the Commission on Judicial Conduct or the Supreme Court. Disciplinary authority should not be exercised for the identical conduct if the violation of the Code of Judicial Conduct pertains to the role of the judiciary and does not relate to the judge's or justice's fitness to practice law.

Comment

[Unchanged.]

Additional Washington Comments (8-13)

[Unchanged.]

SUGGESTED AMENDMENTS TO THE LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT

Redline Version

LLLT RPC 1.0B ADDITIONAL TERMINOLOGY

(a) – **(e)** [Unchanged.]

(f) "Limited License Legal Technician" or "LLLT" ~~denotes~~ means a person qualified by education, training, and work experience who is ~~authorized~~licensed to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(g) "Limited Practice Officer" or "LPO" means a person who is licensed to engage in the limited practice of law as specified by APR 12.

~~(g)~~(h) "~~ELLLTC~~RDI" denotes the Washington Supreme Court's Rules for ~~Enforcement of Limited License Legal Technician Conduct~~Discipline and Incapacity.

~~(h)~~(i) "Representation" or "represent," when used in connection with the provision of legal assistance by an LLLT, denotes limited legal assistance as set forth in APR 28 to a pro se client.

Comment

[Unchanged.]

LLLT RPC 1.15A SAFEGUARDING PROPERTY

(a) – **(h)** [Unchanged.]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~ELC 15.7(d)~~RDI 15.5(d) and 15.5(e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~ELC 15.7(c)~~RDI 15.5(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Limited License Legal Technician's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ~~ELLLTC~~RDI 15.4 and ~~ELC 15.7(e)~~15.5(e).

(2) – (3) [Unchanged.]

(4) The provisions of paragraph (i) do not relieve an LLLT or law firm from any obligation imposed by these Rules or the ~~ELLLTC~~RDI.

Comment

[Unchanged.]

LLLT RPC 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT

(a) An LLLT or LLLT firm shall not share legal fees with anyone who is not a LLLT, except that:

(1) [Unchanged.]

(2) an LLLT who purchases the practice of a deceased, ~~disabled~~incapacitated, or disappeared LLLT or lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that LLLT or lawyer the agreed-upon purchase price;

(3) - (5) [Unchanged.]

(b) – **(d)** [Unchanged.]

Comment

[Unchanged.]

LLLT RPC 5.8 MISCONDUCT INVOLVING LLLTS, ~~AND~~ LAWYERS, AND LPOS NOT ACTIVELY LICENSED TO PRACTICE LAW

(a) [Unchanged.]

(b) An LLLT shall not engage in any of the following with ~~an LLLT or~~ a lawyer, LLLT, or LPO who is disbarred or suspended for discipline, ~~or~~ who has resigned in lieu of disbarment or discipline, or whose license has been revoked for discipline or voluntarily canceled in lieu of ~~discipline~~revocation:

(1) – (5) [Unchanged.]

Comment

[Unchanged.]

LLLT RPC 8.4 MISCONDUCT

It is professional misconduct for an LLLT to:

(a) – **(k)** [Unchanged.]

(*l*) violate a duty or sanction imposed by or under the ~~ELLLTC~~RDI in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ~~ELLLTC 1.5~~RDI 1.6;

(m) – **(o)** [Unchanged.]

Comment

[Unchanged.]

SUGGESTED AMENDMENTS TO THE LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT

Redline Version

LPORPC 1.0 TERMINOLOGY

(a) – **(e)** [Unchanged.]

(f) "Limited Practice Officer" or "LPO" means a person who is licensed ~~in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board~~to engage in the limited practice of law as specified by APR 12.

(g) – **(n)** [Unchanged.]

Comment

[Unchanged.]

LPORPC 1.8 UNAUTHORIZED PRACTICE OF LAW

An LPO shall not:

(a) – **(b)** [Unchanged.]

(c) select, prepare, or complete documents authorized by APR 12 for or together with ~~any person whose~~ an LPO ~~certification~~ who ~~has been revoked~~is disbarred or suspended for discipline, or who has resigned in lieu of discipline, or whose license has been revoked for discipline or voluntarily cancelled in lieu of revocation, if the LPO knows, or reasonably should know, of such disbarment, revocation, ~~or~~ suspension, resignation, or cancellation; or

(d) [Unchanged.]

Comment

[Unchanged.]

LPORPC 1.10 MISCONDUCT

It is professional misconduct for an LPO to:

(a) – **(e)** [Unchanged.]

(f) violate a duty or sanction imposed by or under the Rules for ~~Enforcement of Limited Practice Officer Conduct~~Discipline and Incapacity in connection with a disciplinary matter,

including, but not limited to, the duties catalogued at ~~ELPOC 1.5~~RDI 1.6~~, Violation of Duties Imposed by These Rules~~.

(g) engage in conduct demonstrating unfitness to practice as an LPO. "Unfitness to practice" includes but is not limited to the inability, unwillingness or repeated failure to perform adequately the material functions required of an LPO or to comply with the LPORPC ~~and/~~or ~~ELPOC~~RDI;

(h) – **(i)** [Unchanged].

Comment

[Unchanged.]

LPORPC 1.12A SAFEGUARDING PROPERTY

(a) – **(h)** [Unchanged.]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meets the requirements of RDI 15.5(d) and 15.5(e). In the exercise of ordinary prudence, the LPO or Closing Firm may select any bank, savings bank, credit union or savings and loan association that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, is authorized by law to do business in Washington and has filed the agreement required by ~~rule~~RDI 15.4 ~~of the Rules for Enforcement of Lawyer Conduct~~. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest ~~accruing~~earned on ~~the~~ IOLTA account~~s~~, ~~net of reasonable check and deposit processing charges which may only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit~~

~~charge, must~~shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with RDI 15.4 and 15.5(e). ~~Any other fees and transaction costs must be paid by the LPO or Closing Firm. An LPO or Closing Firm may, but shall not be required to, notify the parties to the transaction of the intended use of such funds.~~

(2) – (4) [Unchanged.]

(j) [Unchanged.]

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Nicholas Pleasants, At Large Member on behalf of the WSBA Solo and Small Practice Section Executive Committee
Julianne Unite, WSBA Member Services and Engagement Manager

RE: Proposed Rules for Discipline and Incapacity

DATE: April 6, 2021

ACTION: Approve the WSBA Solo and Small Practice Section's Request to Comment on Proposed Rules for Discipline and Incapacity

- Brief Summary/Purpose of the request/Align with WSBA mission, values, strategic goals, WSBA and Section Bylaws, etc.
  Solo & Small Practice (S&SP) Section Executive Committee (EC) would like its members' voices to be heard before the Supreme Court regarding the proposed Rules for Discipline and Incapacity. These rules will affect all of the Section members' ability to work and earn a living practicing law in Washington State. S&SP Members expressed concern that they were not represented on the drafting committee that created the proposed RDI. S&SP Members are also surprised at the breadth and number of proposed changes potentially impacting their ability to earn a living, and want to preserve more of the protections that are currently in place for lawyers subject to discipline.

- History/Background/Process under which the section discussed and voted to approve these comments
  The S&SP Section Executive Committee considered the attached draft comment at its April 6 meeting. The committee members present and eligible to vote unanimously approved the draft comment, and directed it to be submitted as additional material for the Board of Governors to review. That vote constituted more than 75% of the EC members eligible to vote.

- Stakeholder analysis/feedback
  Anne Seidel shared her article from the KCBA Bar Bulletin regarding the Proposed Rules for Discipline and Incapacity with our section via its listserv. Many S&SP members responded concurring with the observations made in Anne Seidel's article, including former Section Chair Julie Fowler. S&SP members that commented all expressed opposition to the proposed rules, and many requested that the Section submit a public comment in opposition. Member comments included that the proposed rules are "scary," "disturbing," and "troubling."

- Financial impact/analysis
  The comment has no financial impact on the WSBA.

- Rule compliance, if applicable e.g. GR12 analysis
  At its April 6 meeting, the S&SP Section Executive Committee discussed the compliance with GR 12. The discussion included that the issue is not of a political or social nature that would be precluded by GR 12.2(c). The discussion included that the issue of regulation of lawyer discipline is related to the practice of law. The Executive Committee unanimously voted that the matter under consideration meets GR 12 and is not prohibited by GR 12.2(c) and unanimously voted to comment in opposition to the proposed RDI and to approve the draft comment submitted herewith. That vote constituted more than 75% of the EC members eligible to vote.

- Implementation implications
  The S&SP Section Executive Committee would post its comment to the Supreme Court without further implementation required by the BOG.

Solo & Small Practice Section Comment on proposed Rules for Discipline and Incapacity

The Solo & Small Practice Section is opposed to the proposed Rules for Discipline and Incapacity (RDI) for the following reasons:

1. The rules have not been drafted with input from the lawyers being subjected to them.
    a. Members of the Bar were not represented in the drafting work group. General members of the Bar were not invited to participate in reviewing the rules at any stage in the drafting process, yet these rules could be used to take away their livelihood. Members of the Solo & Small Practice Section have strong opinions about these changes and should have an opportunity to meaningfully participate in the drafting of the rules, not just to make comments at the end.
    b. The rules were drafted by the Office of Disciplinary Counsel (ODC). As others have noted, this is like the prosecutor writing the rules of criminal procedure.
    c. The stated purpose of the drafting work group was to "streamline the rules and create system efficiencies". To this end, the proposed RDI remove various rights of appeal and protections that were afforded respondents under the existing Rules for Enforcement of Lawyer Conduct (ELC), e.g.:
        i. Right to appeal ODC's decision to withhold information from Respondent. ELC 5.1(c)(3)(B)
        ii. Right to appeal ODC's decisions on whether to defer an investigation pending related civil or criminal litigation. ELC 5.3(d)(2).
        iii. Disciplinary counsel subject to contempt for wrongful release of information. RDI 3.1(d); ELC 3.2(f).
    d. Confusingly, some avenues of quickly reaching a final decision available under the ELC are absent under the RDI:
        i. The RDI allow reopening of a closed decision, in essence meaning that complaints are never finally adjudicated. RDI 5.11.
        ii. An admonition was not a sanction under the ELC but is a sanction under the RDI. Previously, respondents may have accepted the result of an admonition, but now will be further incentivised to oppose such a result.
2. The Bar has not studied the demographics of respondents to determine if the rules have a disproportionate impact on particular groups or individuals. The Solo & Small Practice section is concerned that the proposed rules will have a disparate impact on lawyers in small or solo practices. The Bar should examine the impact that the ELC currently has on its members before making such significant changes.
3. Diversity of the hearing officers is removed. By switching to using paid adjudicators, the RDI system necessarily removes the diversity of volunteer hearing officers that is accomplished under the existing ELC. A panel of volunteer hearing officers allows for racial, geographic, firm size and practice area diversity. The rules should promote more diversity of hearing officers, not less.
4. The rules should be written in a way that increases equity and fairness to members. GR 12.1(j) specifically includes the objective in regulating the practice of law to promote "diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system." Solo & Small Practice

members are a diverse group of attorneys that face many challenges in running their law practices that larger firms do not. The rules should be written in a way that promotes the most fairness to diverse respondents, not to help the ODC clear its caseload faster.

The Solo & Small Practice Section understands and respects the Court's desire to modernize the rules governing lawyer discipline. We simply ask that this be done in a fair and equitable manner with participation by lawyers from a diverse range of practices.

TOWNSEND LAW
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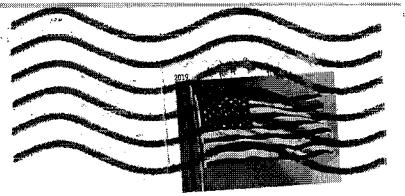

Board of Governors
Washington State Bar Association
1325 Fourth Ave, Ste 600
Seattle, WA 98101

[redacted]

March 15, 2020

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

And To:

Washington State Supreme Court Supreme@courts.wa.gov

Re: Opposition to Proposed Rules for Discipline and Incapacity

Dear Board of Governors:

As the Chair of the **Criminal Law Section**, I am notifying you that our cross section of both prosecutors and defense lawyers have voted as a board to take a position against the implementation of the **new proposed disciplinary rules** which were created without input or consideration from stakeholders.

We believe that under due process, a committee should be established with representatives of all groups to redraft a balanced set of rules that does not create an omnificent office, which is without oversight by the membership that it serves. It is extremely troubling that the Office of Disciplinary Counsel seeks to have more authority and less oversight. We do not believe a fair or just set of rules can be drafted unless all of those involved in the lawyer discipline process have a say. Because stakeholders were not involved in drafting the proposed rules, our ideas for improving the disciplinary system were not even considered.

Currently, a committee selects hearing officers and disciplinary board members. But under the proposed rules, WSBA chooses the most important person in the new system, the Chief Regulatory Adjudicator, who hires all other adjudicators. *See* RDI 2.3(c). Since there is no restriction on which WSBA employees make the selection, ODC could be authorized to choose the Chief Regulatory Adjudicator. Since the rules eliminate the current right of parties to remove a hearing officer without cause, respondent lawyers will have no ability to avoid an adjudicator who always rules in ODC's favor.

We believe that independent volunteer hearing officers, who are familiar with and practice the particular area of law being examined is helpful to the process and provides a level of fairness. Their knowledge and experience provides a level of experience and knowledge of the intricacies associated with those laws to the table which promotes fairness to the accused.

We urge the BOG and the Supreme Court to completely reject this unilateral proposition by ODC as it does not represent a system of fairness. It will have a chilling effect on our membership and violates due process.

"We need to defend the interests of those whom we've never met and never will."

Sincerely,

s/Josephine C. Townsend

Josephine C. Townsend

Chair, Criminal Law Section

WSBA 31965

WSBA LEGISLATION AND COURT RULE COMMENT POLICY

(Amended November 13, 2015 Board of Governors Meeting)

*This policy was superseded, in part, with regard to Sections legislative comment. Please see *Sections Legislative Comment Policy*, adopted June 2020, for policy on legislative comment as applicable to Sections.

Purpose: This policy governs Sections, Panel, Committee, Division or Council (hereinafter collectively referred to as 'Entity') authority to comment publicly on state and federal court rules and legislation, and clarifies the conditions under which such Washington State Bar Association (WSBA) entities can comment publicly on state and federal court rules, legislation, executive orders, administrative rulemaking, and international treaties. For purposes of this policy, to "comment" means to take a position (for example, expressing support, concerns, or opposition) with or without accompanying statements explaining the position; it also means to provide input (for example, suggested amendments, recommendations, analysis, or comments to the media) without taking a position.

Policy: The Board of Governors, the Executive Director, the WSBA Legislative Committee, the Board of Governors Legislative Committee, and the Legislative Affairs Manager, are authorized to refer legislative proposals (including bills, initiatives, referenda, and resolutions) or proposed court rule changes[1] to Entities of the WSBA for their consideration. Entities are authorized to appear before or otherwise publicly comment on legislation to the Legislature or Congress, or a committee of the Legislature or Congress, or to publicly comment on any proposed state rule change pursuant to Washington Supreme Court General Rule (GR) 9(f), or to publicly comment on any federal proposed rule change, only under the following conditions:

1. The Entity may not comment publicly on federal legislation or federal court rules without prior written authorization of the Board of Governors, and such authorization may be subject to limitations established by the Board of Governors.

2. The Entity may not publicly comment unless: (a) at least 75% of the total membership of the Entity's governing body has first determined that the matter under consideration meets GR 12; and (b) after determining that the matter meets GR 12, that the comments are the opinion of at least 75% of the total membership of the governing body of the Entity. A subcommittee or other subset of an Entity may not publicly communicate its comments on proposed legislation or court rules.

[1] The WSBA Court Rules and Procedures Committee routinely vets proposed Court Rules to various WSBA Entities, scrubs those proposals, and then either supports or opposes having the Board of Governors recommend those proposals to the Supreme Court Rules Committee. This process continues to be permitted under this Policy.

3. The Entity shall not publicly communicate comments on a legislative or rule proposal that are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.

4. The Entity shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to publically communicating with anyone. If authorization is granted, Entities must clearly state that their comments are solely those of the Entity, and not the official comments of the WSBA. In order to officially comment on behalf of the WSBA, the Entity must have the prior written approval of the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. Entities are not permitted to comment on local or municipal policies or legislation.

5. The Entity is responsible for advising the Executive Director, the Board of Governors, the Board of Governors Legislative Committee, and the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the Entity. The Entity shall advise the Legislative Affairs Manager of any proposed action intended to publicly communicate its comments on legislation in advance of taking such action. Unless otherwise authorized by the Executive Director, the Board of Governors, or the Board of Governors Legislative Committee, the Entity shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action.

6. In all cases, the Entity representatives shall cease to publicly communicate the comments of the Entity if requested to do so by the Executive Director, the Board of Governors, the Board of Governor's Legislative Committee, or the President of the Bar; and, in the case of comments on legislative proposals, the Entity representatives shall also cease to publicly communicate the comments of the Entity if requested to do so by the Legislative Affairs Manager.

7. Entities are prohibited from joining or affiliating with groups or associations whose legislative advocacy reaches beyond the areas allowable under GR 12.

SECTIONS LEGISLATIVE COMMENT POLICY
Adopted June 2020
*****

* Please see *WSBA Legislation and Court Rules Comment Policy*, adopted November 2015, for policy as applicable to legislative and court rules comment for entities other than Sections, and for court rules comment by Sections.

Purpose: This Policy governs the authority of Sections of the Washington State Bar Association to comment publicly on state legislation, executive orders, and administrative rulemaking (hereinafter "Matter"). For purposes of this Policy, to "comment" means to take a position (for example, expressing support, concerns, or opposition) with or without accompanying statements explaining the position; it also means to provide input (for example, suggested amendments, recommendations, analysis, or comments to the media) without taking a position. The reason for this Policy is to provide a mechanism for divergent positions on legislation to be reconciled with the assistance of the Legislative Affairs Manager in order to provide the Legislature with the best possible information in developing new laws.

The work of the Sections in the legislative process is valuable and important to WSBA members and requires a contribution of significant time and energy by Section Executive Committee members. Sections are the experts in their fields, and attorneys and other members of the WSBA expect that their sections will monitor legislation,

take positions when appropriate, educate the legislators with regard to proposed legislation, recommend changes to previously passed legislation or technical corrections to existing legislation. The WSBA also needs to know about Section legislative activity so that the WSBA Outreach & Legislative Affairs Manager ("Legislative Affairs Manager") can help avoid divergent positions and unnecessary expenditure of political capital by the WSBA and the Sections. Sections also benefit from learning of the positions of other Sections on the same bills or on companion bills.

Policy:

1. Sections are encouraged to identify legislative issues within their area of expertise. The Legislative Affairs Manager will also identify bills to a Section that are within a particular Section's expertise and will keep the Sections updated on a bill's progress and pivotal points in the legislative process.

2. Training should be provided annually by the WSBA staff and Section members with significant experience in the legislative setting to at least one designee of each Section's Executive Committee, with other committee members welcome and encouraged to attend, on how to implement this Policy. Such training should include how to accomplish Section goals and how to act responsibly in the legislative setting.

3. The Legislative Affairs Manager shall be made available to Section Executive Committees as a resource for any questions as a Section works on a legislative matter in accordance with this Policy. Each Section and the Legislative Affairs Manager will work cooperatively to establish a process to assist each Section's Executive Committee in the development of and consideration of any comment. Similarly, Sections should be a resource

to the WSBA on legislative matters within a Section's subject area.

4. Sections are authorized to appear before or otherwise comment on legislation to the Legislature, or a committee of the Legislature, only under the following conditions:

a. The Section may not comment unless: (a) at least 75% of the total membership of the Section's Executive Committee has first determined that the matter under consideration meets GR 12; and (b) after determining that the Matter meets GR 12, that the comments are the opinion of at least 75% of the total membership of the Executive Committee of the Section. A subcommittee or other subset of a Section may not communicate its comments on a Matter to the Legislature or a committee thereof.

b. The Section shall not communicate comments on a Matter if such comments are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.

c. The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to communicating its comments on a Matter. In order to officially comment on behalf of the WSBA, the Section must have the prior written approval of the Board Legislative Committee or the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. If authorization is granted, Sections may represent that the comments are the official comments of the WSBA.

d. Each Section will apprise the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after a decision is made by the Section on pending or proposed legislation, that the Section intends to support it, oppose it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position. Each Section will also notify the Legislative Affairs Manager at least 24 hours in advance of a hearing before a legislative committee on a given bill, if the Section wishes to testify regarding that bill. The Section may do nothing more until the Legislative Affairs Manager gives permission to testify or to move forward with the position being taken by the Section, which permission may be given either verbally or in writing. The Legislative Affairs Manager will bring it to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the Section's position, unless there is a good and articulable reason to deny the request, which shall be explained to the Section. The Legislative Affairs Manager will notify the Board's Legislative Committee of the decision as soon as possible thereafter.

e. Each Section is responsible for advising the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the Section regarding Matters. The Section shall advise the Legislative Affairs Manager of any proposed action intended to communicate its comments on legislation in advance of taking such action. Unless otherwise authorized by the Board of Governors or the Board of Governors Legislative Committee, the Section shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action. However, a Section representative may answer questions posed by legislators in a manner consistent with the Section position that has been authorized in accordance with this Policy.

f. Each Section may provide technical drafting comments such as pointing out issues (typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in a bill, and suggested amendatory language) without a GR 12 analysis. The Legislative Affairs Manager shall be advised of and copied on such comments in a timely manner.

g. Sections may not comment on municipal (defined as a city or county) Matters or on Federal Matters, which are defined as federal court rules and legislation, executive orders, administrative rulemaking, and international treaties. If a Section believes that comment on a municipal or Federal Matter should be undertaken, the Section may bring the Matter to the Board of Governors to seek the Board's authorization. Such authorization is subject to such limitations as may be established by the Board of Governors.

h. This Policy supersedes and replaces any and all prior policies on the same subject, as they apply to Sections, including but not limited to the WSBA Legislation and Court Rule Comment Policy amended November 13, 2015 by the Board of Governors.

March 15, 2020

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

Re: Proposed Rules for Discipline and Incapacity

Dear Board of Governors:

We are a group of lawyers who regularly represent respondents in legal professional discipline matters. We believe the proposed Rules for Discipline and Incapacity ("RDI") are unwise and will unfairly penalize bar members, especially those who are most vulnerable. The proposed rules are a power grab by the Office of Disciplinary Counsel ("ODC") made possible by the unprecedented process that gave WSBA employees sole control over the content of the proposed rules.

The Board of Governors ("BOG") should ask the Court to reject these rules and instead, establish a committee with representatives of all participants in the discipline process to craft a more balanced set of rules.

The BOG can and should comment on the proposed rules

The WSBA repeatedly said that the BOG would review the proposed rules before they were submitted to the Court, including in ODC's Washington Disciplinary System 2019 Annual Report at 16, the March 19, 2020 Executive Director's Report, and in the introductory memorandum to the Volunteer Reviewers who participated in the stakeholder process.

There is nothing in the current rules that prohibits the BOG from weighing in on proposed changes to the procedural rules for the disciplinary system. The only prohibited activity is involvement in individual disciplinary cases. ELC 2.2(b). Members of our group have served on several prior committees that recommended either a new set of procedural rules or changes to the existing rules and all of those proposals were submitted to the BOG before going to the Court. The proposed rules will have a significant -- yet undetermined -- effect on the bar's budget, making review by the BOG more critical. If adopted, these rules will create an unfunded mandate for paid adjudicators and may require bar dues to be increased.

We do not believe a fair or just set of rules can be drafted unless all of those involved in the lawyer discipline process have a say. Because attorneys who represent respondents were not involved in drafting the proposed rules, our ideas for improving the disciplinary system were not even considered.

Rules were drafted by and for ODC

ODC, along with other WSBA employees, spent three years drafting these rules. They alone controlled the content. Two of our members participated in the "stakeholder review" process and both saw it as a fig leaf designed simply to create an illusion of input from others in the disciplinary process. Respondent counsel's feedback was largely ignored. Contrary to the

promise of a "transparent" process, the documents relating to the stakeholder process are not available as they were in previous rule revisions proposed by a special committee. Instead, when one of us submitted a records request for these documents, WSBA said it would take up to two months and cost almost $600 to obtain them. We question why the stakeholder meetings were not open to the public and why the stakeholder comments are not available on WSBA's website. This process has had no transparency.

Because ODC and other WSBA employees created the proposed rules, it should come as no surprise that the proposal boils down to a power grab by ODC. Currently, a committee selects hearing officers and disciplinary board members. But under the proposed rules, WSBA chooses the most important person in the new system, the Chief Regulatory Adjudicator, who hires all other adjudicators. *See* RDI 2.3(c). Since there is no restriction on which WSBA employees make the selection, ODC could be authorized to choose the Chief Regulatory Adjudicator. And since the rules eliminate the current right of parties to remove a hearing officer without cause, respondent lawyers will have no ability to avoid an adjudicator who always rules in ODC's favor.

ODC has also rewritten the rules to remove numerous provisions limiting its authority or permitting review of its decisions. The proposed rules eliminate or greatly curtail the review committee process that currently provides checks and balances for ODC's decision to dismiss a grievance or proceed to hearing. The proposed rules limit the authority of the review panel so that it serves no purpose, as it duplicates a motion to dismiss. Other changes removing oversight from ODC and giving it more discretion include rules that allow ODC to reopen grievances at any time, eliminate the current rights to appeal decisions on whether to defer an investigation and decisions on whether to withhold information, remove a respondent's ability to appeal if ODC refuses to destroy a file, give ODC sole authority to decide to file interim suspension petitions and eliminate a provision that subjects disciplinary counsel to a contempt proceeding for wrongful release of information.

Currently, there is virtually no oversight of ODC or the lawyer discipline system and no opportunity for input from other stakeholders in the system, such as respondent counsel. The Disciplinary Advisory Round Table ("DART") was created to provide needed oversight and to provide a forum for respondent counsel and others to provide input. A number of our members have served on DART and in our opinion, it has proven to be ineffective. The rules should instead create a more robust process for overseeing the lawyer disciplinary system. ODC gets by far the largest share of our bar dues, yet there is no analysis of whether those funds are being spent efficiently or fairly.

We recommend that the rules create an oversight committee like Colorado's Advisory Committee, which is tasked *inter alia* with reviewing "the productivity, effectiveness, and efficiency of the Supreme Court's attorney regulation system including that of the Presiding Disciplinary Judge and peer assistance programs and report its findings to the Supreme Court." CRCP 251.34(b)(3); *see also* Colorado proposed rule 242.3.

Sanctions will be harsher

The proposed rules continue a trend that began decades ago of eliminating the lower forms of discipline, resulting in public discipline for even minor errors with the ensuing loss of reputation, income and potentially career. Unlike many other states and the ABA Standards for Imposing Lawyer Discipline, Washington no longer allows for any form or nonpublic discipline. The proposed rules will make admonitions a sanction and eliminate advisory letters, two ways minor mistakes can be handled currently. ODC already has unfettered discretion in whether to offer diversion to a lawyer in lieu of public discipline. Under the new rules, more lawyers will also be sanctioned because the new rules eliminate procedures, like the review committees, that offer some oversight over ODC's decisions to pursue discipline.

It is well-known that lawyers suffer from mental health and addiction issues at far greater rates than the general public. As respondent counsel, we too often see the toll depression and anxiety take on lawyers. These proposed rules will make it even harder for such lawyers to get help and instead will lead them to be publicly humiliated and removed from the profession.

Fewer volunteer opportunities

By getting rid of volunteer hearing officers and assigning a paid adjudicator as chair of any review panel, the new rules greatly curtail the opportunities for lawyers to serve in volunteer roles in the lawyer discipline system. This both deprives those who would have served as volunteer hearing officers of valuable adjudicative experience and harms the system as a whole since having fewer participants will mean less diversity in backgrounds and practice areas.

Conclusion

We urge the BOG to act on behalf of all of its members and ask the Court to reject these rules and instead begin a fair and transparent process of rulemaking.

Sincerely,

David Allen
Rita L. Bender
Kurt M. Bulmer
Thomas M. Fitzpatrick
Timothy K. Ford
Kenneth S. Kagan
Todd Maybrown
Leland G. Ripley
Anne I. Seidel
Patrick C. Sheldon
Stephen C. Smith
John A. Strait
Elizabeth Turner

WASHINGTON STATE
BAR ASSOCIATION

WSBA Feedback Report
April 9, 2021

The following feedback was sent to **BoardFeedback@wsba.org** and focuses on the topic of **Proposed Rules for Discipline and Incapacity** as of **April 9, 2021**. The **five (5)** messages are presented in the order in which they were received. Contact information may be redacted if it differs from what is publicly available on the WSBA Legal Directory.

[Dated: Thursday, March 11, 2021]

In our politically charged climate, vesting powers into a single individual is fraught with peril (as Ann Seidel's article points out).

The lack of oversight and amount of discretion vested into the ODC is problematic at best.

Much like the criminal justice system, poverty (and race) makes the likelihood of justice go down. Those with the money to fully defend against an ODC's claims will be fine and continue to do whatever it is they are doing. The brunt of this will fall on solo practitioners who are disproportional female and minority compared to the well funded big law population.

If SCOTUS were composed of a single individual, the chance of extreme political decisions would be assured (not to say that is not already the case, but at least there is a smoothing effect across nine justices).

Moving from a review board with more power spread across 8 volunteers that has a limiting effect on the ODC reduces the possibility of any potential bias or disparate impact in charging.

In the bar news, I already see three to ten attorneys a month being disbarred, censored, admonished, etc. How many more do you want? Further, what would happen if there is a political, racial, or genderist motivation behind the accusation and how would that news play out in the general media? It would not be a good look. Likewise if there is a disparate impact, how would that play? And unfortunately the only way to solve a disparate impact is to disbar or charge more until the equities balance or to charge less until the same.

The proposed rule changes do not promote more justice, but less.

I would ask that the rule changes not be implemented. If they are to be implemented, I would suggest the process be slowed down and more commentary allowed to flesh the rules out and to provide better checks and balances.

Edgar I. Hall, Attorney
Washington Debt Law, PLLC
12535 15th Ave NE, Suite 214
Seattle, WA 98125
Phone: (206) 535-2559

Fax: (206) 374-2749
www.wadebtlaw.com

[Dated: Thursday, March 11, 2021]

I have experience with the Disciplinary Committee as a grievant and offer the following proposals based on my experience and the probable applicability to other grievants and situations. By way of background, I believe that our local county prosecutor has engaged in illegal surveillance for an extended period of time through email hacking and that a settlement negotiated on my behalf and deposited into a trust account was ultimately removed from the trust account and distributed to others, including the attorney who negotiated the settlement. I am not asking anyone to judge the credibility of my statements. What I want to offer is the benefit of my experience to offer proposed changes to the disciplinary rules and/or policies. Incidentally, I am an attorney with more than 30 years of experience. My concerns about the fairness of the disciplinary process are both personal and professional.

1. ALL ALLEGED TRUST ACCOUNT VIOLATIONS SHOULD REQUIRE AN AUDIT.

It is my belief that an audit was not conducted, possibly because of the source of the Second Recommendation.

2. THE NAMING OF PROMINENT ATTORNEYS IN A RESPONSE TO A GRIEVANCE SHOULD BE CONSIDERED A RED-FLAG AND INVESTIGATED FOR POSSIBLE INTIMIDATION.

I felt intimidated by the naming of these other prominent attorneys (who also practice in the same county) and the knowledge that the process was not being kept confidential.

3. THE RESULTS OF THE INVESTIGATION BY THE INVESTIGATOR SHOULD BE TAKEN SERIOUSLY AND FOLLOWED UNLESS CLEARLY MISGUIDED.

In my case, the investigator agreed that certain people should be contacted. One was a professor emeritus at the Seattle University School of Law who serves the Disciplinary Committee in an adjunct role and was so concerned about the county prosecutor's conduct that he endorsed his opponent in his reelection campaign. The other person was the owner of the computer forensics firm I believe to be the one that handles the county prosecutor's surveillance activities.
It is my belief that those people were not contacted. I was not given a reason for the failure to contact these people.

4. CONFLICT OF INTEREST RULES SHOULD BE DEVELOPED FOR DISCIPLINARY COMMITTEE MEMBERS.

Such rules should include a prohibition against a member from the same county taking a role in the disciplinary process regarding another member(s) of the same county. I suppose an exception will need to be made in larger counties but in ours, people in our local legal community know each other.

5. INVESTIGATIVE POWERS.

In addition to having auditors on board, it would be helpful if the Disciplinary Committee had a relationship with a computer forensics expert or firm which could conduct at least a preliminary scan to determine if a comprehensive investigation should be conducted.

6. CITIZEN MEMBERS OF THE COMMITTEE SHOULD BE FREE OF INFLUENCE BY THE ATTORNEYS ON THE COMMITTEE IN ORDER TO BE FULLY REPRESENTATIVE AND EFFECTIVE.

I would assume that citizen representative would defer to the attorneys most of the time. Perhaps they need training and information about their particular roles.

7. GRIEVANTS SHOULD BE ALLOWED TO MAKE AN IN-PERSON PRESENTTION TO THE DISCLIPLINARY COMMITTEE FOR A SET PERIOD OF TIME (1 HOUR?) ONCE AN INVESTIGATION IS STARTED.

Appearing in person would have provided me the opportunity to explain why contacting the people I suggested and agreed to by the investigator was important. It would have counteracted any secret conversations and established me as a flesh and blood person and not just a name on a piece of paper.

8. THERE SHOULD BE A MEANS BY WHICH ALLEGATIONS ABOUT IMPROPER PROCESS IN THE DISCIPLINARY PROCESS CAN BE HEARD.
9.

I had and have no way to get my legitimate concerns addressed. That would be true of other grievants. That situation should be changed.

I am offering my experience on the assumption that my experience as a grievant is shared by other grievants, at times. It would be almost impossible for grievants who are not attorneys to discern any misconduct. I believe that the recommendations above would reinforce the integrity of the disciplinary system, and ultimately the legal profession and its practitioners.

I am willing to make myself available if there is any interest in talking to me further for the purposes of these Recommendations.

Susan Kirkpatrick
WSBA No. 11004

[Dated: Saturday, March 13, 2021]

Absolutely opposed, the rules are not in the interest of the bar, lawyers, or the public. It would not be an improvement especially having an "in house" hearing officer, too much bureaucracy. Having hearing officers with real law experience, real practice experience, and no ties to the disciplinary office, however tenuous, works.

I served as a hearings officer for a few years and it was a satisfying learning experience and made me feel more a part of the bar than I otherwise would have and it promoted my respect for those in inside the offices knowing that any lawyer can and should be able to part of the disciplinary process. Independent and volunteer hearings officers serves as a check and oversight of the disciplinary office.

Edward LeRoy Dunkerly
Attorney at Law
WSBA# 8727
McAleer Law

WASHINGTON STATE
BAR ASSOCIATION

Of Counsel
3709 E. Fourth Plain Blvd.
Vancouver WA 98661
360 334-6277

[Dated: Monday, March 15, 2021]

In response to the request for member feedback regarding the proposed new disciplinary procedural rules, I'm attaching a letter from the lawyers listed on the attached and copied on this email.

Anne I. Seidel
Law Office of Anne I. Seidel
1817 Queen Anne Ave. N., Suite 311
Seattle, WA 98109
(206) 284-2282

[dated: April 7, 2021]

From: Edward <ehiskes@gmail.com>
To: Main@draw.groups.io
CC: Bar Leaders, supreme@courts.wa.gov, Brian Tollefson

There are problems with the hearing officer system, even without new rules to make it worse.

In 2013 the Snohomish County Prosecutor and a County Official filed a bar complaint against XXXXX, who operates a news website covering Snohomish County government issues. Her offense? She published things on the website that were critical of Snohomish County government. Although the complaint was unrelated to the practice of law or XXXXX's status as a WSBA member, the WSBA decided to issue an investigatory subpoena anyway.

Under then and current rules, the WSBA Chief Hearing Officer assigns a hearing officer to handle any particular case. Per the rule, this assignment may not be questioned, by way of an affidavit of prejudice or otherwise.

So what hearing officer was picked for XXXXX's case? It turns out that this person was the subject of several bar complaints concerning his/her/their practice as a guardian, and was eventually sanctioned and terminated as a guardian by a Superior Court judge, and also sanctioned by the Supreme Court Guardianship Board.

The potentially disturbing thing is that the WSBA might have known about these problems at the time of the hearing officer appointment, but then proceeded to appoint this hearing officer anyway, failing to give notice to XXXXX about the officer's problems. A cynical person might infer that they wanted a hearing officer who had reason to be afraid of the WSBA discipline department. Also of concern is that, despite the sanction by a Superior Court judge, and the adverse action of the Guardianship Board, the WSBA never imposed discipline on that hearing officer for the guardianship misfeasance. One might infer that they were protecting one of their own. (I stress the words "might" and "infer", since I am not an eyewitness to these events, but merely a reader of documents. I would be grateful to receive comments from those at the WSBA who could provide authoritative reassurances.)

The XXXXX case illustrates a problem with the system. There is no "firebreak" against bias or cronyism. In Superior Court one can file an affidavit of prejudice against a particular judge, and also elect to have a jury trial. These devices tend to keep the decision-makers at arms-length from the prosecutor. The WSBA system provides no such distance. Discipline counsel are under the direct supervision of political actors such as the Executive Director, and the Disciplinary Board is populated with political patronage appointees. Between the Executive director, discipline counsel, and the Disciplinary Board, political strings are hanging out everywhere. One might reasonably fear that these could be pulled, whether this has actually happened or not.

A good reform would allow discipline respondents to elect a trial in Superior Court, in lieu of WSBA trial. I believe this is done in California. Another reform would be for the WSBA to maintain an independent cadre of defense lawyers. Inside counsel would help level the playing field against specialist prosecutors, and would be of particular help to minority and disadvantaged defendants.

evh

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Russell Knight, Governor At-Large
Hunter Abell, Governor At-Large

DATE: March 3, 2021

RE: Resolution in support of a bar exam to ensure a competent, ethical and diverse legal profession

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ACTION/DISCUSSION: The attached resolution is set for discussion, possible amendment and approval.

The attached resolution is set for discussion, possible amendment and approval. – Attachment 1

To aid in the discussion, the following materials are attached:

- Attachment 2 - June 12, 2020 Supreme Court Order Granting Diploma Privilege and Temporality Modifying Admission & Practice Rules for July and September 2020 Bar Examinations
- Attachment 3 - November 20, 2020 Supreme Court Order Establishing the Washington Bar Licensure Task Force
- Attachment 4 - December 3, 2020 Order Authorizing Remote Licensing Examinations and Amending APR 4 to Reduce Passing Score for Uniform Bar Examination for February 2021
- Attachment 5 - February 4, 2021 Letter from the Supreme Court Regarding Requests to Reconsider Decision Not to Grant Diploma Privilege for February 2021 Bar Examination
- Attachment 6 - National Conference of Bar Examiners Preliminary Recommendations for the Next Generation of the Bar Examination

WASHINGTON STATE
BAR ASSOCIATION

RESOLUTION IN SUPPORT OF A BAR EXAM TO ENSURE A COMPETENT, ETHICAL AND DIVERSE LEGAL PROFESSION

WHEREAS, the mission of the Washington State Bar Association ("WSBA") is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice; and

WHEREAS, passing a bar exam has long been a requirement for membership in the WSBA in part to ensure a competent and ethical legal profession; and

WHEREAS, on June 12, 2020, in part in response to the COVID-19 pandemic, the Washington State Supreme Court entered Order No. 25700-B-630 temporarily modifying Admission to Practice Rules 3 and 4, and granting diploma privilege as an option to graduates of ABA accredited law schools who were registered for either the July 2020 or September 2020 bar exams; and

WHEREAS, the Washington State Supreme Court has not extended diploma privilege to applicants registered for subsequent bar exams; and

WHEREAS, stakeholders have expressed concern that the bar exam has a discriminatory effect on examinees of color and first generation examinees; and

WHEREAS, on November 20, 2020, the Washington State Supreme Court entered Order No. 25700-B-649 establishing the Washington Bar Licensure Task Force ("WBLTF"); and

WHEREAS, the WBLTF is asked to "examine current and past bar examination methods, passage rates, and alternative licensure methods, assess disproportionate impacts on examinees of color and first generation examinees, consider the need for alternatives to the current bar exam, and analyze those potential alternatives"; and

WHEREAS, the WSBA supports the work of the WBLTF;

NOW, THEREFORE, BE IT RESOLVED THAT

1. In order to ensure a competent, ethical and diverse legal profession, the WSBA supports the continued requirement of passing a bar exam before admission to the WSBA.
2. The WSBA discourages diploma privilege as an alternative to a bar exam.
3. The WSBA encourages a review of, and possible change to, the format and content of the bar exam to both strengthen and improve the bar exam as a tool to ensure the competent and ethical practice of law and to ensure there is no discriminatory effect on examinees of color and first generation examinees.

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY	)	ORDER GRANTING DIPLOMA PRIVILEGE AND TEMPORARILY MODIFYING ADMISSION & PRACTICE RULES No. 25700-B-630

WHEREAS, the court recognizes the extraordinary barriers facing applicants currently registered to take the bar examination in either July or September 2020, or the limited license legal technician (LLLT) examination in July 2020; and

WHEREAS, the Court has reviewed Washington's Admission and Practice Rules (APRs) to consider whether any of its provisions should be modified to accommodate current applicants who have received juris doctorate degrees from ABA accredited law schools or have completed all requirements to sit for the July 2020 LLLT exam;

The Court by majority hereby enters the following order establishing temporary modifications to some provisions of the current APRs:

1) APR 3 and 4 are modified to the extent that applicants for admission to practice law who are currently registered for either the July or September 2020 bar examination and who have received a Juris Doctorate degree from an ABA accredited law school, and applicants currently registered to take the LLLT examination scheduled for July 2020, are granted the option of receiving a diploma privilege to practice in

Washington. The bar examinations in July and September 2020 will still be offered for those who do not qualify for the diploma privilege and those who wish to take the exam to receive a Uniform Bar Exam (UBE) score.

2) The diploma privilege option will be available to applicants currently registered to take the examinations who are taking the tests for the first time and those who are repeating the tests.

3) The court delegates to WSBA the appropriate discretion to determine the timelines for eligible applicants to notify WSBA of their intent to receive the diploma privilege in lieu of taking an examination, and whether or to what extent any registration fees may be refunded.

DATED at Olympia, Washington this 12th day of June, 2020.

For the Court

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ESTABLISHMENT OF THE WASHINGTON BAR LICENSURE TASK FORCE	)	ORDER NO. 25700-B-649

WHEREAS, the Washington State Supreme Court has determined to implement a strategic initiative to evaluate and assess the efficacy of the Washington state bar licensure requirement for licensing lawyers, to consider alternatives to the current licensure requirements, and to analyze potential alternatives;

NOW, THEREFORE, IT IS HEREBY ORDERED:

The Washington Bar Licensure Task Force is hereby created to assess the efficacy of the Washington state bar exam and related requirements for licensing competent lawyers. The Task Force shall examine current and past bar examination methods, passage rates, and alternative licensure methods, assess disproportionate impacts on examinees of color and first generation examinees, consider the need for alternatives to the current bar exam, and analyze those potential alternatives.

The Task Force shall have broad membership as indicated in the attached strategic initiative charter, who will be appointed by the Supreme Court in consultation with the co-chairs and represented groups.

The Task Force shall also consult or coordinate with the organizations listed in the attached strategic initiative charter.

The Task Force shall be chartered through December 31, 2022.

DATED at Olympia, Washington this 20th day of November, 2020.

Stephens, C. J.
CHIEF JUSTICE

Washington State Supreme Court

Strategic Initiative Charter

WASHINGTON BAR LICENSURE TASK FORCE

I. **Title:** Washington Bar Licensure Task Force

II. Authority: Washington State Supreme Court (WSSC) Order, November 20, 2020

III. Goal:

The goal of this strategic initiative is to evaluate & assess the efficacy of the Washington state bar licensure requirements for licensing lawyers and whether the WSSC should consider alternatives to the current licensure requirements, and to analyze those potential alternatives.

IV. Charge, Deliverables and End Date:

The Washington Bar Licensure Task Force is formed to assess the efficacy of the Washington state bar exam and related requirements for licensing competent lawyers. This Task Force will examine current and past bar examination methods, passage rates, and alternative licensure methods, assess disproportionate impacts on examinees of color and first generation examinees, consider the need for alternatives to the current bar exam, and analyze those potential alternatives.

Among its tasks, the Task Force shall:

a. Review past studies conducted on the efficacy of bar exams.

b. Study and report on the history of the bar exam, both nationally and within the state of Washington, particularly with regard to the purpose of the bar exam at its inception.

c. Analyze whether the bar exam as currently given serves the purpose of licensing competent lawyers.

d. Compare Washington bar exam passage rates with other states, and if such data exists, compare rates of bar passage for examinees of color and first generation examinees.

e. Research whether there is data demonstrating competency or lack thereof when lawyers are licensed through means other than a bar exam.

f. If possible, seek input from those who were admitted via 2020 diploma privilege regarding their preparedness for practice, as well as input from attorneys supervising them.

g. Make recommendations to the WSSC regarding the bar exam and licensing new attorneys in Washington state.

This charter shall expire on December 31, 2022.

V. Membership:

The Task Force shall have broad membership, to include:

Chairs:

WA Supreme Court Justice:
Co-Chair (Dean from one of the Washington law schools):

Membership:

- Deans (or their designees) of each of the Washington law schools (including Co-chair)
- Two admissions committee members from any Washington law school
- One member from the WSBA Board of Governors
- One member from the National Conference of Bar Examiners
- WSBA General Counsel or Chief Regulatory Counsel
- One student member from each of the Washington law schools
- One member from the Young Lawyers Section of the WSBA
- Two licensed lawyer members of the Washington State Bar Association, including a member with experience as an employer
- Two public members, who are not licensed legal professionals
- One member from the Minority and Justice Commission
- One member from the Gender and Justice Commission
- Additional ex officio members as determined by the Co-Chairs

VI. Entities to Consult or Coordinate with include:

- Washington State Center for Court Research
- Supreme Court Commissions and Boards
- Washington State Bar Association
- Washington lawyer organizations, including but not limited to: Washington Association of Prosecuting Attorneys, Washington Association of Criminal Defense Lawyers, Washington Association for Justice, Washington Defense Trial Lawyers Association, Washington minority bar associations
- Law School Admissions Council
- National Center for State Courts
- National Conference of Bar Examiners

VII. Staff Support and Budget:

The Supreme Court shall be responsible for adequately supporting the Task Force.

THE SUPREME COURT OF WASHINGTON

ORDER AUTHORIZING REMOTE LICENSING EXAMINATIONS AND AMENDING APR 4 TO REDUCE PASSING SCORE FOR UNIFORM BAR EXAMINATION IN FEBRUARY 2021	)	**ORDER** NO. 25700-B-651

WHEREAS, the Court recognizes the extraordinary barriers applicants for the February 2021 legal licensing examinations are facing due to the continued COVID-19 pandemic; and

WHEREAS, the Court recognizes the challenges of administering an in-person examination to a large group of examinees while complying with health and safety protocols to alleviate risks to the applicants and WSBA staff associated during a pandemic; and

WHEREAS, the Court recognizes that APR 4(a) authorizes the WSBA to conduct examinations and that those examinations have traditionally been administered in-person;

Now, therefore, it is hereby

ORDERED:

1. The WSBA is authorized to conduct the February 2021 administration of legal licensing examinations for admission using remote testing software.
2. The WSBA has the discretion to require an applicant to take an in-person examination in the unusual and rare circumstances that remote testing would be impractical or unreasonable.

3. Any applicant for a February 2021 examination may request to transfer the application to the Summer 2021 administration of that examination without the need to pay additional application fees. The WSBA has the discretion to determine the timeline for applicants to request the transfer of their application to the Summer 2021 administration.
4. The WSBA will provide reasonable and necessary accommodations for applicants taking the examinations in February 2021 in accordance with the Admissions Policies of the Washington State Bar Association, and will provide applicants in Washington who do not have a reliable internet connection or a suitable place for taking an exam with location assistance as needed to take an examination using remote testing software. The WSBA has the discretion to determine the timeline for applicants to request location assistance.
5. APR 4(d)(1) is temporarily modified for the lawyer bar examination to be administered in Washington State in February 2021, to allow for a UBE minimum passing score of 266; the UBE minimum passing score of 266 also applies to applicants transferring a February 2021 UBE score from another jurisdiction.

This order applies to all lawyer, LLLT and LPO applicants who have already timely submitted an application for Washington admission by examination for the February 2021 administration.

DATED at Olympia, Washington this 3rd day of December, 2020.

Stgnac, C. J.
CHIEF JUSTICE

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

February 4, 2021

Terra Nevitt, Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

RE: Requests to Reconsider Decision Not to Grant Diploma Privilege for February 2021 Bar Examination

Dear Ms. Nevitt:

Recently the Supreme Court has received correspondence from various groups and individuals requesting that the Court reconsider its decision in December 2020 to not grant diploma privilege for persons that are registered to take the February 2021 bar examination.

I have been requested to advise you that on February 4, 2021, the Court considered these requests and by a majority vote has decided that the decision to not grant diploma privilege will not be reconsidered.

Please share this information with any interested persons, and it may also be posted on your website if you feel that would be helpful in making sure that the information has been distributed to all interested persons.

Sincerely,

Susan L. Carlson
Supreme Court Clerk

SLC:

cc: Dean Annette Clark
Dean Mario Barnes
Dean Jacob Rooksby

OVERVIEW OF PRELIMINARY RECOMMENDATIONS FOR THE NEXT GENERATION OF THE BAR EXAMINATION

TESTING TASK FORCE
National Conference of Bar Examiners

Best practices for high-stakes licensure examinations include periodic review of exam content and design. Consistent with that standard, the Testing Task Force undertook a three-year, comprehensive, empirical study to ensure that the bar examination continues to assess the minimum competencies required of newly licensed lawyers in an evolving legal profession, and to determine how those competencies should be assessed. This overview sets out the Task Force's *preliminary* recommendations for the next generation of the bar examination; the overview is brief by design and intended to help facilitate discussion with stakeholders at webinars scheduled in early January. After the webinars, the Task Force will finalize the recommendations for submission to NCBE's Board of Trustees. Upon approval by the Board, we will issue a final report detailing the decisions reached and providing a general timeframe and process for implementation. A tremendous amount of work will be required to implement the recommendations and transition to administration of the new examination. At the end of this overview, we list some of the steps involved in implementation, a process that is anticipated to take up to four to five years.

This study has been approached systematically, transparently, and collaboratively—unconstrained by the current bar exam's content and design—with qualitative and quantitative research conducted by external expert consultants in three phases. During Phase 1, we held a series of listening sessions across the country where more than 400 stakeholders from bar admission agencies, the legal academy, and the legal profession provided their views about the current bar exam and ideas for how it could be changed. Phase 2 consisted of a nationwide practice analysis survey completed by nearly 15,000 lawyers that provided a rich set of data on the work performed by newly licensed lawyers and the knowledge and skills they need to perform that work. In Phase 3, we convened two committees composed of bar admission representatives, legal educators, and practitioners who applied their professional experience and judgment to the data produced by Phases 1 and 2 to provide input on what content should be tested on the bar exam and when and how that content should be assessed. The results from Phases 1, 2, and 3 of our study are detailed in individual reports available at https://testingtaskforce.org/research/.

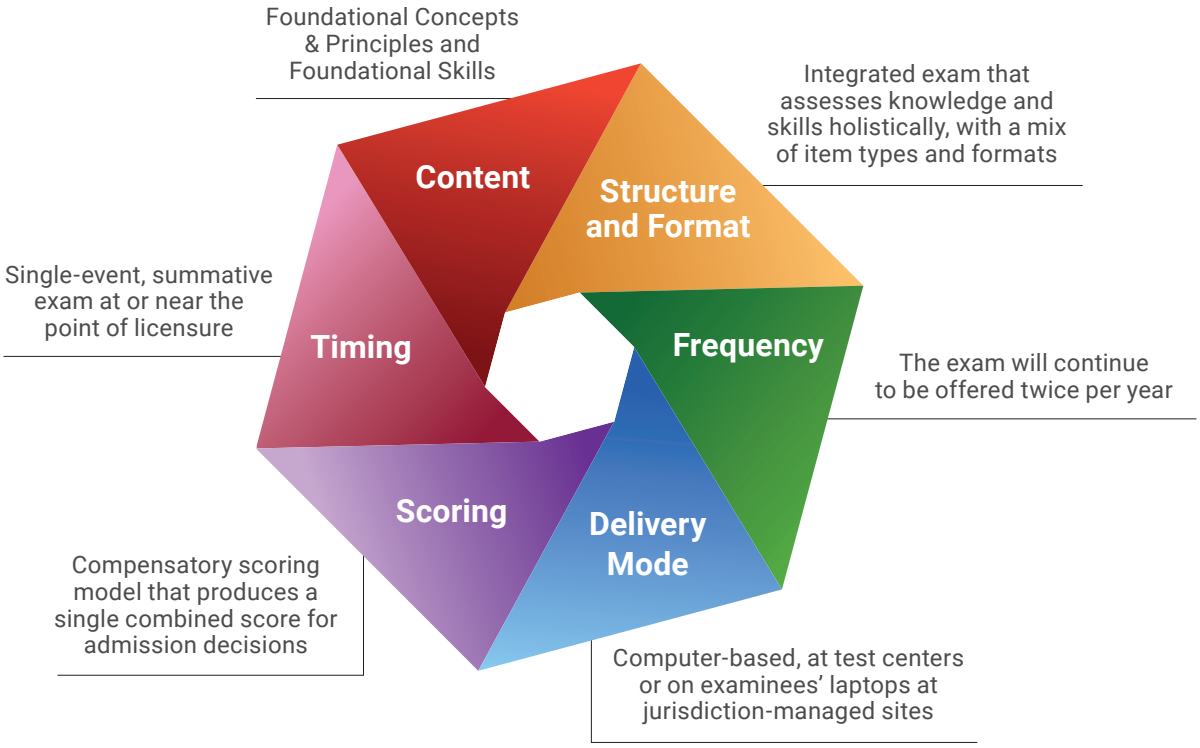
Based on this extensive research, the Task Force has arrived at high-level decisions about the content and the design for the next generation of the bar examination. Those decisions are founded on the principle that the purpose of the bar exam is

> ***to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.***

Our decisions were guided by the prevailing views expressed by stakeholders during Phases 1 and 3: that the bar exam should test fewer subjects and should test less broadly and deeply within the subjects covered, that greater emphasis should be placed on assessment of lawyering skills to better reflect real-world practice and the types of activities newly licensed lawyers perform, that the exam should remain affordable, that fairness and accessibility for all candidates must continue to be ensured, and that the portability of Uniform Bar Exam (UBE) scores should be maintained. In those instances where there weren't prevailing stakeholder views, our decisions were based on what will best ensure that the exam's content and design achieve the purpose described above and meet the standards required of high-stakes licensure exams by the *Standards for Educational and Psychological Testing* (AERA, APA, NCME, 2014). Finally, our decisions reflect the fact that newly licensed lawyers receive a general license to practice law, suggesting that the licensure exam should assess knowledge and skills that are of foundational importance and are common to numerous practice areas.

As explained in more detail in the pages that follow, these preliminary recommendations specify the use of an integrated examination that measures both knowledge and skills through a mix of item formats. The exam will be offered two times per year as a summative event and delivered by computer. Compensatory scoring will be used to produce a single combined score for making admission decisions.

Snapshot of the Next Generation of the Bar Examination



INTEGRATED EXAMINATION

The Task Force recommends the creation of an integrated examination that assesses both knowledge and skills holistically, using both stand-alone questions and item sets, as well as a combination of item formats (e.g., selected-response, short-answer, and extended constructed-response items). An item set is a collection of test questions based on a single scenario or stimulus such that the questions pertaining to that scenario are developed and presented as a unit. Item sets can be assembled so that all items within a set are either of the same format or of different formats.

An integrated exam reflects a fundamental shift from the current Multistate Bar Examination (MBE), Multistate Essay Examination (MEE), and Multistate Performance Test (MPT), which are discrete components covering specific knowledge and skills and using single items of the same format within each component.

An integrated exam permits use of scenarios that are representative of real-world types of legal problems that newly licensed lawyers encounter in practice and provides an authentic assessment of lawyering skills. The use of item sets also provides efficiencies in exam development and administration, in that a single scenario applies to multiple items.

SCORING

A single combined score for making admission decisions, based upon a compensatory scoring model, is consistent with the use of an integrated exam and with the interconnected nature of the competencies being measured. Compensatory scoring reflects the candidate's overall proficiency and allows areas of strength to compensate for areas of weakness and generally is considered fairer to candidates than conjunctive scoring models.

CONTENT TO BE ASSESSED

The following Foundational Concepts & Principles (FC&P) and Foundational Skills are recommended for inclusion on the new bar exam. Note that the FC&P are legal subjects that are common to numerous practice areas, which is consistent with the regulatory framework of a general license.

Foundational Concepts and Principles

- Civil Procedure (including constitutional protections and proceedings before administrative agencies)
- Contract Law (including Art. 2 of the UCC)
- Evidence
- Torts
- Business Associations (including Agency)
- Constitutional Law (excluding principles covered under Civil Procedure and Criminal Law)
- Criminal Law and Constitutional Protections Impacting Criminal Proceedings (excluding coverage of criminal procedure beyond constitutional protections)
- Real Property

Foundational Skills

- Legal Research
- Legal Writing
- Issue Spotting and Analysis
- Investigation and Evaluation
- Client Counseling and Advising
- Negotiation and Dispute Resolution
- Client Relationship and Management

Implementation of the final recommendations will include a process for developing content specifications to ensure that the depth and breadth of coverage of the FC&P is carefully aligned with minimum competence for entry-level practice. Content specifications guide development of test questions and articulate the scope of coverage to provide notice to candidates of what may be tested.

Foundational Skills may be assessed in the context of the FC&P listed above as well as in other legal contexts. Whenever Foundational Skills are assessed in a legal context other than the FC&P, appropriate legal resources (e.g., statutes, cases, rules) will be provided to candidates. As an example, Professional Responsibility or Family Law may serve as the context for the assessment of Foundational Skills with appropriate legal resources being provided.

The list of Foundational Skills includes some skills that might be thought of as performance skills, such as client interviewing and negotiation. To ensure fairness, those skills that can be objectively measured will be assessed using uniform text- or video-based scenarios that require candidates to construct a written response or select the correct response. Of course, it is necessary to also consider accessibility issues in determining appropriate methods for assessing skills.

TIMING, MODE, AND FREQUENCY OF TEST ADMINISTRATION

The Task Force recommends that the bar exam be given as a single event at or near the point of licensure. This timing is most consistent with the purpose of the bar exam in that it places measurement of minimum competence as close in time to the award of a license as possible. Jurisdictions could still permit applicants to test in their final semester of law school, as is currently the case. Single-event testing allows more options for equating and scaling and is also more consistent with the use of an integrated exam.

A single-event approach will avoid concerns expressed by some stakeholders about a multi-event approach, where components of the exam would be administered at separate times. Those potential concerns included interfering with internship opportunities, impacting law school curricula, adding the stress of taking a high-stakes exam during law school, creating multiple "hurdles" for admission, and potentially increasing costs for candidates to prepare for and travel to multiple administrations of the exam. One of the primary reasons some stakeholders favored multi-event testing was to permit testing of legal doctrine closer in time to

when students learned the content in law school. The Task Force concluded that the use of an integrated exam with an increased emphasis on assessing skills and more limited depth and breadth of coverage of doctrine addresses the underlying reasons some stakeholders favored multi-event testing.

The next generation of the bar exam will be a computer-based test, administered either on candidates' laptops in jurisdiction-managed facilities and/or at computer testing centers managed by a suitable vendor. If possible, the length of the exam will be reduced, but this will be done only if the necessary validity and reliability of scores can be maintained. The exam will continue to be offered two times each year.

NEXT STEPS

We anticipate that the implementation process to develop and deliver the new exam will take up to four to five years, which will allow time for notice to candidates of what to expect and for law schools to help students prepare. We will continue to collaborate with stakeholders as we work to build the new exam from this road map. Some of the major steps of implementation will include

- developing content specifications identifying scope of coverage;
- drafting new types of questions for integrated testing of knowledge and skills;
- ensuring accessibility for candidates with disabilities;
- field-testing new item formats and new exam content;
- conducting analyses and review to ensure fairness for diverse populations of candidates;
- evaluating options for computer delivery of the exam;
- establishing scoring processes and psychometric methods for equating/scaling scores;
- developing test administration policies and procedures;
- assisting jurisdictions to prepare and supporting them in activities such as setting passing score requirements and amending rules to align with changes to the exam; and
- providing study materials and sample test questions to help candidates prepare.

We look forward to presenting these preliminary recommendations to bar admission authorities and the legal academy and addressing questions and comments from stakeholders. Readers may submit any questions or comments about the preliminary recommendations via the Contact Us form. We will compile the questions and provide answers in an FAQ document later in January.

National Conference of Bar Examiners

Building a competent, ethical, and diverse legal profession

The National Conference of Bar Examiners, founded in 1931, is a not-for-profit corporation that develops licensing tests for bar admission and provides character and fitness investigation services. NCBE also provides testing, research, and educational services to jurisdictions; provides services to bar applicants on behalf of jurisdictions; and acts as a national clearinghouse for information about the bar examination and bar admissions.

Our mission

NCBE promotes fairness, integrity, and best practices in admission to the legal profession for the benefit and protection of the public. We serve admission authorities, courts, the legal education community, and candidates by providing high-quality

- assessment products, services, and research
- character investigations
- informational and educational resources and programs

Our vision

A competent, ethical, and diverse legal profession.

TESTING TASK FORCE MEMBERS

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TESTING TASK FORCE

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WASHINGTON STATE
BAR ASSOCIATION

WSBA Feedback Report
April 9, 2021

The following feedback was sent to **BoardFeedback@wsba.org** and **BarLeaders@wsba.org** focuses on the topic of **Pending Resolution before the WSBA Board of Governors to Support the Administration of a Bar Exam**, as of **Wednesday, April 8, 2021**. The **sixty-six (66)** messages are presented in the order in which they were received. Contact information may be redacted if it differs from what is publicly available on the WSBA Legal Directory.

1	[Dated: March 25, 2021] To: Board Feedback WSBA Board members, I wish to provide feedback regarding bar exam alternatives that the board will be considering in April. I am attaching *[Attachment 1]* a letter that I sent in October and was published in the Bar News. My feelings have not changed. I can also indicate to you that I have discussed this matter with a number of attorneys, and not one has agreed with what the Supreme Court did. To be quite frank, I consider the position of the Seattle University School of Law, of which I am an alumni, to be somewhat remarkable to say the least, and arrogant to say the most, that it, and other law schools alone, are solely qualified to determine who should practice law. While I value my experience at the then, University of Puget Sound Law School, and while a number of my professors were well qualified to teach the theoretical underpinnings of the law, most had very little experience actually practicing law. I believe that continues to be the case. The people who have prepared bar questions and evaluate the answers are well regarded practitioners, with years of experience. That experience has, for decades, acted as a check and balance on law schools. To now consider to disregard that is to disregard what thousands of lawyers and judges over the years have considered an integral part of the qualifying process. Even more remarkable is that consideration is being given to dispensing with this process when there has not been presented, to my knowledge, not one thread of actual evidence to support the position of Seattle University and the Supreme Court. In fact, there is significant evidence to the contrary. While I am unaware of the numbers(which it would be instructive if the board would publish them) of people who had failed the bar exam numerous times who are now licensed to practice despite the fact the evidence indicates they are not qualified to do so.

	Most lawyers are aware that despite the rigorous process that has been in place for years, there are people who successfully navigate that process that should not be practicing law. Those numbers are not great, but they do exist and every practicing lawyer knows it. You, and the Supreme Court, are now being asked to consider adding to those numbers. Thank you for your consideration. Steve Whitehouse ***Stephen Whitehouse*** ***Whitehouse & Nichols, LLP*** ***P.O. Box 1273*** ***601 W. Railroad Ave.*** ***Shelton, Wa. 98584*** ***360-426-5885*** **swhite8893@aol.com**
2	[Dated: March 25, 2021] To: Board Feedback The current public health and economic crises provide an opportunity to implement critically needed reforms of our legal system. The attached *[Attachment 2]* March 16, 2021 Wall Street Journal book review eloquently states the case for such fundamental reform. Clifford Winston, a senior fellow at the Brookings Institution, and a coauthor of **TROUBLE AT THE BAR: AN ECONOMICS PERSPECTIVE ON THE LEGAL PROFESSION AND THE CASE FOR FUNDAMENTAL REFORM**, argues for elimination of self-serving regulation of lawyers by state bar associations and substitution of strengthened anti-trust enforcement: Eliminating both the ABA's monopoly control of legal education and states' licensing requirement would allow alternative legal education programs to flourish, including vocational and online courses that could be completed in less than a year and college programs that offer a bachelor's degree in law. Graduates of those programs could expand the availability of effective, low-cost civil legal services. Three-year law schools would be forced by the new competition to reduce tuition and the time to graduate. More J.D.s would be free to pursue a career in public-interest law if they were less encumbered by law school debt. **My new Brookings book with David Burk and Jia Yan takes an economics look at the legal profession and argues that educational requirements and state bar exams do little in practice to assure a minimum quality of legal services. Market forces have created institutions that accurately inform consumers about the quality, reputation and performance of a plethora of services.** *Emphasis added.* I urge the Board to join in the conversation in the Legislature for civil and criminal justice reform.

	Hank Henry E. Lippek, WSBA #2793 [redacted] *Email:* lippek@aol.com
3	[dated March 30, 2021] To: Bar Leaders I support the proposed resolution. I believe that is important that attorney who wish to practice in Washington State take the time to learn Washington laws, not to mention having everyone study legal ethics! Very truly yours, Ann M. Brice, partner LAW OFFICE OF BRICE & TIMM, LLP 1223 Broadway Everett, WA 98201 425.252.0797 425.252.0959 fax
4	[dated: March 30, 2021] To: Bar Leaders; carla@higgonsonbeyer.com I am opposed to eliminating the Bar Exam. I am a proponent of the essay bar exam format. Having been admitted pursuant to APR 6 35 years ago, I was stunned when the Supreme Court allowed for the diploma privilege. Taking the Bar Exam is essential in my opinion. Regards, Kathryn Jenkins Attorney at Law 927 N. Northlake Way, Suite 140 Seattle, Washington 98103-8871 O: 206.679.4935 F: 800.655.8586 e-mail: kjenkins@kjenkinslaw.com website: kjenkinslaw.com mailing address: P. O. Box 99445 Seattle, WA 98139
5	[dated March 30, 2021]

To: Bar Leaders
CC: carla@higginsbeyer.com

Greetings,

This resolution was brought to my attention today when I received a March 29, 2021 letter from Carla Higginson, District 2 governor. Despite the letter's indication that the majority of comments received by Governor Higginson oppose the bar exam's reimplementation, the governor indicates continued support for this resolution. This seems to fly in the face of a commitment to represent constituents.

Regardless, the basis for the resolution is fundamentally flawed and does not stand up to scrutiny when challenged with basic empirical evidence. The bar exam does not serve as a safeguard to the public we serve that attorneys will be competent and ethical in their representation. If it did, the monthly Bar News would not have a section toward the back with recent disciplinary proceedings. I'd be willing to bet that nearly every person named in that section, nearly every person against whom the WSBA adjudicates disciplinary proceedings, and nearly every person who lacks competence or practices law in an unethical manner, at some point, passed the bar exam. There would be no need for ongoing disciplinary proceedings and WSBA would not need to keep disciplinary counsel on staff because, if a person passed the bar exam, they absolutely must be a competent and ethical attorney. Of course, this is an absurd scenario and we all know it is clearly not true. However, it is a reasonable extension of the logic put forth in this resolution.

I don't know what information the WBLTF reviewed and I don't know whether this resolution was proposed by that task force. I do know that Wisconsin and New Hampshire are the only states to have permanent diploma privilege dating to before the COVID-19 pandemic and that there is no evidence that individuals who take advantage of that program are any more or less likely to undergo disciplinary proceedings during the early stage (first decade) of their legal careers than individuals who pass the bar exam over the same timeframe. A recent study concluded in part, "empirical literature studying occupational licensing finds little or no effect on the quality of services in most professions." The study found that the disciplinary rates in the first decade of practice were the same between attorneys admitted through diploma privilege versus passage of the bar exam. Later into careers, the rates of disciplinary sanctions among attorneys who received diploma privilege was approximately 1% higher than those who had taken a bar exam. It's also noted that some of these discrepancies could be attributed to other changes in rules for applicants. The study can be found here.

The resolution cites as one of its bases for maintaining the bar exam that it "has long been a requirement for membership in the WSBA," as though that is a legitimate basis for keeping any policy around. The concept of the bar exam has roots in white supremacy and elitism. The rationale put forward in this resolution fails to address this in any way other than to indicate an "expressed concern" regarding examinees of color and first generation examinees. The bar exam does nothing but cause undue stress, cost an exorbitant amount of money to both study for (through programs designed to simply re-teach curriculum and teach methods of how to pass the exam itself) and sign up for the exam, and diminish the purpose of law school in general.

	Another aspect that is apparently disregarded in the topic of diploma privilege versus bar examination is that applicants must also undergo a significant background check that includes inquiries into criminal records, financial records, and other aspects of an individual's life prior to applying for membership to the Bar. So often, it seems that the rhetoric is simply a fear tactic to get people to believe that absolutely anyone who manages to fumble their way through law school will automatically become a license attorney. This is disingenuous at best. WSBA has a number of rubrics upon which it can evaluate an applicant's perceived competence and ethical proclivities already being utilized. The bar exam should not be one of them because it simply does not achieve the mission of WSBA or the bases for this proposed resolution. I ask that the Board of Governors actually take the time to listen to and represent their constituents and oppose this resolution. Best, -- Colin J. McMahon WSBA#49152 [redacted]
6	[dated: March 30, 2021] FW: Bar Leaders **From:** Judge, Millie **Sent:** Tuesday, March 30, 2021 1:53 PM **To:** carla@higginsonbeyer.com **Subject:** RE: Bar Exam Requirements Dear Governor Higginson, Thank you for soliciting our comments on the resolution proposed by WSBA Governor Knight to reinstate a bar exam as a requirement for licensure to practice law in Washington. I fully support the resolution. I also support a return to the pre-2013 former bar exam method, that focused on Washington law through the use of essay questions and an ethics focus. The process was rigorous, focused on Washington law and resulted in the licensure of attorneys who were fully capable of representing clients to the standards we expect. The multi-state multiple choice approach, while rigorous, does not lend itself to allowing bar candidates to fully demonstrate their skill and knowledge of Washington law. I am strongly opposed to the granting of diploma privileges without a requirement to pass the bar exam. Thank you again for requesting feedback on the resolution and proposals. Best regards,

	The Honorable Millie M. Judge Judge of the Superior Court Snohomish County Courthouse 3000 Rockefeller Avenue, M/S 502 Everett, Washington 98201 Law Clerk: Arianna Gardner [redacted]
7	[dated: March 30, 2021] To: Bar Leaders CC: carla@higginsonbeyer.com Good afternoon, I support the WSBA resolution in support of a bar exam. I am a member of the Washington Bar (#35603) and also a member (inactive) of the California Bar (#101310). When I took the Washington bar exam it was essay only. When I took the California bar exam (1981) it was a combination of essay and the Multistate Bar Exam. To pass in California, applicants were required, at that time, to pass both the Multistate and essay portions; although if an applicant passed one portion and failed the other, the applicant was only required to retake the portion failed. I favor the combination essay and Multistate exam approach. Deborah A. Severson WSBA No. 35603
8	[dated: March 30, 2021] To: Bar Leaders CC: carla@higginsonbeyer.com I am writing to express my support for the current Resolution to require passing a bar exam before admission to the WSBA; discourage diploma privilege as an alternative to a bar exam; encourage a bar exam that ensures the competent and ethical practice of law in Washington and ensures non-discriminatory effect on any applicant. I also support returning to a bar exam with an emphasis on Washington law. *John J. Juhl* Deputy Prosecuting Attorney Juvenile Unit Snohomish County Prosecuting Attorney 3000 Rockefeller Avenue, M/S 504 Everett, WA 98201 [redacted] jjuhl@co.snohomish.wa.us

9	[dated: March 31, 2021] To: Bar Leaders CC: carla@higginsonbeyer.com: TMK Partners; Tina Waldo March 31, 2021 TO: Washington Bar Licensure Task Force Attention: Justice Raquel Montoya-Lewis and Jacob Rooksby, Dean of Gonzaga School of Law, co-chairs. I strongly support maintaining the requirement of passing the bar exam as a condition of becoming a practicing lawyer in the State of Washington. My position is not based upon the old saw of, "I had to do it in so everyone else coming after me should have to do it as well;" not at all. My position is based on my involvement in the rule 6 program. I am currently the tutor for a rule 6 intern, Ms. Tina Waldo. My law partners and I have spent the past 2+ years teaching our intern, one subject at a time. Each class culminates in an examination that is designed to test mastery of the subject in the same way as a law school final exam or the bar exam. Much of our study is to analyze cases and statutes to enable our intern to "spot the issues." Spotting issues is precisely what I have done as a lawyer for the past 39 years. It is the basic skill that I bring to every legal task I confront. Every time I take on a new legal project, I am called upon to spot the relevant issues so that my client and I can figure out the solution to the problem/issue at hand. The bar exam tests whether or not an applicant has the ability to spot the issues. Without the ability to spot the issues, the lawyer is unable to properly counsel her client. The public needs the protection that the bar exam will provide by limiting a bar license to those who can properly spot the issues. Respectfully, *Deane W. Minor* He/him/his Tuohy Minor Kruse PLLC 2821 Wetmore Avenue Everett, Washington 98201 Phone: (425) 259-9194 Fax: (425) 259-6240 Website: www.tuohyminorkruse.com
10	[dated: April 1, 2021] To: Bar Leaders CC: carla@higginsonbeyer.com To whom it may concern;

	I am writing to express my support for continuing the long-standing requirement of passing the bar exam in order to practice law in the State of Washington. Passing the bar exam plays an important role in establishing a baseline of legal competence. First, and most obviously, it tests a student's grasp of a wide range of basic legal principles and theories. Having this baseline of understanding is important because it will serve as the foundation for any practitioner's legal knowledge. Second, and less obviously, the bar exam tests an exam takers ability to think quickly under pressure, which is almost a daily requirement in the practice of law. In contrast, allowing students to practice based on the "diploma privilege" does not provide the same rigorous testing, which may well lead to more attorneys being admitted to the practice of law who would not other wise be qualified. This would diminish the public's trust in the legal profession and undermine very institutions of order and justice our society needs, Kristofer D. Leavitt Managing Partner O'BRIAN & ASSOCIATES, P.S. Redmond Town Center 7525 - 166th Ave NE, Suite D-230 Redmond, WA 98052 Email: kristofer@smobrian.com Website: www.smobrian.com T: (425) 869-8067 F: (425) 869-7444
11	[dated: April 1, 2021] To: Bar Leaders CC: carla@higginsonbeyer.com Good morning, I am strongly in favor of continuing to administer a bar exam to potential members of the bar. Passage should be required before a person becomes licensed to practice. I took the bar exam in 2003, and I believe the exam helps ensure our bar members are sufficiently able to analyze legal issues and are able to withstand the stress associated with the practice of law. The bar exam is stressful and if an applicant cannot perform under that sort of stress, I do not believe they will do well in practice. There is no shortage of licensed attorneys in this or any other state. Simply granting a license to everyone who graduated law school would result in a further over-saturation of the market – and not necessarily with truly qualified lawyers. The bar exam helps preserve the integrity of our profession by ensuring the lawyer has demonstrated a minimum level of competency before being granted a license. I am cognizant of the concerns regarding passage rates for 1st generation examinees and people of color. I was the first person in my family to go to law school. I was able to take out a loan as a part of my student aid package so that I could attend a bar prep course before taking the exam. I think that course was incredibly helpful. Perhaps a free or heavily discounted prep course could be offered to minority candidates. Granted, it would be important to ensure everyone has access

	to prep courses of the same quality. With that in mind, perhaps vouchers for courses could be offered to candidates of color or who are first generation examinees. I am also curious if there has been a demonstrable change in the passage rates of applicants, either across the board or only for certain demographics, from the "old" bar exam to the UBE. I imagine the Court's Task Force will be looking into that. For the applicants that did receive diploma privilege last year, how did the search for employment go? I would be reluctant to hire someone who had not passed the bar exam. Given that a majority of currently practicing lawyers in our state appear to have been against diploma privilege, I wonder if granting diploma privilege to those 2020 applicants did them more harm than good. Thank you for your time and consideration. Sincerely, *Christi C. Goeller* Attorney, WSBA #33625 GOLDSTEIN LAW OFFICE PLLC 1800 Cooper Point Road SW No. 8, Olympia, WA 98502 Telephone 360.352.1970 | [redacted] | www.jaglaw.net
12	[dated: April 1, 2021] To: Bar Leaders I write in support of keeping the bar exam as a requirement for law students. I do not intend this support to apply to lawyers from other jurisdictions seeking admission. High school , college , law school, and bar exam are the generally prevailing expectations that lawyers will have passed for years. None make someone competent to practice law in any meaningful way after completing, but all provide their unique strengths to the attorney's future ability to do so. Each also provide another measure of minimal competence in the areas involved. These expectations are not unique to lawyers. I assume others will comment on doctors, teachers, and other traditional professionals. Probably ad nauseum. Law School, if done correctly at least, provides the attorney with an amazing ability to learn laws. It teaches few relevant laws that will aid the lawyer for long as new laws, cases, regulations are implemented, and, especially, as the lawyer's focus narrows. The bar exam shovels a broad amount of black letter law back into the attorney's brain and gives that attorney

	something that law school classes often do not: practice with simple solutions to legal problems in a quick and efficient manner. Too often young attorneys do believe complexity exists where it does not. That small taste of day-to-day practice provides an ongoing benefit, at least in my view. The bar exam is not particularly difficult. Most law students pass it, and almost all eventually will. Thank you, Jonathan Baner Baner and Baner Law Firm 724 S. Yakima Ave. Tacoma, WA 98405 253.212.0353 www.BanerBaner.com
13	[dated: April 1, 2021] **From:** Long, David R <david.long@pnnl.gov> **Sent:** Thursday, April 1, 2021 11:32 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Bar Exam I support requiring the Bar Exam and any implementation changes should maintain safeguards to ensure integrity in the administration of that exam. The exam serves to establish a minimum level of competency and any lessening of standards will be a disservice to the public, the courts and the profession. David R. Long WSBA# 14062 PNNL IP Legal Affairs 902 Battelle Blvd Richland, WA 99354 1 (509) 372-6308
14	[dated: April 1, 2021] **From:** K MERWIN <burwinzer@msn.com> **Sent:** Thursday, April 1, 2021 11:57 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Diploma Privelege Hi Leaders, There was a convincing article in the Bar News about how the bar exam was not a measure of the kind of talents and qualities that a good lawyer needs to have.

	I have forgotten most of what it said, but at the time I was persuaded that it was not necessary. And, to quote Eric Hoffer, "If it is not necessary to do something, it becomes necessary not to do it" If I am not misremembering this, the bar exam is more often a hurdle to the BiPOC community (A term I just learned at Tuesday's CLE); that reason alone is enough to make me want to get rid of it. Don't get me wrong, I like a good bar exam as well as the next person, but I have to wonder if the reason that some want to keep it is the whole (ridiculous) rite of passage mentality. Maybe it is time for a new rite. Do what you will. But please do what Chief Justice Gonzales urged on Tuesday; have a good long look at your biases. Best, Steve Burtchaell 17995
15	[dated: April 1, 2021] **From:** Jerry Moberg <jmoberg@mrklawgroup.com> **Sent:** Thursday, April 1, 2021 11:30 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** Dan Clark <danclarkbog@yahoo.com> **Subject:** Bar Exam I am in favor of having all candidates sit for a bar examination. I am not convinced that the multi-state bar exam is the answer. When I took the bar exam in 1973 a version of a multiple choice multistate exam was employed for the first time. It was not very successful and was not used again for some time. The traditional essay seems like a better test of a candidates knowledge. A combination of both essay and multiple choice makes sense but I would weight the results in favor of the essay portion. Thanks for considering my comments. Jerry Moberg Principal Attorney
16	[dated: April 1, 2021] **From:** Kimberley Lane <kimberley@lanelaw.attorney> **Sent:** Thursday, April 1, 2021 11:06 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** Carla J. Higginson <carla@higginsonbeyer.com> **Subject:** RE: Request for comment to Bd. of Governors re bar exam resolution See attached. *[Attachment 3]*

	Kimberley Lane
17	[dated: April 1, 2021] From: West Campbell <whc@tkglawfirm.com> Sent: Thursday, April 1, 2021 12:28 PM To: Bar Leaders <BarLeaders@wsba.org> Subject: WSBA Bar Exam Resolution Good afternoon, I have reviewed the proposed resolution of the WSBA/BOG and support it. As a member of the WSBA for over 40 years and former member of the BOG, I believe the exam as currently administered serves the intended purpose of setting a benchmark for competency and ethical behavior for new attorneys in our state. While certainly not a guarantee of either, it is a necessary requirement to try and protect the public. I opposed and continue to oppose the concept of " diploma privilege " and hope that is merely a one time response to a National Health Care Emergency. Very truly yours West H. Campbell WSBA # 9049
18	[dated: April 1, 2021] To: Bar Leaders As a 50 plus year member of the Washington State Bar Association, I support the resolution of the Bar Board of Governors to require all persons affected to pass the examination administered by the Bar before practicing law in this State. Nels Michael Hansen WSBA 1509 (Emeritus)
19	[dated: April 1, 2021] **From:** Matt Purcell <mp@purcellfamilylaw.com> **Sent:** Thursday, April 1, 2021 12:21 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** DanClarkBog@yahoo.com **Subject:** Bar Exam To whom it may concern: I believe that the Bar exam should continue in its current iteration and see no reason why it can't be in person and shouldn't continue in person. **It is a minimum competency test** that provides people a license of paper to charge people fees for their services. It comes with the understanding that you have to do something substantial in order to pass (study, dedication to a craft, respect for the exam and it's licensing power). It comes as part of how we protect the

	public to ensure that Lawyers are at least minimally competent at their craft, that not just everyone can and should do this practice. It should not be taken lightly and should absolutely come with "skin in the game" so to speak. Further, I believe that every advanced degree and profession (doctor, architect, accountant, actuary, etc.) all have minimal competency testing requirements; it serves to protect the profession, the public and the honor/duty we have as practitioners of law. The goal is not higher passage rates. The goal is not everyone can pass. This is not participation in T-Ball. The goal is competent lawyers who are sworn to uphold the constitution. The goal is not to ensure law schools guarantee practicing at the end of their ridiculous costs (if their complaint is people don't go to law school because of later bar passage rates perhaps they should look in the mirror at the ridiculous amount of law school debt people incur from them as a reason for not going to law school). If they complain their students don't pass the bar perhaps they should do a better job of training their students, especially since they are the ones making millions of the tuition costs… I am sure they can afford to add a single bar preparation class to assist. And why does it allegedly even need to be fixed? What actual documented evidence does the WSBA have that supports that it needs to be changed? As a lawyer, if I am required to present and support my cases with evidence, why should the WSBA be any different? For those of us who passed this exam, it's a badge of honor; it's respect for the profession, for what we do, for our clients, for the Court and for our fellow colleagues. Perhaps it's not the test that needs changing but the archaic way schools teach. Perhaps it's not the test that needs to change but the let's make it easier for everyone because we don't accept failure anymore (pretty sure lawsuits in most cases still have a winner and a loser)… Please don't dumb this down or make it easier. It's not easy. It's not meant to be and for that, we should all be proud. **See information regarding Covid-19 and our office and the court, below.* Truly, **MATHEW M. PURCELL** Attorney PURCELL LAW A FAMILY LAW OFFICE 7301 W. Deschutes Ave., Ste. E Kennewick, WA 99336 Phone: (509) 783-7885 Fax: (509) 783-7886
20	[dated: April 1, 2021] From: Eric Eberhard <eberhard.eric@outlook.com>

	Sent: Thursday, April 1, 2021 7:37 PM To: Bar Leaders <BarLeaders@wsba.org> Subject: Bar Exam Resolution I support the draft resolution. Eric Eberhard Bar No. 24570
21	[dated: April 1, 2021] To: Bar Leaders YES!!! -- *Bill Viall* Attorney / Escrow 12823 W San Pablo Dr. Sun City West, AZ 85375 (623) 328-8469 Licensed in AZ and WA
22	[dated: April 1, 2021] To: Bar Leaders Hi, I would like to make my opposition to this resolution known. I took the bar exam despite being eligible for diploma privilege. I was very fortunate in that I had been able to save up money for Bar Study during my internships and part-time work. I am also fortunate in that I have no children or family that I care for. I am also not facing medical issues or disabilities that would interfere with my ability to study for the bar exam. Where I was fortunate, so many of the most capable and intelligent law students I've met are not. The bar exam prevents these individuals from entering the practice of law without great personal sacrifice. The bar exam in no way prepared me for my practice as a public defender and I do not believe my score on the bar reflects my capabilities as a lawyer. Rather, my experience with the bar was that it is an arbitrary barrier to the most capable and empathetic law students being admitted to practice. The profession does not need more lawyers who can study to pass a test. We need more lawyers who strive for justice and equity and who are grounded in experience and empathy. Continuing to require new lawyers to pass the bar is not ensuring the quality of lawyers, it is ensuring that only the well-off can become lawyers. I cannot support any resolution that supports the continued requirement that new lawyers pass a bar exam to be admitted to practice. Best,

	-- Lucy Wilhelm WSBA 57130 (530) 385-8725 HAWKINS & CRAWFORD, PLLC 720 SOUTH 333RD STREET #101 FEDERAL WAY, WA 98003
23	[dated: April 1, 2021] What does the bar exam ensure for the public? Does it ensure that the lawyer they are talking to knows anything about their problem? No; the law is vast, and even the best subject matter experts cannot help with loads of issues in other subjects. And the bar exam does not test every possible subject, nor can it. Does it ensure general competence, like a seal of quality? No; malpractice and weak advocacy happens regularly, and it is by its nature underreported, given that clients need sufficient understanding to file a bar complaint. Does it ensure the lawyer currently knows things about the subject areas on the bar exam? No; CLEs serve the maintenance function past the bar exam and certification. Is it normal to compare lawyers and say, "This one is bar-certified, so I know they won't lie or cheat or do a bad job?" If that used to be a consideration, it is not anymore. There are not separate jokes and stereotypes in broader culture for licensed and unlicensed lawyers. I'm not under the impression that the typical person thinks it is easy to find a lawyer who will be good to them. If the bar exam is not a guarantor of quality or a way to distinguish good lawyers from bad lawyers, what does passing it mean? It means that, once upon a time, someone paid enough money to pass a character and fitness test and made it through an exam. If they had a life, they put it sufficiently on hold to make it through an exam. If they had a sobriety issue, they cleaned up for 3 months and made it through an exam. That's it. That's all it means now, and for the nearly 12 years I have been bar certified (in Alabama and here), that's all it has meant. It says nothing about the quality of the lawyer I am thinking of paying my saved-up cash (or getting a loan to pay) to fight my battles **today**. Bar certification and CLEs - continuing obligations to the profession - say something about what the lawyer is today. What the lawyer was or knew or wrote down in one summer 5, 10, or 40 years ago means nothing to a case I have right now. So as far as I can see, all a bar exam protects is a fictitiously-generated reputation of a bar association. That's not enough for me. Trust the education of accredited schools and reading

	the law with already-certified lawyers. Trust the character and fitness process however you modify it. Trust your CLE requirements. The bar exam adds nothing to those but cost and stress and a test score. Thank you, Brandon Isleib District 9 #50898
24	[dated: April 1, 2021] To: Isleib, Brandon CC: Bar Leaders I strongly encourage the Board of Governors to adopt the proposed resolution *in favor* of continuing to require passage of a bar exam to be admitted to practice law in the State of Washington. Ryan K. Brown Chief Deputy Pros. Attorney, Civil Benton Co. Pros. Attorney's Office Phone: (509) 735-3591
25	[dated: April 2, 2021] From: Jeffrey Mirsepasy <jeffmirs@gmail.com> Sent: Friday, April 2, 2021 9:55 AM To: Bar Leaders <BarLeaders@wsba.org>; carla@higginsonbeyer.com Subject: Bar examination I write to voice my concern about eliminating a bar examination as a prerequisite to practicing law in the State of Washington. I think the bar examination serves to screen those who may not be otherwise be prepared for the practical requirements of practicing law for the public. The discipline required to go through the 2.5 day exam prepares an attorney for actual practice (time management, intense learning, general knowledge of areas not in one's focus of interest, etc.). Allowing one to transition from a theoretical understanding of the law straight into practice, would be in my opinion, dangerous for the public as well as the practitioner. The law is not a vocation or trade. Its a profession. Lawyers, in one phone call expressing an opinion, can do more harm or good than any other person I know of for the person on the other end of the call. Jeffrey Mirsepasy WSBA 17247 Mirslaw.com

26	[dated: April 2, 2021] **From:** Jim Cathcart <jacathcart@comcast.net> **Sent:** Friday, April 2, 2021 11:35 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** carla@higginsonbeyer.com **Subject:** Comments on administrat3ion of the Bar Exam In response to Carla Higginson's invitation I do wish to make a brief comment on the subject of the bar exam. After the furor last summer over the Court's granting of diploma privilege to the 2020 graduates I did some research into the subject. What I did NOT find, was any information supporting the theory that having a bar exam as a barrier to practice actually "protects the public". In Wisconsin, which grants diploma privilege to graduates of law school in the state, there is no evidence I could find referenced showing that there had ever been an attempt to discover if there was a difference in disciplinary rates between lawyers who were passed through on privilege or whom had to take the exam being from out of state. An obvious conclusion is that if there has never been an attempt to answer this question there must not be a perception that there is a problem. Law practice is open book, open source, open internet, etc. There is no reason to memorize the Rule in Shelley's Case. Even general practice attorneys tend to focus on certain narrower aspects of the law and become quite conversant without studying for the bar. Attorneys who join a firm , no matter how small, have someone to help them acclimate who has a strong financial incentive to make sure the new associate knows what they are doing and doesn't screw up. I can safely say that nothing I learned in the 2 month review course prior to taking the bar exam was vital to me in my nearly 50 years of practice. We administer the bar exam because "(almost) everyone else does it" and "because we've always done it." When we were kids our parents thought those were ridiculous reasons for doing things when we proposed some adventure with our friends. "If everyone else jumped off the bridge into the river would that make it right for you?" I believe the bar exam was intended initially as an economic protection to the established bar as a barrier to entry unrelated to ability and also, unfortunately, a barrier to entry based on discriminatory categories. The idea that the administration of the bar protects the public is unproven and perhaps unprovable, except that we do now have a cohort of diploma-privileged attorneys from 2020 as a control group. The phrase is intoned as a mantra, not as the result of any rigorous, scientifically based research. Please cast my vote for the elimination of the bar exam as a prerequisite to the practice of law in Washington. James A. Cathcart WSBA #5419

	[redacted] 253 576-8525
27	[dated: April 2, 2021] **From:** Sasha S. Philip <sasha@philipmediation.com> **Sent:** Friday, April 2, 2021 11:58 AM **To:** 'Carla J. Higginson' <carla@higginsonbeyer.com>; 'Solo and Small Practice Section' <solo-and-small-practice-section@list.wsba.org> **Cc:** Bar Leaders <BarLeaders@wsba.org>; carla@higginsonbeyer.com **Subject:** RE: [solo-and-small-practice-section] Request for comment to Bd. of Governors re bar exam resolution Carla, Responding solely in my individual capacity, and not as a member of the WSBA ADR Executive Committee, I am opposed to the resolution as it is currently presented. It appears that the task force was established precisely to examine the bar exam and alternatives thereto, particularly in light of concerns of serious structural and systemic inequalities in its administration. The conversations I have witnessed over the past year indicate that far more discussion is required; indeed, my perception of this resolution is that it attempts to shortcut the intent of the task-force and ask it to rubber-stamp the status quo. To put it more bluntly, this resolution – intentionally or not – is likely to send the message that concerns of racism and other systemic inequality are not sufficiently serious to warrant more than a mere change to the "format and content" of a fundamentally flawed admission process. If we as a profession are truly invested in grappling with the concerns that led to the formation of the task force (and in being the thought leaders that we hold ourselves out to be), it seems to me that this is the time to actively invite discussion and dialogue – and to deliberately include groups who may not feel comfortable making their voices heard – rather than passing a resolution that attempts to bring this matter to premature closure. Best, Sasha
28	[dated: April 2, 2021] **From:** Sara Smith <srbesmith1@aol.com> **Sent:** Friday, April 2, 2021 1:39 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** bryn.peterson@brynpetersonlaw.com **Subject:** Bar Exam Going Forward To Whom It May Concern:

	I do not believe there she be an alternative to the Bar Exam. I was incredibly disappointed at the decision to not have the 2020 applicants take the Bar and do not think this decision should be repeated. The Bar exam should not be changed and there should not be alternatives to it. All applicants to the Washington State Bar should be required to take it. (Additionally, I think those who opted not to take the exam in 2020 should have an asterisk next to their name indicating this is how they were admitted to the Bar.) Sincerely, Sara Smith WSBA #26374
29	[dated: April 2, 2021] **From:** Bryn Peterson <bryn.peterson@brynpetersonlaw.com> **Sent:** Monday, April 5, 2021 11:46 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Fwd: Bar exam Continue the Bar exam. Don't lower the Bar. **John McCarthy**
30	[dated: April 2, 2021] **From:** Hal Prukop <hkprukop@comcast.net> **Sent:** Friday, April 2, 2021 6:31 PM **To:** 'Sasha S. Philip' <sasha@philipmediation.com>; 'Solo and Small Practice Section' <solo-and-small-practice-section@list.wsba.org> **Cc:** Bar Leaders <BarLeaders@wsba.org>; carla@higginsonbeyer.com **Subject:** RE: [solo-and-small-practice-section] Request for comment to Bd. of Governors re bar exam resolution Carla, I am with you and the 99% for a non-discriminatory bar exam, and frankly, they should go back to the pre-2013 method as you mentioned of an all written exam of 18 substantive essay questions of approximately 45 minutes average each, and the 6 ethics questions to be answered in about 2.5 hours. The multi-state bar exam format with little to no emphasis on Washington state law, and basically just focused on general principles of law. I learned a heckuva lot about Washington law in 1997 when I studied for the July '97 bar! (Some clear differences from Cali in some respects!) And for the record, I have Polish, Czech, German and northern European blood in me, my wife is 100% Hispanic, and my extended family probably represents almost every ethnicity known to men and women. Chinese, Japanese, Korean, Filipino, African-American, you name it, just a typical mutt-blooded American family. And in the U.S. Army, I served with every imaginable ethnicity this country produces, too in the 1980's. This state needs to get back to basics and

	getting a solid nondiscriminatory Bar Exam on the table for July, September, and February/March exams is paramount. Carla, you requested feedback, so there's my two cents. All the Best, And Happy Easter, Happy Passover, whatever applies Hal Prukop Licensed in CA, WA, and soon to be Idaho.
31	[dated: April 3, 2021] **From:** R. Jason Miller <rjasonmill@gmail.com> **Sent:** Saturday, April 3, 2021 6:15 AM **To:** Hal Prukop <hkprukop@comcast.net> **Cc:** Solo and Small Practice Section <solo-and-small-practice-section@list.wsba.org>; Bar Leaders <BarLeaders@wsba.org>; carla@higginsonbeyer.com **Subject:** Re: [solo-and-small-practice-section] Request for comment to Bd. of Governors re bar exam resolution Carla, I'm for some sort of filter that also addresses WA state peculiarities but honestly found the areas of law tested to be very random. Beyond Contracts Torts Property Civ Pro Crim Constitutional and Community Property, I often sat there thinking "Why am I being tested on this subject?" as it seemed unlikely to come up unless there one had a specialized practice. R.J.M. Columbia Pacific Rain Law, PLLC Member 14900 Interurban Ave S Suite 271 (PMB 51) Tukwila, WA 98168
32	[dated: April 3, 2021] **From:** Barbara Jo Sylvester <BJS@mcgavick.com> **Sent:** Saturday, April 3, 2021 6:15 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Bar exam As a 43 year member of the WSBA, and from education and experience, I submit that any person wishing to practice law in this State should and must pass an exam displaying competency to do so.

	I support Resolution in Support of a Bar Exam to Ensure a Competent, Ethical and Diverse Legal Profession. Thank you. *Barbara Jo Sylvester* *Attorney at Law* *McGavick Graves, P.S.* 1102 Broadway, Suite 500 Tacoma, WA 98402 (253) 627-1181 [redacted] (253) 627-2247 (fax)
33	[dated: April 3, 2021] **From:** Ann Sattler <ann@functionallegalsolutions.com> **Sent:** Saturday, April 3, 2021 8:53 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** carla@higginsonbeyer.com **Subject:** Re: [solo-and-small-practice-section] Request for comment to Bd. of Governors re bar exam resolution I absolutely support a bar exam for applicants wanting to practice law in Washington coming out of law school. As simply put by my 10 year old: "that's like not making someone take a driving test after going to drivers education to learn to drive a car." No one in my family was a lawyer and I returned to law school in my mid 30's. The process of intensively studying the areas of WA state specific law greatly helped me assimilate my legal knowledge from school into some more practical applications for where I would be practicing. I took the bar exam in 2004. I also volunteered to grade practice essays for those studying for the exam in 2005-06. Establishing more of an apprentice or residency akin to the medical profession would be a helpful addition to our profession and structurally build more actual mentoring—not hoping for volunteers. Making it a requirement for currently licensed attorneys to provide it for a time and new applicants to receive it. But excluding the rigorous testing where one has to be able to quickly move about from legal topic to legal topic mentally must be tested in order to provide consumers with the best quality standard for the profession. To evolve as a profession requires thought and open mindedness; but it also includes not diminishing, invalidating or appearing to make purposeless the effort those before still had to exert to get to the same destination. I urge you to make a step that values the hard efforts and work that those in the profession were required to do while also tailoring the application and admission process to account for things not previously considered. You will then not alienate as many currently in the profession and you will open it up to make it more accessible to those who

	thought it not possible for them, because their learning style was different or whatever the reason. Thank you for serving our profession with your time and efforts. Kindly, **Ann Davison** Attorney, licensed in WA ann@functionallegalsolutions.com 206.819.3671
34	[dated: April 4, 2021] **From:** Jeffrey Coats <Jeff@AttorneyJeffCoats.com> **Sent:** Sunday, April 4, 2021 5:37 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** FW: Message from Gov. Bryn Peterson: Seeking input regarding bar exam resolution I agree with the resolution and the establishment of the task force. Jeff Coats
35	[dated: April 4, 2021] **From:** Tamara Garrison <famlawlegaltechnician@gmail.com> **Sent:** Sunday, April 4, 2021 4:12 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Washington Bar Licensure Task Force I am opposed to the continued practice of requiring a bar exam for licensure. Most importantly it has been proven via extensive research to be racially inequitable. I do not see how a task force or committee has the knowledge or skill to know how to develop a test that overcomes that barrier. It would take years to determine if the newly written test accomplished your stated goals. In addition, it is a barrier for those of lower income who cannot necessarily afford expensive, professional bar prep courses. A few states have already switched to diploma privileges (New York and Wisconsin) and have seen no increase in ethical issues or malpractice. In fact, in some circumstances there has been a decrease. See attached *[Attachment 4]* excerpted pages, which have footnotes to citations. Presently, almost every law professor models their final exams after the bar exam format. I know this because I am just now ending my 2L year at Seattle U. This means students are taking mini bar exams throughout their studies. I do not think taking a bar exam at the end represents whether or not I have the practical ability to practice law. Most newly graduated students don't know what they are doing, no matter how well they did on the exam, because bar tested subjects focus mostly on theory and the black letter law, not how to practice. One reason that I frequently hear to justify the exam is that "it is a rite of passage that we all

	had to do and it wouldn't be fair to let someone else skip it." In my opinion, that is not a valid reason to continue a practice that is discriminatory and ultimately racist. I can see perhaps keeping the professional responsibility portion, but I am not in support of keeping the rest of the exam. Employers usually look at GPA anyway rather than what you scored on the bar exam. Thank you, Tamara Garrison
36	[dated: April 4, 2021] **From:** Jacqui Becker <jacquibecker@comcast.net> **Sent:** Sunday, April 4, 2021 12:32 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Bar exam feedback Hello, Bar Leaders, I most definitely support a requirement that applicants pass the state's bar exam prior to being admitted to practice law in Washington. Thank you. Jacqueline Becker WSBA #18818 [redacted]
37	[dated: April 4, 2021] **From:** Alizeh Bhojani <bhojani.alizeh@gmail.com> **Sent:** Sunday, April 4, 2021 6:39 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Feedback on Bar Exam Resolution Dear Board of Governors, I am writing to you today as member of the Washington bar who is admitted to practice in two states. I have taken the bar exam and can say with utter confidence that I remember very little of what I studied and use it not at all in my daily practice. If the purpose of the bar exam is "to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer" then the exam fails that purpose. My law school classes and internships are what prepared me to be an entry-level lawyer. The bar just served as an additional financial barrier and emotional stressor. The way the bar exam is administered today has no bearing on the practice of law, which involves dedicated research and collaboration with a team. Rarely does it involve multiple choice questions on generic federal criminal law or rules of evidence.

	The bar is an antiquated exam that disproportionately prevents people of color and those without the means to pay for expensive test preparation. It is disheartening that we as a profession have accepted that students pay an additional $2,000 at the end of their law school careers simply in test preparation materials. This disproportionately impacts those not getting jobs with firms that can cover the cost. I would not have been able to afford the bar prep fees had I not received a scholarship since my post-law school job was in public service. We know that our system is not serving the needs of the Washington legal community nor its clients. Please support diploma privilege as an alternative to the bar and let us focus on educating our legal community on the actual systemic inequities impacting the diversity, ethics, and competent practice of the law. Best, Alizeh Bhojani Bar No. 55160 Alizeh Bhojani | J.D./LL.M. (425) 273 2820
38	[dated: April 5, 2021] **From:** Greg Banks <Gregb@islandcountywa.gov> **Sent:** Sunday, April 4, 2021 11:19 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** carla@higginsonbeyer.com **Subject:** Support for bar exam Dear Board of Governors, I live and practice in District 2. I support the proposed resolution in support of a bar exam, the full text of which I understand to be as set forth below. While the bar exam is far from a perfect instrument for determining whether one has the basic skills and knowledge to practice law, it is far better than a mere diploma from an ABA accredited law school. For over twenty-two years, I have been an attorney in public practice with the difficult task of evaluating newly admitted attorneys for employment. The diploma privilege harms all parties to the hiring process. It is especially injurious to the cohort of applicants who have not passed the bar exam. Given a hypothetical choice between two attorneys who are novices and in other respects equivalent, I would choose the one who has distinguished himself or herself by passing a stringent bar exam. The Court's Order No. 25700-B-630 unnecessarily and unfairly disadvantaged the affected graduates, and, by extension, all those who practice law and those who need legal representation. The diploma privilege was and is a terrible idea. Just absolutely terrible. Need I say more? Sincerely,

	_____ *Gregory M. Banks* *Island County Prosecuting Attorney* *PO Box 5000* *Coupeville, WA 98239* *360.240.5506* *gregb@islandcountywa.gov*
39	[dated: April 5, 2021] **From:** Jennifer Mentor Mills <Jennifer@mentorcompany.com> **Sent:** Monday, April 5, 2021 11:37 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Washington State Bar Exam To Whom It May Concern: I was admitted to the Washington State Bar in 1999 after having attended law school in California. I believe the bar exam should continue to be a requirement to be a licensed lawyer in Washington State. The bar exam ensures that each lawyer has a baseline of legal knowledge and ensures that each lawyer is at least familiar with Washington State law. I believe there are already methods in place for those with learning disabilities so the exam can be administered fairly. I do not see any justifiable reason to lower the standards and eliminate or lessen the rigor of the exam. Moreover, if the WSBA really wants feedback from its members, it should send out an anonymous survey instead of making bar members send an e-mail with feedback. This is cumbersome and unlikely to solicit a true survey of its members. Jennifer Mills WSBA #29480
40	[dated: April 5, 2021] To: Bar Leaders Dear Board of Governors, I am writing to you today as a member of the Washington bar that was admitted in the fall of 2020 after accepting diploma privilege. As a new juvenile litigation attorney, I have successfully handled my own juvenile litigation caseload that involves conducting hearings, trials, and appeals on my own (and remotely). I can say that the success of our field is not the result of the bar examination.

	If the purpose of the bar exam is "to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer" then the exam fails that purpose. My law school classes and internships are what prepared me to be an entry-level lawyer. The bar serves as an additional financial barrier and emotional stressor. The way the bar exam is administered today has no bearing on the practice of law, which involves dedicated research and collaboration with a team. Rarely does it involve multiple choice questions on generic federal criminal law or rules of evidence. For me, dependency law, the Indian Child Welfare Act, or the practical experience of using the evidence and civil rules are nowhere found within the pages of the preparation materials or exam. The bar is an antiquated exam that disproportionately prevents people of color and those without the means to pay for expensive test preparation. It is disheartening that we as a profession have accepted that students pay an additional $2,000 at the end of their law school careers simply in test preparation materials. This disproportionately impacts those not getting jobs with firms that can cover the cost. I would not have been able to afford the bar prep fees had I not worked as a bar prep organization representative since my post-law school job is in public service. We know that our system is not serving the needs of the Washington legal community nor its clients. Please support diploma privilege as an alternative to the bar and let us focus on educating our legal community on the actual systemic inequities impacting the diversity, ethics, and competent practice of the law. Thank you, Sydney Bay, WSBA# 56908
41	[dated: April 5, 2021] To: Bar Leaders; carla@higginsonbeyer.com Bar leaders and Carla – I agree with Carla's sentiments below. As all standardized testing at all levels of education is undergoing review, I agree with the review mentioned below. I do not believe that doing away with the Bar examination and allowing law graduates to practice law in Washington with simply a law diploma is appropriate to provide the legal and practical protections our citizens expect. We can say that perhaps the Bar examination does not provide sufficient proof of competency long-term. That may be the case if the State is using standardized testing that has no bearing on Washington law and provides for no critical thinking. I was not aware that the Bar examination was no longer a Washington derived and graded examination. I took my exam in 1992 and it may not have shown I knew how to file a complaint; but I was required to show some level of competency of analysis and knowledge of Washington law ("community property" issues were everywhere to address).

	Most licensed professions in Washington require a test prior to licensure to ensure quality. I feel it is imperative not to lose that one last measure of quality control for our legal profession. **Jean M. McCoy | Attorney at Law** LANDERHOLM Legal advisors. Trusted advocates. 805 Broadway Street, Suite 1000 P.O. Box 1086 Vancouver, WA 98666-1086 T: 360-816-2526 | [redacted] | F: 360-816-2527 www.landerholm.com
42	[dated: April 5, 2021] **From:** Betsy Brinson <betsy@brinsonheinz.com> **Sent:** Monday, April 5, 2021 10:48 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Bar Exam Dear Bar Leaders: I am curious what the Bar intends to do with Rule 6 if they abolish the bar exam? Given the cost of law school tuition, Rule 6 seems to be a way to expand the diversity of lawyers in Washington. And, if we are moving to a system where either you must have a diploma from an accredited law school and/or where only Rule 6 students must take a bar exam, it would seem that we are being more, not less, discriminatory. In the interests of full disclosure, I am currently mentoring a Rule 6. We are 13 months in, and I will tell you it has been a lot more work than I anticipated, perhaps because my law school education is 40 years old, but it has also been very rewarding to date. *Betsy Brinson*, W.S.B.A. #12190 **Brinson & Heinz** **Family Law Attorneys** **114 W. Magnolia St.** **Suite 315** **Bellingham, Wa 98225** **(p) 360.734.1920** **(f) 360.734.1890** **www.brinsonheinz.com**
43	[dated: April 5, 2021] To: Bar Leaders; carla@higginsonbeyer.com WSBA -

	The bar exam is integral to the success and integrity of lawyers in our profession. No one in the medical profession is talking about doing away with their boards, yet in the misguided name of social justice, some propose we do such a thing. Is the Bar difficult?: yes. Is the Bar unfair, challenging, and a bar to some applicants?: yes. That is how an entrance exam should be. Entrance exams uniformly exist across nearly every profession for a reason: to safeguard the quality of the profession. At the same time, should we expand resources and law school education to focus on bar passage rates? YES. Should we constantly tailor and improve the UBE/Multistate Bar to address current forces in the legal profession, especially for Washington? YES. Respectfully, maybe our law students should do what I did (which allowed me to pass the first time): **take lots of bar classes**. The WBLTF should focus on that, lowering the cost of quality bar exam courses, and encouraging our law schools to spend less time on wishy-washy courses such as "HOMELESS RIGHTS ADVOCACY PRACTICUM" and " SOCIAL IMPACT ADVOCACY"(Seattle U), where apparently the grading primarily comes from such subjective assessments as "(1) consistent professionalism and participation in classroom discussions and course activities, and (2) contributions to group projects, including presentations..." The best attorneys - the ones you want in your court when the chips are down - did not get tenth place ribbons in an ideological litmus test. They command a superior knowledge of multiple areas of law, are zealous advocates, and are results-oriented problem-solvers. The bar exam separates the wheat from the chaff. Cordially, -Tom Lee -- TOM LEE Attorney R. THOMAS LEE, PLLC | Attorney and Counselor at Law | A Professional Limited Liability Company Direct: 425-219-6736 rtl@rtleelaw.attorney | website: www.rtleelaw.attorney
44	[dated: April 5, 2021] To: Bar Leaders Cc: carla@higginsonbeyer.com Dear leaders of the Bar - I write in support of the motion below as proposed by WSBA Governor Russell Knight. A bar exam is necessary for taking reasonable steps to ensure the integrity of the legal profession and protect the general public. As such, I support the resolution as proposed below. I would also

support a retroactive requirement that all members who waived in to the bar in 2020 be required to take (and pass) the bar exam within the next 12 months to keep their license active.

I think that the Supreme Court's decision damaged the reputation of the Bar because no other licensed profession took the same steps for applicants. For example, doctors were not "waived in" from their board examinations. They took the more reasonable approach to just issue temporary waivers that required passing the exams over an extended period of time. It's shocking to me that the legal field couldn't let logic and sound reasoning lead the way and instead was guilty of knee jerk emotional reactions. So, I support the return of a bar exam as motioned below.

RESOLUTION IN SUPPORT OF A BAR EXAM TO ENSURE

A COMPETENT, ETHICAL AND DIVERSE LEGAL PROFESSION

WHEREAS, the mission of the Washington State Bar Association ("WSBA") is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice; and

WHEREAS, passing a bar exam has long been a requirement for membership in the WSBA in part to ensure a competent and ethical legal profession; and

WHEREAS, on June 12, 2020, in part in response to the COVID-19 pandemic, the Washington State Supreme Court entered Order No. 25700-B-630 temporarily modifying Admission to Practice Rules 3 and 4, and granting diploma privilege as an option to graduates of ABA accredited law schools who were registered for either the July 2020 or September 2020 bar exams; and

WHEREAS, the Washington State Supreme Court has not extended diploma privilege to applicants registered for subsequent bar exams; and

WHEREAS, stakeholders have expressed concern that the bar exam has a discriminatory effect on examinees of color and first generation examinees; and

WHEREAS, on November 20, 2020, the Washington State Supreme Court entered Order No. 25700-B-649 establishing the Washington Bar Licensure Task Force ("WBLTF"); and

WHEREAS, the WBLTF is asked to "examine current and past bar examination methods, passage rates, and alternative licensure methods, assess disproportionate impacts on examinees of color and first generation examinees, consider the need for alternatives to the current bar exam, and analyze those potential alternatives"; and

WHEREAS, the WSBA supports the work of the WBLTF;

NOW, THEREFORE, BE IT RESOLVED THAT

	1. In order to ensure a competent, ethical and diverse legal profession, the WSBA supports the continued requirement of passing a bar exam before admission to the WSBA. **2. The WSBA discourages diploma privilege as an alternative to a bar exam.** **3. The WSBA encourages a review of, and possible change to, the format and content of the bar exam to both strengthen and improve the bar exam as a tool to ensure the competent and ethical practice of law and to ensure there is no discriminatory effect on examinees of color and first generation examinees.** -- Thank you, KAITLYN R. JACKSON | ATTORNEY | DIMENSION LAW GROUP PLLC 130 Andover Park East, Suite 300 | Tukwila, WA 98188 T: 206.973.3500 | F: 206.577.5090 | E: KAITLYN@DIMENSIONLAW.COM | WWW.DIMENSIONLAW.COM
45	[dated: April 5, 2021] To: Bar Leaders I have a lot of mixed feelings on the topic of the bar exam. The first feeling is kinda stupid, it goes along the lines of since I had to do it -others should as well. I have been in practice for about 20 years. The GPA of an attorney in law school does not appear to me to be 100% reflective of the effectiveness of them as an attorney. Passing the ethics portion of the exam does not appear to keep people from stealing money from their clients. So, for what it is worth – the completion of law school is a big deal. The concept of diploma privilege is a bit odd to me. I suppose I will get used to it like I get used to a lot of things. There will be the admission of some folks that could not pass the bar. However, those same folks, may turn out to be decent or even great attorneys. Maybe you should consider doing it 3 or 4 years and see how it plays out. Can always reinstitute the exam. John Groseclose GSJONES LAW GROUP, PS 1155 Bethel Avenue Port Orchard, WA 98366 (360) 876-9221
46	[dated: April 6, 2021] **From:** John McCrady <j.mccrady@pstitle.com> **Sent:** Tuesday, April 6, 2021 8:59 AM

WASHINGTON STATE
BAR ASSOCIATION

To: Bar Leaders <BarLeaders@wsba.org>; carla@higginsonbeyer.com
Subject: Resolution

I am in favor of the following resolution:

RESOLUTION IN SUPPORT OF A BAR EXAM TO ENSURE A COMPETENT, ETHICAL AND DIVERSE LEGAL PROFESSION

WHEREAS, the mission of the Washington State Bar Association ("WSBA") is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice; and
WHEREAS, passing a bar exam has long been a requirement for membership in the WSBA in part to ensure a competent and ethical legal profession; and
WHEREAS, on June 12, 2020, in part in response to the COVID-19 pandemic, the Washington State Supreme Court entered Order No. 25700-B-630 temporarily modifying Admission to Practice Rules 3 and 4, and granting diploma privilege as an option to graduates of ABA accredited law schools who were registered for either the July 2020 or September 2020 bar exams; and
WHEREAS, the Washington State Supreme Court has not extended diploma privilege to applicants registered for subsequent bar exams; and
WHEREAS, stakeholders have expressed concern that the bar exam has a discriminatory effect on examinees of color and first generation examinees; and
WHEREAS, on November 20, 2020, the Washington State Supreme Court entered Order No. 25700-B-649 establishing the Washington Bar Licensure Task Force ("WBLTF"); and
WHEREAS, the WBLTF is asked to "examine current and past bar examination methods, passage rates, and alternative licensure methods, assess disproportionate impacts on examinees of color and first generation examinees, consider the need for alternatives to the current bar exam, and analyze those potential alternatives"; and
WHEREAS, the WSBA supports the work of the WBLTF;

NOW, THEREFORE, BE IT RESOLVED THAT

1. In order to ensure a competent, ethical and diverse legal profession, the WSBA supports the continued requirement of passing a bar exam before admission to the WSBA.
2. The WSBA discourages diploma privilege as an alternative to a bar exam.
3. The WSBA encourages a review of, and possible change to, the format and content of the bar exam to both strengthen and improve the bar exam as a tool to ensure the competent and ethical practice of law and to ensure there is no discriminatory effect on examinees of color and first generation examinees.

Thank you

John McCrady
Counsel
Puget Sound Title Company

	5350 Orchard Street West University Place WA 98467 [redacted] j.mccrady@pstitle.com
47	[dated: April 6, 2021] From: Gregory L. Ursich <gursich@insleebest.com> Sent: Tuesday, April 6, 2021 1:21 AM To: Bar Leaders <BarLeaders@wsba.org> Cc: carla@higginsonbeyer.com Subject: WSBA Resolution on Bar Exam Hello Board of Governors: I am a 32 year member of the WSBA, having passed the bar in February 1989 and admitted June 1989. I graduated from UC Hastings College of the Law in San Francisco in May 1988, a "First generation" law graduate at the young age of 23, and was just 24 when I took the bar and passed. I failed the first time, just like my law school classmate Kamala Harris. Even people of color, Woman and "first generation" law graduates, like myself, have taken and passed difficult bar exams for years. My point about this is is that myself, a "First Generation" law graduate that put myself through law school (my Dad was an enlisted Master Chief Petty Officer in the Navy and my Mom a RN) and I still passed the exam after the challenge of failing it the first time; probably because I went to law school out of state in California and wasn't maybe quite ready for the rigors of 24 essay questions that were somewhat particular to Washington law. However, I was very proud to have passed the bar at age 24 on the second try and mastered the legal analysis and rigors of the exam. I have to further say that conducting a multiple day trial in Superior Court, or preparing for and arguing a complex motion for summary judgment is far more rigorous than the 3 day bar exam ever was. I think the bar exam serves an important purpose to establish the ability to write, reason, and perform legal analysis under pressure in responding to exam questions. This is the same type of challenges faced everyday in the practice of law, and a minimum test of competency is needed to protect the public and insure the integrity of the Profession. We are professionals, and just as MD's, Engineers, Land Surveyors, Architects, Dentists, Pharmacists, Nurses, and Counselors need to pass licensing exams, lawyers need to as well. We serve the public daily and take on some of their most intimate problems like child support/divorce; criminal defense and keeping them out of jail; foreclosure defense; employment discrimination and benefits; and personal injury cases. The Public demands a certain level of competency from lawyers and other professionals and they deserve to know that the lawyers they deal with have been tested to show a minimum level of competency. The exam protects the public and preserves the integrity of our Learned profession. Even people of Color and woman have managed to pass the bar exam in large numbers. Maybe the exam can be adjusted in terms of questions that are not culturally biased. But, the law is the law; it is a demanding and rigorous profession for which legal analysis and the processing and resolving legal problems requires a high level of competency and skill, and standards need to be maintained to protect the public. Query, would you want a surgeon to operate on you that could

	not pass a basic competency exam as to medical techniques? Of course not! This is why we need to keep and maintain the bar exam. – Gregory Ursich, WSBA 18614, Inslee Best
48	[dated: April 6, 2021] **From:** Claudia A Gowan <claudia@cagowanlaw.com> **Sent:** Tuesday, April 6, 2021 10:16 AM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** carla@higginsonbyer.com **Subject:** In support of bar examination Representatives: I am writing to support on-going administration of a Bar exam prior to licensure of applicants to practice law in the State of Washington. While a Bar exam does not ensure that a person is fully qualified to practice law, it does provide some baseline of competence. In addition, I at least, would appreciate establishing a minimum level of Washington law related content under the exam. I am not equipped or qualified to render suggestions on what type of exam or what a 'minimum level' of Washington related content should be. I trust that the Task Force will be able to assess the matter and provide viable recommendations. The practice of law is truly a public service tradition. Each client that comes before me takes a risk that I will provide services to them that meet their needs – this is true of every lawyer greeting a client. It is imperative that these clients – whether corporate, governmental or individual – be able to trust that a person holding a license to practice has been vetted and schooled sufficient to advise them. Each month we see disciplinary action taken against attorneys who have somehow failed to meet their fiduciary obligation to that public. Let's ensure that prior to practicing, attorneys demonstrate that they are qualified by education and examination, rather than turn to disciplinary functions for regulating attorneys who serve our state citizens. In doing so, the public, and members of our own profession, can have some faith that we are qualified, committed legal professionals. With respect, Claudia Gowan ***Claudia A. Gowan*** **Claudia A. Gowan, PLLC** **2212 Queen Anne Avenue No., # 338** **Seattle, WA 98109** **(206) 443-2733 (T)** **claudia@cagowanlaw.com**
49	[dated: April 6, 2021]

	To: carla@higginsonbeyer.com Cc: Bar Leaders I support the Resolution In Support of a Bar Exam. GDP Glenn D. Price, J.D. Price & Farrington, PLLC *Attorneys and Counselors at Law*
50	[dated: April 6, 2021] To: Bar Leaders Cc: carla@higginsonbeyer.com All, I fully support the administration of the Washington State Bar Exam to ensure the competency of our attorneys and integrity of our profession. Sincerely, **Timothy C. Lehr** Attorney at Law STILES & LEHR Inc. P.S. Attorneys at Law p: 360.855.0131 e: timothy@stileslaw.com w: www.stileslaw.com
51	[dated: April 6, 2021] To: Bar Leaders; carla@higginsonbeyer.com I support requirement of passing the bar exam. Bar exams aren't perfect, but at least they show that prospective bar members have a baseline understanding of the law. Kristin Lillquist Reeder

52	[dated: April 6, 2021] To: Bar Leaders Cc: carla@higginsonbeyer.com The public must have confidence that a license to practice represents mastery of at least the minimal knowledge required to pass a bar exam. The bar exam should not include political or social content or messages. Skin color and "first generation" status do not prevent a person from learning the law that must be learned. Everyone learns differently, success is the ability to surmount whatever of the myriad obstacles challenge a particular individual. Teaching that people of one color or background are less capable is racism and bigotry; our profession should have no part of it, it must be blind to such invidious discrimination. Peaking under the mask of justice is not allowed, either in the qualification of advocates or in deciding between litigants. -- **Law Offices of K. Garl Long - Mount Vernon, Washington - (360) 336-3322**
53	[dated: April 6, 2021] To: Bar Leaders I am in favor of returning to the bar exam. Sent on IPHONE- please excuse text and spelling errors. Theresa Dowell Dowell Law Offices
54	[dated: April 6, 2021] To: Bar Leaders To Whom it Concerns, I am strongly opposed to any effort to further deviate from the bar licensure program. The Bar Exam is a necessary component of same. I think we all can agree that law school, while formative, does not impart the detailed level of knowledge needed to actually represent clients in real life matters. Further, having a large number of practicing lawyers who have not passed an objective test, will likely lead to increased malpractice premiums. Please do away with the “diploma privilege.” Best, MICHAEL G. MALAIER Chapter 13 Standing Trustee

	2122 Commerce Street | Tacoma, Washington 98402 [redacted] | www.chapter13tacoma.org
55	[dated: April 6, 2021] To: Bar Leaders Cc: carla@higginsonbeyer.com Dear Board of Governors, I also support the bar exam being in essay format, which I believe adds an important writing component to the exam and makes for a better exam process than multiple choice. Mimi M. Wagner Attorney at Law mimi@sanjuanlaw.com Phone (360) 378-6234 Fax (360) 378-6244 www.sanjuanlaw.com
56	[dated: April 6, 2021] To: Bar Leaders Cc: carla@higginsonbeyer.com Carla, Thank you for sending this resolution and the corresponding email. I hope you are receiving comments on this matter. I will make mine very brief. As a practicing attorney and a small regional law firm owner. I know that my firms position is that we will more than likely never hire any attorney that doesn't pass a bar exam. We hired an associate this past summer and she was one of I believe less than 75 attorneys who actually did pass the exam, that is a source of pride for my partners and I. I have read the countless reasons why a bar exam is not indicative of the practice of law. To me that misses the point completely. The bar exam is proof that someone is not afraid to put in the disciplined work to study for the exam. If we are not going to have an exam than we are simply lowering the bar for our profession. I believe that many of the attorneys who chose not to take an exam are the same who chose not to work as an intern and thus are potentially a harm to future clients. I think they will force the bar to later take a position of mandatory malpractice insurance or at a minimum the requirement to post malpractice insurance similar to a contractor. I for one am hopeful that the WSBA can fix an error instead of dealing with this potential outcome down the road. John M. Kragt WSBA #44110

57	[dated: April 6, 2021] To: Bar Leaders; Carla J. Higginson Cc: Sarah Moen; erik.moen.87 Carla, Thank you for the opportunity for input. I am opposed to the proposed Resolution for the simple reason that the Bar Exam does not "ensure competent and ethical" practitioners. I do support the Supreme Court Order that created the Washington Bar Licensure Task Force and their mission. I believe that the Bar Exam is a rite of passage and is broadly supported on that basis. Like the LSAT and other qualification tests, the passage of the Bar Exam shows only the applicants' skill at taking tests. A better measure of legal knowledge is the three years spent earning a law degree from an ABA accredited school. True, we all know the occasional inept lawyer who causes us to wonder how they ever graduated. But the same is true of the occasional inept lawyer who passed the Bar Exam. And consider the many luminaries who failed the Bar Exam: Benjamin Cardozo, Hillary Clinton, former Dean of Stanford Law School Kathleen Sullivan for example. Some passed on state Bar Exam only to fail in another state. Most persons failing the Bar Exam will pass on the second or third try. Does that mean that the applicant was unfit at the time of failing and suddenly became fit six months later? No. They were fit all along. They only stumbled on a rite of passage that is an inaccurate indicator of competence. It is also concerning that the pass rate of the Bar Exam varies between 50%-70% for graduates of ABA accredited schools. To me, that is damning to the exam and not to the schools. If the pass rate were up at 90%, then I would not be concerned. The proposal to "encourage a review of, and possible change to, the format and content of the bar exam" is not the answer. A Committee will suggest changes borne of compromises and nothing will change. Better for the Licensure Task Force to consider alternative licensure methods.

	Thanks, Bruce _____ Bruce R. Moen Moen Law Offices PS 601 Union Street, Suite 3232 Seattle, WA 98101-2331 206-441-1156 [redacted]
58	[dated: April 6, 2021] To: Bar Leaders As a Washington attorney, I am writing in support of the bar exam resolution and in support of a bar exam to maintain a competent, ethical, and diverse legal profession. I strongly support a licensing exam for many reasons, especially the function it has to ensure a competent legal profession. The bar exam, in its current or proposed new format, tests not only substance but the skills that every attorney should know and have acquired in law school. Passing the bar exam also shows grit, perseverance and the kind of work ethic the profession requires. Moreover, I am very concerned about creating alternative paths to licensure because of the potential of creating a perception of "second-class" licensure paths. Applicants should not be given options that better suit them, but, instead, all applicants should take the same test or go through the same process to guarantee minimum competency. In addition, after watching the first recorded meeting from March 17, 2020, I would like to share some of my concerns regarding the WA Supreme Court Task Force: First, I am concerned about the lack of transparency in the creation and selection of the members of this Task Force. - It was mentioned that the public information office is still in the process of putting together a webpage for the task force and it is still contacting members, including members of the public. I am concerned that a first meeting was held without the Task Force being fully formed. I am not sure what the reason is for that and I also do not see where or how members of the public have the opportunity to apply to be considered for this Task Force? - I am also concerned that this is happening without other lawyers and members of the public being made aware of the existence of the Task Force, the order itself and the selection of the members. The order is not easily available on the WA Courts website and I believe this process should be transparent and lawyers should be actively informed of its existence and progress from the start. One of the members mentioned potential input from stakeholders, but it does not appear that a plan is in place at this time. Second, I am concerned about the appearance of bias to the overall community in the Task Force. It was mentioned that the Task Force is not driven by any particular outcome. - While many of the introductions did not express opinions, I heard phrases like having a "system that

	does not erect unnecessary barriers" and looking at data to get a better sense of the "history of exclusion" which in my opinion are not objective. Some members of the Task Force are expressing strong opinions from the start during their introductions, which concerns me given the scope of the Task Force and the impact of any recommendations on the Washington Supreme Court. **While I am happy to be contacted to further discuss any of these points, I do wish for my opinions and comments to be anonymous.** Thank you for your time and work on this matter! [redacted]
59	[dated: April 6, 2021] To: Bar Leaders Cc: carla@higginsonbeyer.com I am in support of continuation of the Bar Exam and opposed to diploma privilege as an alternative to the Bar Exam requirement to be a WSBA member. I further support return to the Bar Exam format as it existed prior to 2013.Thank you for your consideration of my comment. Bryce H. Dille Dille Law, PLLC 2010 Caton Way SW Ste. 101 Olympia, WA 98502 Office: 360-350-0270 [redacted]
60	[dated: April 7, 2021] From: Kelly Lyman <kelly@lyman.net> Sent: Wednesday, April 7, 2021 7:47 AM To: Bar Leaders <BarLeaders@wsba.org> Subject: Feedback on Resolution Hello, I live in Seattle and I heard the WSBA is considering a resolution regarding the Bar Exam to ensure a diverse legal profession. I am writing in support. I do not believe the current Bar Exam does an adequate job of screening out incompetent lawyers. It does, however, do an excellent job at screening out would-be lawyers who can't afford endless retakes!

The Bar can cost well over $1000, depending on your state. (To put that number into context, it cost me around $150 to take my field's certification test for speech pathologists who work in hospitals.)

The Bar's prohibitive cost places an enormous financial burden on people who come from poorer backgrounds. Whereas people from wealthier backgrounds, with family support, etc., can pay to retake the test until they pass. Obviously that's not very equitable. And that's before we even get into all the other expenses...

Test prep from Kaplan, BarMax, etc., can cost upwards of $2000. Not to mention, the Bar is 2-3 days long! Will your work allow you the time off? Many people's employers (especially minimum wage jobs or under-the-table jobs for undocumented workers) won't. Those people would have to quit their job or be fired in order to take the Bar, even once.

Then there's the issue of actually getting yourself TO the Bar. The Bar is only offered at a few testing locations per state. Far fewer than most professional certification tests. People travel all day to get to a Bar testing site.

How much longer would it take to get there, and how much more time off work would you need, if you had no car? Are you able to spend 12 hours commuting by bus? Would you feel rested, and in your best state of mind for test-taking, after that commute? Of course not, and that's why wealthier people often pay for a hotel, so they can stay overnight and continue test-taking on Day 2 more refreshed.

By the way, so far this discussion has been about subtle ways the Bar keeps poor people out of the profession. But there are many more gatekeeping issues beyond just finance, like whether the Bar is culturally appropriate and fair to people of diverse backgrounds. I'm not an expert on those issues, just a concerned Washingtonian, so I won't belabor the point. But I think there is value in having lawyers and judges who understand the life experiences of those who may end up in their courts one day. Particularly since folks in lower income areas are more affected by policing and have a greater chance to wind up in court.

Representation matters, and right now, the professional isn't reflective of the demographics of America as a whole. For example, only 5% of lawyers are Hispanic. We would expect more like 19%, commensurate with the Hispanic population in America.

When we see discrepancies like that, we have to ask ourselves, what are the unseen barriers here that might be preventing equitable access? And can we do anything to lessen them, and foster more inclusivity? In the Bar's case, I think the answer is a resounding yes!

Thank you for your consideration of my feedback.

Best wishes,
Kelly Lyman
MS, CCC-SLP

61	[dated: April 7, 2021] **From:** Penny Henderson <pennypie53@yahoo.com> **Sent:** Wednesday, April 7, 2021 3:33 PM **To:** Bar Leaders <BarLeaders@wsba.org>; carla@higginsonbeyer.com **Subject:** Bar Exam Elimination Resolution Dear Ms./Sir: As a graduate of the Rule 6 program and a practicing attorney since 1998, I am concerned about the impact this will have on Law Clerk graduates. I am generally opposed to licensure as a matter of right to anyone who has successfully graduated from law school, and I have thought long and hard these last few days to determine whether my opposition was based upon logic or emotion. It seems a little of each. Historically, any profession that requires a higher degree also requires additional testing or writing, subjectively graded. Master's level or Doctorate level, for example, both require additional writings that are graded. In addition, potential MDs and Nursing candidates are required to sit for extensive exams. The purpose of this is to gauge their comprehensive knowledge of the subjects that will be required, in order for them to practice their art on real people. Granted, lawyers are not charged with life-or-death decisions (although sometimes we think so) but our jobs often affect real people in ways that, if done wrong, can have devastating, life-altering effects. Additionally, some folks do very well in a classroom setting, and are good test takers, but they do not retain the information, and under pressure they do poorly. I think the Bar Exam is a good measure of not only someone's test-taking abilities and knowledge of the range of subjects, but also his or her ability to work under pressure. These are necessary skills in courtroom work, and just good general lawyering skills. More specifically, I am concerned about how this will affect graduates of the WSBA Rule 6 Program. These folks also take regular exams that are patterned after real Bar Exam questions, like law school attendees. They are graded, and at the end of the program (4 years of study) the students are granted a certificate/diploma and permission to sit for the Bar Exam. How will a general licensure for graduates of law school (3 years of study) be translated for Rule 6 graduates? It has been my experience that Rule 6 graduates pass the Bar in roughly the same percentages as law school graduates, and practice law alongside them competently and without issue. It has also been my experience that WSBA has consistently questioned the program, and yet the program has lived up to its reputation and the mission statement of WSBA. When I was on the Law Clerk Board, there was a push from law schools to terminate the program, but we were able to show its efficacy and financial solvency (it actually MADE money for WSBA). The one thing that I regret not being able to rectify during my tenure on the Board was the discrepancy between law school graduates and Rule 6 graduates vis a vis reciprocity. It boiled down to the requirement in the reciprocity policy that applicants graduate from an accredited law school. When I left the Board, they were looking at getting umbrella accreditation for the WSBA to eliminate that prejudicial policy.

	In short, I believe eliminating the need for a comprehensive exam to practice law is a misguided action; however, if the exam is eliminated for law school graduates it should also be eliminated for Rule 6 graduates who successfully complete the program. I am available for further comment at your pleasure, Penny Henderson, WSBA 28408
62	[dated: April 7, 2021] From: Eden Rubenstein Toner [mailto:attorneytoner@earthlink.net] Sent: Wednesday, April 07, 2021 3:02 PM To: 'barleaders@wsba.org' Cc: 'mailto:carla@higginsonbeyer.com' Subject: Bar exam resolution I support the proposed resolution to keep a Bar exam in some format. I am not familiar with the multi-state exam, so cannot speak to its usefulness; however, I have learned from years of practice is how important it is to be able to spot issues in various subjects at one time. For instance, an estate may have tax, intellectual property, real property, family law, criminal law, and descent and distribution issues. No lawyer may be qualified to handle all of them, but the estate attorney should be able to identify the potential issues and secure appropriate assistance. Unlike exams in specific subject areas, the Bar exam is a useful tool for being able to cultivate attorneys who can see the broad picture and who know what they don't know, thereby protecting clients' interests. *Eden Rubenstein Toner* *Attorney at Law* *Mail only: 21301 Hwy 410 E, #140* *Bonney Lake, WA 98391* *Phone 206-953-4485* *www.edenrtoner.com*
63	[dated: April 7, 2021] **From:** Alfredo González Benítez <algonzb@gmail.com> **Sent:** Wednesday, April 7, 2021 10:43 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Feedback on bar exam resolution Dear Board of Governors, I am writing to urge you to do away with the bar exam at your upcoming April meeting - at which you are to discuss the efficacy of the bar.

	I have been a member, in good standing, of the Washington State Bar since 2018. In my three years of practice, since being licensed, I have used virtually none of the information I crammed for purposes of the bar exam - in truth I've forgotten most things I crammed for the bar. What the bar exam did for me was cause me financial hardship and impact my mental health. I consider myself fortunate that I was able to secure scholarships to offset some of my costs for the exam but the expenses were so many that I had to ask my low-income parents for assistance to make ends meet for the months leading up to the exam. Preparing for the bar exam is a full time job if one wants to be successful. During the months of prep my scholarships were not enough to cover course fees, exam fees, rent, utilities, and hotel costs for the period of the exam. My low-income parents also endured financial hardship by lending me their hard earned money so that I could participate in this institutional hazing. Furthermore, because my job offer depended on my license I couldn't even begin working to offset these costs until after I completed the bar. The isolation, financial hardship, and constant stress of preparing for the exam took a toll on my health. This is not the way to welcome folks into our profession, especially when the actual lessons of lawyering are learned on the job. As a person of color, these barriers to access the profession felt particularly oppressive where I already strain to see people that look like me in the profession due to the onerous costs of entry, following the already harrowing experience of law school and preparing for the bar. For these reasons I urge you to please abolish the bar exam and instead consider alternatives, such as diploma privilege. Sincerely, Alfredo González Benítez, WSBA # 54364 algonzb@gmail.com
64	[dated: April 8, 2021] **From:** Scott Osborne <scott.osborne2@gmail.com> **Sent:** Thursday, April 8, 2021 11:44 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Cc:** carla@higginsonbeyer.com **Subject:** Resolution in Support of Bar Exam I am writing to express support of the resolution advocating the continuation of a bar exam. While I don't believe passing a bar exam guarantees competency in practice, it does ensure an applicant has a minimum level of knowledge of basic legal principles required to advise clients. Possession of a degree from an accredited law school is not a substitute for the first-party demonstration of knowledge of basic legal principles. I do not believe it is appropriate for the Court to outsource its duty to establish standards for admission to the Bar to accredited law schools located throughout the country.

	If there are deficiencies in the exam or a belief the exam is not an accurate measure of the knowledge of applicants, then change the exam. However, it is not in the best interests of the profession or the public to depart from the requirement of a direct demonstration of a minimum level of legal knowledge as a condition of being granted the privilege of providing legal representation to Washington residents. -- Scott B. Osborne WSBA #6246 **scott.osborne2@gmail.com**
65	[dated: April 8, 2021] To: Bar Leaders I wrote and graded two ethics questions in the late 1980's, and was shocked at the lack of understanding demonstrated by about 20% of the applicants. One year we failed 32% on the ethics test. The for-profit law schools should not be deciding the minimum competency to practice law. Thomas Stuen WSBA 5922 retired.
66	[dated: April 8, 2021] **From:** Brian E. Lawler <BLawler@jpclaw.com> **Sent:** Thursday, April 8, 2021 2:34 PM **To:** Bar Leaders <BarLeaders@wsba.org> **Subject:** Fwd: Resolution In Support of a Bar Exam… Begin forwarded message: **From:** "Carla J. Higginson" <carla@higginsonbeyer.com> **Subject: RE: Resolution In Support of a Bar Exam…** **Date:** April 6, 2021 at 1:56:37 PM MDT **To:** '"Brian E. Lawler'" <BLawler@jpclaw.com> Dear Brian, Thank you for your time in providing your thoughtful comments in your email below regarding the proposed bar exam resolution. They are much appreciated. Please also send your comment to barleaders@wsba.org to insure that it is noted in the responses that are submitted to the Board. Regards, Carla

From: Brian E. Lawler <BLawler@jpclaw.com>
Sent: Tuesday, April 6, 2021 8:11 AM
To: Carla J. Higginson <carla@higginsonbeyer.com>; wsbarp-bounces@lists.wsbarppt.com
Cc: Anne DeVoe Lawler <ALawler@jpclaw.com>
Subject: Resolution In Support of a Bar Exam…

Dear Ms. Higginson.

Thank you for your email. Very informative.

I support the proposed resolution and further comment that, in Item #3, the review be data driven and that any inequities, regardless of color, be addressed, so that all applicants have an equal opportunity to pass the bar exam.

I would also support a deeper look at how we look or define the issue of color. The US, including its legal system, is unique in classifying people as "black" if almost any part of their ancestry is of black/african, the so-called "one drop of blood" theory. This is antiquated and wrong. We would do better to have similar definitions for racial classification, which would like result in more people being classified as mixed race.

https://www.pbs.org/wgbh/pages/frontline/shows/jefferson/mixed/onedrop.html

Thank you for your service.

Brian E. Lawler, WSBA #8149
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October 8, 2020

Editor
WASHINGTON STATE BAR NEWS
1325 Fourth Ave, Suite 600
Seattle, WA 98101

Dear Editor:

I would like to comment on the article about why the bar exam should be eliminated.

The article posed two issues: First, the bar exam had a disparate impact on minorities. Second, it was the belief that there was no relationship between passing the bar and competence.

The issue of the need for the bar exam and whether or not it has a disparate impact are separate and distinct issues. While disparate impacts should be eliminated, I am not well versed enough on the subject to comment.

As to the need for the bar exam, I strongly disagree that it should be eliminated and most lawyers I know feel the same.

While the article poses some statistics which suggest the bar examination does not assure competence, what is cited really does not prove that assertion. It is also true that a degree from an accredited law school is also not an assurance of competence, yet the article suggests we should allow law school to make that determination.

Going to law school and taking the bar exam are not just about learning the law. Any person who thinks graduation from a law school equips you to actually practice law is quickly disabused of that delusion. Law school gives you some of the tools to practice law but there is a big learning curve after that. I have been practicing for 44 years and am still learning.

One of the things law school and the bar exam does is put you though a rigorous challenge. This is intentional and designed to weed out people who are unable to perform under pressure. If you cannot perform under that type of pressure, then you are likely not to be able to perform under the pressures of practicing law. In this respect, the bar exam provides a valid challenge. It also provides a check and a balance on law schools.

The issue is not about us. It is about the people we are licensed to serve.

It is the Supreme Court's obligation to regulate the practice of law and that obligation should not be abdicated to law schools.

This raises another subject and that is what happened this year. The Bar News has presented very little information about what happened. If the bar association truly represented the interests of its members, there should have been a full account of what occurred.

From what I know, the idea to not have the exam and to admit graduates was proposed and rejected by the Supreme Court. A letter was written by one of our law school deans which was opposed by the Board of Governors. The Supreme Court then did an about face. The discussion then died a natural death.

This may not the be the whole story. What does seem clear to me is that if there was a concern relating to the covid virus, the solution was very simple, and that was to allow for a provisional license until 2021, subject to a bar exam being passed.

Sincerely,

STEPHEN WHITEHOUSE
WHITEHOUSE & NICHOLS, LLP
Attorneys at Law

The Wall Street Journal, March 16, 2021 | OPINION | COMMENTARY, Print Ed at A13

https://www.wsj.com/articles/eliminate-the-bar-exam-for-lawyers-11615847973

Eliminate the Bar Exam for Lawyers

The disadvantaged pay the price for an elitist legal system.

By Clifford Winston

Mr. Winston is a senior fellow at the Brookings Institution and a coauthor of TROUBLE AT THE BAR: AN ECONOMICS PERSPECTIVE ON THE LEGAL PROFESSION AND THE CASE FOR FUNDAMENTAL REFORM.

Attorney General Merrick Garland in Washington, March 11. Photo: pool/Reuters

The legal profession regulates itself—which explains how lawyers get away with practices that pad their own earnings and block nonlawyers from selling competing services at lower prices.

Congress may soon strengthen the antitrust enforcement powers of the Biden administration's Justice Department. The department should use those powers to eliminate the American Bar Association's monopoly in determining what constitutes an acceptable legal education and state licensing requirements, which restrict the supply of lawyers.

Prospective lawyers generally graduate from an ABA-accredited three-year law school before taking a state bar examination to obtain a license to practice law. However, many people who are interested in and capable of providing legal services cannot afford the

high tuition and opportunity cost of not working for three years and paying to obtain a law degree.

Limits on the supply of lawyers are reflected in prices. A simple contract can run $1,500, which most people cannot afford. One study by the National Center for State Courts found that 75% of civil matters in major urban areas had at least one self-represented party, and these parties are less likely to prevail in court without proper legal help. Others who can't afford legal assistance end up stuck in horrific circumstances that ought to be criminal matters, such as domestic violence.

Eliminating both the ABA's monopoly control of legal education and states' licensing requirement would allow alternative legal education programs to flourish, including vocational and online courses that could be completed in less than a year and college programs that offer a bachelor's degree in law. Graduates of those programs could expand the availability of effective, low-cost civil legal services. Three-year law schools would be forced by the new competition to reduce tuition and the time to graduate. More J.D.s would be free to pursue a career in public-interest law if they were less encumbered by law school debt.

My new Brookings book with David Burk and Jia Yan takes an economics look at the legal profession and argues that educational requirements and state bar exams do little in practice to assure a minimum quality of legal services. Market forces have created institutions that accurately inform consumers about the quality, reputation and performance of a plethora of services.

Astute members of the profession are aware that the most advantaged members of society, such as Donald J. Trump and his 3,500-plus lawsuits, are the primary beneficiaries of the system. By eliminating ABA's monopoly on legal education and licensing requirements, antitrust authorities could help the most disadvantaged members of society benefit from access to justice.

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April 2, 2021

RE: Bar Exam Support Resolution 03-2021

Dear Bar Licensure Task Force Members,

UNFAIR TO CLERKS. Currently, I am engaged as the primary tutor for a paralegal enrolled in the Washington Bar Association's Clerkship Program. I am wholly responsible for providing this one person a legal education in our state, and I take that responsibility very seriously. I have been providing her tests replete with questions from past bar exams because the WSBA has asked me to prepare her to the best of my ability to take such an exam. I have scoured resources to provide her the very best test questions to evaluate her understanding of not only the basic principles of law, but also how to apply and use her judgement to best serve a client's best interests.

This paralegal turned clerk also has the advantage of being at my elbow for every decision I make for my existing clients. She has the benefit no law school student has in that she may learn a concept in the law one day and apply it in real practice the next with the oversight and expertise of an experienced attorney.

Why are her and my experiences important to the resolution for a bar exam? Because the WSBA cannot on one hand have rigorous requirements for its clerks to go through for no reason. If there is no bar exam, she will have gone through four years of training with NO ADMITTANCE to practice. Either test all or none.

PUBLIC PERCEPTION. Why does the licensure to practice in field of the law have prestige and honor in the eyes of the public? Simply put, because it is hard to achieve. It has a perceived value among the public that our members have the intelligence and fortitude to pass a licensure exam that is difficult. If you take that away, it lessens the value of the profession as a whole in the eyes of the public. The public are the ones who pay for our services and if they have lesser value for those services, not only will the hourly rates suffer for our members but the confidence in our services will suffer. Not having a bar exam is not an option in my mind. And I would never hire an attorney who has not passed a bar exam. Those that received the diploma privilege are marked for older attorneys like me as a group who has not proven that they have the basic knowledge and skill to perform the simplest of legal tasks in my law firm. Perception is reality.

UNEXPLORED SOLUTIONS. The fact that due to a pandemic a certain group of people got a pass from taking what I consider to be a right of passage in my profession irritates me, but unselfishly, I am infuriated that the many technological options for testing have not even been explored before granting the diploma privilege. Options like the following:

1) timed secure multi-location test facilities with a maximum number of test takers and proctors all ensuring social distancing,

2) a secure timed portal with test questions allowing for test takers to log into a web site and take the test;

3) rewriting test questions such that even if the test takers used test materials their knowledge of the law would still be tested in its applications to the topics tested;

4) making use of our partnership with universities like the University of Washington computer sciences department to develop a secure and valid test portal for test takers.

These are but a few ideas that I came up with in the few moments that I have considered the issue. With the brain power and the level of intelligence and technological know-how in our state (one of today's tech centers for managing secure flows of data) and in our own membership, these arenas have not been explored prior to just throwing up the white flag and providing the diploma privilege. Explore all options.

UNTAPPED BRILLIANT RESOURCES. No doubt exists that this is a problem for the WSBA and for the Supreme Court, but there is no reason to cheapen the status, prestige and honor to practice law in one of the most technologically advanced areas of the nation. The WSBA has among its members lawyers who have tackled incredibly difficult technological legal issues that test the bounds of the law in companies like Microsoft, Google, Amazon, etc. Why not bring these brilliant minds to bear on creating a solution that leads the nation in adequate bar testing. Ask them for help.

My father used to say, "Often times you will have the choice between the easy thing and the right thing, Kimberley. The easy thing is for the lazy. The right thing is called the right thing for a reason; it's worth it." Please do the right thing: re-institute the bar exam.

Sincerely,

Kimberley Lane

Bar Examination Fact Sheet

This short fact sheet was created for the purpose of critically analyzing bar examination options, as the Washington State Supreme Court and Washington State Bar Association consider how to best host the February 2021 Bar Exam.

Bar Examinations, Generally

1. The New York State Bar Association concluded, after an exhaustive 2019 review, that the Uniform Bar Exam is not considered an effective measure of attorney competence.[1]
    - Washington utilizes the UBE as its bar testing method.
2. The bar exam is perpetuating pervasive patterns of discrimination against aspiring attorneys based on income, race, and disability.
    - Low-income individuals often struggle to pay for the bar and associated preparation courses.
        - The bar exam costs $585[2] and bar prep courses cost approximately $2,000[3]—though some cost more.
        - Law students typically must wait four months between graduation and the time they find out whether they passed the bar.[4] Because the average entry-level salary for an attorney is $59,371 per year,[5] this four-month delay can cost new attorneys $19,790.33.[6]

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[1] *New York State Bar Association, Report of the New York State Bar Association Task Force on the New York Bar Examination*, NEW YORK STATE BAR ASSOCIATION, 44–56 (2020), https://nysba.org/app/uploads/2020/03/Report-of-the-Task-Force-on-the-New-York-Bar-Examination.pdf.

[2] *Washington Lawyer Bar Examination Frequently Asked Questions*, WASHINGTON STATE BAR ASSOCIATION, 3 (2020), https://www.wsba.org/docs/default-source/licensing/admissions/bar-exam/bar-exam-faq.pdf?sfvrsn=62120df1_32.

[3] *Compare Bar Review Enrollment*, BARBRI, https://www.barbri.com/bar-review-course/bar-review-course-details/#enroll (last visited Nov. 23, 2020); *with Complete Bar Review: Washington Bar Review Course*, KAPLAN, https://www.kaptest.com/bar-exam/courses/washington-bar-review (last visited Nov. 23, 2020); *Themis Course Pricing*, THEMIS, https://www.themisbar.com/pricing (last visited Nov. 23, 2020).

[4] For example, in Washington State, many law students graduate in mid- to late-May, take the bar in July, and receive their results in mid-September.

[5] *Average Entry-Level Attorney Salary*, PAYSCALE, https://www.payscale.com/research/US/Job=Entry-Level_Attorney/Salary (last visited Nov. 23, 2020).

[6] Dividing the average entry-level salary by the total number of months in a year, multiplied by the total number of months law students must wait after graduation before they are licensed to practice.

- The bar exam keeps people of color out of the legal profession.
    - People of color are more likely to be exposed to conditions that make passing the bar less likely.[7]
    - Washington's attorney demographics reflect the bar exam's discriminatory nature: Washington's population is 1.9% Native or Alaskan, 4.4% Black, and 13% Hispanic or Latinx.[8] The percentages of Washington attorneys identifying as members of these groups are .6%, 1.5%, and 1.7%.[9]
- The bar exam discriminates against individuals with disabilities.
    - Students with disabilities must spend as much as a year assembling all relevant medical documentation required for testing accommodations.[10]
    - Medical appointments for testing accommodations are often not covered by health insurance because they are not considered "medically necessary."[11]
    - Even if such visits are covered by insurance, an estimated 20–30% of students and recent graduates lack health insurance.[12]

<u>In-Person Bar Examinations</u>

1. An in-person bar exam, just as any in-person event, poses a serious public health risk.

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[7] Nareissa Smith, *Factors Affecting Bar Passage Among Law Students: The Real Connection Between Race and Bar Passage*, AFRICAN AMERICAN ATTORNEY NETWORK (May 15, 2018), https://aaattorneynetwork.com/factors-affecting-bar-passage-among-law-students-the-real-connection-between-race-and-bar-passage/.

[8] *QuickFacts: Washington*, UNITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/WA (last visited Nov. 23, 2020).

[9] *WSBA Member Licensing Counts*, WASHINGTON STATE BAR ASSOCIATION, 2 (2020), https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf?sfvrsn=ae6c3ef1_106.

[10] Kerrian Stout, *Lawyering While Legally Blind*, ABOVE THE LAW (Dec. 16, 2019 at 12:45 PM), https://abovethelaw.com/2019/12/lawyering-while-legally-blind/?rf=1.

[11] Emin Gharibian, *California Bar Exam Accommodations: 9 Questions Bar Applicants Have About Academic Accommodations*, VERDUGO PSYCHOLOGICAL ASSOCIATES, (last visited Nov. 23, 2020), https://verdugopsych.com/california-bar-exam-accommodations-9-questions-bar-applicants-have-about-academic-accommodations/.

[12] *Poll: 72% of College Students & Recent Grads Have Challenges Finding Affordable Health Insurance*, AGILE HEALTH INSURANCE, (June 20, 2017), https://www.agilehealthinsurance.com/health-insurance-learning-center/student-health-insurance-survey.

- The United States is averaging 150,000 new cases of COVID-19 per day.[13]
- COVID-19 cases are rising in Washington, and are expected to continue to rise.[14]
- Governor Inslee enacted new restrictions in response to COVID-19, that will be in place for at least four weeks.[15] Under these restrictions, a bar examination cannot be held as a matter of law.

2. An in-person bar examination will require people to travel from various counties around the state, and possibly from out of state. This increases the risk of people bringing COVID-19 to the testing site, or contracting COVID-19 at the testing site and spreading it to their own communities.
    - The February 2021 Bar Exam is scheduled to be hosted at the Tacoma Convention Center,[16] which is miles away from the nearest law school.
    - Other states have already experienced bar-related COVID-19 outbreaks. In Colorado, for example, after several exam takers in Denver were exposed during an in-person test.[17]
3. While vaccines are being developed and may be approved for market by the start of 2021, there will not likely be enough for every person in the United States for months.
    - For example, there are over 330 million people in the United States, and Pfizer says it expects to produce enough only for 12.5 million

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[13] T*he Coronavirus Outbreak Live Updates*, THE NEW YORK TIMES, (last updated Nov. 23, 2020), https://www.nytimes.com/live/2020/11/16/world/covid-19-coronavirus-updates?name=styln-coronavirus&region=TOP_BANNER&block=storyline_menu_recirc&action=click&pgtype=Interactive&impression_id=3ff38731-2819-11eb-93df-1971a0c31a00&variant=1_Show.

[14] *COVID-19 Data Dashboard*, WASHINGTON STATE DEPARTMENT OF HEALTH, (last updated Nov. 22, 2020), https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard#downloads.

[15]*COVID-19 Guidance*, WASHINGTON STATE GOVERNOR'S OFFICE, 1 (Nov. 15, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/COVID%2019%20November%20Statewide%20Restrictions.pdf.

[16] *Admission by Law Bar Examination*, WASHINGTON STATE BAR ASSOCIATION (Nov. 6, 2020), https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/qualifications-to-take-the-bar-exam.

[17] Elizabeth Hernandez, *Person who took bar exam at University of Denver tests positive for COVID-19 following contested test*, THE DENVER POST (July 30, 2020 at 3:11 PM), https://www.denverpost.com/2020/07/30/colorado-bar-exam-coronavirus-du/.

people by the time it goes to market, and enough for 650 million people by the end of 2021.[18]

- Healthcare workers, other essential workers, and high-risk populations will likely be the first to receive the vaccine.[19]

Online Bar Examinations

1. Remote bar exams eliminate the risk of COVID-19 outbreaks but discriminate against a wide variety of test-takers.
    - Remote exams impose significant burdens on any test taker who lacks access to reliable internet connection, a quiet study area, and technology.[20]
    - The difficulty of proctoring remote exams has resulted in discrimination against test takers with disabilities, who have been denied unscheduled bathroom breaks and forbidden from "fidgeting" or exhibiting other neurodiverse behaviors.[21]
    - Platforms that host remote exams use discriminatory anti-cheating facial recognition software that disproportionately misidentifies people of color, women, and gender diverse people.[22]
2. Remote bar exams have experienced serious technological failures.

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[18] *Pfizer And Biontech Announce Vaccine Candidate Against COVID-19 Achieved Success in First Interim Analysis from Phase 3 Study*, PZIFER (Nov. 9, 2020 at 6:45 AM) https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-announce-vaccine-candidate-against.

[19] *Who will be the first to get COVID-19 vaccines?*, THE ASSOCIATED PRESS (Nov. 17, 2020), https://apnews.com/article/who-will-get-covid-19-vaccine-first-2f9f8a32b5d9991790f4956497a50124.

[20] Valerie Strauss, *Why this pandemic is a good time to stop forcing prospective lawyers to take bar exams*, THE WASHINGTON POST (July 13, 2020 at 11:45 AM), https://www.washingtonpost.com/education/2020/07/13/why-this-pandemic-is-good-time-stop-forcing-prospective-lawyers-take-bar-exams/.

[21] Debra Cassens Weiss, *No bathroom break allowed? Suit says rules for remote bar exam discriminate against disabled grads*, THE ABA JOURNAL (Sept. 16, 2020 at 9:39 AM), https://www.abajournal.com/news/article/no-bathroom-break-allowed-suit-says-rules-for-remote-bar-exam-discriminate-against-disabled-grads.

[22] *ACLU civil rights concerns with potential use of facial recognition in proctoring the California Bar Examination*, AMERICAN CIVIL LIBERTIES UNION OF CALIFORNIA (2020), https://www.aclunc.org/sites/default/files/ACLU_Advocacy_Letter_re_Online_Bar_Exam.pdf; https://venturebeat.com/2020/09/29/examsofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/.

- Remote bar exam programs' failures or serious glitches led to postponements or cancellations in Indiana,[23] Michigan,[24] Nevada,[25] Louisiana,[26] and Florida.[27]
- Many remote exams faced a wave of software failures and glitches that prevented many test-takers from completing the exam.[28]
    - 41.1% of remote exam test-takers in New York reported experiencing technical problems during the test.[29]
- Remote bar exam software caused serious security breaches and invasions of privacy.[30]
    - One prominent remote proctoring company was hacked in July, exposing the personal information of 400,000 people.[31]

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[23] Caroline Spiezio and Sara Merken, *A day after Michigan snafu, software 'complications' force Indiana to hold bar exam by email*, REUTERS (July 29, 2020 at 2:56 PM), https://www.reuters.com/article/lawyer-coronavirus-indiana/a-day-after-michigan-snafu-software-complications-force-indiana-to-hold-bar-exam-by-email-idUSL2N2F030H

[24] Caroline Spiezio, *Michigan software crash roils first online U.S. bar exam*, REUTERS (July 28, 2020 at 1:26 PM), https://www.reuters.com/article/lawyer-coronavirus-michigan/michigan-software-crash-roils-first-online-u-s-bar-exam-idUSL2N2EZ26A

[25] Colin Lecher, *Remote Exam Software Is Crashing When the Stakes Are the Highest*, THE MARKUP (Oct. 13, 2020 at 8:00 AM), https://themarkup.org/coronavirus/2020/10/13/remote-exam-software-failures-privacy.

[26] Sam Skolnik, *October Online Bar Exams Spark Technology, Privacy Concerns*, BLOOMBERG LAW (Aug. 18, 2020 at 3:00 AM), https://news.bloomberglaw.com/us-law-week/october-online-bar-exams-spark-technology-privacy-concerns.

[27] Luke Barr, *Law school graduates in Florida say bar test software compromised computers*, ABC NEWS (Aug. 28, 2020 at 8:51 AM), https://abcnews.go.com/US/law-school-graduates-florida-bar-test-software-compromised/story?id=72595442.

[28] Jason Kelley, *Bar Applicants Deserve Better than a Remotely Proctored "Barpocalypse"*, ELECTRONIC FRONTIER FOUNDATION (October 9, 2020), https://www.eff.org/deeplinks/2020/10/bar-applicants-deserve-better-proctored-barpocalypse.

[29] Senator Brad Hoylman, *Senator Brad Hoylman and Assemblymember Jo Anne Simon Snapshot Survey of New York Online Bar Exam Finds Nearly Half of Respondents Experienced Technical Difficulties*, NEW YORK STATE SENATE (Oct. 16, 2020), https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/senator-brad-hoylman-and-assemblymember-jo-anne-simon-snapshot.

[30] Khari Johnson, *ExamSoft's remote bar exam sparks privacy and facial recognition concerns*, VENTURE BEAT (Sept. 29, 2020 at 9:07 AM), https://venturebeat.com/2020/09/29/examsofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/; Maggie Miller, *Law school graduates worried about security, privacy of online bar exam*, THE HILL (July 14, 2020 at 8:11 PM), https://thehill.com/policy/technology/507381-law-school-graduates-worried-about-security-privacy-of-online-bar-exam.

[31] *Security Update for ProctorU Clients*, PROCTORU (September 21, 2020), https://www.proctoru.com/security-update; Lawrence Abrams, *ProctorU confirms data breach*

Dozens of students who downloaded remote exam software later reported experiencing security breaches ranging from hacking to identity theft.[32]

Supervised Licensure

1. A supervised licensure program eliminates the risk of COVID-19 by permitting recent graduates to obtain full licensure after a defined period, or would allow them to practice until a bar exam could be safely administered, but pose many other difficulties.
2. It would be burdensome on the Court and the WSBA to implement a supervised licensure program by the time the February bar dates come about.
    - Many of the states that did adopt supervisory licensure programs already had some type of a program in place that was merely extended.
    - Washington would need to decide whether it would extend its Rule 9 option, or create a new program for graduates altogether.
        - Washington would need to delineate:
            - What it means to be a "qualified supervisor"
            - Whether recipients must be paid for their work
            - How long supervision must last before graduates are considered barred
3. Supervised licensure programs favor students who can effectively secure jobs.
    - Most law graduates will have trouble finding a job/supervisor in a recession.
    - Graduates who can find a supervisor might be unpaid for months on end.

Diploma Privilege

1. Diploma privilege eliminates COVID-19 concerns, as well as any equity concerns.

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after database leaked online, BLEEPING COMPUTER (Aug. 9, 2020 at 2:02 PM), https://www.bleepingcomputer.com/news/security/proctoru-confirms-data-breach-after-database-leaked-online/.

[32] Jack Evans, *The Florida Bar exam software crashes, freezes and can lead to hacks, examinees say*, TAMPA BAY TIMES (Aug. 11, 2020), https://www.tampabay.com/news/2020/08/11/the-florida-bar-exam-software-crashes-freezes-and-can-lead-to-hacks-examinees-say/.

2. Although there is a worry that adopting diploma privilege for graduates of accredited law schools will lead to higher rates of malpractice, Wisconsin's experience shows that diploma privilege does not endanger the public.
    - Wisconsin, which has adopted diploma privilege, has slightly lower rates of lawyer misconduct than Washington. In 2019, for example, Wisconsin disciplined 0.12% of its lawyers, while Washington disciplined 0.17%.[33]
3. Washington does not consider Wisconsin attorneys incompetent and permits them to apply for admission by motion to Washington's bar.[34]

[33] *Office of Lawyer Regulation Annual Report 2019-2020*, OFFICE OF LAWYER REGULATION (last accessed Nov. 23, 2020), https://www.wicourts.gov/courts/offices/docs/olr1920fiscal.pdf; *Washington Discipline System 2019 Annual Report*, WASHINGTON STATE BAR ASSOCIATION (last accessed Nov. 23, 2020), https://www.wsba.org/docs/default-source/licensing/discipline/2019-discipline-system-annual-report.pdf?sfvrsn=d5100ef1_10 (dividing disciplinary cases by total number of lawyers); Jean C. Edwards, *Incidence of Bar Discipline in Millennial Attorneys*, HARVARD UNIVERSITY 36 (May 2018), https://dash.harvard.edu/bitstream/handle/1/37945095/EDWARDS-DOCUMENT-2018.pdf?sequence=1&isAllowed=y (stating that Washington and Wisconsin are similarly sized bars that discipline attorneys at "similar rates").

[34] WA A.P.R. 3.

Forwarded by Governor Grabicki to Terra Nevitt and Kyle Sciuchetti

From: William Croft <william.croft@farmersinsurance.com>
Sent: Thursday, March 25, 2021 9:07 AM
To: PJ Grabicki <pjg@randalldanskin.com>
Subject: Bar Exam- governor's meeting

Mr. Grabicki:

I was a bar examiner for several years and have now basically stepped aside to let others do it, mostly as a result of the implementation of the multi-state examination. I see that the examination process is undergoing evaluation by the board in the latest news digest e-mail. If there is an opportunity to establish a Washington based law school diploma privilege, I think that would save the bar money, and would be one good way to make sure a student's significant investment in a Washington legal education is furthered.

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Paris Eriksen

From: Bryn Peterson <bryn.peterson@brynpetersonlaw.com>
Sent: Wednesday, April 7, 2021 6:17 PM
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FYI below

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---------- Forwarded message ---------
From: **Ron Greenen** <ron@greenenpllc.com>
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To: Jeffrey Floyd <jeff@jsfloydlaw.com>, Law Firm <glotzkar@lotzkarlaw.com>, Kimberley Lane <kimberley@lanelaw.attorney>, Evan Floyd <evan@jsfloydlaw.com>, Zach Walker <Zach@jsfloydlaw.com>
Cc: Betsy Brinson <betsy@brinsonheinz.com>, Cynthia First <cynthia@portgardnerlaw.com>, David Speikers <law@davidspeikers.com>, Greg Zempel <greg.zempel@co.kittitas.wa.us>, Bryn Peterson <bryn.peterson@brynpetersonlaw.com>, Ben Phillabaum <ben@spokelaw.com>, tarraflawoffice@gmail.com <tarraflawoffice@gmail.com>, Edward@chaalexander.com <Edward@chaalexander.com>, paul@paulrichmondlaw.com <paul@paulrichmondlaw.com>, walt@kruegerbecklaw.com <walt@kruegerbecklaw.com>, dlee@feldmanlee.com <dlee@feldmanlee.com>, jonathan.meyer@lewiscountywa.gov <jonathan.meyer@lewiscountywa.gov>, scott@lacykane.com <scott@lacykane.com>, dvargas@djvlaw.com <dvargas@djvlaw.com>, greg@gregdeckerlaw.com

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For what it's worth, I was shocked when the Supreme Court decided that just graduating from law school this last year is all that was necessary to practice law in the state without taking a bar exam. In my opinion, I feel

that everyone should take the bar exam whether they graduated from a law school or completed the law clerk program. I have tutored two ladies who took the bar exam and passed on the first try. I am now in my third year with a third lady in the program and expect her to likewise pass without any problem.

As for getting CLE credit for acting as a tutor, I wonder if I can get 11 years of credit at this point. I actually don't care if I get CLE credits or not.

Ron

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Paris Eriksen

From: Bryn Peterson <bryn.peterson@brynpetersonlaw.com>
Sent: Wednesday, April 7, 2021 6:12 PM
To: Bar Leaders
Subject: Fwd: CLE Credit for Mentor in WSBA Clerkship Program

Follow Up Flag: Follow up
Flag Status: Flagged

FYI below.

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---------- Forwarded message ---------
From: **Greg Zempel** <greg.zempel@co.kittitas.wa.us>
Date: Tue, Apr 6, 2021 at 10:06 PM
Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program
To: Jonathan Meyer <Jonathan.Meyer@lewiscountywa.gov>, Betsy Brinson <betsy@brinsonheinz.com>, Cynthia First <cynthia@portgardnerlaw.com>, David Speikers <law@davidspeikers.com>, Bryn Peterson <bryn.peterson@brynpetersonlaw.com>, Kimberley Lane <kimberley@lanelaw.attorney>
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Do not disagree to what said, except my remarks were more to the fairness issue: If Law school folks get to take a pass on an exam and just get sworn in, then so should the clerks. I still think both should take a test, but waive for one set, waive for the other.

From: Jonathan Meyer <Jonathan.Meyer@lewiscountywa.gov>
Sent: Tuesday, April 6, 2021 11:42 AM
To: Greg Zempel <greg.zempel@co.kittitas.wa.us>; 'Betsy Brinson' <betsy@brinsonheinz.com>; Cynthia First <cynthia@portgardnerlaw.com>; David Speikers <law@davidspeikers.com>; 'Bryn Peterson' <bryn.peterson@brynpetersonlaw.com>; Kimberley Lane <kimberley@lanelaw.attorney>
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Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program

I believe this is bad policy all around. People have to take a test to drive a car, cut hair, etc. Should we not expect a minimal amount of proficiency be proven to practice law? Our ability/inability to

practice law literally has the ability to save/destroy lives. It seems of some import to ensure ability. Can the bar exam be improved? Absolutely. Does graduating from an accredited school guarantee the ability to practice law? Absolutely not. I went to school with someone who paid actual attorneys to do his legal writing for him.

This standard would do nothing to improve the practice of law. However, I believe the Rule 6 process is of a greater benefit than law school. It covers major areas of law. You learn by doing and has the ability to help those who want to become lawyers but would otherwise be unable to achieve the goal.

The advantage of the clerk program, as discussed above, is the full-immersion style of the program. As someone pointed out in an earlier email, I believe those going through the clerk program are better situated to perform better, and often do. Perhaps skipping the bar *after* a term as a rule 9 or something along those lines would be appropriate.

If we all think back to law school, it did VERY LITTLE to prepare us for the practice of law. Rather, it taught us the thought process and the research process. Law clinics, moot courts, internships, and externships did more for my preparation to be an attorney than any of the schooling ever did.

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From: Greg Zempel <greg.zempel@co.kittitas.wa.us>
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Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program

I think out of fairness, if they are waiving for this group, how long are they waiving? July test? February test?

If this group gets waived, why should Clerks be different? They work as hard if not harder and for a longer period of time. Need a combined response to Supremes and BOG

From: Betsy Brinson <betsy@brinsonheinz.com>
Sent: Monday, April 5, 2021 5:48 PM
To: Cynthia First <cynthia@portgardnerlaw.com>; David Speikers <law@davidspeikers.com>; Greg Zempel <greg.zempel@co.kittitas.wa.us>; 'Bryn Peterson' <bryn.peterson@brynpetersonlaw.com>; Kimberley Lane <kimberley@lanelaw.attorney>
Cc: Ben Phillabaum <ben@spokelaw.com>; jeff@jsfloydlaw.com; tarraflawoffice@gmail.com; Edward@chaalexander.com; paul@paulrichmondlaw.com; walt@kruegerbecklaw.com; dlee@feldmanlee.com; jonathan.meyer@lewiscountywa.gov; scott@lacykane.com; dvargas@djvlaw.com; greg@gregdeckerlaw.com; scottamarks@hotmail.com; kyle@pugetsoundwills.com; scott@braininjurylawofseattle.com; trhill@co.grant.wa.us; john@politolawoffices.com; john@merriam-maritimelaw.com; mjordan@bracepointlaw.com; hmaynard@vjglaw.com; mark@markdnelsonlaw.com; craig@evezich.com; roman@kesselmanlaw.net; govindalaw@gmail.com; jason@celskilaw.com; bronson@bellbrownrio.com; spederson@gravislaw.com; tmdlaw@gmail.com; karl@mallinglaw.com; pb@luminositylaw.com; bud@bhouserlaw.com; bruce@glgpllc.com; deane@tuohyminor.com; blducelaw@yahoo.com; efahlman@faolaw.com; jsprouffske@olylaw.com; jgray@olylaw.com; stephanie@hendersonlaw.net; gkopta@hotmail.com; jeanne@morris-sockle.com; Todd.Sipe@atg.wa.gov; dorothyb@findbankruptcy.com; steve@defoepickett.com; rtulloch@earthlink.net; adrian@apimentellaw.com; Klaus.Snyder@sumnerlawcenter.com; jim@jklegal.com; Jarrodhays@Skyviewlaw.com; neal@gravislaw.com; norma@rihr-law.com; nathan@petersenlawgroup.com; manny@cajlawyers.com; matt@nwirp.org; glotzkar@lotzkarlaw.com; sam@samelderlaw.com; donohue@wscd.com; chris@cedarlawpllc.com; Mike@SearsInjuryLaw.com; rrehberg@rehberglaw.com; brock@stileslaw.com; brad@lancasterlawoffice.com; Craig@glgmail.com; michele@pearsonlawfirm.com; jmoberg@mrklawgroup.com; paul@paulbmack.com; michael@colbynipper.com; martin@peltramlaw.com; hector@quirogalawoffice.com; jjt@law-wa.com; mark@adoptionlegalservices.org; dept6@spokanecounty.org; esteven@comcast.net; jps@spurgetislaw.com; dennis@beemer-mumma.com; KapriLawFirm@gmail.com; mtreyz@harbornet.com; jsterbick@sterbick.com; TeamRehmke@rehmkelaw.com; anthony@sounderlaw.com; lloyd.oaks@piercecountywa.gov; rnerio@mckinleyirvin.com; attorney@merideemathews.com; alexandra@abogadaalexandra.com; jbarrar@barrarlaw.com; steve@horensteinlawgroup.com; ron@greenenpllc.com; rylander@rylanderlaw.com; jbean@joshuabeanlaw.com; peter@hesslawoffice.com; dan@hesslawoffice.com; carolyn@csimmslaw.com; johnpatrickmucklestone@comcast.net; danclarkbog@yahoo.com; Soniarodrigueztrue@gmail.com; Samuel.Chen@co.yakima.wa.us; mconnell@smartlawoffices.com; dan@crowelaw.net
Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program

Dear Group:

I have just receive notice from my WSBA BOG member that the supreme court is contemplating waiving (apparently again, as they did last year, or maybe on-going) the requirement to take and pass a bar exam and that a diploma from an accredited law school suffices as a ticket to practice law in Washington. Setting aside, for the moment, my knee jerk reaction of "I had to, you should have to too" reaction, what does this do to the Rule 6s?

Betsy Brinson

From: Cynthia First [mailto:cynthia@portgardnerlaw.com]
Sent: Monday, April 05, 2021 4:28 PM
To: David Speikers <law@davidspeikers.com>; Greg Zempel <greg.zempel@co.kittitas.wa.us>; 'Bryn Peterson' <bryn.peterson@brynpetersonlaw.com>; Kimberley Lane <kimberley@lanelaw.attorney>
Cc: Ben Phillabaum <ben@spokelaw.com>; jeff@jsfloydlaw.com; tarraflawoffice@gmail.com; Edward@chaalexander.com; paul@paulrichmondlaw.com; walt@kruegerbecklaw.com; dlee@feldmanlee.com; jonathan.meyer@lewiscountywa.gov; scott@lacykane.com; dvargas@djvlaw.com; greg@gregdeckerlaw.com; scottamarks@hotmail.com; kyle@pugetsoundwills.com; scott@braininjurylawofseattle.com; trhill@co.grant.wa.us; john@politolawoffices.com; john@merriam-maritimelaw.com; mjordan@bracepointlaw.com; Betsy Brinson <betsy@brinsonheinz.com>; hmaynard@vjglaw.com; mark@markdnelsonlaw.com; craig@evezich.com; roman@kesselmanlaw.net; govindalaw@gmail.com; jason@celskilaw.com; bronson@bellbrownrio.com; spederson@gravislaw.com; tmdlaw@gmail.com; karl@mallinglaw.com; pb@luminositylaw.com; bud@bhouserlaw.com; bruce@glgpllc.com; deane@tuohyminor.com; blducelaw@yahoo.com; efahlman@faolaw.com; jsprouffske@olylaw.com; jgray@olylaw.com; stephanie@hendersonlaw.net; gkopta@hotmail.com; jeanne@morris-sockle.com; Todd.Sipe@atg.wa.gov; dorothyb@findbankruptcy.com; steve@defoepickett.com; rtulloch@earthlink.net; adrian@apimentellaw.com; Klaus.Snyder@sumnerlawcenter.com; jim@jklegal.com; Jarrodhays@Skyviewlaw.com; neal@gravislaw.com; norma@rihr-law.com; nathan@petersenlawgroup.com; manny@cajlawyers.com; matt@nwirp.org; glotzkar@lotzkarlaw.com; sam@samelderlaw.com; donohue@wscd.com; chris@cedarlawpllc.com; Mike@SearsInjuryLaw.com; rrehberg@rehberglaw.com; brock@stileslaw.com; brad@lancasterlawoffice.com; Craig@glgmail.com; michele@pearsonlawfirm.com; jmoberg@mrklawgroup.com; paul@paulbmack.com; michael@colbynipper.com; martin@peltramlaw.com; hector@quirogalawoffice.com; jjt@law-wa.com; mark@adoptionlegalservices.org; dept6@spokanecounty.org; esteven@comcast.net; jps@spurgetislaw.com; dennis@beemer-mumma.com; KapriLawFirm@gmail.com; mtreyz@harbornet.com; jsterbick@sterbick.com; TeamRehmke@rehmkelaw.com; anthony@sounderlaw.com; lloyd.oaks@piercecountywa.gov; rnerio@mckinleyirvin.com; attorney@merideemathews.com; alexandra@abogadaalexandra.com; jbarrar@barrarlaw.com; steve@horensteinlawgroup.com; ron@greenenpllc.com; rylander@rylanderlaw.com; jbean@joshuabeanlaw.com; peter@hesslawoffice.com; dan@hesslawoffice.com; carolyn@csimmslaw.com; johnpatrickmucklestone@comcast.net; danclarkbog@yahoo.com; Soniarodrigueztrue@gmail.com; Samuel.Chen@co.yakima.wa.us; mconnell@smartlawoffices.com; dan@crowelaw.net
Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program

Not that you will find many (if any) tutors who would oppose this eloquent and well-supported request by Ms. Lane, but for the record, I concur. To Ms. Lane, thank you for persisting in this quest. If there is more information needed from any of us for BOG to consider this ask, I am sure you would be flooded with anything you needed from grateful tutors. I had no idea there were so many of us!

Cynthia R. First

Attorney and Mediator

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Please consider the environment before printing this e-mail.

Please Note: We are still open! We remain committed to our clients and our staff as we continue to take precautions to keep our staff and clients safe. We have continued to keep up to date on the changing COVID 19 circumstances, orders, and suggestions coming from our State and County officials, and the CDC, along with other authorities. We are available for in person appointments and phone appointments, along with Zoom and other electronic platforms to meet your needs and address any safety concerns of our clients and staff. We will continue to monitor the situation and recommendations from the CDC and state and local health departments and will respond accordingly. Be assured that we will continue to advise and support our clients throughout this health emergency and we will continue to discuss with our clients changes to court procedures, requirements, attendance as these processes are ever evolving. Be safe and well.

From: David Speikers
Sent: Monday, April 5, 2021 3:36 PM
To: Greg Zempel; 'Bryn Peterson'; Kimberley Lane
Cc: Ben Phillabaum; jeff@jsfloydlaw.com; tarraflawoffice@gmail.com; Edward@chaalexander.com; paul@paulrichmondlaw.com; walt@kruegerbecklaw.com; dlee@feldmanlee.com; jonathan.meyer@lewiscountywa.gov; scott@lacykane.com; dvargas@djvlaw.com; greg@gregdeckerlaw.com; scottamarks@hotmail.com; kyle@pugetsoundwills.com; scott@braininjurylawofseattle.com; trhill@co.grant.wa.us; Cynthia First; john@politolawoffices.com; john@merriam-maritimelaw.com; mjordan@bracepointlaw.com; betsy@betsybrinson.com; hmaynard@vjglaw.com; mark@markdnelsonlaw.com; craig@evezich.com; roman@kesselmanlaw.net; govindalaw@gmail.com; jason@celskilaw.com; bronson@bellbrownrio.com; spederson@gravislaw.com; tmdlaw@gmail.com; karl@mallinglaw.com; pb@luminositylaw.com; bud@bhouserlaw.com; bruce@glgpllc.com; deane@tuohyminor.com; blducelaw@yahoo.com; efahlman@faolaw.com; jsprouffske@olylaw.com; jgray@olylaw.com; stephanie@hendersonlaw.net; gkopta@hotmail.com; jeanne@morris-sockle.com; Todd.Sipe@atg.wa.gov; dorothyb@findbankruptcy.com; steve@defoepickett.com; rtulloch@earthlink.net; adrian@apimentellaw.com; Klaus.Snyder@sumnerlawcenter.com; jim@jklegal.com; Jarrodhays@Skyviewlaw.com; neal@gravislaw.com; norma@rihr-law.com; nathan@petersenlawgroup.com; manny@cajlawyers.com; matt@nwirp.org; glotzkar@lotzkarlaw.com; sam@samelderlaw.com; donohue@wscd.com; chris@cedarlawpllc.com; Mike@SearsInjuryLaw.com; rrehberg@rehberglaw.com; brock@stileslaw.com; brad@lancasterlawoffice.com; Craig@glgmail.com; michele@pearsonlawfirm.com; jmoberg@mrklawgroup.com; paul@paulbmack.com; michael@colbynipper.com; martin@peltramlaw.com; hector@quirogalawoffice.com; jjt@law-wa.com; mark@adoptionlegalservices.org; dept6@spokanecounty.org; esteven@comcast.net; jps@spurgetislaw.com; dennis@beemer-mumma.com; KapriLawFirm@gmail.com; mtreyz@harbornet.com; jsterbick@sterbick.com; TeamRehmke@rehmkelaw.com; anthony@sounderlaw.com; lloyd.oaks@piercecountywa.gov; rnerio@mckinleyirvin.com; attorney@merideemathews.com; alexandra@abogadaalexandra.com; jbarrar@barrarlaw.com; steve@horensteinlawgroup.com; ron@greenenpllc.com; rylander@rylanderlaw.com; jbean@joshuabeanlaw.com; peter@hesslawoffice.com; dan@hesslawoffice.com; carolyn@csimmslaw.com; johnpatrickmucklestone@comcast.net; danclarkbog@yahoo.com; Soniarodrigueztrue@gmail.com; Samuel.Chen@co.yakima.wa.us; mconnell@smartlawoffices.com; dan@crowelaw.net
Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program

I agree Greg. I have mentored an APR 6 after she first began working for me as a paralegal. She raised children alone for 9 months of the year while her husband was deployed over seas. It was a lot of work but satisfying knowing that I was able to give back to a family and law clerk who very much deserved to become a lawyer.

David G. Speikers, *Attorney*

32116 SE Red-Fall City Rd.
Fall City, WA 98024
Phone: 425-222-0555

From: Greg Zempel [mailto:greg.zempel@co.kittitas.wa.us]
Sent: Monday, April 05, 2021 1:10 PM

To: 'Bryn Peterson' <bryn.peterson@brynpetersonlaw.com>; Kimberley Lane <kimberley@lanelaw.attorney>
Cc: Ben Phillabaum <ben@spokelaw.com>; jeff@jsfloydlaw.com; tarraflawoffice@gmail.com; Edward@chaalexander.com; paul@paulrichmondlaw.com; walt@kruegerbecklaw.com; dlee@feldmanlee.com; jonathan.meyer@lewiscountywa.gov; scott@lacykane.com; dvargas@djvlaw.com; greg@gregdeckerlaw.com; scottamarks@hotmail.com; kyle@pugetsoundwills.com; scott@braininjurylawofseattle.com; trhill@co.grant.wa.us; cynthia@portgardnerlaw.com; john@politolawoffices.com; john@merriam-maritimelaw.com; mjordan@bracepointlaw.com; betsy@betsybrinson.com; hmaynard@vjglaw.com; mark@markdnelsonlaw.com; craig@evezich.com; roman@kesselmanlaw.net; govindalaw@gmail.com; jason@celskilaw.com; bronson@bellbrownrio.com; spederson@gravislaw.com; tmdlaw@gmail.com; karl@mallinglaw.com; pb@luminositylaw.com; bud@bhouserlaw.com; bruce@glgpllc.com; deane@tuohyminor.com; blducelaw@yahoo.com; efahlman@faolaw.com; jsprouffske@olylaw.com; jgray@olylaw.com; stephanie@hendersonlaw.net; gkopta@hotmail.com; jeanne@morris-sockle.com; Todd.Sipe@atg.wa.gov; dorothyb@findbankruptcy.com; steve@defoepickett.com; rtulloch@earthlink.net; adrian@apimentellaw.com; Klaus.Snyder@sumnerlawcenter.com; David Speikers <law@davidspeikers.com>; jim@jklegal.com; Jarrodhays@Skyviewlaw.com; neal@gravislaw.com; norma@rihr-law.com; nathan@petersenlawgroup.com; manny@cajlawyers.com; matt@nwirp.org; glotzkar@lotzkarlaw.com; sam@samelderlaw.com; donohue@wscd.com; chris@cedarlawpllc.com; Mike@SearsInjuryLaw.com; rrehberg@rehberglaw.com; brock@stileslaw.com; brad@lancasterlawoffice.com; Craig@glgmail.com; michele@pearsonlawfirm.com; jmoberg@mrklawgroup.com; paul@paulbmack.com; michael@colbynipper.com; martin@peltramlaw.com; hector@quirogalawoffice.com; jjt@law-wa.com; mark@adoptionlegalservices.org; dept6@spokanecounty.org; esteven@comcast.net; jps@spurgetislaw.com; dennis@beemer-mumma.com; KapriLawFirm@gmail.com; mtreyz@harbornet.com; jsterbick@sterbick.com; TeamRehmke@rehmkelaw.com; anthony@sounderlaw.com; lloyd.oaks@piercecountywa.gov; rnerio@mckinleyirvin.com; attorney@merideemathews.com; alexandra@abogadaalexandra.com; jbarrar@barrarlaw.com; steve@horensteinlawgroup.com; ron@greenenpllc.com; rylander@rylanderlaw.com; jbean@joshuabeanlaw.com; peter@hesslawoffice.com; dan@hesslawoffice.com; carolyn@csimmslaw.com; johnpatrickmucklestone@comcast.net; danclarkbog@yahoo.com; Soniarodrigueztrue@gmail.com; Samuel.Chen@co.yakima.wa.us; mconnell@smartlawoffices.com; dan@crowelaw.net
Subject: RE: CLE Credit for Mentor in WSBA Clerkship Program

Great points. And I suppose as a statement of support, both of the folks that I have been a tutor for were living to far from a law school to attend on a daily basis, and they were/are women working full time to support their family/children. Both had finished college degrees after starting families, because CWU was close, or because some could be done on-line. If we do not desire to maintain the traditional approach (One used by Lincoln) as a pathway to law, then at a minimum, perhaps the law schools can go to on-line instruction, although they would still want the big dollars that some might not be able to afford.

And for some of us, given the distance to WSBA, this is the only connection we truly have with “our” bar association.

From: Bryn Peterson <bryn.peterson@brynpetersonlaw.com>
Sent: Monday, April 5, 2021 12:21 PM
To: Kimberley Lane <kimberley@lanelaw.attorney>
Cc: Ben Phillabaum <ben@spokelaw.com>; jeff@jsfloydlaw.com; tarraflawoffice@gmail.com; Edward@chaalexander.com; paul@paulrichmondlaw.com; walt@kruegerbecklaw.com; dlee@feldmanlee.com;

jonathan.meyer@lewiscountywa.gov; scott@lacykane.com; dvargas@djvlaw.com; greg@gregdeckerlaw.com; scottamarks@hotmail.com; kyle@pugetsoundwills.com; scott@braininjurylawofseattle.com; Greg Zempel <greg.zempel@co.kittitas.wa.us>; trhill@co.grant.wa.us; cynthia@portgardnerlaw.com; john@politolawoffices.com; john@merriam-maritimelaw.com; mjordan@bracepointlaw.com; betsy@betsybrinson.com; hmaynard@vjglaw.com; mark@markdnelsonlaw.com; craig@evezich.com; roman@kesselmanlaw.net; govindalaw@gmail.com; jason@celskilaw.com; bronson@bellbrownrio.com; spederson@gravislaw.com; tmdlaw@gmail.com; karl@mallinglaw.com; pb@luminositylaw.com; bud@bhouserlaw.com; bruce@glgpllc.com; deane@tuohyminor.com; blducelaw@yahoo.com; efahlman@faolaw.com; jsprouffske@olylaw.com; jgray@olylaw.com; stephanie@hendersonlaw.net; gkopta@hotmail.com; jeanne@morris-sockle.com; Todd.Sipe@atg.wa.gov; dorothyb@findbankruptcy.com; steve@defoepickett.com; rtulloch@earthlink.net; adrian@apimentellaw.com; Klaus.Snyder@sumnerlawcenter.com; law@davidspeikers.com; jim@jklegal.com; Jarrodhays@Skyviewlaw.com; neal@gravislaw.com; norma@rihr-law.com; nathan@petersenlawgroup.com; manny@cajlawyers.com; matt@nwirp.org; glotzkar@lotzkarlaw.com; sam@samelderlaw.com; donohue@wscd.com; chris@cedarlawpllc.com; Mike@SearsInjuryLaw.com; rrehberg@rehberglaw.com; brock@stileslaw.com; brad@lancasterlawoffice.com; Craig@glgmail.com; michele@pearsonlawfirm.com; jmoberg@mrklawgroup.com; paul@paulbmack.com; michael@colbynipper.com; martin@peltramlaw.com; hector@quirogalawoffice.com; jjt@law-wa.com; mark@adoptionlegalservices.org; dept6@spokanecounty.org; esteven@comcast.net; jps@spurgetislaw.com; dennis@beemer-mumma.com; KapriLawFirm@gmail.com; mtreyz@harbornet.com; jsterbick@sterbick.com; TeamRehmke@rehmkelaw.com; anthony@sounderlaw.com; lloyd.oaks@piercecountywa.gov; rnerio@mckinleyirvin.com; attorney@merideemathews.com; alexandra@abogadaalexandra.com; jbarrar@barrarlaw.com; steve@horensteinlawgroup.com; ron@greenenpllc.com; rylander@rylanderlaw.com; jbean@joshuabeanlaw.com; peter@hesslawoffice.com; dan@hesslawoffice.com; carolyn@csimmslaw.com; johnpatrickmucklestone@comcast.net; danclarkbog@yahoo.com; Soniarodrigueztrue@gmail.com; Samuel.Chen@co.yakima.wa.us; mconnell@smartlawoffices.com; dan@crowelaw.net
Subject: Re: CLE Credit for Mentor in WSBA Clerkship Program

It was a pleasure to talk with you last week!

Let me look into this for you.

Cheers!

Bryn Peterson

Your Corporate Law Attorney

Washington State Bar Association, Governor District 9

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On Mon, Apr 5, 2021 at 12:18 PM Kimberley Lane <kimberley@lanelaw.attorney> wrote:

> Dear Mr. Peterson,
>
> Thank you for talking to me the other day. I appreciate your time as a member of the Board of Governors of the WSBA in discussing the above issue with you. Per our discussion, you asked if I would provide you a synopsis of my experience.
>
> 1. My paralegal, Tessa Henrichsen applied and was accepted into the WSBA clerkship program in December of 2018 with me listed as her primary mentor, making me primarily responsible for her legal education in total.
> 2. During the program, I read all texts, conduct classes, draft tests, proctor tests, and fill out all paperwork associated with Ms. Henrichsen's clerkship. Texts are usually 500-1000 pages, classes are 3-4 hours per week, drafting the tests is about 10 hours of my time, proctoring and grading exams is about another 4 hours of my time and filling out all associated paperwork required by WSBA is another hour.
> 3. Ms. Henrichsen is now in her third year of the program and according to Ben Philabaum, chair of the WSBA Clerkship Program, she is progressing satisfactorily.

4. I applied for CLE credits for my time teaching Ms. Henrichsen in December of 2020 and was denied all credit on January 14, 2021.
5. I contacted Mr. Phillabaum in December and asked him about the possibility of acquiring CLEs for mentorship of my clerk and he responded stating that none of the mentors/tutors received CLEs but if I could get the rule changed, I would "be a hero to more than a hundred other tutors in WA!" See attached.

My understanding of the CLE rule is that law professors teaching law students are allowed to claim CLEs for that activity. Consequently, if I were teaching 2 law students in a law school, I would be entitled to CLEs but because I am teaching 1 student as part of the WSBA's sponsored clerkship program, I am denied CLE credit. There are about a hundred law professors at the three law schools in the state of Washington and there are about a hundred mentor/tutors in the WSBA Clerkship program. This appears to be fundamentally unfair and an arbitrary rule as the WSBA will grant CLE credit to the same number of attorneys basically doing the exact same activity for the exact same type of audience, yet one is given credit and the other not.

If the WSBA is desirous of promoting mentor involvement in its sponsored program, why would it refuse to grant credit to encourage participation? If the stated purpose of the Rule 6 program is to provide "access to legal education guided by qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components (*See APR Rule 6(a)),* then the "qualified tutor" is me, who had to qualify and provide legal education, just as any law professor in any ABA accredited law school. Plus, more is asked of me as a tutor than law professors as I have to provide the experiential piece in addition to the theoretical piece. Consequently, an argument for my getting credit for time spent participating in this program is even more warranted.

Lastly, this program serves the law student who, through life situations, cannot attend traditional law school. Our bar says it is committed to not only access to justice but access to legal education. Many of the participants live and work far away from the three law schools in this state. Serving in this program assists bringing brilliant minds not otherwise able to attend formalized legal education into our revered profession. What is it saying to all these people if the WSBA only shows its support for formalized education by giving only law professors CLE credit and not law tutor/mentors?

For your convenience, I have attached a list of the current law tutors in the WSBA Clerkship Program and copied them on this mail.

As far as the issue of how many CLE credits the WSBA should offer per class taught, perhaps the WSBA can leverage the university system and provide 3 credits for a 3 hour per week class, 1 credit for a 1 hour per week class, and 4 hours for a 4 hour per week class. That way, there would be no greater than 36 hour per year cap for any given tutor/mentor.

I would appreciate any information I could garner from you on how to change this unfair and arbitrary rule. Please provide first steps and with whom I need to speak in order to redress this unfairness to our membership.

Thank you for your kind attention to this matter,

Kimberley Lane

Managing Attorney / Lane Law Group PLLC / 509-674-5200

WASHINGTON STATE
BAR ASSOCIATION

To: WSBA Board of Governors
From: Benjamin Phillabaum, Chair, Law Clerk Board
Bobby Henry, Associate Director of Regulatory Services
Date: March 30, 2021
Subject: Suggested Amendments to APR 6 and Law Clerk Program Regulations.

Information: The Law Clerk Board (Board) submits suggested amendments to APR 6 and the Law Clerk Program Regulations for first reading by the Board of Governors.

The suggested amendments to APR 6 and the law clerk program regulations are intended to clarify and expand the program requirements, provide for increased accessibility to the program and to make the program more efficient to administer by the Board and WSBA staff.

The law clerk program has been successful in providing the opportunity for a legal education for those who recognize the value of an apprenticeship model of legal education, cannot afford law school, or have other barriers to attending law school. The program's practical, employment-based apprenticeship structure has been sought by an increasing number of applicants in recent years. New circumstances and atypical requests are more frequently presented to the Board with the increasing number of participants and applicants. In an effort to provide more guidance and less ambiguity, the Board seeks to better define the key elements of the program such as the employment structure, educational requirements for advanced standing, and the duties of tutors and clerks.

The Board began discussing possible rule amendments in 2020 in response to questions and concerns from potential applicants and current participants in the program. The Board designated a committee to review and make suggested amendments to the rules and regulations. The following suggested amendments were developed through extensive review and discussion by the committee, and after consideration by the Board during this process.

Suggested amendments to APR 6 and Related Regulations
Broadly speaking, the primary purpose of the suggested amendments is to expand and clarify definitions and program processes. Below are some of the amendments being presented today and the discussions around specific topics.

Out of State Applicants and Employers
The Law Clerk Program has always been available to Washington State residents only, however, this has been challenged by many applicants and brought to the Board's attention in recent years. The Board is suggesting a new provision in APR 6(b)(8) to allow for a law clerk to have an out of state employer when certain criteria are met. The proposed new provision would include the following main requirements for an applicant with an out of state employer, as outlined in proposed Regulation 3-1(A)(3):

- The primary tutor must be an active member of the Washington State Bar Association.

- The primary tutor must certify that the tutor's, or tutor's workplace, has a case load with at least 51 percent of caseload involving Washington law.
- The tutor must agree to maintain a caseload that has substantial contact with Washington State. Substantial contact means having a caseload where at least 51 percent of the cases on average in a given year involve Washington law. The tutor will be required to submit an annual certification regarding WA caseload to remain eligible.
- Law clerks and tutors are required to attend evaluations, regardless of distance.

Employment Waiver Policy

There is currently a policy (previously approved by the Board of Governors) in place to allow for a tutor who is not employed by the law clerk's employer when certain conditions are met. The Board is proposing to incorporate these policies, referred to as the employment waiver policies, into the regulations. See Regulation 3-1A(2). There are no substantive changes to the existing policy. The goal is to have the policy as part of the regulations so that applicants and participants are able to find the information in one place rather than a separate policy document to refer to.

Law Clerk Program Reciprocity

California, Vermont, and Virginia have alternative legal education models, and several other states allow a hybrid model of law school with alternative legal education. Some clerks who have completed Washington's program have had success with petitioning for admission to practice law in other states on a case by case basis. Oregon is working on developing an alternative legal education program very similar to Washington's program, but it has been put on hold during the pandemic. The Board reviewed the idea of reciprocity between other states in order to make it more attainable for a former law clerk to practice law outside of Washington State. However, there are currently no programs comparable enough to Washington's that would warrant reciprocity. The Board determined it is more appropriate for reciprocity to be considered and reviewed by WSBA admissions staff if and when Oregon adopts its program.

Additional Changes Proposed

Many of the proposed amendments are meant to address issues that tend to come up frequently and need greater clarity so that the Board can provide consistency in its decision making and approval processes. The Board is seeking to resolve the issues that tend to cause the most confusion for participants and Board members.

These changes include:

- Allowing the Bar Association staff to direct how applications, petitions or requests should be submitted as technology and procedures change over time. Regulation 2-4.
- Filing materials via alternative methods rather than at the physical office location. Regulation 3-1(A).

- Clarifying that an applicant who was previously enrolled in the program may seek advanced standing for courses completed in the prior enrollment (but only those completed in the last five years from the date of application). Regulation 3-2(A)(2).
- Allowing applicants to choose when to enroll in the program. The new provision will allow the applicant to amend the enrollment date if it changes. Regulation 3-4 and 3-5.
- Amending the deadline for submission of exams to 10 days rather than 10 business days so the due date is consistent rather than changing month to month. Regulation 5-3(E).
- Permitting the Board to determine the intervals at which a law clerk and tutor must appear for an evaluation. The clarification allows the Board to decide when a law clerk and tutor need to appear in person. Regulation 5-4.

Many of the other proposed amendments seek to unify the grammar and style of APR 6 without creating substantive changes to the rules and regulations. Other proposed amendments seek to clarify information and definitions, but in other respects is left unaltered.

Attachments

1. Suggested amendments to APR 6 and the Law Clerk Program Regulations
2. Clean copy – Proposed APR 6 and Regulations

WASHINGTON STATE
BAR ASSOCIATION

RULES AND REGULATIONS

GOVERNING THE WASHINGTON STATE

LAW CLERK PROGRAM

Effective Date: September 1, 2017

APR 6 Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003;January 13, 2009; January 1, 2014; September 1, 2017.

Regulations approved by the Board of Governors September 26, 2013, effective January 1, 2014; amended effective May 19, 2017.

ADMISSION AND PRACTICE RULES (APR)

RULE 6. LAW CLERK PROGRAM

(a) Purpose. 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 in Washington; it is not a special admission or limited license to practice law.

(b) Application. Every applicant for enrollment in the law clerk program shall:

(1) Be of good moral character and fitness, as defined in APR 20;

(2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;

(3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;

(4) Submit in such form and manner as prescribed by the Bar (i) an application for enrollment in the program, (ii) the tutor's application, and, (iii) the application fee;

(5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Bar; and

(6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Bar may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.

(7) Where the Bar is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or primary tutor's employer, be the law clerk's employer may be waived.

(8) Where the Bar is satisfied that the applicant has employment with a tutor whose practice has substantial contacts with Washington state, the requirement that the full-time employment be in Washington state may be waived.

(c) Tutors. To be eligible to act as a tutor in the law clerk program, a lawyer or judge judicial member, as defined in the WSBA Bylaws, shall:

(1) Act as a tutor for only one law clerk at a time;

(2) Be an active member in good standing of the Bar, or be a judicial member who is currently elected or appointed to an elected position of the Bar, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;

(3) Have active legal experience in the practice of law as defined by APR 1 or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment. The 10 years of practice must include at least 2 years in Washington State and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;

(4) Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and

(5) Act as a tutor only upon the approval of the Bar which may be withheld or withdrawn for any reason.

(d) Enrollment. When an application for enrollment has been approved by the Bar, an enrolled law clerk shall:

(1) Pay an annual fee as set by the Board of Governors.

(2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.

(3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course of study must be completed within 6 years from the ~~initial~~ date of enrollment.

(4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.

(e) Course of Study. The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:

(1) **Examinations.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The examination shall be graded pass/fail.

(2) **Certificates.** Within 10 days following the month of study, t~~T~~he tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study, and the tutor's personal supervision ~~within 10 business days following the month of study~~. If an examination is not given, the monthly certificate shall be submitted stating the reason.

(3) **Book Reports**. The law clerk shall submit three book reports for the Jurisprudence course

requirement corresponding to each year of study.

(4) **Evaluations.** ~~Annually, or~~ A~~a~~t other intervals deemed necessary by the Bar, the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.

(f) **Completion of the program**. A law clerk shall be deemed to have successfully completed the program when:

(1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted;

(2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the lawyer bar examination and is competent to practice law; and

(3) The Bar has certified that all program requirements are completed.

(g) **Termination**. The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:

(1) Failure to complete the prescribed course of study within 6 years from the date of enrollment;

(2) Failure of the tutor to timely submit the monthly examinations and certificates ~~at the end of each month in which they are due~~;

(3) Failure to comply with any of the requirements of the law clerk program; and

(4) Any other grounds deemed pertinent.

(h) **Effective Date**. Revision of this rule shall not apply retroactively. A law clerk may complete the program under the version of the rule in effect at the start of enrollment.

(i) **Confidentiality.** Unless expressly authorized by the Supreme Court, the program applicant, or by a current or former law clerk, enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure. ~~, except that the fact of successful completion of the program shall be subject to disclosure.~~

APR 6 LAW CLERK ~~BOARD~~ PROGRAM REGULATIONS

1-1 Authority

Regulation 1. GENERAL

A. The law clerk program established in Rule 6 of the Admission and Practice Rules (APR ~~6~~) and implemented in these regulations is conducted by the Washington State Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.

B. The good moral character and fitness of an applicant is determined by the Character and Fitness Board pursuant to ~~Admission and Practice Rules~~ APR ~~7 and~~ 20 through 24.3~~4(a)~~.

C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.

D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

1-2 Purpose and Expectations.

A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.

B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.

C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.

D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

1-3 Definitions.

For the purpose of these regulations, the following terms are defined:

A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.

B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.

C. "Bar Association" means the Washington State Bar Association.

D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.

E. "Board" means the Law Clerk Board as authorized by APR 2.

F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.

G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6(b)(7) and Regulation 3-1A(2).

H. "Employment location waiver" means an employment arrangement in which the law clerk is not employed in Washington state but has received Board approval for an out-of-state employer under APR 6(b)(8) and Regulation 3-1A(3).

I. ~~H.~~ "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.

J. ~~I.~~ "Program" means the law clerk program established by APR 6 and implemented in these regulations.

K. ~~J.~~ "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court ~~of general, limited, or appellate jurisdiction located~~ in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.

L. ~~K.~~ "Tutor" means a qualifying lawyer or judicial member ~~judge~~ who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

Regulation 2. LAW CLERK BOARD

2-1 Responsibilities.

The Board will make decisions regarding:

A. Approval or rejection of an application for enrollment in the program.

B. Approval or rejection of a lawyer or a judge to act as a tutor.

C. A petition for advanced standing.

D. A direction to the law clerk to change tutors.

E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.

F. A petition for readmission.

G. Changes in course contents, course descriptions, or program completion requirements.

H. Applicability of the effect of prior decisions regarding other law clerks and tutors.

I. Recommendations to the Board of Governors regarding amendments to these regulations.

J. Any other matter related to the program or referred to the Board by the Board of Governors.

2-2 Board Liaisons.

A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.

B. A Board liaison will make decisions regarding:

(1) Recommendations to the Board regarding the acceptance or rejection of an applicant.

(2) An annual evaluation of the law clerk's second and third years.

(3) Recommendations regarding any other matter related to the program or referred to the Board.

2-3 Staff Administration.

A. The Board may delegate duties to staff to facilitate prompt administration of the program.

B. The duties may regularly include but are not limited to:

(1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;

(2) Approval of assistant tutors to teach specific courses;

(3) Approval of leaves of absence of less than 12 months;

(4) Approval of petitions by law clerks to take courses or electives out of order;

(5) Approval of the 4th year courses; and

(6) Notices of involuntary withdrawal.

2-4 Filing, general.

All applications, petitions or requests shall be submitted ~~in writing and shall be directed~~ to the Board in a form and manner as directed by ~~at~~ the Bar Association ~~office~~.

2-5 Review Procedure.

A. Review of Right. An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:

(1) Rejection of an application for enrollment in the program;

(2) Termination of a law clerk's enrollment in the program; or

(3) Requiring a law clerk to change tutors.

B. Discretionary. An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.

C. Filing. A petition requesting either review of right or discretionary review shall be:

(1) in writing,

(2) directed to the Board of Governors;

(3) filed with ~~at~~ the Bar Association ~~office~~; and

(4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

Regulation 3. APPLICATION PROCEDURE

3-1 Applicants. Every applicant for enrollment in the program shall:

A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver or employment location waiver as defined in Reg. 1-3.

(1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.

(2) Approval of any relationship requiring an employment waiver is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved. Applications or requests for reinstatement that include a petition to waive the requirement that the primary tutor or primary tutor's employer be the law clerk's employer, may be approved under the following conditions:

(a) The Board receives applications for the law clerk, primary tutor and the *employing lawyer*. The employing lawyer must establish that the clerk's employment includes tasks and duties that contribute to the practical aspects of engaging in the practice of law required by APR 6(b)(3).

(b) The employing lawyer must at least meet the requirements of an assistant tutor (whether or not they teach a course). Regulation 4-2A defines the assistant tutor's qualifications as meeting all the qualifications of a tutor except that only five years of active practice is required.

(c) The minimum three hours a week of personal supervision between the law clerk and the tutor required by APR 6(d)(2) must occur in person. Because the pair do not otherwise work together, a minimum amount of personal contact is required.

(d) The law clerk, employing lawyer and primary tutor must have regular contact. It is anticipated that the lawyers develop a relationship to discuss the progress of the clerk and guide work and course assignments as required of the tutor in Regulation 4-1 D(7).

(e) The employing lawyer must agree to contribute to the monthly certificate. The certificate will include prompts for what the employing lawyer should include in their report.

(f) All three participants must agree to meet with the liaison for their initial interview and at any other meeting the Law Clerk Board requests. The employing lawyer, as the provider of the practical and experiential component of the program, may not be a passive participant.

(g) A law clerk with an employment waiver may not work or learn in a primarily virtual/remote office situation.

(3) Approval of employment with an out-of-state employer is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the out-of-state location, its proximity to Washington, the type and amount of interaction with the laws and courts of Washington state, and how the purpose of the program will be maintained. Applications or requests for reinstatement that include a petition to waive the requirement that the law clerk be employed in Washington state may be approved under the following conditions:

(a) The primary tutor will be an active member of the Bar Association. The primary tutor must be an active member of the Bar Association and intend to remain so throughout the law clerk's course of study.

(b) Employment must have contact with Washington state to ensure the law clerk's exposure to Washington law. The primary tutor must certify that the tutor's, or the tutor's workplace, has a

case load with at least 51 percent of the cases involving Washington law or being subject to the jurisdiction of the Washington state courts, and that the law clerk will spend some work time on these cases.

(c) Maintain substantial contact with Washington State. The tutor must agree to maintain a caseload that has substantial contact with Washington State. Substantial contact means having a caseload where at least 51 percent of the cases on average in a given year involve Washington law or are subject to the jurisdiction of Washington State courts. The tutor must annually certify that the caseload meets the substantial contact definition and must notify the Board if the caseload fails to meet the substantial contact definition.

(d) Law clerks and tutors are required to attend evaluations. Regardless of the distance, law clerks and tutors must comply with all APR 6 rules and regulations, including but not limited to attending evaluations with the Board.

B. Submit the following with the application fee by the deadlines established by the Board:

(1) A completed program application and all required supplemental information;

(2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;

(3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to undertake and successfully complete the program; and

(4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.

C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, the Character & Fitness Board, or the Board of Governors.

3-2 Advanced Standing. A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

(1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;

(2) A list of law clerk program courses completed during a prior enrollment in the program to be used to satisfy the request for advanced standing. Law clerk program courses completed more than five years prior to the application date will not be considered for advanced standing;

(3) ~~(2)~~ A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;

(4) ~~(3)~~ Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application

date will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and

(5) ~~(4)~~ Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

(1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;

(2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and

(3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

3-3 Additional and Remedial Courses. In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

3-4 Notification. The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. ~~All programs shall begin the first day of the month specified in the notice.~~ If rejected, the notification will provide the basis for the rejection.

3-5 Acknowledgement of Enrollment. Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to inform the Bar Association in writing of any incident that occurs while the law clerk is enrolled that might call the law clerk's moral character or fitness into question. All programs shall begin the first day of the month specified by the law clerk in the acknowledgement of enrollment; this will be the enrollment date. The enrollment date must not be more than six months after the date of approval by the Board. Any changes to the enrollment date must be amended with a new acknowledgment of enrollment form.

Regulation 4. TUTORS

4-1 Tutor's Responsibilities.

A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.

B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.

C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.

D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical

analysis of the law clerk's written assignments, the tutor's responsibilities include:

(1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;

(2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;

(3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;

(4) Evaluating the law clerk's progress;

(5) Developing, administering, and grading the monthly examinations;

(6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 ~~working~~ days of the end of the month in which it was administered;

(7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and

(8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

4-2 Assistant Tutors. When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which ~~he/she~~ the assistant tutor was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

(1) The assistant tutor may undertake the following duties for the course(s) for which the assistant tutor is approved:

i. Choosing textbooks, casebooks, and resource materials for the course.

ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.

iii. Developing, administering, and grading the monthly examination.

(2) The primary tutor shall:

i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;

ii. Remain ultimately responsible for the conduct of the clerkship;

iii. Complete all monthly and other certificates; and

iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

Regulation 5. COURSE OF STUDY

5-1 Structure.

A. The program is designed to be a four year course of study in combination with employment. Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.

B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year, including jurisprudence reading, must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.

C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

5-2 Subjects.

A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.

B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

Course	**Months**
Basic Legal Skills	2
Civil Procedure	2
Torts	2
Contracts	2
Agency & Partnerships	2
Property	2

C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	**Months**
Community Property	1
Criminal Law	2
Constitutional Law I	2
Corporations	2
Evidence	2
Uniform Commercial Code	3

D. Third Year. To complete the third year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Constitutional Law II	2
Professional Responsibility	1
Domestic Relations	2
Wills, Estates, Trusts, Probate	3
Conflict of Laws	2
Criminal Procedure	3

E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

(1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other professional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.

(2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval of alternative areas of study by including a detailed course description for each proposed course.

Course	Months
Administrative Law	2
Personal Federal Income Tax	2
Land Use	2
Labor Law	2
Remedies	2
Antitrust	2
Creditor-Debtor Relations	2
Securities Regulation	2
Legal Accounting	2
International Law	2
Insurance	2
Consumer Protection	2
Environmental Law	2
Real Property Security	2
American Indian Law	2
Trial Practicum	2
Elder and Disability Law	2

5-3 Monthly Examinations. The tutor is responsible for the content and administration of all monthly examinations.

A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.

B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.

C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last ~~business~~ day of each month.

D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade the law clerk ~~he or she~~ shall continue to study the subject for an additional month.

E. Certificates. Within 10 days following the month of study, t~~T~~he tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision~~, within 10 business days following the month of study~~.

(1) If an exam is not given, the monthly certificate shall be submitted stating the reason.

(2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

5-4 Board Evaluations. ~~Annually, or~~ A~~a~~t ~~such other~~ intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The ~~Board may at any other time, in its discretion, conduct an evaluation at which the~~ law clerk and the tutor shall be personally present when ~~if~~ required by the Board ~~to do so~~.

A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.

B. Materials. In making its evaluation, the Board may consider:

(1) The substantive contents of all monthly examinations;

(2) The tutor's monthly certificates and timeliness of receipt;

(3) Any written course work; and

(4) Any other written or oral materials deemed to be pertinent by the Board.

C. Decision. At the conclusion of the evaluation, the Board may:

(1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;

(2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;

(3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and

certificates;

(4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;

(5) Require the law clerk to change tutors;

(6) Advise the law clerk that the law clerk's enrollment in the program is terminated.

D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

Regulation 6. WITHDRAWAL AND TERMINATION OF ENROLLMENT

6-1 Withdrawal by Law Clerk.

A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.

B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:

(1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;

(2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or

(3) The annual fee is not paid by the established deadline.

6-2 Withdrawal by Tutor.

A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2- 4.

B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.

C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

6-3 Termination of Enrollment by the Board. ~~The Board may terminate a law clerk's participation in the program for~~:

A. The Board must terminate a law clerk's participation in the program for:

(1) Failure to complete the prescribed course of study within 6 years from the date of enrollment; or

(2) A determination by the Character and Fitness Board that the ~~applicant~~ clerk does not meet the character or fitness requirement for continued enrollment in the program.

B. The Board may terminate a law clerk's participation in the program for t~~T~~he law clerk's failure to otherwise comply with the requirements of the program or a decision or order of the Board~~; or~~

~~C. A determination by the Character and Fitness Board that the applicant does not meet the character or fitness requirement for enrollment in the program.~~

Regulation 7. COURSE DESCRIPTIONS

7-1 Jurisprudence Reading. A four-year course of reading consisting of three (3) books each year, to

be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports ~~shall~~ should be submitted every 4 months.

B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law clerk may not begin the next year's course work until the current year's book reports are completed and submitted to the Board.

7-2 First Year Clerkship.

A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.

B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and collateral estoppel; discovery and other pretrial devices; joinder; summary judgment; judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.

C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.

D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.

E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.

F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between

participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint venture law.

7-3 Second Year Clerkship.

A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.

B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.

C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.

D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion, formation and organization; theories of corporations; corporate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.

F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC

Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

7-4 Third Year Clerkship.

A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.

B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre- paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.

C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.

D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property, intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.

E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.

F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

7-5 Fourth Year Clerkship; Electives.

A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.

B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but

not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.

C. Land Use. Study of legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.

D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.

E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.

F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tieing arrangements, exclusive dealing and state antitrust law.

G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.

I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.

J. International Law. Legal process by which interests are adjusted and authoritative decisions made on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.

K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.

L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn "unfair" practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.

M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.

N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common- law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.

O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.

P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and text books as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.

Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the "story" of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.

Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

WASHINGTON STATE
BAR ASSOCIATION

RULES AND REGULATIONS

GOVERNING THE WASHINGTON STATE

LAW CLERK PROGRAM

Effective Date: September 1, 2017

APR 6 Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003;January 13, 2009; January 1, 2014; September 1, 2017.

Regulations approved by the Board of Governors September 26, 2013, effective January 1, 2014; amended effective May 19, 2017.

ADMISSION AND PRACTICE RULES (APR)

RULE 6. LAW CLERK PROGRAM

(a) Purpose. 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 in Washington; it is not a special admission or limited license to practice law.

(b) Application. Every applicant for enrollment in the law clerk program shall:

(1) Be of good moral character and fitness, as defined in APR 20;

(2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;

(3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;

(4) Submit in such form and manner as prescribed by the Bar (i) an application for enrollment in the program, (ii) the tutor's application, and, (iii) the application fee;

(5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Bar; and

(6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Bar may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.

(7) Where the Bar is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or primary tutor's employer, be the law clerk's employer may be waived.

(8) Where the Bar is satisfied that the applicant has employment with a tutor whose practice has substantial contacts with Washington state, the requirement that the full-time employment be in Washington state may be waived.

(c) Tutors. To be eligible to act as a tutor in the law clerk program, a lawyer or judicial member, as defined in the WSBA Bylaws, shall:

(1) Act as a tutor for only one law clerk at a time;

(2) Be an active member in good standing of the Bar, or be a judicial member of the Bar, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;

(3) Have active legal experience in the practice of law as defined by APR 1 or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment. The 10 years of practice must include at least 2 years in Washington State and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;

(4) Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and

(5) Act as a tutor only upon the approval of the Bar which may be withheld or withdrawn for any reason.

(d) Enrollment. When an application for enrollment has been approved by the Bar, an enrolled law clerk shall:

(1) Pay an annual fee as set by the Board of Governors.

(2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.

(3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course of study must be completed within 6 years from the date of enrollment.

(4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.

(e) Course of Study. The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:

(1) **Examinations.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The examination shall be graded pass/fail.

(2) **Certificates.** Within 10 days following the month of study, the tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study, and the tutor's personal supervision. If an examination is not given, the monthly certificate shall be submitted stating the reason.

(3) **Book Reports**. The law clerk shall submit three book reports for the Jurisprudence course

requirement corresponding to each year of study.

(4) **Evaluations.** At other intervals deemed necessary by the Bar, the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.

(f) **Completion of the program**. A law clerk shall be deemed to have successfully completed the program when:

(1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted;

(2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the lawyer bar examination and is competent to practice law; and

(3) The Bar has certified that all program requirements are completed.

(g) **Termination**. The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:

(1) Failure to complete the prescribed course of study within 6 years from the date of enrollment;

(2) Failure of the tutor to timely submit the monthly examinations and certificates;

(3) Failure to comply with any of the requirements of the law clerk program; and

(4) Any other grounds deemed pertinent.

(h) **Effective Date**. Revision of this rule shall not apply retroactively. A law clerk may complete the program under the version of the rule in effect at the start of enrollment.

(i) **Confidentiality.** Unless expressly authorized by the Supreme Court, the program applicant, or by a current or former law clerk, enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure.

APR 6 LAW CLERK PROGRAM REGULATIONS

1-1 Authority

Regulation 1. GENERAL

A. The law clerk program established in Rule 6 of the Admission and Practice Rules (APR) and implemented in these regulations is conducted by the Washington State Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.

B. The good moral character and fitness of an applicant is determined by the Character and Fitness Board pursuant to APR 20 through 24.

C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.

D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

1-2 Purpose and Expectations.

A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.

B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.

C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.

D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

1-3 Definitions.

For the purpose of these regulations, the following terms are defined:

A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.

B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.

C. "Bar Association" means the Washington State Bar Association.

D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.

E. "Board" means the Law Clerk Board as authorized by APR 2.

F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.

G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6(b)(7) and Regulation 3-1A(2).

H. "Employment location waiver" means an employment arrangement in which the law clerk is not employed in Washington state but has received Board approval for an out-of-state employer under APR 6(b)(8) and Regulation 3-1A(3).

I. "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.

J. "Program" means the law clerk program established by APR 6 and implemented in these regulations.

K. "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.

L. "Tutor" means a qualifying lawyer or judicial member who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

Regulation 2. LAW CLERK BOARD

2-1 Responsibilities.

The Board will make decisions regarding:

A. Approval or rejection of an application for enrollment in the program.

B. Approval or rejection of a lawyer or a judge to act as a tutor.

C. A petition for advanced standing.

D. A direction to the law clerk to change tutors.

E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.

F. A petition for readmission.

G. Changes in course contents, course descriptions, or program completion requirements.

H. Applicability of the effect of prior decisions regarding other law clerks and tutors.

I. Recommendations to the Board of Governors regarding amendments to these regulations.

J. Any other matter related to the program or referred to the Board by the Board of Governors.

2-2 Board Liaisons.

A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.

B. A Board liaison will make decisions regarding:

(1) Recommendations to the Board regarding the acceptance or rejection of an applicant.

(2) An annual evaluation of the law clerk's second and third years.

(3) Recommendations regarding any other matter related to the program or referred to the Board.

2-3 Staff Administration.

A. The Board may delegate duties to staff to facilitate prompt administration of the program.

B. The duties may regularly include but are not limited to:

(1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;

(2) Approval of assistant tutors to teach specific courses;

(3) Approval of leaves of absence of less than 12 months;

(4) Approval of petitions by law clerks to take courses or electives out of order;

(5) Approval of the 4th year courses; and

(6) Notices of involuntary withdrawal.

2-4 Filing, general.

All applications, petitions or requests shall be submitted to the Board in a form and manner as directed by the Bar Association.

2-5 Review Procedure.

A. Review of Right. An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:

(1) Rejection of an application for enrollment in the program;

(2) Termination of a law clerk's enrollment in the program; or

(3) Requiring a law clerk to change tutors.

B. Discretionary. An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.

C. Filing. A petition requesting either review of right or discretionary review shall be:

(1) in writing,

(2) directed to the Board of Governors;

(3) filed with the Bar Association; and

(4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

Regulation 3. APPLICATION PROCEDURE

3-1 Applicants. Every applicant for enrollment in the program shall:

A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver or employment location waiver as defined in Reg. 1-3.

(1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.

(2) Approval of any relationship requiring an employment waiver is within the discretion of the Board.

The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved. Applications or requests for reinstatement that include a petition to waive the requirement that the primary tutor or primary tutor's employer be the law clerk's employer, may be approved under the following conditions:

(a) The Board receives applications for the law clerk, primary tutor and the *employing lawyer*. The employing lawyer must establish that the clerk's employment includes tasks and duties that contribute to the practical aspects of engaging in the practice of law required by APR 6(b)(3).

(b) The employing lawyer must at least meet the requirements of an assistant tutor (whether or not they teach a course). Regulation 4-2A defines the assistant tutor's qualifications as meeting all the qualifications of a tutor except that only five years of active practice is required.

(c) The minimum three hours a week of personal supervision between the law clerk and the tutor required by APR 6(d)(2) must occur in person. Because the pair do not otherwise work together, a minimum amount of personal contact is required.

(d) The law clerk, employing lawyer and primary tutor must have regular contact. It is anticipated that the lawyers develop a relationship to discuss the progress of the clerk and guide work and course assignments as required of the tutor in Regulation 4-1 D(7).

(e) The employing lawyer must agree to contribute to the monthly certificate. The certificate will include prompts for what the employing lawyer should include in their report.

(f) All three participants must agree to meet with the liaison for their initial interview and at any other meeting the Law Clerk Board requests. The employing lawyer, as the provider of the practical and experiential component of the program, may not be a passive participant.

(g) A law clerk with an employment waiver may not work or learn in a primarily virtual/remote office situation.

(3) Approval of employment with an out-of-state employer is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the out-of-state location, its proximity to Washington, the type and amount of interaction with the laws and courts of Washington state, and how the purpose of the program will be maintained. Applications or requests for reinstatement that include a petition to waive the requirement that the law clerk be employed in Washington state may be approved under the following conditions:

(a) The primary tutor will be an active member of the Bar Association. The primary tutor must be an active member of the Bar Association and intend to remain so throughout the law clerk's course of study.

(b) Employment must have contact with Washington state to ensure the law clerk's exposure to Washington law. The primary tutor must certify that the tutor's, or the tutor's workplace, has a case load with at least 51 percent of the cases involving Washington law or being subject to the

jurisdiction of the Washington state courts, and that the law clerk will spend some work time on these cases.

(c) Maintain substantial contact with Washington State. The tutor must agree to maintain a caseload that has substantial contact with Washington State. Substantial contact means having a caseload where at least 51 percent of the cases on average in a given year involve Washington law or are subject to the jurisdiction of Washington State courts. The tutor must annually certify that the caseload meets the substantial contact definition and must notify the Board if the caseload fails to meet the substantial contact definition.

(d) Law clerks and tutors are required to attend evaluations. Regardless of the distance, law clerks and tutors must comply with all APR 6 rules and regulations, including but not limited to attending evaluations with the Board.

B. Submit the following with the application fee by the deadlines established by the Board:

(1) A completed program application and all required supplemental information;

(2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;

(3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to undertake and successfully complete the program; and

(4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.

C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, the Character & Fitness Board, or the Board of Governors.

3-2 Advanced Standing. A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

(1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;

(2) A list of law clerk program courses completed during a prior enrollment in the program to be used to satisfy the request for advanced standing. Law clerk program courses completed more than five years prior to the application date will not be considered for advanced standing;

(3) A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;

(4) Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application date

will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and

(5) Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

(1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;

(2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and

(3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

3-3 Additional and Remedial Courses. In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

3-4 Notification. The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. If rejected, the notification will provide the basis for the rejection.

3-5 Acknowledgement of Enrollment. Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to inform the Bar Association in writing of any incident that occurs while the law clerk is enrolled that might call the law clerk's moral character or fitness into question. All programs shall begin the first day of the month specified by the law clerk in the acknowledgement of enrollment; this will be the enrollment date. The enrollment date must not be more than six months after the date of approval by the Board. Any changes to the enrollment date must be amended with a new acknowledgment of enrollment form.

Regulation 4. TUTORS

4-1 Tutor's Responsibilities.

A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.

B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.

C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.

D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments, the tutor's responsibilities include:

(1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;

(2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;

(3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;

(4) Evaluating the law clerk's progress;

(5) Developing, administering, and grading the monthly examinations;

(6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 days of the end of the month in which it was administered;

(7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and

(8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

4-2 Assistant Tutors. When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which the assistant tutor was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

(1) The assistant tutor may undertake the following duties for the course(s) for which the assistant tutor is approved:

i. Choosing textbooks, casebooks, and resource materials for the course.

ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.

iii. Developing, administering, and grading the monthly examination.

(2) The primary tutor shall:

i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;

ii. Remain ultimately responsible for the conduct of the clerkship;

iii. Complete all monthly and other certificates; and

iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

Regulation 5. COURSE OF STUDY

5-1 Structure.

A. The program is designed to be a four year course of study in combination with employment.

Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.

B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year, including jurisprudence reading, must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.

C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

5-2 Subjects.

A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.

B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

Course	**Months**
Basic Legal Skills	2
Civil Procedure	2
Torts	2
Contracts	2
Agency & Partnerships	2
Property	2

C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	**Months**
Community Property	1
Criminal Law	2
Constitutional Law I	2
Corporations	2
Evidence	2
Uniform Commercial Code	3

D. Third Year. To complete the third year of the program, the law clerk shall pass the following

prescribed courses, in any order:

Course	Months
Constitutional Law II	2
Professional Responsibility	1
Domestic Relations	2
Wills, Estates, Trusts, Probate	3
Conflict of Laws	2
Criminal Procedure	3

E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

(1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other professional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.

(2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval of alternative areas of study by including a detailed course description for each proposed course.

Course	Months
Administrative Law	2
Personal Federal Income Tax	2
Land Use	2
Labor Law	2
Remedies	2
Antitrust	2
Creditor-Debtor Relations	2
Securities Regulation	2
Legal Accounting	2
International Law	2
Insurance	2
Consumer Protection	2
Environmental Law	2
Real Property Security	2
American Indian Law	2
Trial Practicum	2
Elder and Disability Law	2

5-3 Monthly Examinations. The tutor is responsible for the content and administration of all monthly

examinations.

A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.

B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.

C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last day of each month.

D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade the law clerk shall continue to study the subject for an additional month.

E. Certificates. Within 10 days following the month of study, the tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision.

(1) If an exam is not given, the monthly certificate shall be submitted stating the reason.

(2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

5-4 Board Evaluations. At intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The law clerk and the tutor shall be personally present when required by the Board.

A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.

B. Materials. In making its evaluation, the Board may consider:

(1) The substantive contents of all monthly examinations;

(2) The tutor's monthly certificates and timeliness of receipt;

(3) Any written course work; and

(4) Any other written or oral materials deemed to be pertinent by the Board.

C. Decision. At the conclusion of the evaluation, the Board may:

(1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;

(2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;

(3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates;

(4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to

each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;

(5) Require the law clerk to change tutors;

(6) Advise the law clerk that the law clerk's enrollment in the program is terminated.

D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

Regulation 6. WITHDRAWAL AND TERMINATION OF ENROLLMENT

6-1 Withdrawal by Law Clerk.

A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.

B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:

(1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;

(2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or

(3) The annual fee is not paid by the established deadline.

6-2 Withdrawal by Tutor.

A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2-4.

B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.

C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

6-3 Termination of Enrollment by the Board.

A. The Board must terminate a law clerk's participation in the program for:

(1) Failure to complete the prescribed course of study within 6 years from the date of enrollment; or

(2) A determination by the Character and Fitness Board that the clerk does not meet the character or fitness requirement for continued enrollment in the program.

B. The Board may terminate a law clerk's participation in the program for the law clerk's failure to otherwise comply with the requirements of the program or a decision or order of the Board

Regulation 7. COURSE DESCRIPTIONS

7-1 Jurisprudence Reading. A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports should be submitted every 4 months.

B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law

clerk may not begin the next year's course work until the current year's book reports are completed and submitted to the Board.

7-2 First Year Clerkship.

A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.

B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and collateral estoppel; discovery and other pretrial devices; joinder; summary judgment; judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.

C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.

D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.

E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.

F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint

venture law.

7-3 Second Year Clerkship.

A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.

B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.

C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.

D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion, formation and organization; theories of corporations; corporate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.

F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

7-4 Third Year Clerkship.

A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition

and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.

B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre- paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.

C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.

D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property, intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.

E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.

F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

7-5 Fourth Year Clerkship; Electives.

A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.

B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.

C. Land Use. Study of legal principles and constitutional limitations affecting systems for public

regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.

D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.

E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.

F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tieing arrangements, exclusive dealing and state antitrust law.

G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.

I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.

J. International Law. Legal process by which interests are adjusted and authoritative decisions made

on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.

K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.

L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn "unfair" practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.

M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.

N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common- law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.

O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.

P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and text books as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.

Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the "story" of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions

in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.

Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Daniel D. Clark, WSBA Treasurer & 4th District Governor

DATE: April 16th, 2021

RE: WSBA FY 2021 Budget Reforecast

ACTION/DISCUSSION : FY 2021 WSBA Budget Reforecast Review and Potential FY 2021 Budget Modification based on FY 2021 Reforecast recommendations

The FY 2021 Budget Reforecast has been completed. This has been a very substantial and comprehensive time and labor-intensive undertaking by myself as Treasurer, Jorge Perez, Terra Nevitt, and the rest of the Executive Management Team, as well as various WSBA Department Managers. I can report that we all were able to successfully efficiently work together through collaboration to accomplish this financial reforecast.

The following is an update on various pertinent financial matters affecting the 2021 Reforecast.

The FY 2021 Reforecast as presented to the budget and Audit Committee on March 24th by the WSBA Leadership team resulted in an overall total net profitability change of ($95,895). This variances to budget is distributed as follows by fund:

FY 21 Reforecast	General Fund	CPF Fund	CLE	Sections
Reforecast Balances	3,364,142	4,074,610	212,479	930,820
FY 21 Budgeted Balance	3,275,472	4,064,571	407,082	930,821
Variance	88,670	10,039	-194,603	-1

The end result submitted by WSBA's Executive Director and Executive Team before you recommending adoption of this FY 2021 Budget reforest, represents a comprehensive review and analysis of the current FY 2021 Reforecast as compared to the 2021 Budget. The reforecast includes various recommendations to the Board of Governors for potential action and recommendations for modification to the FY 2021 WSBA Budget that is based on additional expenditures as brought forth by the Executive Team and Executive Director for operational needs of WSBA.

The recommendation of adoption of this reforecast represents a reduction in expenditures in the general fund of $464K, this reduction is offset by a reduction in revenue to the general fund of $375K and the impact of adding 2 net FTEs $15K. The net 2 positions are shown below:

COST CENTER	TITLE	ANNUAL SALARY	BENEFITS (30%)	TOTAL	FISCAL START MONTH	2001 IMPACT	$
($)							
IT	Developer II	80,000	24,000	104,000	9	26,000	
MAP	Member Wellness Program Clinician	70,000	21,000	91,000	10	15,167	
MCLE	MCLE Analyst	50,000	15,000	65,000	7	27,083	
		200,000	60,000	260,000		68,250	
Administration	Office Services	(40,685)	(12,206)	(52,891)	0	(52,891)	
Total		159,315	47,795	207,110		15,360	

As shown above the additions include a Member Wellness Clinician as requested by the BOG in order to enhance Member Wellness services. While the impact on 2021 reforecast is $15.4K on an annualized basis the total impact on 2022 will be $207K including benefits. Including these positions the 2021 net overall impact to the WSBA Unrestricted General Fund is an improvement of $88.6K over originally budgeted. Adoption of the reforecast will require that we potentially use $114,000 out of the unrestricted fund balance reserves.

WSBA has been able to save significant expenses on avoiding travel related expenses for various meetings. To the extent we change ongoing COVID related practices of having meetings be strictly via Zoom these reforecast items will be unfavorably impacted.

The most noticeable change presented in the reforecast is in the CLE fund. The CLE Fund was budgeted to consume $62.1K of its reserve balance. The reforecasts shifts the amount of reserve utilization to $256.8K a change of $194K to the negative.

The CLE fund has been hard hit by matters related to the COVID pandemic. On the revenue side, the MCLE Certification Extension, the absence of in person programs, Live and On Demand seminar demand are all significantly lower. This necessitated the fund to take actions to mitigate the costs impacting the funds. In that area some of these include: Additional on-demand “sales campaigns” to spur sales of on-demand products resulting in approximately $100k increase of on-demand sales in February with expectations set that the May spring Sale will result in similar results. Direct costs in live seminar development cost center decreased by $270k driven by savings associated with facilities, speakers and program development and print marketing costs and Hiring freeze for an open position in CLE through August.

After careful review by the Leadership team and ample discussion with the budget and Audit Committee we recommended for adoption by the Board of Governors the reforecast as presented.

Respectfully,

Dan Clark
WSBA Treasurer/4th District Governor
DanClarkBoG@yahoo.com
(509) 574-1207 (office)
(509) 969-4731 (cell)

FY 2021 REFORECAST

Board Of Governors Meeting

April 17th, 2021

REFORECAST FY 2021 FUND BALANCES

FY 21 Reforecast	General Fund	CPF Fund	CLE	Sections
Fund Balances 9/30/2020	3,478,234	4,193,130	469,241	1,210,209
Revenue Reforecast	20,227,365	533,402	1,353,029	585,779
Licensing Revenue	16,218,638			
Other Revenue	4,008,727			
Expenses	20,341,457	651,922	1,609,791	865,168
Indirect Expenses	17,896,722	158,569	376,803	0
Direct Expenses	2,444,735	493,352	1,232,988	865,168
Net Income/Loss	-114,092	-118,520	-256,762	-279,389
Reforecast Balances	3,364,142	4,074,610	212,479	930,820
FY 21 Budgeted Balance	3,275,472	4,064,571	407,082	930,821
Variance	88,670	10,039	-194,603	-1

Restricted Funds

Op Reserve Fund	1,500,000
Facilities Fund	550,000

Total Cash Impact (Net Income) Impact is -95,895

KEY ISSUES IMPACTING REFORECAST

- CLE Revenue Reduced by $487K
  - 2020 MCLE Extension
  - COVID – 19
    - In person programs
    - Seminars
    - In person programs
- Partial Offset CLE expenses Reduced by $292K
- General Fund Net Income Positive $89K
- CPF Net Income Positive $10K

GENERAL FUND
NET INCOME ANALYSIS

General Fund	Original FY21 Budget	Reforecast FY2021	FY 21 Ref vs Budget F/(U)	% of change F/(U)
Revenue	20,603,129	20,227,365	(375,764)	-2%
Expenses	20,805,908	20,341,457	464,452	2%
Net Income	(202,779)	(114,092)	88,687	44%

- Late fees are lower by $-372K assumed 30% vs 15% actual
- Offsetting expenses mostly driven by
  - Salaries $273K Open Position
  - Staff Travel and Parking $54K
  - Speakers & Program Dev. $45K
  - Facilities $214K

CLE FUND
NET INCOME ANALYSIS

	Original FY21 Budget	Reforecast FY2021	FY 21 Ref vs Budget F/(U)	% of change F/(U)
CLE FUND				
Revenue	1,840,000	1,353,029	(486,971)	-26%
Expenses	1,902,159	1,609,791	292,368	15%
Net Income	(62,159)	(256,762)	(194,603)	-313%

- **To be addressed by Director Plachy**

CLE REFORECAST FY21

IMPACTS ON FINANCIAL RESULTS

- MCLE Certification Extension for 2020 – reporting group for 2020 doesn't need to complete CLE reporting until end of 2021
- COVID – no in person programs including Midyears
- The last two months of the year (November/December) are the highest on-demand revenue months. Generally we earn around $365k in those two months but this year earnings were $58k. That is a $307k shortfall in two months.
- Live Seminar revenue is trending downward by $175k overall
- On-Demand revenue is trending downward by $277k overall
- CLE was budgeted to earn $107k but is now forecasted to lose $65k.

ACTIONS TAKEN TO MITIGATE IMPACTS

- Additional on-demand "sales campaigns" to spur sales of on-demand products
- February and May
  - February "Winter Sale" resulted in approximately $100k increase of on-demand sales
  - We expect the May "Spring" sale to result in the similar increases.
- Direct costs in live seminar development cost center decreased by $270k driven by
  - savings associated with facilities
  - speakers and program development
  - print marketing costs.
- We were able to negotiate out of five fairly large venue contracts with no penalties.
- Keeping production of seminars going in the remote environment to keep inventory built up for future on-demand sales.
- Hiring freeze for an open position in CLE through August.

CLE FUND BALANCE AND OPPORTUNITIES TO REBUILD

CLE Fund

- CLE Fund balance is currently $390k
- CLE Fund is budgeted to lose $266k
- The CLE Fund is doing what it was intended to do – buffer the CLE operation from market fluctuations and uncontrollable external impacts (i.e. COVID Pandemic)

Opportunities to Rebuild:

- Pent up demand
  - We will have a market of two reporting groups in FY22 so we expect on-demand and live registration to be higher than normal next year.

NET 2 NEW POSITIONS

COST CENTER	TITLE	ANNUAL SALARY	BENEFITS (30%)	TOTAL	FISCAL START MONTH	2001 $ IMPACT
($)						
IT	Developer II	80,000	24,000	104,000	9	26,000
MAP	Member Wellness Program Clinician	70,000	21,000	91,000	10	15,167
MCLE	MCLE Analyst	50,000	15,000	65,000	7	27,083
		200,000	60,000	260,000		68,250
Administration	Office Services	(40,685)	(12,206)	(52,891)	0	(52,891)
Total		159,315	47,795	207,110		15,360

- **IT Developer: The additional position is needed to fill gaps and to get the original FY21 project moving forward again with more capacity on the development team as a result of various ongoing efforts around Outlook 365 and Cyber Security**
- **MWP Clinician: As requested by the BOG to enhance the member benefit services currently offered and set an established redundancy in a key membership facing position.**
- **MCLE Analyst: An additional MCLE Analyst FTE to be hired with a start date in July 2021. The additional analyst is based on the increase in workload, the regulatory duty to ensure the timely and accurate review and management of the MCLE requirements for all license types.**
- **One offset position Office Services**

MITIGATING STRATEGIES

Outsource Deskbooks

- WSBA Communications staff in response to previous B & A discussions related to the continued costs of Deskbooks has procured an arrangement with Lexus/Nexus where WSBA will reduce publishing costs, obsolescence of Deskbooks and overall costs of the Deskbooks CC. The contract is meant to mitigate the costs of producing this service for members.
- Director Niegowski will present the details

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL Z. CROWE; LAWRENCE K. PETERSON I; OREGON CIVIL LIBERTIES ATTORNEYS, an Oregon nonprofit corporation, *Plaintiffs-Appellants*, v. OREGON STATE BAR, a Public Corporation; OREGON STATE BAR BOARD OF GOVERNORS; VANESSA A. NORDYKE, President of the Oregon State Bar Board of Governors; CHRISTINE CONSTANTINO, President-elect of the Oregon State Bar Board of Governors; HELEN MARIE HIERSCHBIEL, Chief Executive Officer of the Oregon State Bar; KEITH PALEVSKY, Director of Finance and Operations of the Oregon State Bar; AMBER HOLLISTER, General Counsel for the Oregon State Bar, *Defendants-Appellees*.	No. 19-35463 D.C. No. 3:18-cv-02139-JR

DIANE L. GRUBER; MARK RUNNELS, *Plaintiffs-Appellants*, v. OREGON STATE BAR; CHRISTINE CONSTANTINO; HELEN MARIE HIERSCHBIEL, *Defendants-Appellees.*	No. 19-35470 D.C. No. 3:18-cv-01591-JR OPINION

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, Presiding

Argued and Submitted May 12, 2020
Portland, Oregon

Filed February 26, 2021

Before: Jay S. Bybee and Lawrence VanDyke, Circuit Judges, and Kathleen Cardone,[*] District Judge.

Per Curiam Opinion;
Partial Concurrence and Partial Dissent by Judge VanDyke

[*] The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

SUMMARY[**]

Civil Rights

The panel affirmed in part and reversed in part the district court's dismissal of plaintiffs' claims, and remanded, in actions alleging First Amendment violations arising from the Oregon State Bar's requirement that lawyers must join and pay annual membership fees in order to practice in Oregon.

At the heart of plaintiffs' suits were two statements published alongside each other in the April 2018 edition of the Oregon State Bar's ("OSB") monthly *Bulletin.* The first, attributed to OSB and signed by its leaders, condemned white nationalism and the "normalization of violence." The second was a joint statement of the Oregon Specialty Bar Associations supporting OSB's statement. OSB maintained that both *Bulletin* statements were germane to its role of improving the quality of legal services. When plaintiffs and other members complained about the statements, OSB refunded $1.15 to plaintiffs and other objectors—the portion of their membership fees used to publish the April 2018 *Bulletin.*

In affirming the district court's dismissal of the free speech claim, the panel held that it need not decide whether the district court erred in concluding that the *Bulletin* statements were germane under *Keller v. State Bar of California*, 496 U.S. 1, 13–14 (1990) (or, in the case of the Specialty Bars' statement, not attributable to OSB) for

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

purposes of this appeal. Even assuming both statements were nongermane, plaintiffs' free speech claim failed. Plaintiffs had argued that because *Keller* relied on *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 234–36 (1977), to treat compulsory dues like union dues, and because *Abood* was overruled by *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2477, 2481 (2018), the court was required to apply *Janus*'s exacting scrutiny to OSB's assessment of membership fees. In rejecting this argument, the panel noted that *Keller* plainly had not been overruled and therefore could not now prohibit the very thing it permitted when decided.

The panel rejected the Crowe plaintiffs' alternative argument that, assuming mandatory dues remained constitutionally permissible, OSB failed to provide adequate procedural safeguards as required by *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). The panel held that nothing in *Keller* mandated a strict application of the *Hudson* procedures. As alleged, the OSB's refund process was sufficient to minimize potential infringement on its members' constitutional rights. The panel therefore affirmed the district court as to plaintiffs' free speech claim and the adequacy of OSB's procedural safeguards with respect to protecting plaintiffs' free speech rights.

The panel held that the district court erred by dismissing plaintiffs' free association claim as barred by precedent. The panel determined that plaintiffs raised an issue that neither the Supreme Court nor this Court have ever addressed: whether the First Amendment tolerates mandatory membership itself—independent of compelled financial support—in an integrated bar that engages in nongermane political activities. The panel concluded that plaintiffs' freedom of association

claim based on the *Bulletin* statements was viable. Because the district court erred in dismissing this claim as foreclosed by precedent, the panel reversed and remanded. On remand, the panel noted that there were a number of complicated issues that the district court would need to address, including whether *Janus* supplies the appropriate standard for plaintiffs' free association claim and, if so, whether OSB can satisfy its exacting scrutiny standard.

The panel held that the district court erred by determining that OSB was an arm of the state entitled to Eleventh Amendment immunity. The panel concluded that, on the whole, the relevant factors set forth in *Mitchell v. L.A. Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988), weighed against finding OSB an arm of the state entitled to immunity. As to the first and most important factor—whether a money judgment would be satisfied out of state funds—the panel noted that Oregon law expressly disavows State financial responsibility for OSB, which is funded by membership fees.

Concurring in part and dissenting in part, Judge VanDyke agreed with and concurred in the entirety of the panel's opinion, except the panel's resolution of the Crowe plaintiffs' inadequate procedural safeguards claim based on *Chicago Teachers Union v. Hudson.* Given the Supreme Court's decision in *Janus*, it was hard for Judge VanDyke to see how something less than *Hudson*'s safeguards could suffice in the context of compulsory bar membership dues. Accordingly, he respectfully dissented on this singular claim.

COUNSEL

Jacob Huebert (argued) and Timothy Sandefur, Scharf-Norton Center for Constitutional Litigation at the Goldwater Institute, Phoenix, Arizona; Luke D. Miller, Military Disability Lawyer LLC, Salem, Oregon; for Plaintiffs-Appellants Daniel Z. Crowe, Lawrence K. Peterson I, and Oregon Civil Liberties Attorneys.

Michael L. Spencer (argued), Klamath Falls, Oregon, for Plaintiffs-Appellants Diane L. Gruber and Mark Runnels.

Elisa J. Dozono (argued) and Taylor D. Richman, Miller Nash Graham & Dunn LLP, Portland, Oregon; Steven M. Wilker (argued) and Megan K. Houlihan, Tonkon Torp LLP, Portland, Oregon; Michael Gillette, Schwabe Williamson & Wyatt P.C., Portland, Oregon; for Defendants-Appellees.

Ellen F. Rosenblum, Attorney General; Benjamin Gutman, Solicitor General; Christopher A. Perdue, Assistant Attorney General; Department of Justice, Salem, Oregon; for Amicus Curiae State of Oregon.

Vanessa L. Holton, General Counsel; Robert G. Retana, Deputy General Counsel; Brady R. Dewar, Assistant General Counsel; Office of the General Counsel, State Bar of California, San Francisco, California; for Amicus Curiae State Bar of California.

Mary R. O'Grady and Kimberly Friday, Osborn Maledon P.A., Phoenix, Arizona, for Amicus Curiae State Bar of Arizona.

OPINION

PER CURIAM:

To practice in Oregon, every lawyer must join and pay annual membership fees to the Oregon State Bar ("the Bar" or "OSB"). In these cases, Plaintiffs[1] claim these compulsions violate their freedoms of speech and association as guaranteed by the First Amendment, made applicable to the states by the Due Process Clause of the Fourteenth Amendment.

The district court dismissed all of Plaintiffs' claims, concluding that the Bar was immune from suit under the Eleventh Amendment; that Plaintiffs' free association and free speech claims were barred by precedent; and that the Bar's objection and refund procedures were constitutionally adequate. We agree with the district court that precedent forecloses the free speech claim, but neither the Supreme Court nor this court has resolved the free association claim now before us. For the reasons that follow, Plaintiffs may have stated a viable claim that Oregon's compulsory Bar membership requirement violates their First Amendment right of free association. We accordingly affirm in part, reverse in part, and remand to the district court with instructions.

[1] "Plaintiffs" refers to Appellants in both No. 19-35463 (Daniel Crowe, Lawrence Peterson, and the Oregon Civil Liberties Attorneys (individually referred to as the "*Crowe* Plaintiffs")) and No. 19-35470 (Diane Gruber and Mark Runnels (individually referred to as the "*Gruber* Plaintiffs")).

I. BACKGROUND

A. *The Oregon State Bar*

"The Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon." OR. REV. STAT. § 9.010(2). OSB is an integrated bar, meaning lawyers must join it and pay an annual membership fee to practice law in Oregon. *Id.* §§ 9.160(1), 9.200. OSB is administered by its board of governors, who may "adopt, alter, amend[,] and repeal" the Bar's bylaws. *Id.* § 9.080. "[A]t all times," the board must "serve the public interest" by "[r]egulating the legal profession and improving the quality of legal services; [s]upporting the judiciary and improving the administration of justice; and [a]dvancing a fair, inclusive[,] and accessible justice system." *Id.* The State of Oregon is not responsible for OSB's debts. *Id.* § 9.010(6). Instead, OSB satisfies its own financial needs and obligations from the membership fees it collects. *Id.* § 9.191(3). Subject to oversight by the Oregon Supreme Court, OSB administers bar exams, investigates applicants' character and fitness, formulates and enforces rules of professional conduct, and establishes minimum continuing legal education requirements for Oregon attorneys. *Id.* §§ 9.210, 9.490, 9.114.

OSB also publishes a monthly Bar *Bulletin*, which is subject to the bylaws' general communications policy:

> Communications of the Bar and its constituent groups and entities, including printed material and electronic communications, should be germane to the law, lawyers, the practice of law, the courts and the judicial system, legal

> education and the Bar in its role as a mandatory membership organization. Communications, other than permitted advertisements, should advance public understanding of the law, legal ethics and the professionalism and collegiality of the bench and Bar.

OSB Bylaws § 11.1.[2] OSB's Chief Executive Officer "has sole discretion . . . to accept or reject material submitted to the Bar for publication." *Id.* § 11.203. "[P]artisan political advertising is not allowed[,]" and "[p]artisan political announcements or endorsements will not be accepted for publication as letters to the editor or feature articles." *Id.* § 11.4.

OSB's legislative and public policy activities must reasonably relate to any of the following nine subjects:

> Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues

[2] The OSB Bylaws are available at http://www.osbar.org/_docs/rulesregs/bylaws.pdf.

> involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Id. § 12.1. The Bar maintains that all its communications and activities are intended to adhere to the above-listed topics, and considers all these topics germane to its regulatory purpose.

B. *The April 2018* Bulletin *Statements*

At the heart of Plaintiffs' suits are two statements published alongside each other in the April 2018 edition of the *Bulletin*, reproduced below in full. The first was attributed to the Bar, signed by its leaders, and stated as follows:

> **Statement on White Nationalism and Normalization of Violence**
>
> As the United States continues to grapple with a resurgence of white nationalism and the normalization of violence and racism, the Oregon State Bar remains steadfastly committed to the vision of a justice system that operates without discrimination and is fully accessible to all Oregonians. As we pursue that vision during times of upheaval, it is particularly important to understand current events through the lens of our complex and often troubled history. The legacy of that

history was seen last year in the streets of Charlottesville, and in the attacks on Portland's MAX train. We unequivocally condemn these acts of violence.

We equally condemn the proliferation of speech that incites such violence. Even as we celebrate the great beneficial power of our First Amendment, as lawyers we also know it is not limitless. A systemic failure to address speech that incites violence emboldens those who seek to do harm, and continues to hold historically oppressed communities in fear and marginalization.

As a unified bar, we are mindful of the breadth of perspectives encompassed in our membership. As such, our work will continue to focus specifically on those issues that are directly within our mission, including the promotion of access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone. The current climate of violence, extremism and exclusion gravely threatens all of the above. As lawyers, we administer the keys to the courtroom, and assist our clients in opening doors to justice. As stewards of the justice system, it is up to us to safeguard the rule of law and to ensure its fair and equitable administration. We simply cannot lay claim to a healthy justice system if whole segments of our society are fearful of the very laws and institutions that exist to protect them.

> In today's troubling climate, the Oregon State Bar remains committed to equity and justice for all, and to vigorously promoting the law as the foundation of a just democracy. The courageous work done by specialty bars throughout the state is vital to our efforts and we continue to be both inspired and strengthened by those partnerships. We not only refuse to become accustomed to this climate, we are intent on standing in support and solidarity with those historically marginalized, underrepresented and vulnerable communities who feel voiceless within the Oregon legal system.

Across the page, a "Joint Statement of the Oregon Specialty Bar Associations Supporting the Oregon State Bar's Statement on White Nationalism and Normalization of Violence" stated:

> The Oregon Asian Pacific American Bar Association, the Oregon Women Lawyers, the Oregon Filipino American Lawyers Association, OGALLA-The LGBT Bar Association of Oregon, the Oregon Chapter of the National Bar Association, the Oregon Minority Lawyers Association, and the Oregon Hispanic Bar Association support the Oregon State Bar's Statement on White Nationalism and Normalization of Violence and its commitment to the vision of a justice system that operates without discrimination and is fully accessible to all Oregonians.

Through the recent events from the Portland MAX train attacks to Charlottesville, we have seen an emboldened white nationalist movement gain momentum in the United States and violence based on racism has become normalized. President Donald Trump, as the leader of our nation, has himself catered to this white nationalist movement, allowing it to make up the base of his support and providing it a false sense of legitimacy. He has allowed this dangerous movement of racism to gain momentum, and we believe this is allowing these extremist ideas to be held up as part of the mainstream, when they are not. For example, President Trump has espoused racist comments, referring to Haiti and African countries as "shithole countries" and claiming that the United States should have more immigrants from countries like Norway. He signed an executive order that halted all refugee admissions and barred people from seven Muslim-majority countries, called Puerto Ricans who criticized his administration's response to Hurricane Maria "politically motivated ingrates," said that the white supremacists marching in Charlottesville, North Carolina in August of 2017 were "very fine people," and called into question a federal judge, referring to the Indiana-born judge as "Mexican," when the race of his parents had nothing to do with the judge's decision. We are now seeing the white nationalist movement grow in our state and our country under this form of leadership.

> As attorneys who lead diverse bar associations throughout Oregon, we condemn the violence that has occurred as a result of white nationalism and white supremacy. Although we recognize the importance of the First Amendment of the United States Constitution and the protections it provides, we condemn speech that incites violence, such as the violence that occurred in Charlottesville. President Trump needs to unequivocally condemn racist and white nationalist groups. With his continued failure to do so, we must step in and speak up.
>
> As attorneys licensed to practice law in Oregon, we took an oath to "support the Constitution and the laws of the United States and of the State of Oregon." To that end, we have a duty as attorneys to speak up against injustice, violence, and when state and federal laws are violated in the name of white supremacy or white nationalism. We must use all our resources, including legal resources, to protect the rights and safety of everyone. We applaud the Oregon State Bar's commitment to equity and justice by taking a strong stand against white nationalism. Our bar associations pledge to work with the Oregon State Bar and to speak out against white nationalism and the normalization of racism and violence.

OSB maintains both *Bulletin* statements are germane to its role in improving the quality of legal services. When

Plaintiffs and other OSB members complained about the statements, however, the Bar refunded $1.15 to Plaintiffs and other objectors—the portion of their membership fees used to publish the April 2018 *Bulletin*. On appeal, the Bar explains it paid the refunds because "it has always sought, in accordance with its Bylaws, to strictly adhere to the standards of 'germane' speech as set forth in *Keller* . . . . [T]he Bar sought to avoid even the appearance of funding non-germane speech, by refunding their proportional dues with interest."

C. *District Court Proceedings*

Plaintiffs filed these lawsuits against OSB officials and OSB itself, alleging the compelled membership and membership fee requirements violate their First Amendment rights. Plaintiffs contend that (1) the two statements from the April 2018 *Bulletin* are not germane; (2) compelling them to join and maintain membership in OSB violates their right to freedom of association; and (3) compelling Plaintiffs to pay—without their prior, affirmative consent—annual membership fees to OSB violates their right to freedom of speech. In addition, the *Crowe* Plaintiffs alone contend that the Bar's constitutionally mandated procedural safeguards for objecting members are deficient. And the *Gruber* Plaintiffs alone continue to argue on appeal that OSB is not entitled to sovereign immunity from suit.

Below, these cases were referred to a magistrate, who first determined that OSB (but not the individual OSB officials) was an "arm of the state" and immune from suit pursuant to the Eleventh Amendment. The magistrate then held the OSB statement "was made within the specific context of promotion of access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone" and

"[wa]s germane to improving the quality of legal services." Assuming the Specialty Bars' statement could "include[] political speech that is not germane to a permissible topic," the magistrate noted it was not technically attributed to OSB but rather a "routinely publishe[d] statement[]" in the *Bulletin*'s "forum for the exchange of ideas pertaining to the practice of law." The magistrate alternatively concluded that, even assuming the statements contained nongermane speech, Plaintiffs would still have suffered no constitutional injury because of OSB's existing safeguards designed to refund membership funds misused for political purposes.

The magistrate recommended the district court grant the Bar's motions to dismiss and deny the *Gruber* Plaintiffs' motion for partial summary judgment. The district court fully adopted the magistrate's findings and recommendations and dismissed these cases. Plaintiffs timely appealed.

II. STANDARD OF REVIEW

The district court had jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. We have jurisdiction under 28 U.S.C. § 1291, and "review de novo a dismissal on the basis of sovereign immunity or for failure to state a claim upon which relief can be granted." *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 864 (9th Cir. 2016). Moreover, we must "accept the complaint[s'] well-pleaded factual allegations as true, and construe all inferences in the plaintiff[s'] favor." *Id*.

III. DISCUSSION

Plaintiffs raise the same issues that were before the district court in their appeals. We will begin with Plaintiffs'

free speech and free association claims. We consider the parties' arguments with respect to the germaneness of the April 2018 *Bulletin* statements and the adequacy of OSB's procedural safeguards as they pertain to Plaintiffs' free speech and free association claims. Because we conclude that Plaintiffs have stated a claim based on their right to free association, which we must remand to the district court, we will then address the question of OSB's immunity from a suit for damages, a claim only raised by the *Gruber* Plaintiffs.

A. *Free Speech*

In *Keller v. State Bar of California*, 496 U.S. 1, 13–14 (1990), the Supreme Court concluded that a state bar may use mandatory dues to subsidize activities "germane to those goals" of "regulating the legal profession and improving the quality of legal services" without running afoul of its members' First Amendment rights of free speech. *Id.* As a preliminary matter, Plaintiffs argue that both April 2018 *Bulletin* statements constitute political speech nongermane to the Bar's role in regulating the legal profession. We need not decide whether the district court erred in concluding that the *Bulletin* statements are germane under *Keller* (or, in the case of the Specialty Bars' statement, not attributable to OSB) for purposes of this appeal because, even assuming both statements are nongermane, Plaintiffs' free speech claim fails.

In rejecting the plaintiffs' free speech claim in *Keller*, the Supreme Court subjected integrated bars to "the same constitutional rule with respect to the use of compulsory dues as are labor unions." *Keller,* 496 U.S. at 13 (adopting *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 234–36 (1977) (holding that a union may not fund from mandatory fees political or ideological activities nongermane to its collective bargaining

duties)). However, the Supreme Court recently overruled *Abood* because the "line between chargeable [germane] and nonchargeable [nongermane] union expenditures has proved to be impossible to draw with precision," and because even union speech germane to collective bargaining "is overwhelmingly of substantial public concern." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2477, 2481 (2018). Plaintiffs argue that, given *Keller*'s reliance on *Abood*, faithful application of *Keller* now requires that we consult *Janus* in analyzing their *Keller* claim and apply exacting scrutiny. *See id.* at 2477, 2486. According to Plaintiffs, OSB engages in political and ideological activities (e.g., the *Bulletin* statements), so forcing them to pay mandatory membership fees violates their free speech rights. Plaintiffs urge that, under *Janus*, OSB's membership fee requirement cannot survive exacting scrutiny, and therefore, membership fees may only be constitutionally assessed if attorneys provide prior, affirmative consent.

Given *Keller*'s instruction that integrated bars adhere to the same constitutional constraints as unions, 496 U.S. at 13, Plaintiffs' argument is not without support. But *Keller* plainly has not been overruled. *See Janus*, 138 S. Ct. at 2498 (Kagan, J., dissenting) (noting that "today's decision does not question" cases applying *Abood*, including *Keller*). Although *Abood*'s rationale that *Keller* expressly relied on has been clearly "rejected in [another] decision[], the Court of Appeals should follow the [Supreme Court] case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). We are a lower court, and we would be scorning *Agostini*'s clear

directive if we concluded that *Keller* now prohibits the very thing it permitted when decided.[3]

In the alternative, the *Crowe* Plaintiffs alone insist that, assuming mandatory dues remain constitutionally permissible, the district court nevertheless erred in concluding that OSB provides adequate procedural safeguards. As discussed above, *Keller* subjected integrated bars to the same constitutional constraints as unions, allowing them to use compulsory dues only to regulate attorneys or improve the quality of their States' legal professions—but not for "activities of an ideological nature which fall outside of those areas of activity." 496 U.S. at 13–14. Having saddled integrated bars with this "*Abood* obligation," the Court concluded they could satisfy that obligation "by adopting the sort of procedures described in *Hudson*." *Id.* at 17 (referencing *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986)). At a minimum, *Hudson*'s safeguards "include an adequate explanation of the basis for the [compulsory] fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." *Hudson,* 475 U.S. at 310.

Here, OSB's bylaws provide a dispute resolution procedure for a "member of the Bar who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes . . . ." OSB Bylaws § 12.600. The objecting member must

[3] Because we do not think the Supreme Court has clearly abrogated or altered *Keller*'s holding, our precedent likewise bars Plaintiffs' requested relief as to this claim. *See Gardner v. State Bar of Nev.*, 284 F.3d 1040, 1042–43 (9th Cir. 2002).

notify OSB's Board of Governors, and "[i]f the Board agrees with the member's objection, it will immediately refund the portion of the member's dues that are attributable to the activity, with interest." *Id.* § 12.601. If the Board disagrees with the objecting member, it offers binding arbitration before a neutral decisionmaker who conducts a hearing and promptly decides "whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law." *Id.* § 12.602. If the objector prevails, OSB pays the same refund described above; conversely, if OSB prevails, the matter is closed. *Id*.

The *Crowe* Plaintiffs argue that OSB's procedures are deficient because (1) OSB does not provide an independently audited report[4] explaining how mandatory dues are calculated; and (2) OSB does not provide the required escrow procedure. We disagree.

First, to the extent the *Crowe* Plaintiffs urge us to require wholesale application of the procedures in *Hudson* in this context, we decline to do so. Nowhere does *Keller* require state bars to adopt procedures identical to or commensurate with those outlined in *Hudson*. 496 U.S. at 17 ("[A]n integrated bar *could* certainly meet its *Abood* obligation by adopting the *sort of procedures* described in *Hudson*.") (emphasis added). Indeed, the Court in *Keller* explicitly recognized that it lacked the "developed record" available in *Hudson* and accordingly held that "[q]uestions [of] whether one or more alternative procedures would likewise satisfy that obligation are better left for consideration upon a more fully developed record." *Id.* Thus, we decline to require an

[4] Plaintiffs concede that OSB publishes information about its allocation of membership fees each year.

independently audited report and escrow solely because *Hudson* required as much.

Nor are we persuaded that adherence to *Hudson* is necessary—or even effective—to minimize infringement here. With respect to the independent audit, *Hudson* required this high-level explanation in the context of a union that affirmatively planned to engage in activities unrelated to collective bargaining for which it could only charge its members. 475 U.S. at 298. The Court obligated the union to provide a detailed statement of fees in advance so that nonmembers could object before being charged for impermissible activities. *Id.* at 305–07. *Hudson* fashioned the escrow requirement for the same reason—to "avoid the risk that [nonmembers'] funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining." *Id.* at 305.

The *Crowe* Plaintiffs do not allege any similarly affirmative plans by OSB to use Bar members' dues for nongermane purposes. Indeed, OSB maintains a policy mandating that dues be used for germane activities and communications. *See, e.g.,* OSB Bylaws §§ 11.1, 12.1. As a practical matter, then, advance notice would not have offered additional protection against the alleged constitutional violations because OSB would have characterized all of its activities as germane.[5] Similarly, an escrow requirement would not further minimize risk of infringement because,

[5] We recognize that there is an argument to be made regarding the propriety of permitting OSB to define for itself what is germane. That is not before us. Moreover, such an argument does not alter the fact that advance notice in this case would not have prevented Plaintiffs' asserted constitutional injury.

unlike in *Hudson*, the allegedly impermissible speech is only identifiable after the fact.

A refund, which Plaintiffs received here, is the only meaningful remedy for Plaintiffs' alleged injuries. Under the circumstances, OSB provides procedures adequately tailored to "minimize the infringement" of its members' First Amendment rights. *Hudson*, 475 U.S. at 303. Indeed, we have observed, albeit in dicta, that "allow[ing] members to seek a refund of the proportion of their dues that the State Bar has spent on political activities unrelated to its regulatory function" complies with *Keller*. *Morrow v. State Bar of California*, 188 F.3d 1174, 1175 (9th Cir. 1999). OSB clearly provides that process here.

In sum, nothing in *Keller* mandates a strict application of the *Hudson* procedures. Indeed, an application of such procedures here would not have provided greater protections for Plaintiffs. As alleged, the OSB's refund process is sufficient to minimize potential infringement on its members' constitutional rights. We therefore affirm the district court as to Plaintiffs' free speech claim and the adequacy of OSB's procedural safeguards with respect to protecting Plaintiffs' free speech rights.

B. *Free Association*

In Oregon, "a person may not practice law . . . unless the person is an active member of the Oregon State Bar." OR. REV. STAT. § 9.160(1). Plaintiffs claim that because OSB engages in nongermane political activity like the *Bulletin* statements, this membership requirement violates their freedom of association under the First and Fourteenth Amendments. We first must decide whether the district court

erred by concluding this claim was foreclosed by existing precedent.

1. Does existing precedent foreclose Plaintiffs' Free Association claim?

In *Keller*, the Supreme Court expressly declined to address the "freedom of association claim" that attorneys "cannot be compelled to associate with an organization that engages in political or ideological activities beyond those for which mandatory financial support is justified under the principles of *Lathrop* and *Abood*." 496 U.S. at 17. *Keller* explained this unaddressed claim was "much broader . . . than [the claim] at issue in *Lathrop*." *Id.* (discussing *Lathrop v. Donohue*, 367 U.S. 820 (1961)). Plaintiffs here insist they have presented precisely this yet-to-be-resolved free association claim. The district court concluded that *Lathrop* and *Keller* foreclosed Plaintiffs' association claim, so we examine those cases in turn.

In *Lathrop*, a plurality of the Supreme Court held:

> [T]he Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity.

367 U.S. at 843. On its own terms, *Lathrop*'s "free association" decision was limited to "compelled financial support of group activities," *id.* at 828; the Court emphasized that "[t]he only compulsion to which [Lathrop] ha[d] been subjected by the integration of the bar [wa]s the payment of the annual dues of $15 per year." *Id.* at 828 ("We therefore are confronted . . . *only* with a question of compelled financial support of group activities, *not with involuntary membership in any other aspect*.") (emphasis added).[6]

Lathrop also complained that the Wisconsin Bar engaged in lobbying. *See Lathrop*, 367 U.S. at 827. But the *Lathrop* plurality presumed, on the bare record before it, that all the bar's activities, including lobbying, related to "the regulatory program" of "improving the profession." *Id.* at 843. In other words, from what little the *Lathrop* plurality could divine, even the bar's lobbying was germane to the regulatory purposes justifying compelled financial association in the first place. *Id. Lathrop*'s ultimate conclusion was deliberately limited: a state "may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program." *Id.* At bottom, *Lathrop* merely permitted states to compel practicing lawyers to pay toward the costs of regulating their profession. *See Keller*, 496 U.S. at 9 (discussing "the limited scope of the question [*Lathrop*] was deciding").

[6] The Supreme Court framed its decision in this way even though Lathrop's actual free association claim was *similar* to the broader one Plaintiffs raise here. *Lathrop*, 367 U.S. at 827 ("The core of appellant's argument is that he cannot constitutionally be compelled to join . . . an organization which . . . utilizes its property, funds and employees for the purposes of influencing legislation and public opinion toward legislation.").

Decades later, the Court revisited the issue in *Keller*. As discussed above, *Keller*, like *Lathrop*, concluded that states could compel practicing attorneys to pay dues to an integrated bar but that those dues could only "constitutionally fund activities germane to those goals" of "regulating the legal profession and improving the quality of legal services." *Id.* at 13–14. *Keller* then augmented the constitutional analysis, prohibiting integrated bars from funding with mandatory dues "activities having political or ideological coloration which are not reasonably related to the advancement of [its regulatory] goals." *Id.* at 15. In a later compelled speech case, the Supreme Court explained that "[t]he central holding in *Keller* . . . was that the objecting members were not required to give speech subsidies for matters not germane to the larger *regulatory* purpose which justified the required association." *United States v. United Foods, Inc.*, 533 U.S. 405, 414 (2001) (emphasis added).

Crucially, *Keller* expressly declined to address the petitioners' separate free association claim: "that they cannot be compelled to associate with an organization that engages in political or ideological activities beyond those for which mandatory financial support is justified under the principles of *Lathrop* and *Abood*." *Keller*, 496 U.S. at 17. *Keller* acknowledged this was "a much broader freedom of association claim than was at issue in *Lathrop*." *Id.* (explaining that the *Keller* petitioners' free association claim challenged more than "their 'compelled financial support of group activities'" (quoting *Lathrop*, 367 U.S. at 828)). *Keller* and *Lathrop* thus speak for themselves: the Supreme Court has never resolved this broader free association claim based on compelled bar membership.

Nor have we. In *Morrow*, the "plaintiffs complain[ed] that by virtue of their mandatory State Bar membership, they [we]re associated in the public eye with viewpoints they d[id] not in fact hold . . . [which] violate[d] their First Amendment rights to free association." 188 F.3d at 1175 ("The issue is whether plaintiffs' First Amendment rights are violated by their compulsory membership in a state bar association that conducts political activities beyond those for which mandatory financial support is justified."). This is, essentially, the same claim Plaintiffs raise here. Just like the instant claim, the *Morrow* plaintiffs raised the "much broader freedom of association claim" that *Keller* and *Lathrop* left unresolved. *See Morrow*, 188 F.3d at 1177 ("Plaintiffs nevertheless contend that language in *Keller* leaves open the question whether membership alone may cause the public to identify plaintiffs with State Bar positions in violation of plaintiffs' First Amendment rights."). Nevertheless, we did not resolve that claim.

When we reached the *Morrow* plaintiffs' association claim, we essentially reformulated it: "[h]ere, plaintiffs do not allege that they are compelled to associate in any way with the California State Bar's political activities." *Id.* By reformulating the claim, *Morrow* held that the claim before it was "no broader than that in *Lathrop*," and noted "[t]he claim reserved in *Keller* was a broader claim of violation of associational rights than was at issue in either *Lathrop* or in this case." *Id.* Our avoidance of this broader free association claim cannot preclude Plaintiffs' efforts to resolve it here.

Accordingly, Plaintiffs raise an issue that neither the Supreme Court nor we have ever addressed: whether the First Amendment tolerates mandatory membership itself—independent of compelled financial support—in an integrated

bar that engages in nongermane political activities. In concluding that precedent foreclosed this claim, the district court erred.

2. Plaintiffs' free association claim is viable.

The First Amendment protects the basic right to freely associate for expressive purposes; correspondingly, "[t]he right to eschew association for expressive purposes is likewise protected." *Janus*, 138 S. Ct. at 2463 (citing *Roberts v. U.S. Jaycees,* 468 U.S. 609, 623 (1984)). Freedom from compelled association protects two inverse yet equally important interests. First, it shields individuals from being forced to "confess by word or act their faith" in a prescriptive orthodoxy or "matters of opinion" they do not share. *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Second, because "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958), freedom from compelled association checks the power of "official[s], high or petty, [to] prescribe what [opinions] shall be orthodox." *Barnette*, 319 U.S. at 642. In short, like the "freedom of belief," freedom from compelled association "is no incidental or secondary aspect of the First Amendment's protections." *Abood*, 431 U.S. at 235.

Plaintiffs' freedom of association claim based on the April 2018 *Bulletin* statements is viable. Because the district court erred in dismissing this claim as foreclosed by our precedent, we reverse and remand.

On remand, there are a number of complicated issues that the district court will need to address. To begin, the district

court will need to determine whether *Janus* supplies the appropriate standard for Plaintiffs' free association claim and, if so, whether OSB can satisfy its "exacting scrutiny standard." *Janus*, 138 S. Ct. at 2477; *see also, e.g.*, *Fleck v. Wetch*, 139 S. Ct. 590 (2018) (remanding a mandatory bar membership case for further consideration in light of *Janus*). Given that we have never addressed such a broad free association claim, the district court will also likely need to determine whether *Keller*'s instructions with regards to germaneness and procedurally adequate safeguards are even relevant to the free association inquiry. To avoid issuing an advisory opinion, we defer consideration of these issues at this stage of the case. *See Ball v. Rodgers*, 492 F.3d 1094, 1119 (9th Cir. 2007) (declining to address an issue "at this time" until after the district court has an opportunity to review on remand in light of the court's instructions related to separate issues).

C. *Sovereign Immunity*

As set forth above, the district court adopted the magistrate's recommendation, in which the magistrate determined that OSB is "an arm of the state entitled to Eleventh Amendment Immunity." Although the magistrate cited several district court decisions and unpublished Ninth Circuit dispositions[7] that have alluded to this conclusion, this is a matter of first impression before this court. The Eleventh Amendment bars, with a few exceptions (*see*, *e.g.*, *Ex parte*

[7] Of note, the district court cited to our unpublished disposition in *Eardley v. Garst*, 232 F.3d 894 (9th Cir. 2000). Our circuit rules prohibit citations to unpublished dispositions issued prior to January 1, 2007 except in limited circumstances, none of which are present here. *See* 9th Cir. R. 36.

Young, 209 U.S. 123 (1908)), federal suits against unconsenting states, their agencies, and their officers "regardless of the nature of the relief sought." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). "[N]ot all state-created or state-managed entities are immune from suit in federal court . . . . an entity may be organized or managed in such a way that it does not qualify as an arm of the state entitled to sovereign immunity." *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1423 (9th Cir. 1991).

In *State ex rel. Frohnmayer v. Oregon State Bar*, the Oregon Supreme Court held that OSB is a state agency as defined by its public records law. 767 P.2d 893, 895 (Or. 1989); *see also* OR. REV. STAT. § 192.311(6) ("'State Agency' means any state officer, department, board, commission or court created by the Constitution or statutes of this state . . . ."). And we acknowledge that the Oregon Supreme Court "is the final authority on the 'governmental' status of the [Bar] for purposes of state law. But its determination . . . is not binding on [federal courts] when . . . [deciding] a federal question." *Keller*, 496 U.S. at 11. We think that *Frohnmayer* has answered, definitively, an important question: Is the Oregon State Bar a state actor? The Oregon Supreme Court has said "Yes," and that means that OSB is bound by those provisions of the U.S. Constitution that bind state actors, such as the First Amendment, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *See*, *e.g.*, *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 717 (1961). Finding that an entity is the "state" for purposes of the First Amendment or the Due Process and Equal Protection Clauses, however, is not the same as concluding that the entity is the "state" for purposes of the Eleventh Amendment. *See*, *e.g.*, *Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658,

690 n.54 (1978) (explaining there is no " basis for concluding that the Eleventh Amendment is a bar to municipal liability" in § 1983 suits). We recently discussed the different tests for state action and, as we will see, they are quite different from our consideration of factors required for sovereign immunity. *See Pasadena Republican Club v. W. Just. Ctr.*, —F.3d—, 2021 WL 235775, at *4 (9th Cir. Jan. 25, 2021) (listing various tests for state action). Accordingly, *Frohnmayer* does not answer the question before us: Whether OSB is an arm of the state entitled to immunity under the Eleventh Amendment.

To determine whether OSB, which is "an instrumentality of the . . . government of the State of Oregon," OR. REV. STAT. § 9.010(2), is an arm of the state entitled to immunity, we apply the *Mitchell* framework. *See Mitchell v. L.A. Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988). The *Mitchell* factors are as follows:

> [1] whether a money judgment would be satisfied out of state funds, [2] whether the entity performs central governmental functions, [3] whether the entity may sue or be sued, [4] whether the entity has the power to take property in its own name or only the name of the state, and [5] the corporate status of the entity. To determine these factors, the court looks to the way state law treats the entity.

Id. (citation omitted). OSB "bear[s] the burden of proving the facts that establish its immunity under the Eleventh Amendment." *ITSI TV Prods., Inc. v. Agric. Ass'ns*, 3 F.3d 1289, 1292 (9th Cir. 1993). We conclude that, on the whole,

the factors weigh against finding OSB an "arm of the state" entitled to immunity.

1. Vulnerability of the State's treasury

The first factor—whether a money judgment would be satisfied out of state funds—weighs strongly against immunity because Oregon law clearly answers this question in the negative. OR. REV. STAT. § 9.010(6) ("No obligation of any kind incurred or created under this section shall be, or be considered, an indebtedness or obligation of the State of Oregon.").

In this circuit, "the source from which the sums sought by the plaintiff must come is the most important single factor in determining whether the Eleventh Amendment bars federal jurisdiction." *Durning*, 950 F.2d at 1424 (citing *Rutledge v. Ariz. Bd. of Regents*, 660 F.2d 1345, 1349 (9th Cir. 1981); *Ronwin v. Shapiro*, 657 F.2d 1071, 1073 (9th Cir. 1981); *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982)). Unlike the district court, we are not inclined to discount the importance of this factor.[8] Although it is true that "[t]he Eleventh Amendment does not exist solely . . . to prevent federal-court judgments that must be paid out of a State's treasury," *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996) (cleaned up), "the vulnerability of the State's purse [i]s the most salient factor in Eleventh Amendment determinations." *Hess v. Port Auth. Trans-Hudson Corp.*,

[8] The district court suggested that this factor carries less weight in cases for primarily equitable relief. But even assuming such a distinction bears on the weight of this factor, it has little effect here as both complaints seek the return of OSB membership fees Plaintiffs have paid during the statute of limitations period.

513 U.S. 30, 48 (1994). Indeed, as the Supreme Court acknowledged in *Hess*, "the vast majority of Circuits . . . have generally accorded this factor dispositive weight." 513 U.S. at 49 (internal quotation marks omitted). We certainly have, *see Durning*, 950 F.2d at 1424 (citing cases).

Nor are we persuaded by the district court's observation that, "[d]espite the fact the Bar alone is responsible for any money damages it may incur. . . . [a]ny money judgment would come from the Bar's collection of fees that is made possible because the State authorized the Bar to collect those fees." Rather, we find OSB's collection of dues weighs against immunity, for like the bar in *Keller*, OSB's "principal funding comes, not from appropriations made to it by the legislature, but from dues levied on its members by the board of governors." 496 U.S. at 11.[9]

In short, Oregon law expressly disavows State financial responsibility for OSB, which is funded by membership fees. Therefore, the first and most important *Mitchell* factor weighs strongly against immunity.

2. Central government functions

Mitchell's second factor, "whether the entity performs central governmental functions," is a closer call, but we conclude that it weighs slightly against immunity. *Mitchell*, 861 F.2d at 201. To be sure, OSB, "an instrumentality of

[9] The district court further opined, in a footnote, that if Plaintiffs succeeded in eliminating mandatory membership fees, the regulatory costs to the State would correspondingly increase. These concerns, however well-intentioned, exceed the proper scope of this first factor's inquiry: Whether a money judgment would be satisfied out of state funds.

[Oregon's] Judicial Department," performs important government functions. OR. REV. STAT. § 9.010(2). The district court detailed how the Bar, subject to the review and direction of the Oregon Supreme Court, manages bar examinations and attorney admissions, discipline, resignations, and reinstatements; and how the Oregon Supreme Court approves changes to some OSB bylaws, adopts rules of professional conduct, reviews OSB's annual financials, and approves its budget for certain activities.

We agree that OSB "undoubtedly performs important and valuable services for the State by way of governance of the profession." *Keller*, 496 U.S. at 11. But like the integrated bar in *Keller*, "those services are essentially advisory in nature." *Id.* Integrated bars are "a good deal different from most other entities that would be regarded in common parlance as governmental agencies." *Id.* (internal quotation marks omitted). OSB "was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession." *Id.* at 13. And although *Keller* never specifically addressed sovereign immunity, its analysis is pertinent and analogous to the immunity question here. *Keller* identified (after a lengthy discussion) constitutionally significant differences between an integrated bar and "traditional government agencies and officials." *Id.* On that basis, the Supreme Court rejected the argument that "the bar is considered a governmental agency" that is "exempted . . . from any constitutional constraints on the use of its dues." *Id.* at 10. Indeed, this was the principal basis on which the Supreme Court reversed the California Supreme Court in *Keller*. *Id.* at 11–13.

Moreover, the second *Mitchell* factor inquiry must be guided by "[t]he treatment of the entity under state law."

Durning, 950 F.2d at 1426. The *Gruber* Plaintiffs point out that under Oregon law, the Oregon Supreme Court—not OSB—makes final decisions on admitting attorneys, disciplining attorneys, and adopting rules of professional conduct. These same considerations convinced the Supreme Court in *Keller* that the California bar was not "the typical government official or agency," but rather a professional association that provided recommendations to the ultimate regulator of the legal profession. 496 U.S. at 11–12 (reversing the California Supreme Court's conclusion to the contrary). The Oregon Supreme Court exerts the same direct, regulatory control over Oregon attorneys. *See Ramstead v. Morgan*, 347 P.2d 594, 601 (Or. 1959) ("No area of judicial power is more clearly marked off . . . than the courts' power to regulate the conduct of the attorneys who serve under it."). Given OSB's similarity to the integrated bar in *Keller*, we find that the second *Mitchell* factor weighs slightly against immunity.[10] We note that even if we were inclined to discount *Keller*—which we cannot—and view OSB's functions as central government functions, the second *Mitchell* factor is, at most, a wash for OSB because the remaining four factors weigh against immunity.

3. Power to sue or be sued

Oregon law unequivocally imparts to OSB the power to sue and be sued. OR. REV. STAT. § 9.010(5). This factor thus

[10] Our pre-*Mitchell* decisions in *O'Connor v. State of Nevada*, 686 F.2d 749, 750 (9th Cir. 1982) and *Ginter v. State Bar of Nevada* 625 F.2d 829, 830 (9th Cir. 1980) do not require a contrary result. Neither opinion offers an explanation as to *why* the Nevada state bar is an arm of the state. More importantly, our present inquiry concerns Oregon's state bar—not Nevada's.

militates against immunity. The district court nevertheless reasoned to the contrary because Oregon law elsewhere provides civil immunity to the Bar and its officials in the performance of their duties related to admissions, licensing, reinstatements, disciplinary proceedings, and client security fund claims. OR. REV. STAT. §§ 9.537(2), 9.657. We are not persuaded that limited grants of immunity for specific functions cancel out the clear statutory grant of the power to sue or be sued. In any event, we have recognized that although this factor warrants "some consideration, [it] is entitled to less weight than the first two factors." *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 254 (9th Cir. 1992). As such, this factor weighs slightly against immunity.

4. Power to take property in its own name

It is clear that OSB may "enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property." OR. REV. STAT. § 9.010(5). This factor accordingly weighs against immunity.

5. Corporate status

"[OSB] is a public corporation and an instrumentality of . . . the State." *Id.* § 9.010(2). But because the Bar appoints its own leaders, amends most of its bylaws, and manages its internal affairs, OSB "is a corporate entity sufficiently independent from the state." *Durning*, 950 F.2d at 1428. Our decision in *Durning* is illustrative here. There, the Wyoming Community Development Authority was "a *body corporate* operating as a state instrumentality operated solely for the public benefit" and its board was government appointed. *Id.* at 1427 (emphasis in original). Yet *Durning* concluded the

fifth *Mitchell* factor weighed against immunity. *Id.* at 1428. We reach the same conclusion here, for OSB is even more independent than the Authority in *Durning*. OSB's Board of Governors, for instance, are not government appointed. OR. REV. STAT. § 9.025(1)(a). The Board appoints OSB's CEO. *Id.* § 9.055. And OSB "has the authority to . . . regulat[e] and manag[e] . . . [its own affairs]." *Id.* § 9.080(1).

* * *

In sum, three factors, including the first and most important, weigh against immunity and the other two still lean slightly against immunity. The *Mitchell* factors thus compel the conclusion that OSB is not an "arm of the state" entitled to immunity. We note that even viewing two factors as neutral, OSB has not met its burden to prove immunity.

IV. CONCLUSION

In light of the foregoing, the district court is **AFFIRMED IN PART**, **REVERSED IN PART**, and these cases are **REMANDED** for further proceedings consistent with this opinion.

VANDYKE, Circuit Judge, concurring in part and dissenting in part:

I agree with and concur in the entirety of the panel's opinion in these cases, except its resolution of the *Crowe* Plaintiffs' inadequate procedural safeguards claim based on *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

At first blush, it's not obvious to me that the Bar's existing after-the-fact safeguards, which no one disputes fail to comply with the Supreme Court's direction in *Hudson*, adequately "prevent[] compulsory subsidization of ideological activity by" objecting bar members. *Id.* at 302 (quoting *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 237 (1977)). As the panel's opinion correctly concludes, even though the Supreme Court seems to have moved on from the *Abood* rationale upon which its *Keller* decision relied, we must still follow *Keller* and thus reject Plaintiffs' free speech claims in these cases. But I don't think that requires us to go further and ignore that the Supreme Court has now concluded even *Hudson*'s minimal safeguards are not enough in other contexts. *See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2482, 2486 (2018) (concluding that "the *Hudson* notice in the present case and in others that have come before us do not begin to permit" objectors to protect their First Amendment rights, and overruling *Abood*).

Given these developments in the law, it is hard for me to see how something less than *Hudson*'s safeguards could suffice in the context of compulsory bar membership dues. *Keller* said that "an integrated bar could certainly meet its *Abood* obligation by adopting the sort of procedures described in *Hudson*," *Keller v. State Bar of California*, 496 U.S. 1, 17 (1990), which of course we are bound by until the Supreme Court tells us otherwise. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997). But *Keller* never addressed what procedures *less protective* than those required by *Hudson* would suffice. Even assuming some type(s) of less protective procedures might have been defensible before *Janus* overruled *Abood*, it doesn't strike me as very defensible now that the Supreme Court has told us *Hudson*'s procedures are

no longer sufficient in other contexts. Following *Keller* and *Janus* and *Agostini*, it may be that *Hudson*'s requirements are now both a floor and a ceiling for integrated bars—at least until the Supreme Court gives us more guidance.

Ultimately, however, I would address the *Crowe* Plaintiffs' inadequate safeguards claim by not doing so in this appeal. We are remanding Plaintiffs' free association claim, and if on remand they prevail on that claim, the Bar will presumably need to change its bylaws, and maybe its entire structure. Because such alterations would likely change the procedures the *Crowe* Plaintiffs currently challenge, I don't think it is necessary that we review those procedures at this stage of the case. To avoid issuing an advisory opinion, I would defer consideration of this issue. *See Ball v. Rodgers*, 492 F.3d 1094, 1119 (9th Cir. 2007) (declining to address a claim "at this time," and waiting until after the district court on remand reviews the claim anew in light of our court's instructions on separate issues that could affect that claim). Accordingly, I respectfully dissent on this singular claim.

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: WSBA Rural Practice Project Team

DATE: April 5, 2021

RE: WSBA Rural Practice Project Team Updates and Request to Establish a Small Town and Rural Committee (STAR)

ACTION: Establish a WSBA Small Town and Rural Committee

Recommendation

The Rural Practice Project (RPP) Team recommends the formation of a standing Washington State Bar Association (WSBA) committee to institutionalize the importance of rural practice and further study and implement initiatives identified by the RPP Team over the past 18 months.

Alignment with General Rule 12 and the WSBA Mission

The establishment of a committee to further study and advance solutions to the access to justice gap in rural communities squarely aligns with the regulatory objectives embodied in General Rule (GR) 12 and the WSBA mission. More specifically, GR 12.1 (a) articulates the Washington Supreme Court's regulatory objective to provide, in part, "meaningful access to justice. . ." while GR 12.1(d) strives for "affordable and accessible legal services." In addition, a committee aligns with the authorized activities outlined in GR 12.2, in particular by providing "services to members and the public," and "fostering collegiality among its members and goodwill between the legal profession and the public."

The mission of the WA State Bar Association is to "serve the public and the members of the bar, to ensure the integrity of the legal profession and to champion justice" by providing focused attention on the unique needs of residents and members in rural areas both through improving access to legal practitioners in rural communities and outreach and development of a pipeline of younger rural residents to pursue a legal career and serve their communities.

By agreeing to establish a committee to address the rural community justice gap, the Board of Governors will advance the regulatory objectives of GR12 and the WSBA mission.

Background

In November 2019, the WSBA formed the RPP Team to explore the concept of "legal deserts" in Washington, and examine ways in which WSBA could support rural practitioners and improve access to justice for rural residents. In following the attached project plan the RPP Team approached the issue of rural practice in phases, which included awareness and conception, research, and ideation. The RPP Team has met at least once a month over the course

of this project. RPP Team members have also conducted several other meetings with other staff and external stakeholders throughout the duration of the project.

The RPP Team currently consists of representatives from each Washington state law school, four Board of Governor members (or former members), at least two representatives from the Washington Young Lawyers Committee (WYLC), and WSBA staff members within the Advancement, Communications and Outreach, Office of Executive Director, and Regulatory Services Departments.

Awareness and Conception

As part of the Awareness and Conception phase, in January 2020, the RPP Team:

1. Mailed letters signed by then WSBA President Rajeev Majumdar and Interim Executive Director Terra Nevitt to 182 practitioners in rural counties with populations of less than 30,000.
2. Mailed letters signed by then WSBA President Rajeev Majumdar and Interim Executive Director Terra Nevitt to six local county bar association presidents with county populations between 30,000 – 50,000.

Research

During the research phase, the RPP Team:

1. Developed a working definition of "rural" utilizing information from the US Dept. of Agriculture and overview of WA County populations, which is currently defined as populations of 30,000 or less.
2. Surveyed rural practitioners throughout the state in April 2020. A summary of the survey results is attached.
   Followed up with phone calls to rural practitioners who responded to the survey and others who indicated willingness to share their experiences from June to November, 2020. We spoke with at least one rural practitioner in each rural county throughout the state. The summary of those calls is attached.

Ideation Phase 1 - Brainstorming

After gathering information from the research phase, the RPP Team entered the ideation phase in November 2020 and completed the following:

1. The RPP Team analyzed the research data and started to brainstorm and formulate possible solutions to address the needs and challenges identified in the research phase.
2. The project team also conducted three brainstorming sessions to gather more potential solutions from external stakeholders including rural practitioners, representatives from legal aid organizations throughout the state, the Attorney General's Office, prosecuting attorneys' offices, and tribal communities. 41 people participated in the brainstorming sessions. A summary of the brainstorming sessions is attached.

Ideation Phase 2 – Feedback Gathering

After the ideation brainstorming phase, the RPP Team started to synthesize all of the data received to date to narrow down the possible solutions. During this phase the RPP Team:

1. Met to analyze all of the research and feedback to prioritize solutions. We agreed upon three broad solutions areas which are identified in the attached Prioritized Potential Solutions document and articulated below.
   Conducted three feedback sessions with the same group of stakeholders from the ideation phase to gather feedback on the prioritized solutions. 22 people participated in the feedback sessions.

After 18 months of research and stakeholder outreach into this area, it has become clear that this is a long-term, multi-faceted endeavor that should be institutionalized and addressed by a WSBA committee. The RPP Team is respectfully requesting that the Board of Governors establish a WSBA committee to pick up where the RPP Team has left off and further research and collaborate on the following prioritized solutions:

- **Community Education and Outreach:** Coordinate efforts to educate members and potential members about the unique needs, opportunities, and benefits of rural practice.

- **Pipeline/Placement Program:** Identify or propose development of WSBA programming, or WSBA supported/partnered programming, designed to build a pipeline of practitioners in rural areas, as well as an incentive program to encourage members to explore a rural practice on a time-limited or multi-year timeframe.

- **Job Opportunities and Clearinghouse:** Utilize existing and future WSBA resources to support and highlight job opportunities in rural communities, as well as to assist retiring members with succession planning and buying/selling of a practice.

The committee would be a conduit and catalyst to address the unique aspects of a rural practice to the Board of Governors for consideration and approval. A draft charter for the committee is attached.

The RPP Team appreciates the Board of Governors' consideration of our request to create a mechanism to institutionalize the work within the WSBA, further research solutions by stakeholders who are most familiar with the issues and to ultimately implement solutions that will benefit rural practitioners and their communities.

Respectfully Submitted,

WSBA Rural Practice Project Team

Attachments:

- Draft Charter
- Project Plan and Timeline
- Survey Summary
- Survey Results
- Outreach Calls Summary
- Outreach Calls Questions
- Brainstorming Sessions Summary
- Prioritized Potential Solutions
- Feedback Sessions Summary

WASHINGTON STATE BAR ASSOCIATION

Small Town and Rural Committee Charter

Effective: Upon Approval by the WSBA Board of Governors

Purpose

The WSBA Small Town and Rural (STAR) Committee is committed to strengthen and support the practice of law in the rural communities throughout Washington state. Members of the STAR Committee will work to ensure that the practice of law in rural communities is present, growing, and thriving.

Practitioners in rural communities are few and far between. Additionally, many of these practitioners are nearing retirement without a clear plan of succession for their clients, leaving a void of access to legal representation and counsel. The STAR Committee will guide policy & program development, serves as ambassadors between the WSBA and these communities, explore and advocate for creative and innovative solutions, and regularly assess the legal landscape in rural communities to determine if WSBA policy, advocacy and program development require further resource for sustainability and improvements.

The STAR Committee aligns with the authorized activities outlined in General Rule 12. More specifically, GR 12.1 (a) articulates the Washington Supreme Court's regulatory objective to provide, in part, "meaningful access to justice. . ." while GR 12.1(d) strives for "affordable and accessible legal services." In addition, the STAR Committee aligns with the authorized activities outlined in GR 12.2, in particular by providing "services to members and the public," and "fostering collegiality among its members and goodwill between the legal profession and the public."

Further, the STAR Committee furthers the WSBA mission to serve the public and the members of the Bar by providing focused attention on the unique needs of residents and members in rural areas both by improving access to legal practitioners in rural communities and outreach and development of a pipeline of younger rural residents to pursue a legal career and serve their communities.

Definition of "Rural"

For the purpose of the STAR Committee and reflective of Washington's unique geographic and socio-geographic landscape, the definition of "rural" is as follows:

> Based on the definitions produced by the U.S. Department of Agriculture Economic Research Service (ERS) and an overview of Washington county population, we focused on counties with populations of less than 50,000 and more than 2,500. These areas are considered 'urban non-metro areas not part of larger labor markets' by ERS. As part of the working definition, and for ease, we have termed these counties as 'rural.' Based upon WA county population data, we've pursued a hypothesis that counties with 30,000 or more as rural, but likely more

adjacent to a labor market and perhaps have a varying set of circumstances that may differ from counties that are less than 30,000.

Composition

Members of the STAR Committee should have demonstrated experience and/or interest in a thriving legal practice in Washington's rural communities. The STAR Committee will consist of 13 members and are outlined as:

- Chair (non-voting member, but has a vote in the event of a tie)
- 2 Current or Former WSBA Board of Governors Members (voting members)
- 1 Active WSBA Member At Large (voting member)
- 4 Active WSBA Members from rural communities - see above for definition of "rural" (voting members)
- 1 Active WSBA Young Lawyer Member, as defined in WSBA Bylaws (voting member)
- 3 Law School Representatives (voting members, must be currently employed with a WA Law School which is not currently represented on the Committee.)
- 1 Active WSBA Lawyer Member currently employed with a Qualified Legal Service Provider (QLSP)(voting member).

WSBA Staff Liaison: Member Services and Engagement Manager or staff member in the Advancement Department, non-voting
Board of Governor Liaison: as assigned annually, non-voting.

Terms

- Chair: two-year term
- Members: three-year term

Initial Committee Terms

The first appointments to the STAR Committee should effectuate a staggered rotation of STAR Committee members. Therefore, the following terms are in place for the first appointment cycle only. All subsequent terms should adhere to the term limits stated above. STAR Committee member serving an initial term less than three years, should be considered an incomplete term. Therefore, the member is eligible to serve two subsequent complete three-year terms in WSBA Bylaws.

- 2 Active WSBA Members
  1 member with two-year term, 1 member with three-year term.
- 4 Active WSBA Members from rural communities (see above for definition)
  1 member with one-year term, 1 member with two years term, 2 members with three-years term.
- 3 Law School Representatives (voting, must be currently employed with a WA Law School)
- *1 member with one-year term, 1 member with two-years term, 1 member with three-years term.*

The following positions will begin as a standard term as set forth in this charter.
- Chair
- 1 Active WSBA Young Lawyer Member

- 1 Active WSBA Lawyer Member currently employed with a Qualified Legal Service Provider (QLSP).

Scope of Work

The scope of the STAR Committee's work will focus on what the WSBA is uniquely positioned to do in supporting a sustaining and thriving environment for the practice of law in Washington's rural communities. The STAR Committee will work with all relevant and interested stakeholders to collaborate where needed. The provision of direct legal services and civil legal aid to the public is outside the scope of the STAR Committee.

Measures of Success

- Increased awareness of the issues and possible solutions to address any gap in practicing members in rural communities.
- A sustainable pipeline of legal practitioners in rural communities.
- Increased numbers of legal practitioners in rural communities.
- The establishment of funding for programs and initiatives for the practice of law in rural communities.

STAR Committee Roles

1. **Community Education and Outreach**
   Coordinated efforts to educate members and potential members about the unique needs, opportunities and benefits of a rural practice. This can include, but should not be limited to, comprehensive information on WSBA's website, features in WSBA publications, presentations at high schools, law schools and community colleges. Meetings and events, such as a summit or symposium, to highlight the issue, convene interested stakeholders to share their concerns and strategize on possible solutions.

2. **Pipeline and Placement Program(s)**
   Develop WSBA programming, or WSBA supported/partnered programming designed to build a pipeline of practitioners in rural areas as well as an incentive program to encourage members to explore a rural practice on a time-limited or multi-year timeframe. This role should explore a possible collaboration or strategic overlap with WSBA existing and future mentorship program(s). In particular, this role will require extensive strategic planning and identification of external stakeholder support and additional funding sources. Coordinate with law schools and other stakeholders regarding economic incentives to practice in rural areas.

3. **Job Opportunities and Clearinghouse**
   Utilize existing and future WSBA resources to support and highlight job opportunities in rural communities. This role should include making it easier, and perhaps more cost-effective, to add job postings to WSBA's service. Develop a clearing house to assist retiring members with succession planning and the buying/selling of a practice.

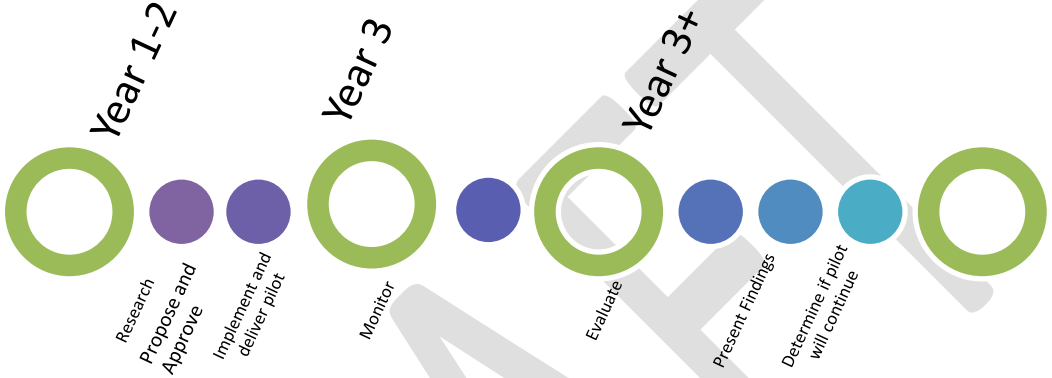
Committee Evaluation

The STAR Committee should conduct an assessment within five years from the date of Board of Governors' approval by 1) conducting a survey of rural practitioners to provide stakeholder feedback regarding the impact of this Committee to effectuate change in these areas, 2) assessing the scope of work to reflect impact and progress in this area and align with trends in the greater legal community, and 3) earnestly examining if the Committee is necessary to continue the scope of work.

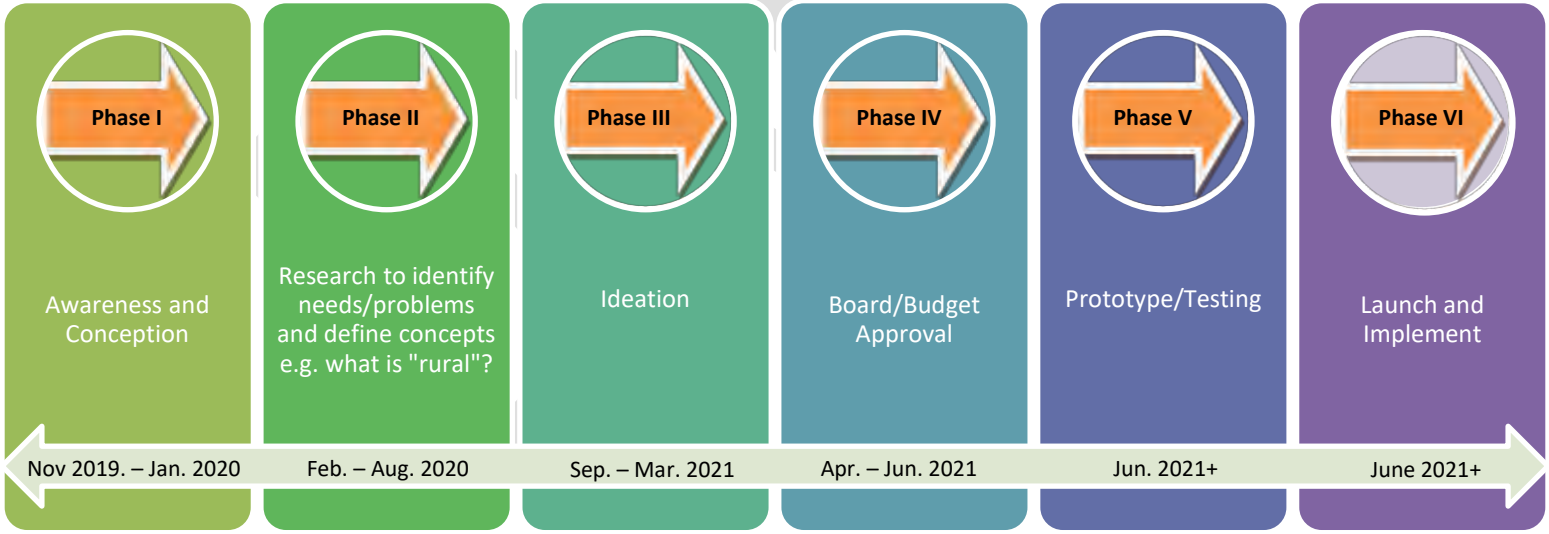
Rural Outreach Project

Updated March 11, 2021 (version 5)

Timeline for a Project 2019-2021



Year 1-2 – Research, Design and Approve



Rural Outreach Project

Updated March 11, 2021 (version 5)

Phase I – Awareness and Conception (November 2019 – January 2020)
The purpose of the awareness and conception phase is to provide a very high level overview of the rural outreach pilot project. There needs to be enough information for the leadership and other stakeholders of the organization to understand and be able to provide feedback and direction. Thus, allowing staff to continue exploring and researching the potential viability of the pilot. (See Phase II.1.)

Conceptualized themes to influence outcomes include, but are not limited to, low cost, outreach, multi-faceted approach, connector, thought-leader, and advertiser. Also, in this phase key stakeholders and project team mates are identified. Ideally, a draft Project Plan is created and logical model exercise completed.

- **Milestones**
  ☒Milestone Completed: Drafted project plan on Dec. 2019.
  ☒Milestone Completed: Established Project Lead Team (PLT) consisting of staff from the Advancement Department and Regulatory Services Department. PLT first convened on November 6, 2019.
  ☒Milestone Completed: Established Ideation & Research Team of internal staff (IRT). IRT first met on December 11, 2019 and consisted of staff from all departments.
  ☒Milestone Completed: Convened a WSBA Board of Governor (BOG) Stakeholder group consisting of appx. 5 governors. Established a monthly meeting schedule beginning December 19, 2019.
  ☒Milestone Completed: Met with Delivery Systems Committee of the Access to Justice Board on January 7, 2020.
  ☒Milestone Completed: Sent letters, signed by WSBA President and Executive Director, to practitioners in counties identified as rural (population of 30,000 or less) as well as associations in counties (population of 30,000+ to 50,000). Letters were dated January 31, 2020.
  ☒Milestone Completed: Deepening our Understanding: Conversations with & Identification of External Stakeholders.

Phase II – Research (February 2020 – August 30, 2020)
The research phase will consist of two separate types of research/assessments done and at different points, (1) initial research is about the social issue (identifying needs/problems) from a larger scale, and (2) is defining what is considered "rural" in Washington state.

1. **Social Issue Assessment** – we need to understand the social issue we are trying to impact, the root problem, and help create understanding of how change can occur to solve the problem. What are the various needs we must assess locally? Once a few counties/regions are identified, the same questions above could be asked. Ideally, this would be done when the concept proposal is approved, since it requires reaching out to external stakeholders. The current goal of the project to address in this pilot is: ***how can the WSBA support viable legal practices that serve rural communities?***

Rural Outreach Project

Updated March 11, 2021 (version 5)

Categories of Research Questions:

a) Category 1: Information about the social issue itself. (What are the legal services in rural communities? How are people accessing the justice system?)
b) Category 2: Information about interventions. (Ex. What is the best evidence based programming that show outcomes to increasing legal services in rural communities? Should one focus on online solutions, or advocate for more lawyers in rural communities? Is this intervention being replicated anywhere else, and how is it working?)
c) Category 3: Information about organizations. (Ex. What groups are working to address the lack of legal services/resources in rural communities? What are their goals and strategies? What do these organizations' beneficiaries think of their work?)
d) Category 4: Information about resources. (Ex. What foundations are funding this type of effort? How have volunteers devoted time and energy to drive access to legal services in rural communities?)
e) Category 5: Identifies the types of legal needs in the rural communities.

2. **Defining Rural** – Which communities should this project target and why?
   a) What is the interest among membership in having a rural practice to make the project viable?
   b) Which regions would be viable host sites? Factors to consider include need for legal services, sufficient client base to support a successful practice, and sufficient local support and resources.
   c) "Rural" community set-up – determine what factors go into deciding the placement of the pilot. Once the location(s) are identified we will need to further explore the allies, mentors, barriers, etc.
   d) What are the types of legal needs in the targeted communities?

   Working Definition of "rural" (as of February 2020):

   - According to the U.S. Department of Agriculture, counties (as opposed to other ways to define areas of population), are the 'standing building block for assessing economic data, and for conducting research to track and explain regional population and economic trends.'[1]
   - Based on the definitions produced by the U.S. Department of Agriculture Economic Research Service (ERS) and an overview of Washington county population, we focused on counties with populations of less than 50,000 and more than 2,500. These areas are considered 'urban non-metro areas not part of larger labor markets' by ERS. As part of the working definition, and for ease, we have termed these counties as 'rural.' Based upon WA county population data, we've pursued a hypothesis that counties with 30,000 or more as rural but likely more adjacent to a labor market and perhaps have a varying set of circumstances that may differ from counties that are less than 30,000.

➢ **Milestones**

[1] https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/

☒Milestone Completed: Launched survey on April 2, 2020 (via SurveyMonkey) to rural associations and practitioners that received January 31 letters.

☒Milestone Completed: Finalize plan to conduct conversations with entities (in WA/outside) addressing this issue, leveraging existing WSBA entities to assist with these conversations.

☒Milestone Completed: Convening of Washington Young Lawyers Committee (WYLC) Rural Project Team on May 28, 2020.

- WYLC project team will assist with external entity research & outreach, including law schools. (Summer 2020).

☒Milestone Completed: Conversations with rural associations and/or practitioners (June 16 – August 20, 2020).

☒Milestone Completed: Conversations with leadership at three Washington state law schools (July – August 20202).

☒Milestone Completed: Conversations with other entities addressing this issue (June – present).

☒Milestone Completed: Discussion: Research Report of Findings

☒Milestone In Process: Create WSBA.org webpage to document, share, and gather information on this issue.

Phase III – Ideation (September 2020 – March 2021)

In the ideation phase, the project team brainstorms/identifies all possible solutions to address the problems/needs identified in Phase II. The following tools could be utilized to further build out what was initially created in the concept proposal and include what we learn from our research and assessments.

- Tools:
  - Theory of Change – Lynda.com & Harvard
  - Logic Model – https://www.innonet.org/media/logic_model_workbook_0.pdf
  - Resource Capacity Assessment – internal to WSBA
  - Research if other similar programs have a budget to compare
  - A Stakeholder Analysis Chart and Map
  - WSBA Race Equity Impact Analysis Tool
  - Surveying/Focus Groups/Interviews with county selected for pilot
  - Research on potential grants or fundraising opportunities

➢ **Milestones**

☐Milestone In Process: participate in brainstorming conversations with staff and relevant stakeholders (BOG, WYLC, rural practitioners, etc.)

☐Milestone In Process: after brainstorming of all possible solutions, determine 1-3 designs that is best suited to the capacity, reach and limitations of WSBA. Brainstorming should not be limited to this suitability.

Rural Outreach Project

Updated March 11, 2021 (version 5)

Phase IV –Budget & Audit Committee and Board Approval (Apr – June 2021)
Utilize WSBA Budget process/timeline to building costs into the program. Be prepared to answer: If this requires funding, what will we need to stop/change/prioritize/etc.

- **Milestones**
  - ☐Milestone Pending: Budget and Audit Approval
  - ☐Milestone Pending: Board of Governors Approval

Phase V –Prototype, Development, and Testing (June 2021 and beyond)

- **Milestones**
  - ☐Milestone Pending: Design potential programs/projects/outcomes identified in Phase III for addressing problems/needs identified in Phase II.
  - ☐Milestone Pending: Test designs.
  - ☐Milestone Pending: Select 1-3 prototypes for continued consideration to be presented to the BOG. (May 2021)
  - ☐Milestone Pending: Compile, prepare, and present report on the following categories: stakeholder analysis, risk analysis, implementation analysis, fiscal impact analysis.

Year 3 – Implement & Deliver

Phase VI – Launch and Implement (June 2021 and beyond)

- **Milestones:**
  - ☐Milestone Pending: Implement Project
  - ☐Milestone Pending: Monitor for Course Correction
  - ☐Milestone Pending: Assess Pilot

Year 3+ – Evaluate

Phase VII – Re-evaluate

WASHINGTON STATE
BAR ASSOCIATION

Preliminary Summary: WSBA Legal Practice in Washington's Rural Communities

May 4, 2020

Survey Overview:

Survey Launch Email:	April 2
Reminder Email:	April 30
Survey Closed:	May 4 @ 8:00am
Number of Survey Recipients:	141
Number of Survey Respondents:	48 *(34% return)*
San Juan County	*21%*
Asotin County	*17%*
Lincoln County	*14%*

Practice Areas:
Estate Planning – probate (52%)
Real Property (48%)
Criminal (35%)
Landlord Tenant (27%)
Real Property – land use (27%)

Summary:

When asked the reasons for working in their community, 75% of respondents indicated that they are from the community where they practice. Additionally, most respondents lived in a rural community because that is where they wanted to raise a family or there was little desire to work in a larger city.

Overwhelmingly, respondents enjoyed working in their communities.

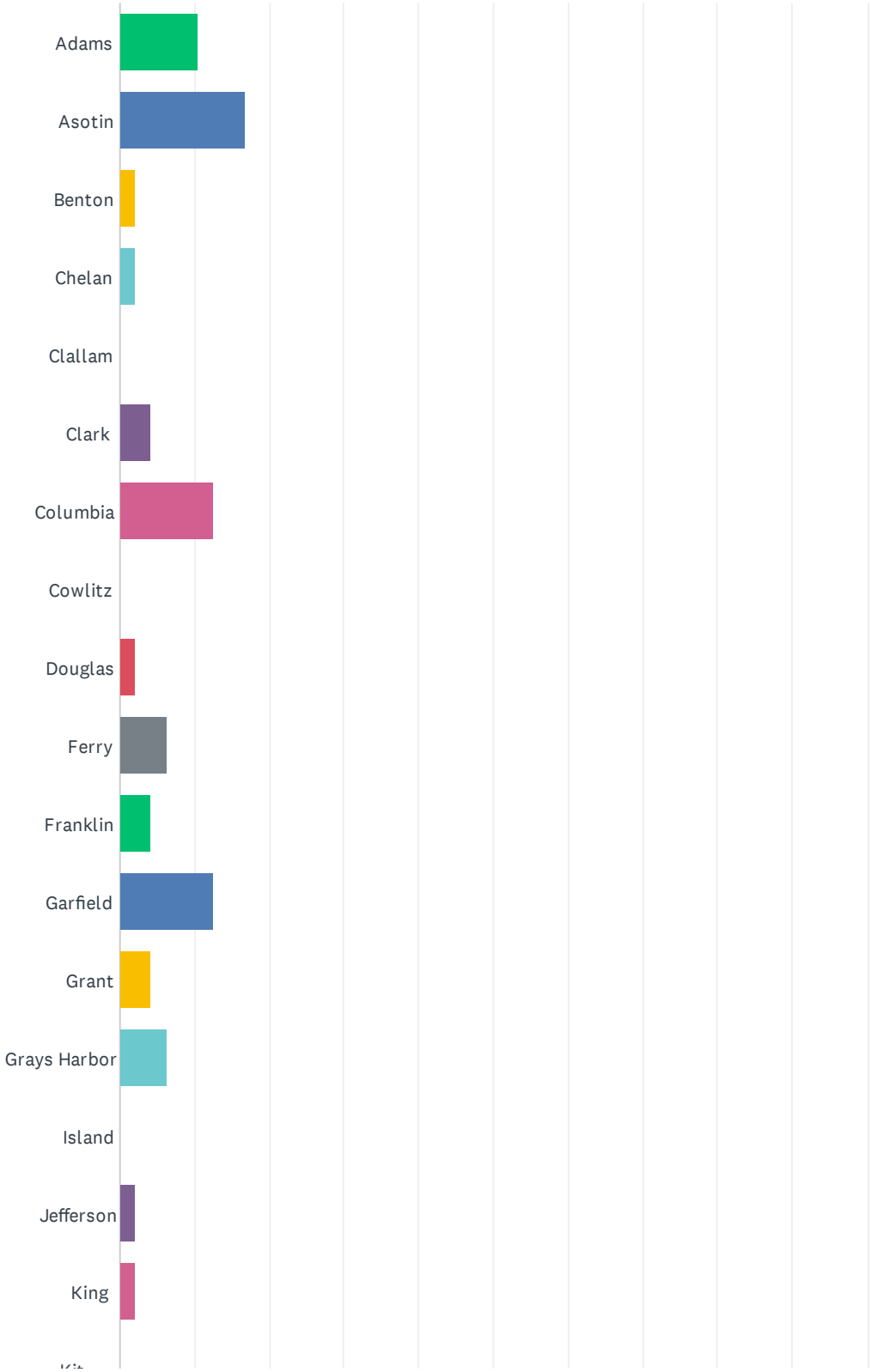
A large majority of the respondents indicated that they do pro bono put do not do so through a qualified legal service provider.

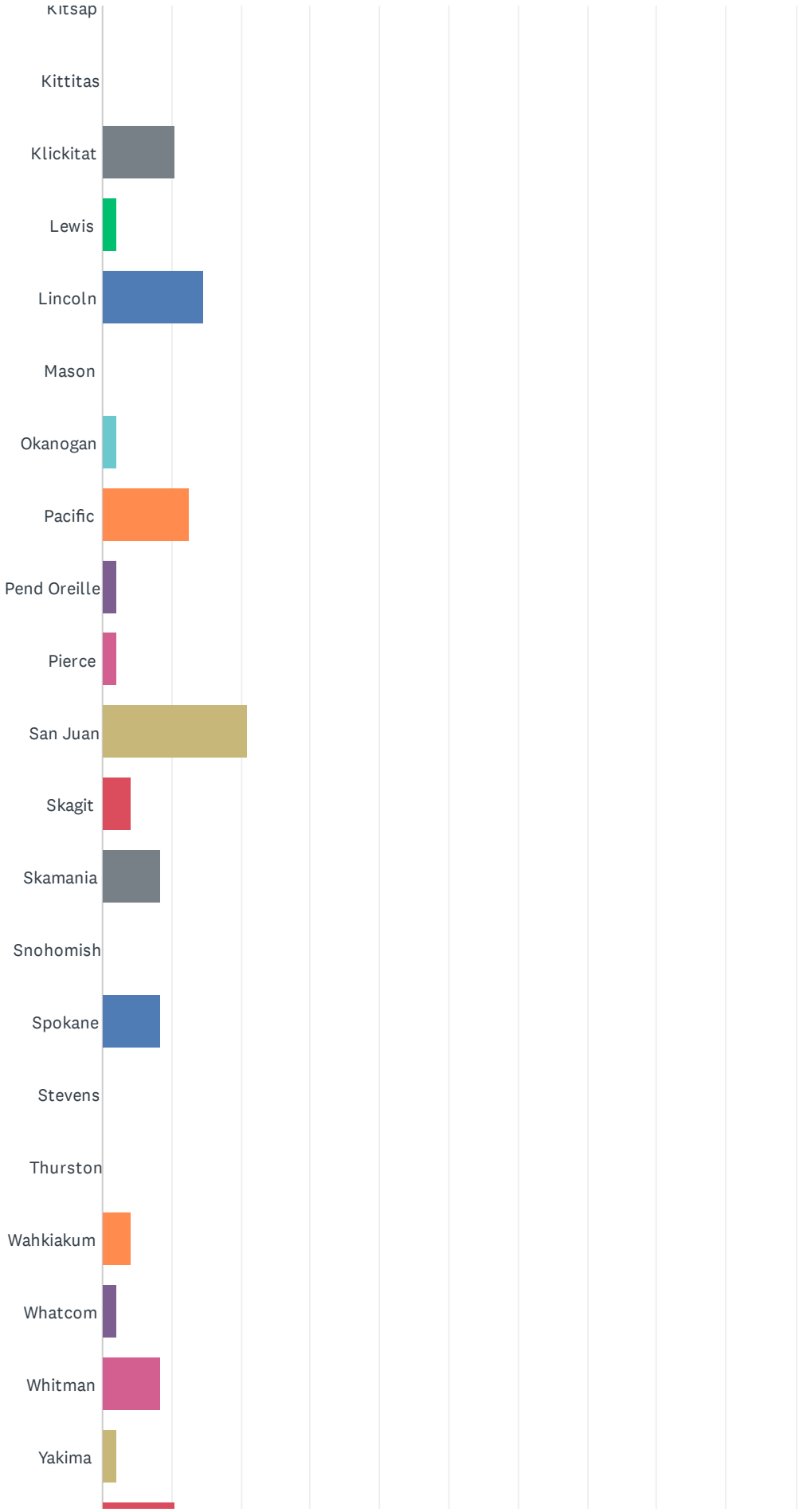
When asked to address conflicts of interest, the responses varied but at initial review, it appears that while this issue is prevalent – it is manageable. It should be noted, however, that there was a wide range of responses from 'no problem at all' to 'this is the single biggest issue.'

When asked what can the WSBA do or what advice should WSBA consider when addressing this issue, respondents generally cited a need to better understand and reach out to rural communities, promote the WSBA resources more directly to rural practitioners, provide financial incentives to encourage members to practice in rural communities, improve support or financial assistance to legal service providers or create a mechanism by which members from around the state can serve clients in the rural communities, perhaps through remote technology.

Q1 Please indicate all WA counties in which you currently practice. Throughout the survey the term 'your community' is intended to include all areas where you practice.

Answered: 48 Skipped: 0

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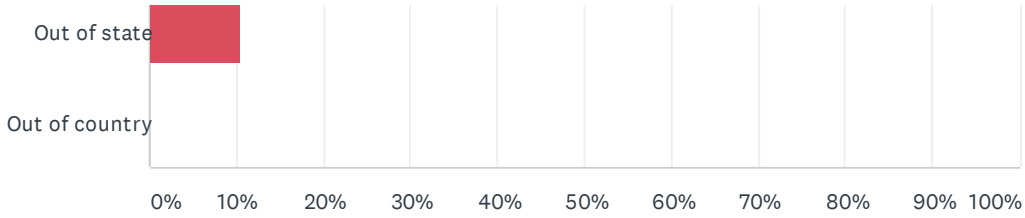
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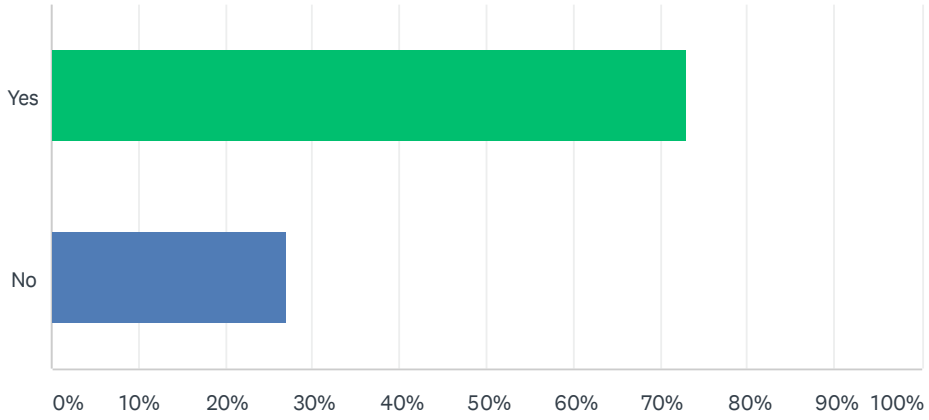
ANSWER CHOICES	RESPONSES	
Adams	10.42%	5
Asotin	16.67%	8
Benton	2.08%	1
Chelan	2.08%	1
Clallam	0.00%	0
Clark	4.17%	2
Columbia	12.50%	6
Cowlitz	0.00%	0
Douglas	2.08%	1
Ferry	6.25%	3
Franklin	4.17%	2
Garfield	12.50%	6
Grant	4.17%	2
Grays Harbor	6.25%	3
Island	0.00%	0
Jefferson	2.08%	1
King	2.08%	1
Kitsap	0.00%	0
Kittitas	0.00%	0
Klickitat	10.42%	5
Lewis	2.08%	1
Lincoln	14.58%	7
Mason	0.00%	0
Okanogan	2.08%	1
Pacific	12.50%	6
Pend Oreille	2.08%	1
Pierce	2.08%	1
San Juan	20.83%	10
Skagit	4.17%	2
Skamania	8.33%	4
Snohomish	0.00%	0
Spokane	8.33%	4

498

Stevens	0.00%	0
Thurston	0.00%	0
Wahkiakum	4.17%	2
Whatcom	2.08%	1
Whitman	8.33%	4
Yakima	2.08%	1
Out of state	10.42%	5
Out of country	0.00%	0
Total Respondents: 48		

Q2 Are you from the community where you practice?

Answered: 48 Skipped: 0

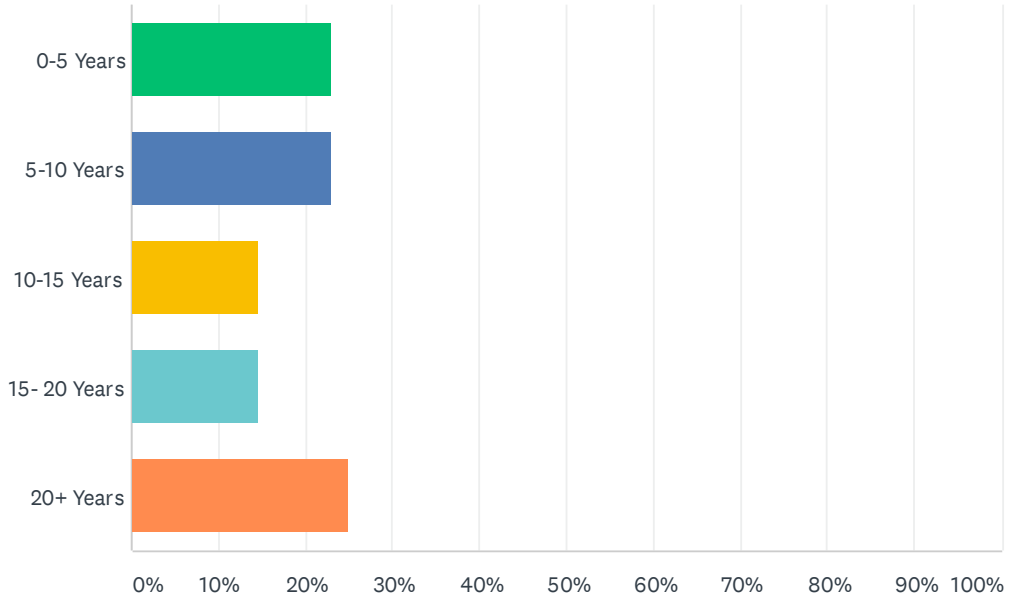


ANSWER CHOICES	RESPONSES	
Yes	72.92%	35
No	27.08%	13
TOTAL		48

500

Q3 How long have you been practicing in your community?

Answered: 48 Skipped: 0



ANSWER CHOICES	RESPONSES	
0-5 Years	22.92%	11
5-10 Years	22.92%	11
10-15 Years	14.58%	7
15- 20 Years	14.58%	7
20+ Years	25.00%	12
TOTAL		48

Q4 Why did you choose to practice in your community?

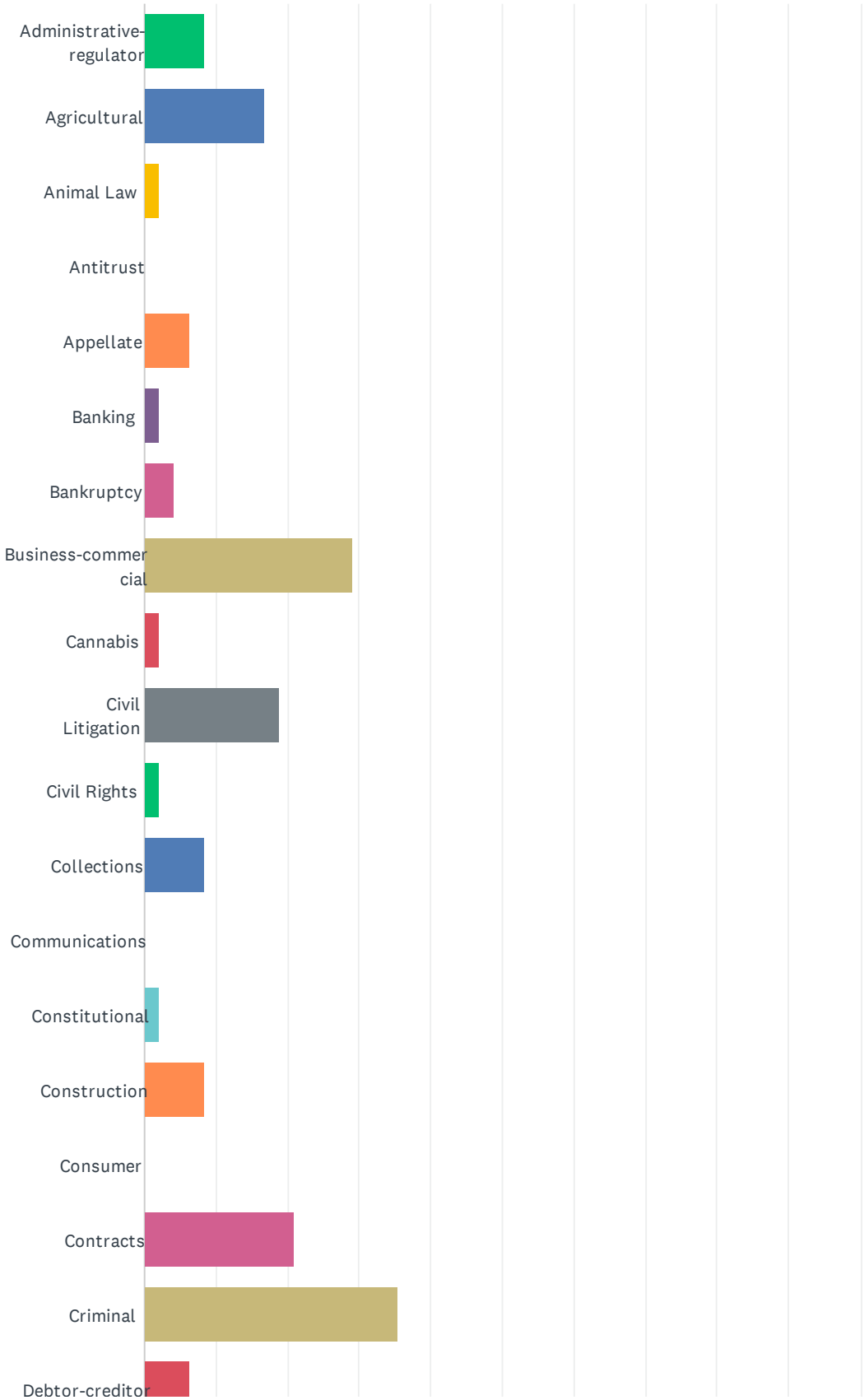
Answered: 47 Skipped: 1

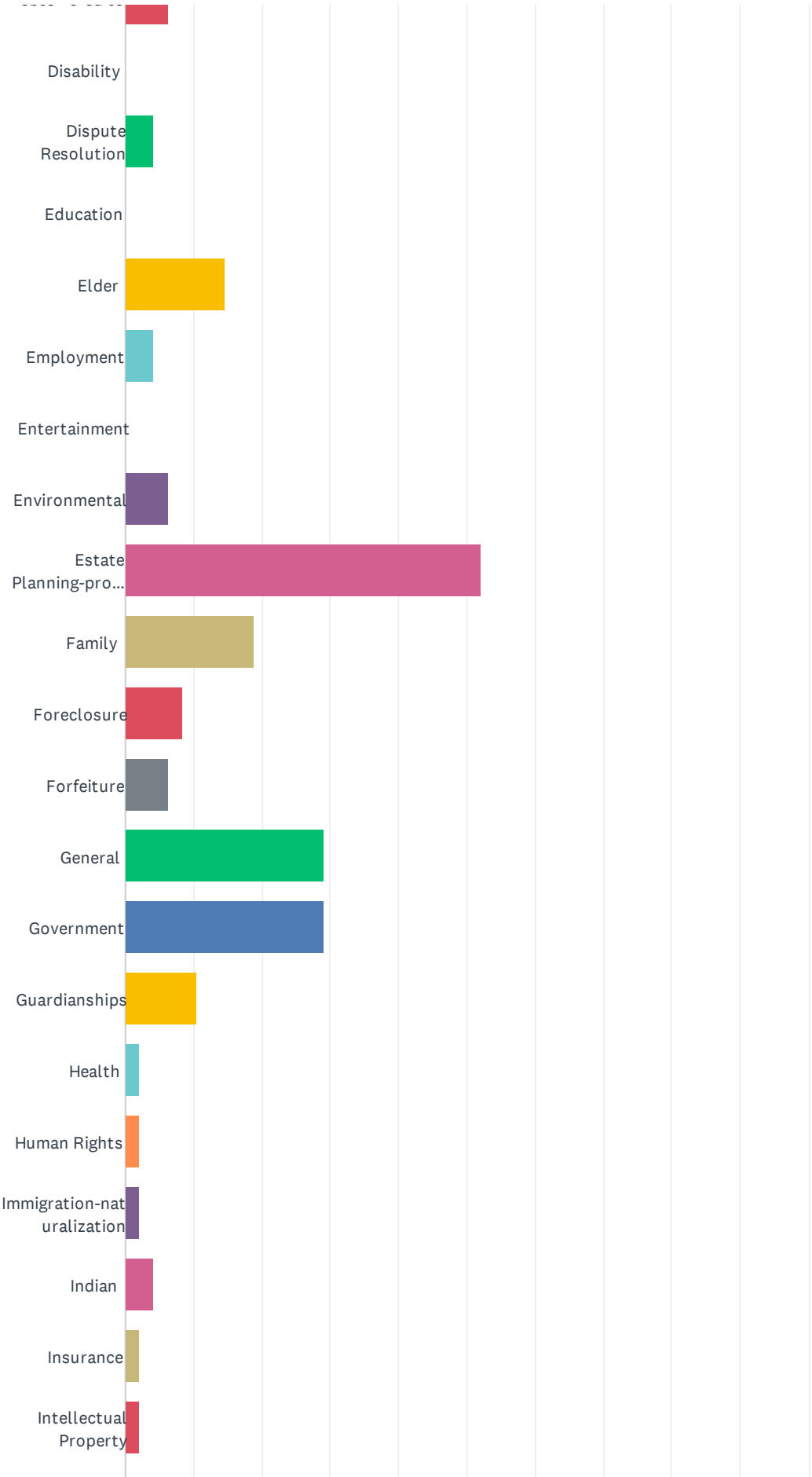
#	RESPONSES	DATE
1	Coming out of law school, my wife (before we got married) was working as a cpa in the rural communities I work in now, and she heard the local law firm was looking for a new attorney to take over the office of a retiring attorney in one of the offices, I interviewed, and it all fell in place for us. My dad grew up on a farm in Nebraska, and worked as a rural appraiser ag lender, I worked cherry harvest and wheat harvest in tri-cities, hunted and fished, and had no desire to work on the west side of the state, and didn't want to work in a large city. I hadn't planned on working in a small town but it just fell in place nicely for me.	5/1/2020 4:44 PM
2	People began asking me to do things for them when they found out I was an attorney and it has grown into a practice. I didn't actually intend to have a law practice here.	5/1/2020 7:34 AM
3	Fell in love with Lopez Island and the island attorney was ready to retire and sell his practice.	4/30/2020 5:22 PM
4	Born and raised in Clarkston; moved back here from Washington DC law firm to raise family and practice here.	4/30/2020 3:55 PM
5	I enjoy a rural lifestyle.	4/30/2020 1:16 PM
6	Offered a job in the community, close to where I wanted to reside.	4/30/2020 12:45 PM
7	Island/rural/waterfront	4/30/2020 11:57 AM
8	I live in the area and I like helping local people.	4/30/2020 11:41 AM
9	I don't practice. I'm a retired lawyer who has maintained his active bar membership. There are probably a lot of us in San Juan county.	4/30/2020 11:36 AM
10	I wanted to live here.	4/30/2020 11:17 AM
11	It is my hometown and I wanted to help people.	4/30/2020 11:01 AM
12	I don't really practice here. I live and work here, but my clients are all in Texas. I've worked remotely for Texas clients from wherever I've lived for 15 years.	4/30/2020 10:59 AM
13	Unique opportunity to be involved with diverse legal, general practice, in small town.	4/30/2020 10:55 AM
14	My family lives here.	4/30/2020 10:54 AM
15	I built a home in the county	4/30/2020 10:52 AM
16	It was a great place to raise a family though the legal opportunities may have been less. The cost of living is low as is the crime rate.	4/30/2020 10:50 AM
17	Did not want to live or work in a large city.	4/30/2020 10:44 AM
18	I enjoy rural living and giving back to the community where I grew up. I also like being close to my family.	4/30/2020 10:33 AM
19	Amazing little town (Port Townsend), high quality of life, and cost of living.	4/30/2020 10:23 AM
20	It's beautiful, small, and colegial, and anyone can make a difference. i've tried spelling collegial four different ways and can't get it right!	4/28/2020 2:05 PM
21	Wanted to raise family in a small town. When I bought the firm it looked like a good population / attorney ratio.	4/8/2020 11:06 AM
22	grew up here. Liked the community.	4/7/2020 4:11 PM
23	- because although I was away for many many years, elsewhere, I'm a native, I was ready to return, and there were no other lawyers left who actually lived here;	4/7/2020 12:27 PM
24	I secured an in-house position, prior to opening my own office.	4/7/2020 11:30 AM
25	There were no civil attorneys in the county before I moved here. I wanted to raise my family in a rural setting and it seemed like there would be enough demand for services to support my practice. Since moving here, I can confirm that there is plenty of work for me.	4/7/2020 10:16 AM
26	I knew folks from the community before moving here.	4/6/2020 12:15 PM
27	I like the community and I like the pace of small town practice	4/6/2020 9:56 AM

28	I enjoy this community	4/6/2020 9:37 AM
29	I was born and raised in the community in which I am now practicing law. I love living here and I have always intended to come back to work and raise my own family here.	4/5/2020 12:27 PM
30	Ease of transition--I knew the other attorneys. Also I got a job there because no one from a larger county wanted it.	4/4/2020 1:11 PM
31	job opening I wanted	4/3/2020 5:05 PM
32	Its home, and its where i wanted to raise my family. The people are good decent people that care about doing the right thing.	4/3/2020 1:38 PM
33	In 1995, it was the only location in which I could find employment.	4/3/2020 11:52 AM
34	I like Columbia County and its underserved.	4/3/2020 10:57 AM
35	Family ties. Nice place to live. Grew up here.	4/3/2020 10:19 AM
36	I work out of my house. Most all my clients are from out of the area and I do not need an office to do work for my client base. Thus I can live where I want and work where I have to.	4/3/2020 8:43 AM
37	I grew up here and connect with a great client base.	4/3/2020 8:15 AM
38	I was practicing in Adams County & was doing conflict indigent defense in multiple rural counties. I bought property after one of the local Judges aske me to bid on the Public Defender Contract in 2006.	4/3/2020 7:50 AM
39	Small towns and it is where I am from	4/3/2020 7:48 AM
40	It was a better job opportunity than my previous job.	4/3/2020 7:10 AM
41	Moved here to retire. Now almost there.	4/2/2020 7:31 PM
42	Live here	4/2/2020 7:12 PM
43	I wanted to live where people prefer to vacation.	4/2/2020 6:25 PM
44	own home here, bought a practice of a deceased lawyer, like it here	4/2/2020 5:47 PM
45	I moved here to open another business.	4/2/2020 4:36 PM
46	I live here.	4/2/2020 4:13 PM
47	There was an opening to do public defense work, and practicing in a small community allows you to get to know the people and their situation well.	4/2/2020 4:02 PM

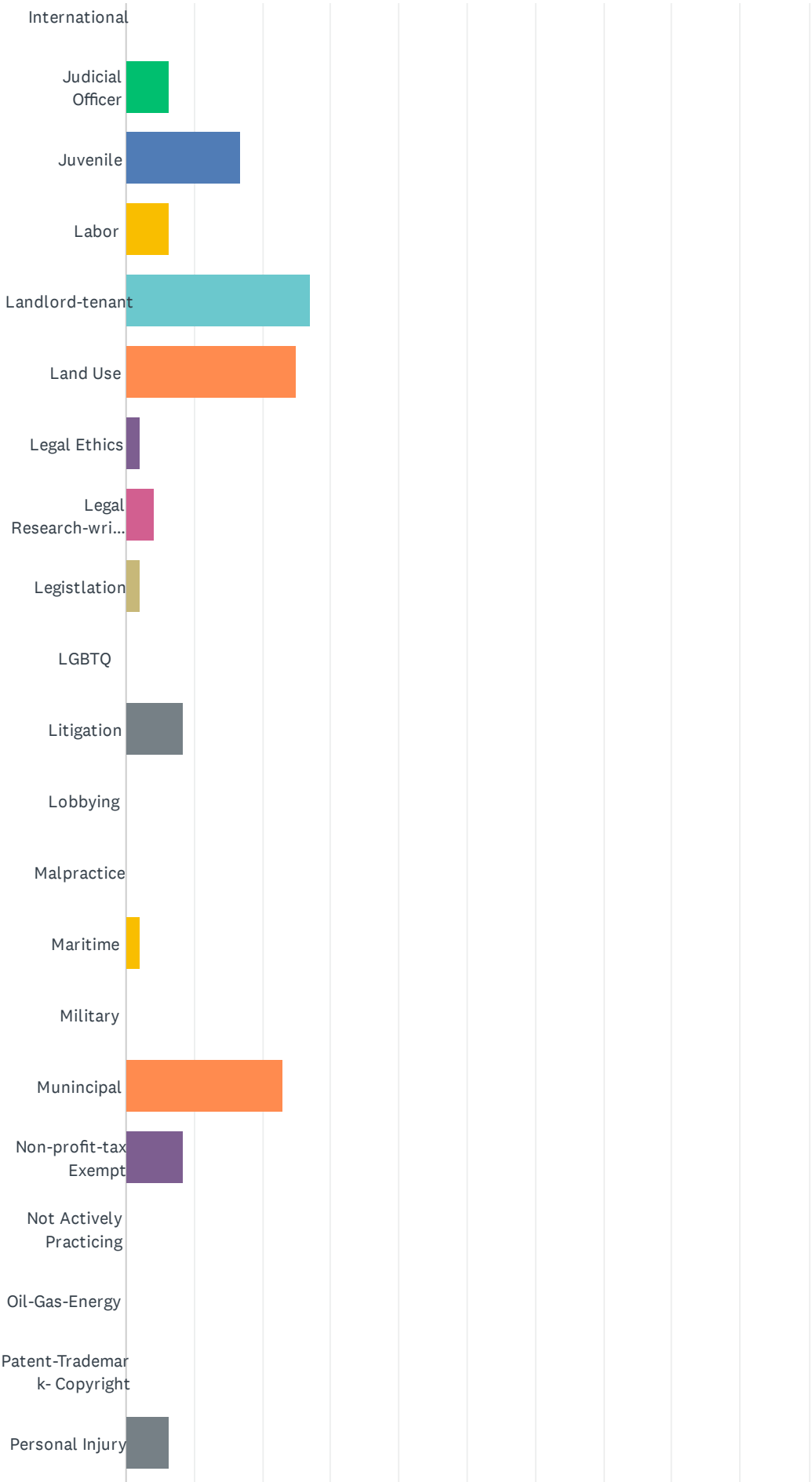
Q5 What type of law do you practice? Please select all that apply.

Answered: 48 Skipped: 0

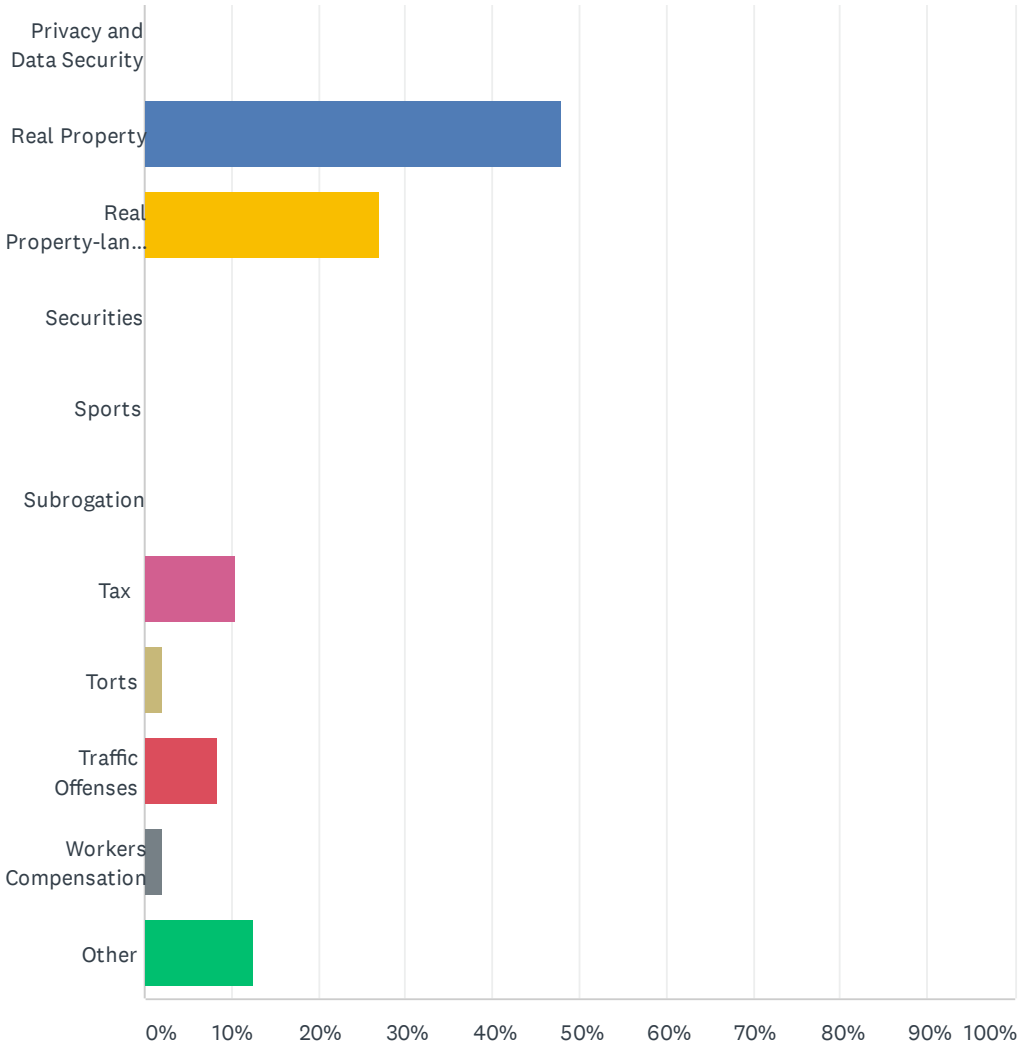



Disability
Dispute Resolution
Education
Elder
Employment
Entertainment
Environmental
Estate Planning-pro...
Family
Foreclosure
Forfeiture
General
Government
Guardianships
Health
Human Rights
Immigration-naturalization
Indian
Insurance
Intellectual Property

506


International
Judicial Officer
Juvenile
Labor
Landlord-tenant
Land Use
Legal Ethics
Legal Research-wri...
Legistlation
LGBTQ
Litigation
Lobbying
Malpractice
Maritime
Military
Munincipal
Non-profit-tax Exempt
Not Actively Practicing
Oil-Gas-Energy
Patent-Trademark- Copyright
Personal Injury

507


Privacy and Data Security
Real Property
Real Property-lan...
Securities
Sports
Subrogation
Tax
Torts
Traffic Offenses
Workers Compensation
Other
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

508

ANSWER CHOICES	RESPONSES	
Administrative-regulator	8.33%	4
Agricultural	16.67%	8
Animal Law	2.08%	1
Antitrust	0.00%	0
Appellate	6.25%	3
Banking	2.08%	1
Bankruptcy	4.17%	2
Business-commercial	29.17%	14
Cannabis	2.08%	1
Civil Litigation	18.75%	9
Civil Rights	2.08%	1
Collections	8.33%	4
Communications	0.00%	0
Constitutional	2.08%	1
Construction	8.33%	4
Consumer	0.00%	0
Contracts	20.83%	10
Criminal	35.42%	17
Debtor-creditor	6.25%	3
Disability	0.00%	0
Dispute Resolution	4.17%	2
Education	0.00%	0
Elder	14.58%	7
Employment	4.17%	2
Entertainment	0.00%	0
Environmental	6.25%	3
Estate Planning-probate	52.08%	25
Family	18.75%	9
Foreclosure	8.33%	4
Forfeiture	6.25%	3
General	29.17%	14
Government	29.17%	14

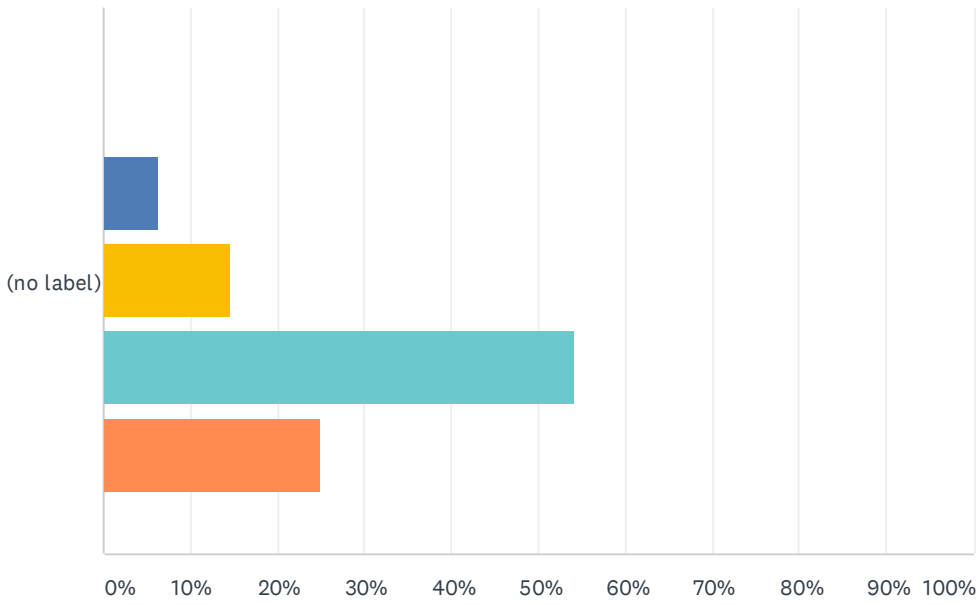
509

Guardianships	10.42%	5
Health	2.08%	1
Human Rights	2.08%	1
Immigration-naturalization	2.08%	1
Indian	4.17%	2
Insurance	2.08%	1
Intellectual Property	2.08%	1
International	0.00%	0
Judicial Officer	6.25%	3
Juvenile	16.67%	8
Labor	6.25%	3
Landlord-tenant	27.08%	13
Land Use	25.00%	12
Legal Ethics	2.08%	1
Legal Research-writing	4.17%	2
Legistlation	2.08%	1
LGBTQ	0.00%	0
Litigation	8.33%	4
Lobbying	0.00%	0
Malpractice	0.00%	0
Maritime	2.08%	1
Military	0.00%	0
Munincipal	22.92%	11
Non-profit-tax Exempt	8.33%	4
Not Actively Practicing	0.00%	0
Oil-Gas-Energy	0.00%	0
Patent-Trademark- Copyright	0.00%	0
Personal Injury	6.25%	3
Privacy and Data Security	0.00%	0
Real Property	47.92%	23
Real Property-land Use	27.08%	13
Securities	0.00%	0
Sports	0.00%	0
Subrogation	0.00%	0

Tax	10.42%	5
Torts	2.08%	1
Traffic Offenses	8.33%	4
Workers Compensation	2.08%	1
Other	12.50%	6
Total Respondents: 48		

Q6 Do you enjoy practicing in your community?

Answered: 48 Skipped: 0



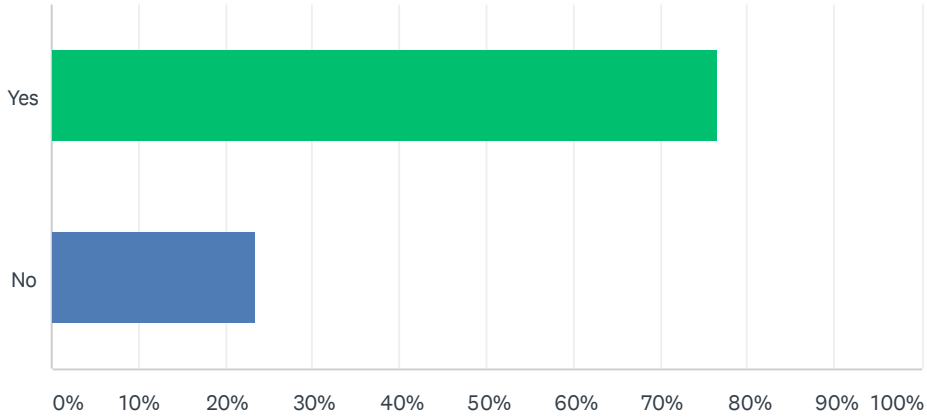
- I do not enjoy practicing in my community.
- I sometimes enjoy practicing in my community.
- I am neutral about practicing in my community.
- I always enjoy practicing in my community.
- I enjoy it so much, I would not practice anywhere else.

	I DO NOT ENJOY PRACTICING IN MY COMMUNITY.	I SOMETIMES ENJOY PRACTICING IN MY COMMUNITY.	I AM NEUTRAL ABOUT PRACTICING IN MY COMMUNITY.	I ALWAYS ENJOY PRACTICING IN MY COMMUNITY.	I ENJOY IT SO MUCH, I WOULD NOT PRACTICE ANYWHERE ELSE.	TOTAL	WEIGHTED AVERAGE
(no label)	0.00% 0	6.25% 3	14.58% 7	54.17% 26	25.00% 12	48	3.98

512

Q7 Do most of your clients live where you practice?

Answered: 47 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	76.60%	36
No	23.40%	11
TOTAL		47

513

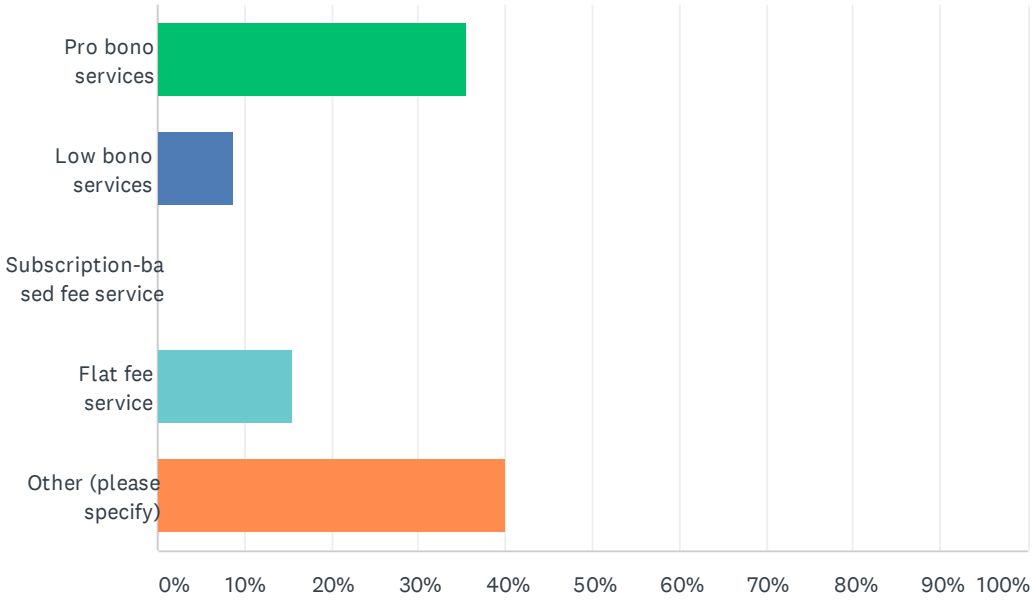
Q8 If not, where are they from?

Answered: 29 Skipped: 19

#	RESPONSES	DATE
1	n/a	4/30/2020 3:55 PM
2	n/a	4/30/2020 1:16 PM
3	NA	4/30/2020 12:45 PM
4	n/a	4/30/2020 11:41 AM
5	N/A. Again, I don't practice actively though I have an active bar membership.	4/30/2020 11:36 AM
6	Texas	4/30/2020 10:59 AM
7	California	4/30/2020 10:52 AM
8	If they are not from the immediate local area, then most are from the upper Northern Oregon Coast or Vancouver or Portland	4/30/2020 10:50 AM
9	N/A Civil Deputy Prosecuting Attorney	4/30/2020 10:23 AM
10	n/a	4/28/2020 2:05 PM
11	n/a	4/8/2020 11:06 AM
12	A few who are not from here have legal matters here.	4/7/2020 4:11 PM
13	- occasionally from Asotin or Columbia County, once in a great while from Spokane or Walla Walla County or from Nez Perce County, Idaho;	4/7/2020 12:27 PM
14	Neighboring communities.	4/7/2020 11:30 AM
15	N/A	4/6/2020 12:15 PM
16	N/A	4/5/2020 12:27 PM
17	Most are foster children, placed across the state and beyond.	4/4/2020 1:11 PM
18	N/A	4/3/2020 11:52 AM
19	multiple areas across the state	4/3/2020 10:57 AM
20	All over the world. But mostly in the US	4/3/2020 8:43 AM
21	Spokane	4/3/2020 8:15 AM
22	N/A	4/3/2020 7:50 AM
23	I don't have clients, I am a government attorney	4/3/2020 7:10 AM
24	Yakima Valley & King County	4/2/2020 7:31 PM
25	Whatcom and Skagit Counties	4/2/2020 6:25 PM
26	mostly from Pacific and Wahkiakum Counties, for my practice in Pacific County	4/2/2020 5:47 PM
27	Most are local.	4/2/2020 4:36 PM
28	Metropolitan areas	4/2/2020 4:13 PM
29	NA	4/2/2020 4:02 PM

Q9 Do you provide any of the following? Please select all that apply.

Answered: 45 Skipped: 3

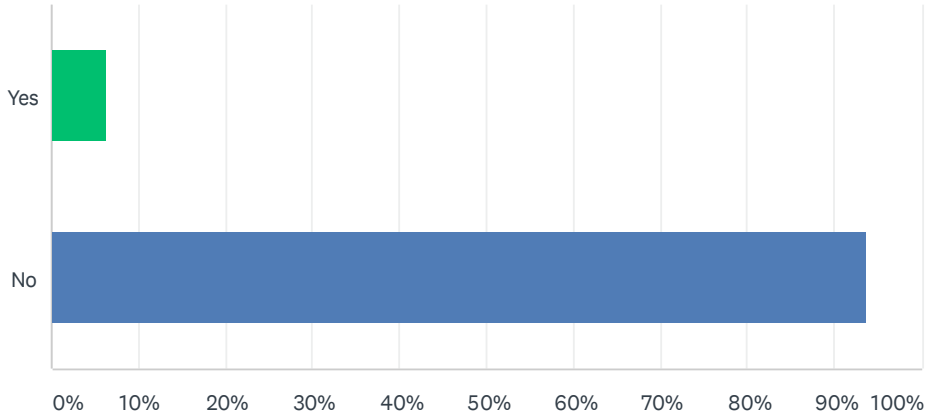


ANSWER CHOICES	RESPONSES	
Pro bono services	35.56%	16
Low bono services	8.89%	4
Subscription-based fee service	0.00%	0
Flat fee service	15.56%	7
Other (please specify)	40.00%	18
TOTAL		45

#	OTHER (PLEASE SPECIFY)	DATE
1	all of above except subscription based fee service (the survey won't let me check more than one box)	5/1/2020 4:44 PM
2	(list doesn't work, only allows 1 selection) pro bono; flat fee; hourly fee	4/30/2020 3:55 PM
3	None of the above, governmental work	4/30/2020 12:45 PM
4	I provide pro bono, low bono, flat rate, and hourly. It would not let me check multiple boxes	4/30/2020 11:41 AM
5	None. Retired.	4/30/2020 11:36 AM
6	I have a mixture of fees and Pro Bono along with taking minimal payments.	4/30/2020 11:01 AM
7	none	4/30/2020 10:52 AM
8	flat fees and contingent fees	4/30/2020 10:50 AM
9	Government lawyer - no client fees	4/30/2020 10:44 AM
10	Government Attorney	4/30/2020 10:33 AM
11	- all of the above except subscription. (The multiple selection isn't working);	4/7/2020 12:27 PM
12	Question settings are wrong. I do pro bono, low bono, and flat fee.	4/7/2020 10:16 AM
13	County Employee	4/6/2020 12:15 PM
14	none now--I am a City Prosecutor	4/3/2020 5:05 PM
15	all of the above	4/3/2020 10:57 AM
16	I don't know what low bono means exactly but I often give fee credits and write downs when it seems appropriate	4/3/2020 10:19 AM
17	System won't let me select more than one - ?	4/2/2020 7:31 PM
18	I do both Pro-Bono, Low Bono,	4/2/2020 7:12 PM

Q10 Do you provide pro bono services through a legal aid organization?

Answered: 48 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	6.25%	3
No	93.75%	45
TOTAL		48

Q11 How do conflicts of interest impact the clients, or potential clients, that you serve?

Answered: 46 Skipped: 2

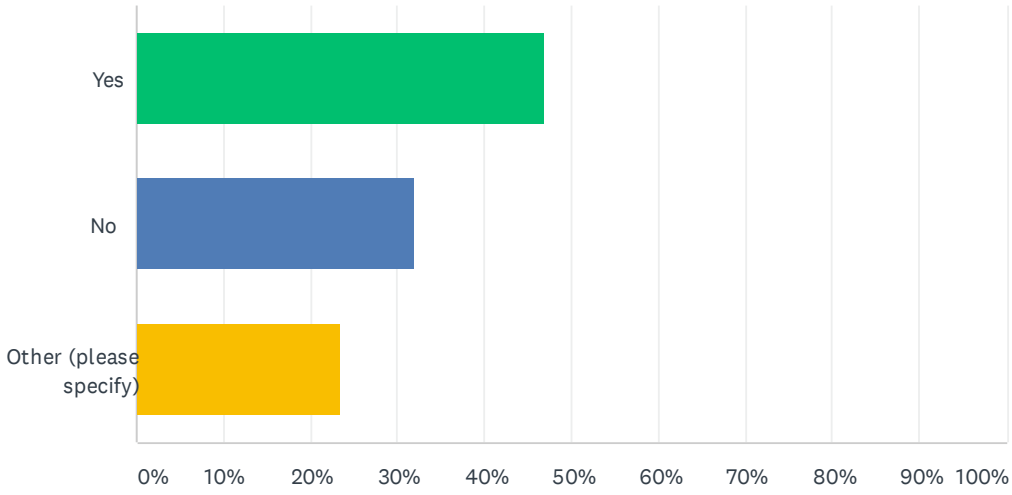
#	RESPONSES	DATE
1	Cost's for clients go up because no local attorneys so have to go to city or attorney has to come here.	5/1/2020 4:44 PM
2	Very rarely in estate planning and probate	5/1/2020 7:34 AM
3	I am the only attorney practicing on Lopez Island, so I need to refer them to someone else in the county.	4/30/2020 5:22 PM
4	not at all	4/30/2020 3:55 PM
5	This question is stupid.	4/30/2020 1:16 PM
6	Few attorneys that practice in the area so there many instances of conflicts of interests.	4/30/2020 12:45 PM
7	What does this mean?	4/30/2020 11:57 AM
8	It happens fairly often that I decline representation because of conflicts. In criminal defense, at least once a month I have to decline because I represent a conflicting party	4/30/2020 11:41 AM
9	N/A. Retired.	4/30/2020 11:36 AM
10	Not much of a problem	4/30/2020 11:17 AM
11	There are only 2 attorneys with private offices in my hometown so people have to drive an hour or more to obtain representation.	4/30/2020 11:01 AM
12	They don't.	4/30/2020 10:59 AM
13	Obviously have to work with attorneys in neighboring towns to deal with it.	4/30/2020 10:55 AM
14	Conflicts are easily resolved by referring them to other attorneys	4/30/2020 10:54 AM
15	not at all	4/30/2020 10:52 AM
16	Most have to be referred out to law firms from out of the area as we have limited lawyers handling matters in our county	4/30/2020 10:50 AM
17	for most areas of law, it is not a major problem as there are other attorneys around. BUT for some areas, it makes potential clients travel quite a distance to find an attorney to help them	4/30/2020 10:38 AM
18	Minimal. Sometimes I have a conflict if I am prosecuting someone I have previously represented in a neighboring county. Other than that, the biggest "conflict" is that I personally know many of my criminal defendants.	4/30/2020 10:33 AM
19	Often have conflicts of interest in primary practice areas. Often take out of county (Clallam) clients	4/30/2020 10:23 AM
20	n/a	4/28/2020 2:05 PM
21	It occasionally results in a referral to another attorney, but i no longer do litigation so that is less frequent than it used to be.	4/8/2020 11:06 AM
22	Issues constantly arise because of how many people I know. A determination has to be made of whether there is a real conflict of interest.	4/7/2020 4:11 PM
23	- in a small rural farm town, depending on the nature of the case, just about everyone has potential conflicts with just about everyone. It's not so much about whether or not there's a conflict as it is about how the conflict is managed;	4/7/2020 12:27 PM
24	They haven't.	4/7/2020 11:30 AM
25	Significant. I have turned down work for a special purpose government due to concerns about conflicting myself out of a lot of future work.	4/7/2020 10:16 AM
26	My office farms out cases with conflicts; they really do not affect my practice.	4/6/2020 12:15 PM
27	It is mainly a challenge in Municipal Court, where I serve as a prosecutor. Sometimes I have to get a "substitute prosecutor" appointed.	4/6/2020 9:56 AM
28	In smaller communities like ours, when potential clients have been represented in the past, they are much more likely to have been represented by one of the few attorneys still practicing in the	4/5/2020 12:27 PM

519

	area. This can make conflict-free representation difficult or impossible for local attorneys.	
29	They come up and we sometimes have to get attorneys for clients that live out of town/county.	4/4/2020 1:11 PM
30	I sometimes have cases in which I represented a defendant in the past when I did defense work. I inquire, thru the defendant's attorney, if the person will sign a Waiver of Conflict of Interest. I have not received a "no" to date.	4/3/2020 5:05 PM
31	Its terrible when you are the only shop in town.	4/3/2020 1:38 PM
32	I have occasional conflicts of interest.	4/3/2020 11:52 AM
33	Not so much of an issue for me yet, but it has come up. Its a significant issue for those that have practiced here for a long time.	4/3/2020 10:57 AM
34	It means I cannot represent them and they then go elsewhere. It also means that it is wise to look ahead to anticipate conflicts and decline work that may eventually create a conflict, and that can be tricky.	4/3/2020 10:19 AM
35	None	4/3/2020 8:43 AM
36	Daily	4/3/2020 8:15 AM
37	I am currently the conflict & preliminary appearance contract attorney. The main contract was assumed by a Stevens County attorney in 2019. Generally there is no adverse issue of representation unless we are both conflicted out.	4/3/2020 7:50 AM
38	It doesn't happen too much except for land disputes (e.g. farm leases, boundary line disputes, etc.)	4/3/2020 7:48 AM
39	N/A	4/3/2020 7:10 AM
40	Regularly	4/2/2020 7:31 PM
41	No often	4/2/2020 7:12 PM
42	It is the single biggest issue.	4/2/2020 6:25 PM
43	you have to be thoughtful about conflicts in a small community	4/2/2020 5:47 PM
44	Sometimes I must abstain from representation.	4/2/2020 4:36 PM
45	Rarely.	4/2/2020 4:13 PM
46	Because the community is small, I often have conflicts. The biggest impact is in finding a conflict attorney to take those cases I cannot. There aren't many public defenders available.	4/2/2020 4:02 PM

Q12 When you were starting out, was there a network of practitioners or mentors that you could turn to within your community?

Answered: 47 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	46.81%	22
No	31.91%	15
Other (please specify)	23.40%	11
Total Respondents: 47		

#	OTHER (PLEASE SPECIFY)	DATE
1	other than my firm, not really	5/1/2020 4:44 PM
2	Yes, but I started practicing in another state. There are some other attorneys in my current county and we can turn to each other for advice when needed.	4/30/2020 5:22 PM
3	I have been practicing law for 27 years but started my practice somewhere other than where I now practice. But in the present community there is little to no local network for a beginning attorney	4/30/2020 12:45 PM
4	I was fairly seasoned when I moved here. The network started seeking me out.	4/30/2020 11:41 AM
5	I practiced in another state (Alaska) when starting out.	4/30/2020 11:36 AM
6	N/A	4/30/2020 10:59 AM
7	- no, but as a later career practitioner, I was experienced in other jurisdictions already, so it didn't really matter;	4/7/2020 12:27 PM
8	Not sure.	4/7/2020 11:30 AM
9	I worked with one other lawyer. No network otherwise.	4/3/2020 10:19 AM
10	Practiced 50 years elsewhere before moving here.	4/2/2020 7:31 PM
11	I am an experienced lawyer; there is only one other similarly experienced lawyer nearby	4/2/2020 5:47 PM

Q13 What tools, people or programs helped you succeed in your practice? How do you go about finding answers to questions that may arise in your practice?

Answered: 46 Skipped: 2

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#	RESPONSES	DATE
1	Research. Ask attorneys in my firm. Ask other attorneys.	5/1/2020 4:44 PM
2	Mostly I had to study the statutes, WSBA practice guides and rely on my general experience. Occasionally I consulted with other practitioners in the area and some were helpful and some not.	5/1/2020 7:34 AM
3	I was fortunate to start practicing in a firm with several other lawyers who are good lawyers and good people. They were very generous with their time and talent, and the senior partner of the firm became my mentor. Invaluable.	4/30/2020 5:22 PM
4	local practitioners; research; national associations; state bar associations	4/30/2020 3:55 PM
5	WAPA	4/30/2020 1:16 PM
6	Mentors, CLE's in the community I began practicing in.	4/30/2020 12:45 PM
7	research	4/30/2020 11:57 AM
8	Westlaw is primary. I scan everything so my entire case load and prior cases are on my computer. I use a homebrew practice management system. I'll talk things over with other lawyers, but nothing formal. CLEs from WDA are invaluable.	4/30/2020 11:41 AM
9	N/A. Retired.	4/30/2020 11:36 AM
10	listservs, CLEs, discuss with colleagues	4/30/2020 11:17 AM
11	None	4/30/2020 11:01 AM
12	I rely entirely on the law firm in Texas for which I provide consulting services.	4/30/2020 10:59 AM
13	I have a small network of attorneys that I work with regularly and am able to reach out when needed. I also belong to a professional/legal association that I work with.	4/30/2020 10:55 AM
14	I was a member of WACDL and WDA, and subscribed to their list serves. Those tools were invaluable to a new public defender.	4/30/2020 10:54 AM
15	I am a senior attorney. I practiced in California for 40 years before moving to Washington	4/30/2020 10:52 AM
16	First it has been my law partner, then networking with lawyers at CLEs, the trial lawyers college, of which I am a graduate, self-help	4/30/2020 10:50 AM
17	Started with a partner, there were other attorneys who were also willing to help, guide, teach, etc. Washington Practice is a great resource, and then I turn to friends around the state	4/30/2020 10:38 AM
18	I contact WAPA or reach out directly to prosecutors in other Counties.	4/30/2020 10:33 AM
19	Informal networking opportunities through the local bar.	4/30/2020 10:23 AM
20	It was over 40 years ago. I consulted with other lawyers, did legal research, and observed in the courtroom.	4/28/2020 2:05 PM
21	list serve and WAELA are very helpful	4/8/2020 11:06 AM
22	In a small town, other lawyers are generally willing to answer questions and share their expertise.	4/7/2020 4:11 PM
23	- depending upon how "succeed" is defined, I've stayed in touch with a few thoughtful practitioners in other jurisdictions -- ME, NY, CA, e.g. -- with whom I can consult. The issues arising aren't usually all that WA specific, actually;	4/7/2020 12:27 PM
24	The WSBA website offered excellent practical information about starting a small practice and I have gathered additional wisdom from a mentor and fellow practitioners.	4/7/2020 11:30 AM
25	I rely on the network I created before moving here.	4/7/2020 10:16 AM
26	The Washington Association of Prosecuting Attorneys. And asking my colleagues questions.	4/6/2020 12:15 PM
27	I was lucky to have two parents who were Judges and/or attorneys. I often just called up attorneys in the area who were knowledgeable. I made a lot of use of Washington Practice.	4/6/2020 9:56 AM
28	Discussing both simple and complex issues with experienced local practitioners helps me	4/5/2020 12:27 PM

	succeed in my practice.	
29	Luckily my parents are both attorneys so I usually go to them. Any of the local attorneys is happy to answer questions. Also listservs for others practicing my type of law.	4/4/2020 1:11 PM
30	A lot of hard work	4/3/2020 5:05 PM
31	Bar association kind of, older practitioners.	4/3/2020 1:38 PM
32	N/A	4/3/2020 11:52 AM
33	at first, a handful of very generous individuals. Now that i have approximately 35 attorneys in multiple states, i am frequently able to reach out within my firm when needed.	4/3/2020 10:57 AM
34	Washington practice! WSBA deskbooks. Other treatises. Talked with the lawyer with whom I practice.	4/3/2020 10:19 AM
35	I practice in a very specialized area so I have a national network of attorneys that I work with and consult	4/3/2020 8:43 AM
36	Westlaw and King County Young Lawyers practice manual	4/3/2020 8:15 AM
37	Research! Research! Research! I've been in practice for 47 years & if I can't find it I consult with other criminal defense attorneys that I respect.	4/3/2020 7:50 AM
38	title companies, court documents, fairly quick and fairly easy access to both land records and court filings is so important to a practice in rural areas	4/3/2020 7:48 AM
39	I reach out to connections in other counties.	4/3/2020 7:10 AM
40	Search my memory.	4/2/2020 7:31 PM
41	Fellow colleagues List-serves	4/2/2020 7:12 PM
42	Good communications and internet research have been most helpful. If I have questions I research case law first.	4/2/2020 6:25 PM
43	35 years of experience	4/2/2020 5:47 PM
44	A local retired lawyer was helpful. For the most part, I have to make it up as I go.	4/2/2020 4:36 PM
45	The internet	4/2/2020 4:13 PM
46	Other attorneys in my community were my biggest support (and continue to be). Also membership in groups such as WACDL. OPD has also been a great resource.	4/2/2020 4:02 PM

Q14 When approaching retirement, what are your plans for the future of your practice, if any?

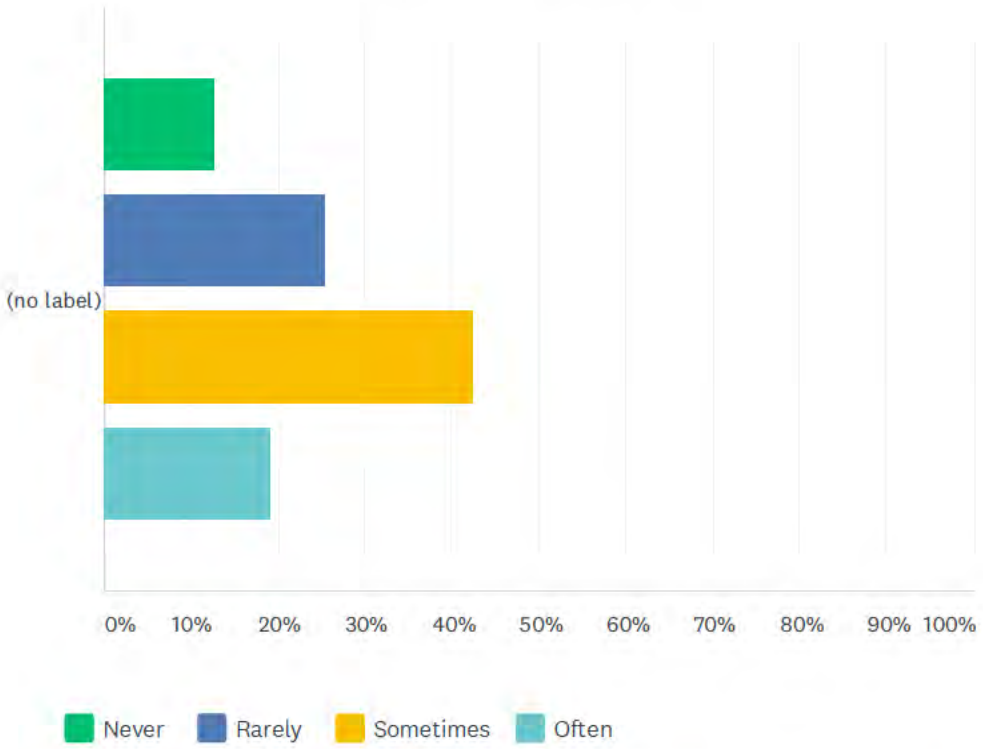
Answered: 45 Skipped: 3

#	RESPONSES	DATE
1	I would expect to pass it on to a younger attorney kind of like they did for me.	5/1/2020 4:44 PM
2	Will just end it. I don't see myself trying to sell it or train up a successor.	5/1/2020 7:34 AM
3	I can't imagine retiring. However, if I have to retire, I will look for someone like me who is looking to practice in a small community and to become part of that community.	4/30/2020 5:22 PM
4	I have an associate and fully intend to have one or more to whom I want to transition the firm; my goal is to provide continuity for at least 2-3 generations; and I think about succession planning just based on my prior orientation coming from a large DC firm with a mandatory age 65 retirement policy (to make room for junior attorneys). I'm firmly opposed to lawyers just working until they die and taking up space and costing a firm a ton of money "playing at practice" while those around them suffer. Very unfortunate to watch play out.	4/30/2020 3:55 PM
5	I am an elected prosecutor. when I retire I doubt if I will continue to practice law.	4/30/2020 1:16 PM
6	I adjunct teach at a local university and hope to do more of that kind of work.	4/30/2020 12:45 PM
7	I sold my practice	4/30/2020 11:57 AM
8	I'm there already. I could retire right now, but I like what I'm doing and plan to continue until I don't. Most of my cases can wrap up quickly so I haven't seen a need for a formal succession plan.	4/30/2020 11:41 AM
9	N/A. Retired.	4/30/2020 11:36 AM
10	It is being sold	4/30/2020 11:17 AM
11	Still have years of practice left	4/30/2020 11:01 AM
12	I'll likely be forced to retire when the principal of my firm retires. It's unclear what I will do then. That's probably a decade or more off.	4/30/2020 10:59 AM
13	I will hope to recruit a replacement.	4/30/2020 10:55 AM
14	I intend to focus on juvenile law and discontinue practicing criminal law.	4/30/2020 10:54 AM
15	continue practicing	4/30/2020 10:52 AM
16	I may choose to pass on the firm to whomever I may partner up with when my current law partner retires or I may chose to close up shop	4/30/2020 10:50 AM
17	practice till I die ... [bitter laugh]	4/30/2020 10:38 AM
18	That is up to the voters of Ferry County!	4/30/2020 10:33 AM
19	I'm 30 off from retirement (even though 80% of the local bar is retirement eligible).	4/30/2020 10:23 AM
20	i have 2 or 3 children that can take over the practice.	4/28/2020 2:05 PM
21	I am nearing retirement... i am 71 now. I would like to sell the practice, however, I have had little or no interest in doing so. I probably would mentor for a 6 month period.	4/8/2020 11:06 AM
22	Wind up my cases. Partner will takeover any that are not finished.	4/7/2020 4:11 PM
23	- I don't really have any to speak of. I don't take on open-ended cases, and there'll be no residual book of business or goodwill value to my operation, nor will there ever be another resident practitioner in Garfield County;	4/7/2020 12:27 PM
24	Retirement is decades away, I cannot plan that far in the future.	4/7/2020 10:16 AM
25	I am a new attorney and the thought of retirement does not currently exist.	4/6/2020 12:15 PM
26	I'm not near retirement	4/6/2020 9:56 AM
27	Practice until I am no longer competent to do so.	4/5/2020 12:27 PM
28	I work on contracts, so no real plan, and it's many years down the line.	4/4/2020 1:11 PM
29	Shut it down	4/3/2020 5:05 PM
30	I am 35 and will probably die at my desk.	4/3/2020 1:38 PM

31	I have no retirement plan.	4/3/2020 11:52 AM
32	limit it to working with clients i like.	4/3/2020 10:57 AM
33	I realize retiring will require a lot of planning and likely be a big hassle. I am far enough out that I have no concrete plans as to how I will handle it.	4/3/2020 10:19 AM
34	None	4/3/2020 8:43 AM
35	Transfer clients to a younger farm background person.	4/3/2020 8:15 AM
36	I'm semi-retired now. My current Ferry County contract expires @ the end of 2021. I do not intend to renew it. I do intend to continue with my OPD contract for 18 appeals/year.	4/3/2020 7:50 AM
37	pass it down to the next generation of lawyers	4/3/2020 7:48 AM
38	N/A	4/3/2020 7:10 AM
39	Wind it down, right here.	4/2/2020 7:31 PM
40	Practice some pro-bono - and low bono	4/2/2020 7:12 PM
41	Practice till I am dead as I need to work to pay the bills.	4/2/2020 6:25 PM
42	sell it	4/2/2020 5:47 PM
43	N/A	4/2/2020 4:36 PM
44	No plans	4/2/2020 4:13 PM
45	Unknown	4/2/2020 4:02 PM

Q15 How often do you encounter pro se litigants?

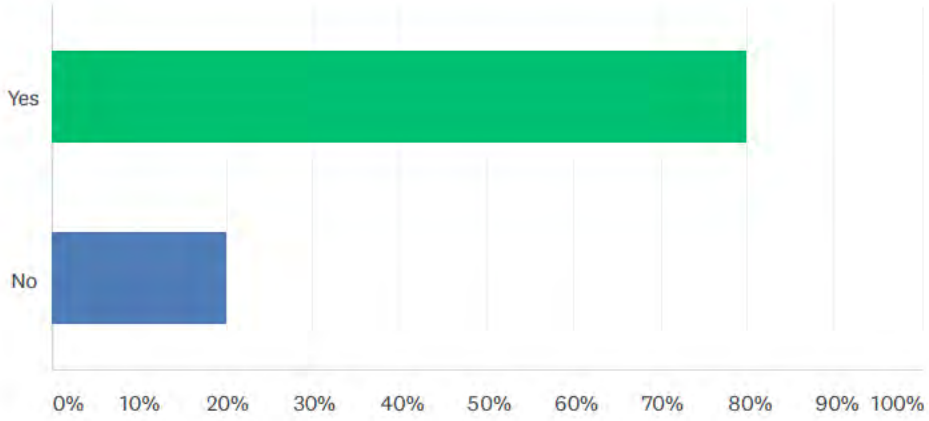
Answered: 47 Skipped: 1



	NEVER	RARELY	SOMETIMES	OFTEN	TOTAL	WEIGHTED AVERAGE
(no label)	12.77% 6	25.53% 12	42.55% 20	19.15% 9	47	3.30

Q16 Have people in your community sought limited legal assistance due to financial restraints?

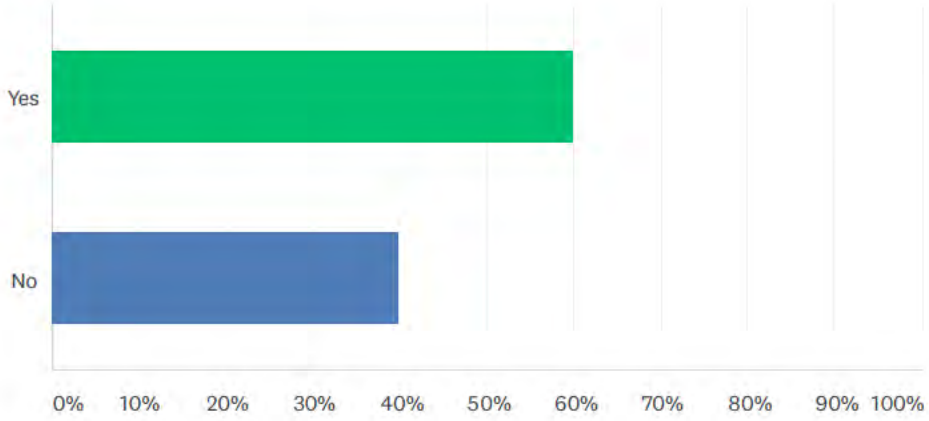
Answered: 45 Skipped: 3



ANSWER CHOICES	RESPONSES	
Yes	80.00%	36
No	20.00%	9
TOTAL		45

Q17 When a legal consumer is seeking free help, are there other community services you refer them to?

Answered: 45 Skipped: 3



ANSWER CHOICES	RESPONSES	
Yes	60.00%	27
No	40.00%	18
TOTAL		45

Q18 Can you recall a situation where someone attempted to set up practice in your community but could not sustain it? What were the circumstances at play?

Answered: 43 Skipped: 5

#	RESPONSES	DATE
1	One attorney offices come and go in the rural communities I work in, but without other attorneys in a firm to give advice about how to do things it is hard to make a go of it, and hard to know how to do things. It is also hard to make a go of it if you don't live in and become involved in the community.	5/1/2020 4:52 PM
2	Don't have any info on that. Not aware of any such case.	5/1/2020 7:37 AM
3	Another attorney with family ties to my community did open an office. He did not stay very long.	4/30/2020 5:24 PM
4	I don't know of this occurring, but it could have.	4/30/2020 3:58 PM
5	Not aware of any.	4/30/2020 1:17 PM
6	NA	4/30/2020 12:47 PM
7	no	4/30/2020 11:58 AM
8	Yes, but the reasons were not particularly financial. Younger lawyers coming to this community have left because there is not much of a social life for them. Most of them have been single and moved on to more populous areas.	4/30/2020 11:44 AM
9	All this is N/A. I don't practice although active bar member.	4/30/2020 11:37 AM
10	No.	4/30/2020 11:18 AM
11	I am currently a municipal attorney. The local private attorney recently retired. A new attorney from a neighboring town has opened a part time office, but is not living locally, nor working on site very often. Obviously demand/market conditions come into play, but recruitment of professionals, like attorneys/Drs/Dentists has been very difficult for small towns.	4/30/2020 11:05 AM
12	No	4/30/2020 11:02 AM
13	The two cases that come to mind, the attorneys closed their practice due to personal reasons, not for lack of business.	4/30/2020 10:59 AM
14	unknown	4/30/2020 10:53 AM
15	No I cannot recall such an event	4/30/2020 10:53 AM
16	a few criminal defense attorneys ... struggled. They each moved on.	4/30/2020 10:41 AM
17	No.	4/30/2020 10:36 AM
18	No	4/30/2020 10:24 AM
19	I think those that are willing to work hard, and don't demand a lot of compensation, do just fine.	4/28/2020 2:07 PM
20	No. Well many years ago an attorney had a branch practice, with a one day a week plan to practice here, but he only came about twice and it folded within 6 months.	4/8/2020 11:10 AM
21	New attorneys will have a slow start, but a good attorney will quickly find clients.	4/7/2020 4:14 PM
22	- no, not within memory. It's common knowledge that this local legal services market no longer can support a practitioner who needs a family wage income;	4/7/2020 12:34 PM
23	No.	4/7/2020 10:22 AM
24	N/A	4/6/2020 12:16 PM
25	I can only think of one attorney who fits the question. I believe the problem stemmed from inability to attract clients. In my opinion, this had more to do with the attorney's personality than the lack of opportunities in the community.	4/6/2020 10:27 AM
26	Once or twice - circumstances were basically the same: personal/family issues "drove them out of town." Tarnished reputations can make it difficult or impossible to practice in a small rural community.	4/5/2020 12:36 PM
27	No, there is always plenty of work for anyone willing to move to this small area.	4/4/2020 1:12 PM
28	N/A	4/3/2020 5:07 PM

29	Nope	4/3/2020 1:39 PM
30	Yes, and the reason for failure was a complete lack of understanding of the cordial manner in which local attorneys practice law.	4/3/2020 11:55 AM
31	This would be unsustainable if I didn't practice outside of the county as well.	4/3/2020 11:02 AM
32	No.	4/3/2020 10:21 AM
33	No	4/3/2020 8:44 AM
34	Not happened yet. We have successfully taken over retired or deceased attorneys practices.	4/3/2020 8:16 AM
35	There is currently a young woman who has been in the County for about 1 year. She practice's from home . I have not met her; but did offer to refer people to her by phone. I have no idea how she is doing!	4/3/2020 7:57 AM
36	no.	4/3/2020 7:50 AM
37	Can't recall - but I've only been here five years.	4/2/2020 7:32 PM
38	N/A	4/2/2020 7:14 PM
39	Nope	4/2/2020 6:27 PM
40	a lawyer from Portland (like me) came here but didn't have the business skill to sustain a start up. I purchased an existing practice	4/2/2020 5:49 PM
41	N/A	4/2/2020 4:37 PM
42	No	4/2/2020 4:13 PM
43	Unknown	4/2/2020 4:04 PM

Q19 What do you think are barriers to enter the legal profession in your community, if any?

Answered: 43 Skipped: 5

534

#	RESPONSES	DATE
1	Depending on the area of practice, low population results in less legal work.	5/1/2020 4:52 PM
2	Small population - lots of people with limited means.	5/1/2020 7:37 AM
3	I did not experience any barriers. This community welcomed me with open arms.	4/30/2020 5:24 PM
4	It seems lawyers have successfully opened practices here and done well (one from Seattle that is now running for judge has done fine, though not "a local kid"); and others have had trouble but for their own illegal or similar actions, not because of the community. But for a person not from the local area, I would of course expect it to be difficult to "hang a shingle" and have good paying business just walk in the door without significant networking and the usual work a small business has to do to build a reputation and build its business. Lawyers who do not think of themselves as a small business are quite often unsuccessful. A small town lawyer is a small business, plain and simple. The more we teach lawyers that, the more successful -- and wary -- they will be of "going solo" or entering a small, financially depressed market.	4/30/2020 3:58 PM
5	Small rural population.	4/30/2020 1:17 PM
6	Limited resources of the community to pay for legal services, would need to be a "jack-of-all trades" to sustain a practice in this community.	4/30/2020 12:47 PM
7	Lack of money in client base, lack of resources generally to refer clients to. Lack of dynamic social life for young professionals.	4/30/2020 11:44 AM
8	N/A	4/30/2020 11:37 AM
9	None	4/30/2020 11:18 AM
10	Legal Market/Demand. Appropriate Housing (lack of new construction). Lack of economic growth. Low Pay.	4/30/2020 11:05 AM
11	Location	4/30/2020 11:02 AM
12	Barriers here include the loss of our elected judge. This has made things very chaotic in our court system. For criminal law practitioners, new and visiting attorneys become discouraged because of the poor lawyering from the prosecutor's office. We have not been able to keep public defenders because of them.	4/30/2020 10:59 AM
13	Very little local demand for my practice area	4/30/2020 10:53 AM
14	With a limited client base, there is only a need for so many lawyers. Because we are a tourist area we compete with many of the larger I5 corridor firms as that is where many folks are from. In injury cases we have to compete with the advertising on television. So starting a new practice is difficult because of those factors and people tend to trust who they know.	4/30/2020 10:53 AM
15	opening a firm is expensive and far more complicated than people think. Law school does not teach how to be a businessman	4/30/2020 10:41 AM
16	This area is very rural with limited housing, entertainment, and shopping opportunities. People have to REALLY like rural living to move here. Also, for young lawyers with families, it can be difficult for their partners to find employment. For single attorneys, the dating pool is limited!	4/30/2020 10:36 AM
17	Lack of legal jobs in the community. Generally you have to open your own practice or bring a job here. All the goo legal jobs are in Seattle, unless you have your own firm or get one of the few government positions.	4/30/2020 10:24 AM
18	Again, I think if one is willing to start with difficult cases (family law!) and work hard, they can make a living.	4/28/2020 2:07 PM
19	most attorneys who would consider coming here are married and their spouses are not interested in small town living. Also an attorney would be wise to do some criminal law practice but many don't want to do that either.	4/8/2020 11:10 AM
20	No real barriers. A lawyer needs to get involved in the community and get known.	4/7/2020 4:14 PM
21	- much of the higher value client business has long since gone out of town, including across the river to Idaho, where there are many WA attorneys. In addition, daily life in this community lacks appeal to most younger attorneys. Only someone from here who wishes to return could make it work, provided that a trailing spouse / partner would stand still for that;	4/7/2020 12:34 PM

22	I'm not sure, but I speculate that it would be difficult to move here from elsewhere and start a practice because much of the work in this community arises through word of mouth, referrals from practicing lawyers, or personal relationships.	4/7/2020 11:32 AM
23	Lack of a customer base that can afford legal services. I reduced my hourly rate significantly when I moved here.	4/7/2020 10:22 AM
24	The sheer cost. I am $200,000 in debt solely to student loans.	4/6/2020 12:16 PM
25	There aren't really "firms" to join, so one challenge is just having the infrastructure to get started.	4/6/2020 10:27 AM
26	Client base is small; Potential clients are often unable to pay full price for legal services.	4/5/2020 12:36 PM
27	Not enough work to survive if you are not a prosecutor or on a contract to provide indigent defense	4/3/2020 5:07 PM
28	Lack of Ag knowledge.	4/3/2020 1:39 PM
29	One factor in why younger and inexperienced attorneys do not want to practice in my community is the desire to earn more money in larger communities	4/3/2020 11:55 AM
30	General practice is very difficult because so much of your time is spent learning, not billing, in order to provide competent service. In a smaller population you have to be a general, would be far easier if all i did was a handful of specific practice areas.	4/3/2020 11:02 AM
31	I do not know what the barriers would be to merely entering the profession. It seems it would be easy enough to open an office out of one's home or elsewhere and start taking on work. Doing it successfully is something else.	4/3/2020 10:21 AM
32	small community- limited clients. You would definitely need to have clients from outside the county	4/3/2020 8:44 AM
33	Recruiting to a rural community	4/3/2020 8:16 AM
34	Young attorneys are not interested unless their spouse is interested. Republic is isolated between 2 mountain passes with @ least an hour drive in any direction to a larger city or town. A lack of support services is a major problem. This is due to funding issues since over 80% of the land is tribal or federal.	4/3/2020 7:57 AM
35	willing to live in a small town, need to be part of the community	4/3/2020 7:50 AM
36	Low population. Competition with established legal practices.	4/3/2020 7:11 AM
37	Lack of client base.	4/2/2020 7:32 PM
38	Money Competition WSBA restrictions	4/2/2020 7:14 PM
39	Paying clients is the big one. There are many client who can afford to pay but will bring in counsel from outside of the area.	4/2/2020 6:27 PM
40	not having connections to community	4/2/2020 5:49 PM
41	No, we have 3 lawyers in private practice including myself. Lots of opportunity.	4/2/2020 4:37 PM
42	I have not idea	4/2/2020 4:13 PM
43	Community is small and relatively poor. Not many can afford legal services and those that can are likely to go with more established/known attorneys	4/2/2020 4:04 PM

Q20 What role, if any, do you see the WSBA playing in addressing legal needs in rural communities?

Answered: 43 Skipped: 5

#	RESPONSES	DATE
1	If there was a way to get some guidance or advice when I have a client with a unique legal issue that is not within my normal practice areas - not sure how WSBA can help with that.	5/1/2020 4:57 PM
2	Incentivize pro bono work	5/1/2020 7:48 AM
3	A state bar should be useful to connect lawyers to people not in their community who can serve their needs not provided in their local community via available technology (especially post-COVID). If the WSBA identified lawyers who are able/willing to take clients from anywhere and work remotely with them; built that list by subject matter expertise; blitzed the bar membership, county commissioners, auditors, assessors, treasurers, libraries, etc. to ensure "connected local people" knew of this WSBA resource (hopefully with a simple to remember web address for clients to get to); and provided a pathway (internet and phone number) for clients to find a way to this group of subject matter experts located throughout Washington; then clients (and elected officials and lawyers) in rural communities may find that they have more resources available to them than they realize.	4/30/2020 4:06 PM
4	Not sure.	4/30/2020 1:19 PM
5	Not sure. Northeast Washington is a long way from Seattle.	4/30/2020 12:50 PM
6	education	4/30/2020 11:59 AM
7	If we could get direction or help improving access to low income services, including behavioral and drug addiction services, plus mental health support, that would be a huge start. Our jurisdiction does not have a drug court or any sort of diversion for the mentally ill. The biggest heartbreak is to have clients with drug related psychosis sitting in jail for minor crimes.	4/30/2020 11:49 AM
8	N/A	4/30/2020 11:38 AM
9	Continuing to research the issue, and developing a plan to promote legal jobs in these areas. Build a free Rural Section. Loans, grants, to attorneys moving into underserved areas. Waive or reduce Bar dues for those attorneys. Promote the need, promote networking.	4/30/2020 11:23 AM
10	Unknown.	4/30/2020 11:20 AM
11	Attorneys cannot afford to practice in rural areas with student loan payments.	4/30/2020 11:03 AM
12	We need public defenders. And some form of civil legal assistance for pro-se civil litigants. I don't know how the WSBA can help with those things.	4/30/2020 11:02 AM
13	I've paid the WSBA several hundred dollars a year for years. I have seen nothing in response other than the legal ability to continue to practice law. If you offer benefits, I have no idea what they are. I get emails about health insurance, which don't help me at all, and reminders to pay and take CLEs. That's the extent of my relationship with the WSBA.	4/30/2020 11:00 AM
14	Facilitate public access to legal services	4/30/2020 10:55 AM
15	I don't know of any. Nearly all of the WSBAs activites take place in the I5 corridor. The outreach for CLEs online has helped. It would be nice for the WSBA to help coordinate with rural courts funding to assist with things like e-filing.	4/30/2020 10:55 AM
16	none	4/30/2020 10:41 AM
17	Education, training.	4/30/2020 10:37 AM
18	Providing low cost online CLEs, network events, and support for solos/small practices.	4/30/2020 10:27 AM
19	There is always a need for more low cost legal services. Not sure if the Bar can help with that.	4/28/2020 2:09 PM
20	I have been at meetings with at least 4 or 5 presidents of the WSBA where I or a different small town attorney nearing retirement has brought up the problem of turning a practice over to a new attorney and the vast scarcity of attorneys who are still practicing. Each president said something like "we know, and we are working on it" ..... I am the only attorney with an office in 7 nearby towns.	4/8/2020 11:16 AM
21	Encourage new lawyers to explore the possibilities of rural communities. I live a good life, make a good income and can go visit the cities for the things they offer.	4/7/2020 4:20 PM
22	- not much of one, really. I'm not even sure there's a problem. In contradistinction to, say, the	4/7/2020 12:45 PM

	upper Great Plains, there are plenty of legal services available here, since the distance between towns is not all that great. While there may be some question re. the quality of some of those legal services, there's relatively little real concern around here about that, since the system has over time adjusted its expectations to comport with the quality available. I see it all the time.	
23	WSBA should strongly encourage urban attorneys to volunteer in rural areas to shift some of the burden off of the rural attorneys. The WSBA could provide support and equipment for video consultations, for example.	4/7/2020 10:33 AM
24	Reduced bar admission prices for government attorneys, especially those in rural communities.	4/6/2020 12:17 PM
25	I'm not sure, offhand. I will say that there is a perception, fair or unfair, that the WSBA is primarily focused on Seattle stuff. I will also say that there are probably resources offered by the WSBA that most of us aren't aware of.	4/6/2020 10:28 AM
26	Providing grants to create small local legal aid centers and then providing funds to subsidize representation of low-income clients.	4/5/2020 12:43 PM
27	None	4/3/2020 5:08 PM
28	connections to mentors, training on the business side of law.	4/3/2020 1:40 PM
29	None.	4/3/2020 11:56 AM
30	Knowledge resources for the general. Single subscriptions for Westlaw/Lexis that provide the depth in secondary sources necessary for a general is really cost prohibitive. WSBA has excellent resources in their deskbook library, but those are cost prohibitive as well for a single attorney office. Price breaks for access to those sources could help. Other than easier access to knowledge, I can't think of what else WSBA can do.	4/3/2020 11:07 AM
31	I would appreciate it if WSBA put together a website or page on its site showing the pro bono services that may be available statewide and listing how one qualifies for the service, what work the service does, etc. Maybe there is one, but I'm not aware of it.	4/3/2020 10:23 AM
32	Perhaps some services to assist small offices, more free CLEs and such	4/3/2020 8:46 AM
33	Assisting in programs and possibly setting up a rural practice bar group. The listserv is great.	4/3/2020 8:17 AM
34	Quit concentrating on the west side & recognize our issues as to lack of services, distances, funding, etc.	4/3/2020 7:59 AM
35	somehow incentivizing young lawyers to practice in those communities and live there...e.g. reduced property taxes, tuition forgiveness	4/3/2020 7:53 AM
36	WSBA should encourage and incentivize attorneys to open offices in rural communities and/or expand their practices into rural communities.	4/3/2020 7:27 AM
37	Establishment/nurturing legal aid entities.	4/2/2020 7:33 PM
38	WSBA has not been supportive of members at all - I don't see that changing without some very big changes	4/2/2020 7:16 PM
39	Traveling legal clinics with rule 9 interns, new lawyers, and old lawyers who want to help.	4/2/2020 6:29 PM
40	we need more lawyers out here, somehow we need to make rural communities attractive	4/2/2020 5:51 PM
41	I would use free or discounted access to legal databases, forms, etc.	4/2/2020 4:37 PM
42	None.	4/2/2020 4:14 PM
43	Unknown	4/2/2020 4:06 PM

Q21 What advice do you have for the WSBA as it seeks to support legal services in rural communities?

Answered: 38 Skipped: 10

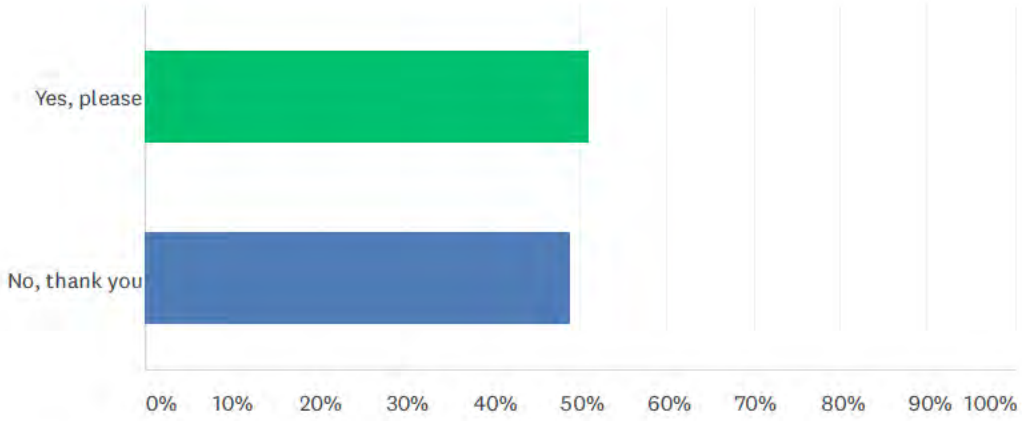
540

#	RESPONSES	DATE
1	There does not appear to be a feasible way to make it more appealing to lawyers to join rural communities since income opportunities are fairly limited. One has to enjoy the rural lifestyle to practice here.	5/1/2020 7:48 AM
2	See answer to question 20.	4/30/2020 4:06 PM
3	High-lite practitioners from rural areas in the bar journal, instead of always high-liting big city attorneys.	4/30/2020 1:19 PM
4	Good luck and I hope you are successful.	4/30/2020 12:50 PM
5	don't require insurance	4/30/2020 11:59 AM
6	Coordinate resource information. We sometimes, in the heat of the caseload, don't have time to find them.	4/30/2020 11:49 AM
7	None.	4/30/2020 11:38 AM
8	Rural representation at WSBA. Do not reduce the # of board members, while lengthening their terms. Such action seems to promote the very problem with the Bar. Promote civil legal aid regionally. Subsidies for rural attorneys(?). Support the retraction or redraft of standards for indigent defense. These standards have seemingly reduced the number and quality of attorneys willing to do such work.	4/30/2020 11:23 AM
9	Free CLEs, online CLEs. People just really need to want to live in the community in order to make it work. Not much the WSBA can do.	4/30/2020 11:20 AM
10	Legal services such as legal aid need to have offices in every county	4/30/2020 11:03 AM
11	Visit the rural communities and attend a couple law and motion dockets to get an idea of the court culture.	4/30/2020 11:02 AM
12	Mandatory pro bono service by all attorneys provived through WSBA sponsored legal clinics	4/30/2020 10:55 AM
13	We are a different breed of lawyer than our city counterparts. We have broader scope practices because we have to in order to survive. We aren't truly a one size fits all practice.	4/30/2020 10:55 AM
14	Focus on giving solos the tools that they need to succeed, which currently the WSBA does quite well. Another area is better civil training of both the lawyers and judges. My practice is entirely civil and often the judges come from a criminal background and are unable to apply the proper civil standard to the issue. Also, the criminal attorneys often dip their toes into the civil world with a complete disregard for any civil rules of procedure or decorum.	4/30/2020 10:27 AM
15	Search for $, and search for attorneys willing to put in the time!	4/28/2020 2:09 PM
16	Try and set up a program whereby law students loans would be forgiven and or aggressively try and match up attorneys and existing small town practitioners to take over a practice.	4/8/2020 11:16 AM
17	Some consideration should be given when making decisions as to how this will affect lawyers in small communities.	4/7/2020 4:20 PM
18	- not all that much, really, except to keep an ear cocked for locales in which there really is a legitimate dearth of presentable quality legal services. Since as you know I don't think that applies here, I'd suggest that WSBA be circumspect re. creating solutions in search of problems.	4/7/2020 12:45 PM
19	I run a practice with very little overhead. I've seen colleagues fail at private practice because they think they need billing software, Westlaw, etc. WSBA could provide training and mentorship fostering for low-overhead solo practitioners.	4/7/2020 10:33 AM
20	Don't forget we exist. The problems in Seattle are not representative of the state.	4/6/2020 12:17 PM
21	Monthly online surveys to continually evaluate developments and needs in the target communities. If the WSBA has enough information to make sound funding decisions, lawyers in rural communities may be more likely to get involved (because they can still afford to pass up some full-paying clients if the lawyers know they will be paid for the pro- or low-bono work).	4/5/2020 12:43 PM
22	Rachael Lundmark director@tcvls.org (Thurston County Volunteer Legal Services) is an excellent resource and she works hard to get legal aid services to Pacific County.	4/4/2020 1:19 PM

23	Please do not do so	4/3/2020 5:08 PM
24	there is not a one size fits all and educating young people on the benefits of being outside of large cities.	4/3/2020 1:40 PM
25	None.	4/3/2020 11:56 AM
26	Include Walla Walla as a county in Washington.	4/3/2020 11:07 AM
27	Continue the new focus on assisting practitioners with nuts and bolts of practice and serving their clients. Stop wasting energy on making "policy" from Seattle.	4/3/2020 10:23 AM
28	Get out of the city and come see these small communities	4/3/2020 8:46 AM
29	Good luck	4/3/2020 8:17 AM
30	A panel of attorneys as a resource for legal advice might be a start.	4/3/2020 7:59 AM
31	Looks can be deceiving. A low number of legal practitioners within a community does not necessarily mean that the community does not have access to legal services. For example, Spokane attorneys will take clients in neighboring rural counties which do not have a lot of attorneys. I have seen King County attorneys hired on Adams County criminal cases. And it is very common for Adams County infraction cases to be handled by attorneys from King County. On the flip side, too many pro se litigants are unsuccessfully representing themselves in dissolution and protection order proceedings.	4/3/2020 7:27 AM
32	Keep at it.	4/2/2020 7:33 PM
33	SUPPORT YOUR MEMBERS TO DO WHAT THEY NEED TO DO FOR THE PUBLIC	4/2/2020 7:16 PM
34	Expand the NW Justice Project	4/2/2020 6:29 PM
35	make it economically viable in some way	4/2/2020 5:51 PM
36	See #20.	4/2/2020 4:37 PM
37	Stay out of it.	4/2/2020 4:14 PM
38	Rural communities need more financial support.	4/2/2020 4:06 PM

Q22 Would you be interested in continuing this dialogue with WSBA staff and leadership?

Answered: 45 Skipped: 3



ANSWER CHOICES	RESPONSES	
Yes, please	51.11%	23
No, thank you	48.89%	22
TOTAL		45

Q23 Name:

Answered: 38 Skipped: 10

#	RESPONSES	DATE
1	[redacted]	5/1/2020 4:57 PM
2	[redacted]	5/1/2020 7:48 AM
3	[redacted]	4/30/2020 5:25 PM
4	[redacted]	4/30/2020 1:19 PM
5	[redacted]	4/30/2020 12:50 PM
6	[redacted]	4/30/2020 11:49 AM
7	[redacted]	4/30/2020 11:38 AM
8	[redacted]	4/30/2020 11:23 AM
9	[redacted]	4/30/2020 11:20 AM
10	[redacted]	4/30/2020 11:02 AM
11	[redacted]	4/30/2020 10:55 AM
12	[redacted]	4/30/2020 10:55 AM
13	[redacted]	4/30/2020 10:41 AM
14	[redacted]	4/30/2020 10:37 AM
15	[redacted]	4/30/2020 10:27 AM
16	[redacted]	4/28/2020 2:09 PM
17	[redacted]	4/8/2020 11:16 AM
18	[redacted]	4/7/2020 4:20 PM
19	[redacted]	4/7/2020 12:45 PM
20	[redacted]	4/7/2020 10:33 AM
21	[redacted]	4/6/2020 12:17 PM
22	[redacted]	4/6/2020 10:28 AM
23	[redacted]	4/5/2020 12:43 PM
24	[redacted]	4/3/2020 5:08 PM
25	[redacted]	4/3/2020 1:40 PM
26	[redacted]	4/3/2020 11:56 AM
27	[redacted]	4/3/2020 11:07 AM
28	[redacted]	4/3/2020 10:23 AM
29	[redacted]	4/3/2020 8:46 AM
30	[redacted]	4/3/2020 8:17 AM
31	[redacted]	4/3/2020 7:53 AM
32	[redacted]	4/3/2020 7:27 AM
33	[redacted]	4/2/2020 7:33 PM
34	[redacted]	4/2/2020 7:16 PM
35	[redacted]	4/2/2020 6:29 PM
36	[redacted]	4/2/2020 5:51 PM
37	[redacted]	4/2/2020 4:37 PM

38	[redacted]	4/2/2020 4:06 PM

Q24 E-mail Address:

Answered: 38 Skipped: 10

#	RESPONSES	DATE
1	[redacted]	5/1/2020 4:57 PM
2	[redacted]	5/1/2020 7:48 AM
3	[redacted]	4/30/2020 5:25 PM
4	[redacted]	4/30/2020 1:19 PM
5	[redacted]	4/30/2020 12:50 PM
6	[redacted]	4/30/2020 11:49 AM
7	[redacted]	4/30/2020 11:38 AM
8	[redacted]	4/30/2020 11:23 AM
9	[redacted]	4/30/2020 11:20 AM
10	[redacted]	4/30/2020 11:02 AM
11	[redacted]	4/30/2020 10:55 AM
12	[redacted]	4/30/2020 10:55 AM
13	[redacted]	4/30/2020 10:41 AM
14	[redacted]	4/30/2020 10:37 AM
15	[redacted]	4/30/2020 10:27 AM
16	[redacted]	4/28/2020 2:09 PM
17	[redacted]	4/8/2020 11:16 AM
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20	[redacted]	4/7/2020 10:33 AM
21	[redacted]	4/6/2020 12:17 PM
22	[redacted]	4/6/2020 10:28 AM
23	[redacted]	4/5/2020 12:43 PM
24	[redacted]s	4/3/2020 5:08 PM
25	[redacted]	4/3/2020 1:40 PM
26	[redacted]	4/3/2020 11:56 AM
27	[redacted]	4/3/2020 11:07 AM
28	[redacted]	4/3/2020 10:23 AM
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30	[redacted]	4/3/2020 8:17 AM
31	[redacted]	4/3/2020 7:53 AM
32	[redacted]	4/3/2020 7:27 AM
33	[redacted]	4/2/2020 7:33 PM
34	[redacted]	4/2/2020 7:16 PM
35	[redacted]	4/2/2020 6:29 PM
36	[redacted]	4/2/2020 5:51 PM
37	[redacted]	4/2/2020 4:37 PM

38	[redacted]	4/2/2020 4:06 PM

WASHINGTON STATE
BAR ASSOCIATION

Preliminary Summary: Washington State Rural Practice Outreach[1] Discussions

as part of the WSBA Legal Practice in Washington's Rural Communities Project

Updated March 18, 2021 (version 3)

Rural Practitioner Outreach Overview:

Dates Video/ Conference Calls Conducted:	June 16 – Nov. 9, 2020
Total practitioners that talked with WSBA staff:	20 *(82% return)*
Counties where practitioners live/ practice:	Adams, Asotin, Benton, Chelan, Clark, Columbia, Douglas, Ferry, Franklin, Garfield, Grays Harbor, Grant, Klickitat, Lincoln, Pacific, San Juan, Skamania, Wahkiakum, Whitman

Washington Law School Outreach Overview:

University of Washington	8/26 (call with Associate Dean of Student and Career Services)
Seattle University	8/10 (Zoom meeting with Director of Access to Justice Institute, Assistant Dean Center for Professional Development, and Externship Program Director)
Gonzaga University	7/2 (Zoom meeting with Assistant Dean of Professional Development)

[1] This summary contains notes from outreach that was conducted by WSBA staff to practitioners and law school leadership in Washington state. Other outreach has been conducted by staff and other stakeholders, e.g. Washington Young Lawyers Committee, but that information is not included in this summary.

Rural Practitioner Outreach Calls - Preliminary Themes:

In general, all of the practitioners contacted were supportive of WSBA reaching out and working on this topic. Moreover, all of the practitioners spoke openly and candidly with WSBA staff. Some preliminary common themes are as follows:

- **About the Practice**
    - Most rural practitioners are either solo practitioners or work as prosecutors.
    - Many of the practitioners are from the communities in which they work. Others came from other rural communities throughout the state and country.
    - Most solo practitioners have little or no staff support (some exceptions exist in Pacific and Adams/Whitman/Lincoln where family owned and/or consolidated firms exist).
    - Most concur that a general practice is necessary, but even then, there are gaps in types of legal services provided. e.g., gaps in family law practice and immigration seem to exist in most rural communities.
    - When starting a practice in a rural community, most practitioners agreed it would be helpful to have a mentor to not only help substantively, but to break down barriers of acceptance by the local community.

      Most practitioners acknowledge it would be very difficult to start a practice if an attorney is saddled with a large amount of student debt. While student debt wasn't the case for many existing rural practitioners we spoke with, for those with large amounts of student debt, most claimed their debt was not a determining factor in their decision to practice in their community, especially given income based repayment plans.

- **About the Community**
    - Communities are small; everyone knows everyone, and people know each other on a first-name basis.
    - Much business is acquired by word-of-mouth and through casual conversations outside of the office. Practitioners make contacts by getting involved in the community (hospital board, school activities, city/county boards, coach youth sports, library, etc.).
    - It is difficult for a practitioner's spouse to find employment if they are not already connected in the area, though some practitioners thought that given the cost of living, two incomes wasn't always necessary.
    - It is very difficult for a practitioner who does not already have a spouse/partner to find a spouse/partner in a rural community.
    - Most of the practitioners we spoke with were from the area or a similar small town. They enjoy being a "big fish in a small pond" and could not imagine living in a city. Practitioners have credibility with the community if they are from the area.
    - Community members are loyal to their current or family attorney, but would welcome newcomers, especially if the newcomers demonstrate hard work and ethics.
    - Most practitioners choose not to practice family law because there is often plenty of work to do in other practice areas, as well as the unique stresses of practicing family law are

not for everyone. As such, there is a great need for family law practitioners in every community.

- Practitioners feel protective of their clients and dislike sending them to other practitioners if a matter is outside their practice area. Practitioners worry about how the client will be treated and how much they will be charged. Most practitioners we spoke with expressed that there is lots of work to do, but that they were "only one person" and couldn't help everyone.
- Practitioners have to want this rural community lifestyle.
- Several practitioners began with a contract for county defense or guardianship, or with the city as city attorney in addition to starting a solo office.

- **Unmet Needs and Barriers**
  - Managing conflicts of interest are common for most practitioners. Often, practitioners may represent both sides (concurrent vs. dual representation); practitioners often have to have clients sign waivers before representation. Many have to refer cases outside their counties/areas. The practitioners we spoke with talked about having a high tolerance for conflicts.
  - Generally, while practitioners acknowledged the need for more attorneys in their area, they also said that there is a maximum capacity of how many attorneys the community can support.
  - Some practitioners provide unbundled legal services due to client's financial restraints. Some also get creative in providing legal services (e.g., in exchange for other services as opposed to money, pro bono, etc.).
  - Barriers to entering the legal profession in their communities include practice area (e.g., knowledge of agricultural law, lack of family law practitioners), geography, infrastructure (e.g., unreliable internet connection), economic, education, and social issues.
    Many practitioners indicated they were open to mentoring new attorneys, interns, and APR 6 law clerks. Some indicated concerns about a formal-long term mentorship relationship due to capacity issues. Others were open if it was low-no cost. One practitioner's firm is currently mentoring two APR6 law clerks.

- **Resources and Next Steps**
  - Generally, practitioners need help in recruitment of attorneys to fill vacancies in private and public practice.
  - Generally, practitioners believed law schools could help support rural practice by offering internships and/or financial incentives. e.g., lower tuition/loan forgiveness. Moreover, law schools can also help by exposing students to rural/agriculture law practice as well as provide training in setting up a law practice office and aspects of running a business.
  - Most practitioners were supportive of a rural placement type program. Some practitioners were familiar with placement programs in the medical profession, but worry that a lawyer's program may not place someone who would be committed to serving in

the community long-term. However, practitioners stressed that clients can tell if the lawyer is sincere and dedicated to the community.

- Many practitioners have used and value WSBA resources (e.g., legal research tools, Legal Lunchbox, on-demand CLEs, sections, list serves, etc.).
- Some practitioners indicated a need for mentorship and networking resources for those practicing in rural communities.
- Some practitioners suggested WSBA develop/support a rural legal clinic.
- All were willing to continue the dialogue with WSBA.

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Washington State Rural Practice Project Outreach Calls Questions

In the summer of 2020, the WSBA's rural practice project team conducted outreach calls to rural practitioners in Washington state as a follow up to a survey launched in spring 2020. Below is the pre-scripted list of questions the project team asked during those calls. The pre-scripted questions fell into four main categories: 1) about your practice, 2) entering/about your community, 3) unmet legal needs and barriers, 4) resources and next steps.

About Your Practice

- How did you go about starting your practice/practicing in a rural community?
- What would have been helpful for you when starting to practice/practicing in a rural community?
- Do you think a general practice is necessary in a rural community?
- What type of staff support do you have for your practice?
- When you graduated from law school, did you have student loans? If so, how did that impact your decision to work in a rural community?

Entering/About Your Community

- Tell us what it's like practicing in your community? What types of conflicts issues do you encounter, if any?
- What does living in community look like? What is family life like? Do you have a partner or spouse, and if so what do they do?
- Have you ever worked in a more metropolitan/urban community?
- What challenges have you faced working in your community?

Unmet Legal Needs and Barriers

- How often have you provided unbundled legal services or have to get creative in providing legal services to members in your community due to financial restraints?
- What do you think are barriers to enter the legal profession in your community, if any?
- How are you preparing your practice for when you retire? Do you plan to pass your practice on to a family member, sell it , or wind it down?

- Have you considered mentoring/have you mentored an attorney who would take over your practice?
- Would you consider working with/have you worked with an intern from one of the three Washington law schools?
- Are you aware of the Rule 6 Law Clerk program at the Bar? Have you mentored or would you be willing to mentor a lawyer under that program?

Resources and Next Steps

- What role, if any, do you see the WSBA playing in addressing legal practice needs in rural communities?
- How, if at all, do you think law schools could assist in supporting and encouraging rural practice?
- Other states have established a placement program that would incentivize and support practitioners to set up a practice in a rural community. Do you think this approach would be helpful? Welcomed in your community? What barriers would you envision someone in the community through a placement program might encounter?
- How can the WSBA better support rural practitioners?
- Have you used any WSBA resources such as free legal research tools, bar news, ethics line, PMA, etc.?
- Would you be willing to continue the dialogue as we move forward in our efforts?

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Washington State Rural Practice Ideation Brainstorming Sessions Summary

In November 2020, the Washington State Bar Association (WSBA) hosted three brainstorming sessions[1] with various stakeholders to explore potential ways in which WSBA could support rural practice in Washington state. The following is a brief summary of the brainstorming discussions, which identify the common problems discussed and solutions proposed. The information is presented below in no particular order.

- **Problem Statement #1:** How can the WSBA address mitigate the *financial* barriers and challenges to starting and remaining in rural practice?
    - **Potential Solutions to Problem Statement #1:**
        - Loan repayment assistance program and/or other student loan debt relief options
        - B&O Tax
        - Retirement benefits, group health insurance, other ways to offset costs for personnel/running a firm
        - Educate rural law firms about reasonable starting salaries for associates
        - Support legislation to expand access to broadband internet
- **Problem Statement #2:** How can the WSBA help *recruit* practitioners to serve in rural communities?
    - **Potential Solutions to Problem Statement #2:**
        - Pipeline program (high school & college)
        - Incubator/placement program
        - Diploma privilege in lieu of bar exam if a bar applicant agrees to practice in a rural community
- **Problem Statement #3:** How can the WSBA *connect* rural practitioners to the *community*?

[1] The brainstorming sessions occurred at noon on November 16, November 18, and November 20, 2020. The total amount of unique participants that attended the brainstorming sessions was 41, inclusive of the WSBA's rural practice project team comprised of members from the WSBA Board of Governors, staff leadership from Washington law schools, Washington Young Lawyers Committee members, and staff. Other participants included rural practitioners and leadership from local county bar associations, volunteer legal service providers, tribes, and government agencies.

- **Potential Solutions to Problem Statement #3:**
    - Create a WSBA Rural Practice Section
    - Create WSBA Rural Practice Committee
    - Mentorship
    - Strengthen support and connections with local county bar associations
    - Strengthen support and connections with volunteer legal service providers
    - Leadership development/opportunities for growth programs
    - Develop a "welcoming committee" to meet and greet with those interested in/entering into rural practice

- **Problem Statement #4:** How can the WSBA generate *visibility* about rural practice opportunities and rural communities?
    - **Potential Solutions to Problem Statement #4:**
        - Bar News article(s)
        - Facilitate the process for practitioners selling their practice
        - Emphasize public service
        - Video clips (or other forms of media) of people sharing their stories of what it's like to live in a rural area

- **Problem Statement #5:** How can the WSBA provide *education and resources* to enter and thrive in rural practice?
    - **Potential Solutions to Problem Statement #5:**
        - Work with/recommend that law schools:
            - Provide students with opportunities to practice in a rural community during law school, e.g., internships, summer associate work, etc.
                - Provide resources for housing, food, and other financial costs associated with moving to a rural area

        - Host a Career/Law Day with rural practitioners and law students
        - Provide courses in law school for hanging a shingle/benefits of solo practice/entrepreneurship
        - Develop an apprenticeship type model
- Practice management resources, e.g. consultations, virtual practice/technology tools
- CLEs

WASHINGTON STATE
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Washington State Rural Practice Project Prioritized Potential Solutions

In November 2019, the Washington State Bar Association (WSBA) formed a project team to explore ways in which WSBA could support rural practice in Washington state. In November 2020, the project team conducted brainstorming sessions with interested participants to identify possible ways in which the WSBA may support rural practice in Washington state. In March 2021, the project team will host feedback sessions with interested participants about the prioritized solutions the project team recommends the WSBA should consider in the more immediate term for further exploration. Those prioritized solutions are:

- **WSBA Committee:** To ensure institutional resources and continuity, establish a leadership group committed to strengthen and support the practice of law in rural communities throughout Washington state. The committee will guide policy and program development, serve as ambassadors between the WSBA and rural communities, explore and advocate for creative and innovative solutions, and regularly assess the legal landscape in rural communities to determine if WSBA policy, advocacy, and program development need further resource for sustainability and improvements. The project team recommends that the Committee initially focus on the following solutions:
    - **Community Education and Outreach:** Coordinated efforts to educate members and potential members about the unique needs, opportunities, and benefits of rural practice.
    - **Pipeline/Placement Program:** WSBA programming, or WSBA supported/partnered programming designed to build a pipeline of practitioners in rural areas, as well as an incentive program to encourage members to explore a rural practice on a time-limited or multi-year timeframe.
    - **Job Opportunities[1]/Clearinghouse:** Utilizing existing and future WSBA resources to support and highlight job opportunities in rural communities, as well as assisting retiring members with succession planning and buying/selling of a practice.

[1] The project team is currently interpreting this to mean identifying what opportunities exist and connecting people with those opportunities.

WASHINGTON STATE
BAR ASSOCIATION

Washington State Rural Practice Project Feedback Session Summary

In March 2021, the Washington State Bar Association (WSBA) hosted three feedback sessions with various stakeholders to evaluate the prioritized solutions the rural practice project team recommends the WSBA should consider in the more immediate term for further exploration. The following is a brief summary of the feedback sessions, which identify the prioritized solutions and the feedback received from stakeholders.

- **Proposed Solution #1 – Establish a WSBA Committee**
    - **Feedback for Proposed Solution #1:**
        - General consensus that the formation of a committee is a good next step.
        - Having one entity serve as the conduit and voice for this initiative to meet, present, and prioritize issues and solutions is good.
        - The committee could play of role of facilitating mentorship and connecting with rural practitioners.
        - The nature of the challenges and solutions warrant a long term presence at the WSBA.
- **Proposed Solution #2 - Community Education and Outreach**
    - **Feedback for Proposed Solution #2:**
        - General support for bringing more awareness of the opportunities to serve in rural communities.
            - Historically and currently, there is not much information shared in urban law schools about opportunities in rural communities
            - Post video clips on the WSBA website highlighting rural practice.
            - Whatever the WSBA does in the area of rural practice won't have much of an impact if people don't know about it.
        - Important for rural practitioners to share their experiences.
            - Create a bank of rural practitioners that are willing to talk to law students or others considering practicing in a legal community to share the different

opportunities of rural practice e.g. control of schedule, cost of living, leadership opportunities, etc.

- Important to get law students interested in rural practice early on so they can plan.
- Most rural practitioners have to be general practitioners, but there may be misunderstanding about what a general practitioner means in a rural area.
- Address "culture" differences in rural communities
    - Some rural folks may not be friendly to "outsiders".
    - Clear up misunderstandings/perceptions of what rural communities are like, e.g. political landscape, lack of diversity, etc.
- Focus on what makes rural practice attractive e.g. quality of life and opportunities (e.g., professional, personal, and leadership).

- **Proposed Solution #3 - Pipeline/Placement Program**
    - **Feedback for Proposed Solution #3:**
        - Address the financial impacts and consider exploring scholarships, loan repayment assistance (LRAP) and/or forgiveness programs (LFP).
            - LRAPs and LFPs be successful in other professional fields and those models could work in the legal field, e.g., medical doctors working in community health centers in underserved areas receive financial incentives.
            - Expressed doubts that we would get money from legislature to help. WSBA also does not have the funds for this, but perhaps could provide a stipend. Attorneys already practicing in rural areas may not have funds to cover those debts.
            - Diploma privilege might be worth considering as a way to alleviate some of the financial burden of preparing and taking the bar exam.
                - Some oppose diploma privilege, but instead would propose providing financial assistance to people to pass the bar exam e.g. paying for bar prep courses.

        - Provide other financial support e.g. retirement benefits, medical insurance for rural practitioners and their families, etc.
            - Financial/resource assistance may not be enough as some people do not want to live/work in a rural community.
            - B&O tax relief would be nice, but will be minimal—rather the financial focus should be on loan forgiveness.
            - Highlight resources from other sources e.g. American Bar Association
    - Consider funding for law students/Rule 9 interns to work in rural counties during law school.
    - Provide courses in law school on rural law topics, introduction to rural practice, and how to run your own law firm.
    - Intentional mentorship is important, especially for those legal professionals that are not from a rural community.
        - Potential model is the Oregon State Bar, which requires new attorneys to complete a mentorship program with an experienced practitioner.
        - Connect rural and urban practitioners to help with specific issues.
        - Some WSBA Sections may serve as resource.
    - Provide more in depth legal research tools and technical resources for rural practice.
    - Need for more/adequate attorneys in rural areas may be greater if legislature passes a "right to counsel" for eviction cases.
    - In some areas, finding available housing is an issue.
- **Proposed Solution #4 - Job Opportunities[1] and Clearinghouse**

[1] The feedback sessions occurred at noon on March 22, March 23, and March 25, 2021. The total amount of unique participants that attended the feedback sessions was 22, inclusive of the WSBA's rural practice project team comprised of members from the WSBA Board of Governors, staff leadership from Washington law schools, and staff. Other participants

- **Feedback for Proposed Solution #4:**
    - Prioritized focus should be on areas where the "legal desert" is in tough shape, e.g., areas where there is only attorney who is about to retire and serves multiple towns/communities.
    - Recruitment, hiring, and retention in rural areas has been challenging.
        - Many open positions remain vacant, even if wages are the same in both rural and urban communities.
        - May be a good idea to connect with the APR 6 program.
        - Focus on recruiting folks with ties to the rural areas, e.g., family.
        - Find ways to support rural practitioners to engage with one another e.g., meetups, encourage establishment and maintenance of local bar associations, list serve, mentorship programs, etc.

- **Additional feedback received:**
    - Focus on "getting boots on the ground" and how to better serve clients in rural communities:
        - Enhance/support virtual court appearances, accessibility to courts and clerk's offices.
        - Support unified court systems in rural areas.
        - Support development of one electronic filing system.
        - Support one set of local rules for nearby counties.
        - Advocate for internet access.
    - The role of technology:
        - Support the "remote rural practitioner" (someone who serves rural communities but does not live in the community).

included rural practitioners, leadership from local county bar associations, volunteer legal service providers, and government agencies.

        - Concerns that if remote attorney services are promoted, then income to practitioners in that rural community could be jeopardized.
        - People in rural communities may not have access to internet/reliable internet or phone service.
    - Find ways to help attorneys do their work with minimal/no staff support.
        - Issues in also finding good legal support staff in rural areas.
        - Issues with finding interpreters.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: President Kyle Sciuchetti

DATE: April 9, 2021

RE: Update on the activities of the Long Range Planning Committee

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DISCUSSION: (1) Discuss the Committee's proposed charter to change the committee to the Long Range Strategic Planning Council, (2) the draft strategic goals, and (3) stakeholder outreach recommendations.

On September 17, 2020, the Board held an abbreviated retreat at which it developed draft strategic goals for further development by the Board's the Long Range Planning Committee. The Long Range Planning Committee has organized its initial work into three categories: charter, strategic goals, and outreach.

Proposed Charter for a Long Range Strategic Planning Council

The Committee is proposing a new charter, which among other things, expands its membership and recasts itself as a Council. The goal of the new charter, in addition to alignment of the group's purpose and framework with WSBA's current organizational structure and bylaws, is to ensure broad input into the development of WSBA's strategic planning.

Draft Strategic Goals

The Committee has made some revision to the Draft Strategic Goals initially developed by the Board in September 2020. The Committee has had considerable discussion about the goals and specific action items as well as how the document will be used to guide WSBA's work and whether the goals and specific action items are too broad or too specific for that purpose. The Committee is bringing the draft goals back to the Board for broader input.

Outreach Recommendations

The Committee has discussed outreach as a critical component of developing strategic goals and action items. As a best practice it recommends that the strategic planning process include:

1. a review of existing reports and recommendations relevant to the goals and action items;
2. written requests for input from identified stakeholders, with specific questions; and
3. listening sessions for each goal that are open to all, with specific invitations to identified stakeholders.

The information gathered through this process should be used to amend the goals and action items. Attached is a draft outreach matrix, which lists research that should be reviewed and identifies specific stakeholders.

Attachments

1. Proposed Charter for a Long Range Strategic Planning Council
2. Current Charter for the Long Range Planning Committee
3. Draft Strategic Goals
4. Outreach Matrix

WASHINGTON STATE
BAR ASSOCIATION

CHARTER
Long Range Strategic Planning Council

(Adopted by the WSBA Board of Governors on ____, 2021)

Background

The work delegated to the WSBA Long Range Planning Committee, as chartered in 1999, was tied directly to the 1999-2003 Strategic Plan and based on organizational and structural assumptions that are no longer current. The nature of WSBA's strategic planning has evolved significantly since the Committee's inception, and since 2007 the Committee has convened under the title "Strategic Planning Committee." It is appropriate for the Board's policymaking efforts to include focused development and implementation of durable organizational goals and objectives. For these reasons, the Board hereby withdraws the 1999 Long Range Planning Committee Charter and adopts this Charter to replace it. The Committee is reclassified as a Council under the WSBA Bylaws and renamed the Long Range Strategic Planning Council to better describe its purpose and to conform to recent practice.

Council Purpose

The Long Range Strategic Planning Council develops and makes recommendations to the Board of Governors for adoption of Organizational Goals and Objectives, together with policy-level recommendations for their implementation, subject to the following guidelines.

- The Council shall communicate to members and the public about the planning process and seek input.
- The Council shall provide timely updates to the Board of Governors and the Budget and Audit Committee about development of new Organizational Goals and Objectives and recommendations for modification of existing Goals and Objectives.
- The Council shall strive to ensure that its recommended Organizational Goals and Objectives are **specific**, **measurable**, **attainable**, **relevant** (to the WSBA's mission and purpose), and **time-bound**. In addition, recommended Organizational Goals and Objectives must be consistent with WSBA's organizational parameters as defined in General Rule 12.

Timeline

The Council shall be convened on an annual basis in alignment with WSBA's fiscal year. It shall submit an annual report to the Board setting forth its recommendations not later than August 1 of each year. It shall submit preliminary recommendations and fiscal projections to the Board of Governors at or before May 1 of each year for the purpose of integration into the organization's budget planning.

Every three years, the Council should conduct an in-depth review of existing Organizational Goals and Objectives to evaluate their ongoing viability and develop recommendations for new Goals and Objectives as appropriate. In other years, the Council's focus should be on measuring progress and determining whether existing Goals and Objectives, the strategies for their implementation, and/or the timeline for their completion, should be modified.

Council Membership

The President, who shall serve as chair, shall have discretion to appoint voting members, and is encouraged to consider participation from the following:

- The President-Elect
- A first-, second-, and third-year governor
- An at-large governor
- The WSBA Treasurer
- The WSBA Immediate Past President
- The Diversity Committee
- The Young Lawyers Committee
- Local and specialty bar associations
- WSBA staff serving in a regulatory capacity
- WSBA Sections, Committees and other entities, and members not otherwise serving on WSBA entities
- Members of the public who are not licensed to practice law.

The Council shall consist of at least twelve voting members, in addition to the President. The term of appointment for membership on the Council is three years. Terms of appointment shall be staggered to ensure continuity on the Council, with one-third of the positions being appointed each year. Inaugural positions should be filled by appointing one-third of the members to one-year terms and one-third of the members to two-year terms, as designated by the President, to permit as equal a number of positions as possible to be filled each year.

The Executive Director shall serve on the Council as a non-voting member and will designate a WSBA staff liaison.

In accordance with WSBA Bylaws, selection of persons to be appointed to the Council will be made by the President with confirmation by the Board of Governors. Bylaw Article IX.C is appended to this charter for ease of reference.

APPENDIX

WSBA BYLAWS ARTICLE IX.C (as adopted on September 24, 2010, with amendments approved by the Board of Governors through October 7, 2020)

IX.C COUNCILS

1. Councils are created and authorized by the BOG to serve as advisory committees to the BOG on matters and issues of particular import to the Bar.
2. Nominations to councils are made as set forth in the council's charter or originating document, and are confirmed by the BOG. Except as may be specifically required under the council's charter or originating document, council members are not required to be members of the Bar.
3. Terms of appointments to councils will be as set forth in the council's charter or originating document.
4. Each council will carry out the duties and tasks set forth in its charter or originating document.
5. Each council must submit an annual report, and such other reports as may be requested, to the BOG or Executive Director.
6. Bar staff will work with each council to prepare and submit an annual budget request as part of the Bar's budget development process.

CHARTER

Long-Range Planning Committee (LRPC)

Adopted by the WSBA Board of Governors on September 10, 1999 and
Presented to the Board of Governors on December 05, 2003

As part of WSBA's 1999 Long-Range Strategic Plan (LRSP), the Board recognizes that to maintain vitality, continuity and a focus on multi-year initiatives, the long-range planning process needs to be incorporated into the fabric of WSBA's planning both fiscally and programmatically. The Long-Range Planning Committee (LRPC) is created and charged with overseeing WSBA's ongoing planning and plan implementation process within the following guidelines.

1. While the LRPC will oversee the overall process, each goal or parts of goals may be delegated to a specified committee, task force or other identified group. These groups, with the assistance of the LRPC and assigned WSBA staff liaison, will work to develop the strategies and an implementation plan for each goal. Each group charged with implementation should, in some way, be represented on the LRPC. The Executive Director will report progress on each strategic goal at least annually to the Board of Governors.

2. The LRPC should formally review the LRSP each spring before the initiation of the coming year's budget planning cycle and make recommendations to the Board for programs and initiatives that support WSBA's strategic direction. The LRPC may also suggest revisions to the plan or suggest further discussion of specified programs.

3. A portion of the WSBA annual planning day in July should focus on the LRSP and budget for both the 3-5 year range and the coming fiscal year.

4. Every three years, the LRSP should conduct a more in-depth review of the plan. This review may include member surveys or focus groups, staff interviews, trend assessments, fiscal and program sunset reviews, and other assessment and evaluation techniques.

5. The Board should continue "listening sessions" with members. Summaries to be posted on the website, and included in the Board meeting materials. The Long-Range Planning Committee (LRPC) will review these summaries to determine whether a new issue is emerging and/or the LRSP needs modification.

6. The LRSP shall be the Board's mechanism for monitoring developing trends and changes.

Membership of the LRPC

The LRPC will include, at a minimum, three governors (one from each year class), the WSBA President and/or President-elect, an immediately past governor, the immediately past president and a WYLD board member or officer. The Executive Director or designee will be ex-official members of the LRPC. The President may appoint others as appropriate, subject to Board approval to assure diversity of interests and representation form the Budget & Audit Committee.

Adopted: 08-10-99
Revised: 12-05-03

Draft WSBA Strategic Goals

Original Draft September 17, 2020 – Updated March 25, 2021

Goal 1: To provide relevant and valuable resources to help all of its members achieve professional excellence and success, in service to their clients and public, and to champion justice.

- Evaluate, improve and expand member services programs.
- Enhance member awareness and increase member engagement in member benefits and services provided by WSBA.
- Increase member engagement with the WSBA

Goal 2: To uphold and elevate the standard of honor, respect and integrity among WSBA members in order to improve public confidence in the legal profession.

Goal 3: To promote access to justice and improve public confidence, trust and respect of members of the public in our legal system and bar association.

- Advocate for a uniform court system.
- Advocate for reforms in the law to ensure justice for clients and the public.
- Design and implement a rural practice program which brings more legal professionals to serve rural communities.
- Explore avenues to increase pro bono and low bono services by members.

Goal 4: To promote diversity, equity and inclusion in the legal system and profession

- Regularly evaluate and improve the culture, policies, procedures and practices of the WSBA so members from communities who have been systemically oppressed can enter, stay and thrive in the legal profession.
- Partner with various stakeholders such as Minority Bar Associations and others to promote diversity, equity and inclusion within the profession.
- Provide resources and training that will assist WSBA leaders members, and staff to examine their work through an equity lens and advance diversity, equity and inclusion.

Goal 5: To manage the business of the State Bar Association in a prudent, efficient and cost-efficient manner.

- Explore business practices that will maximize efficiency, productivity and enhance WSBA services to the members and the public
- Explore cash reserves and investment strategies
- Explore alternative opportunities for office space as we move to a more remote work environment.

Goal 6: Foster an organizational environment and culture that demonstrates a commitment to staff and embodies the organizational mission and stated values of the WSBA.

- Examine and implement recommendations from the Climate Survey to address the culture
- Engage in ongoing assessments to foster an environment that promotes and values employee feedback and input.
- Provide opportunities for the Board of Governors to increase communication and collaboration with the WSBA Executive Team and WSBA employees.

Parking Lot

How will we measure this and know we are achieving those goals?
How do we develop a feedback loop with our members?
Can we do a member survey?

Environmental Scan Discussion Notes

- These goals comprise a living document that may evolve over time.
- General status decrease to rule of law – how can we impose this?
- How will member license fee and the desire to lower fees connect to these goals, especially since some of these goals/objects will take money to accomplish? (competing goals)
- Belief by some members that the bar should still be bifurcated, especially with case law lingering around the integrated bar model.
- Entity regulation – who does this impact our members?
- Devise culture – how can we move beyond this and rebuild?

Next Steps

- This draft will be sent to the Long Range Strategic Planning Committee to further wordsmith.
- A draft version will be sent out to membership and members of the public to comment on.
- Feedback will be considered and determine where to incorporate
- A revised draft will come to the board along with an understanding of why the changes were determined important to incorporate. Board will vote.

Goal / Initiative	Stakeholders	Existing Research, Resources, and Recommendations
Goal 1: To provide relevant and valuable resources to help all of its members achieve professional excellence and success, in service to their clients and public, and to champion justice. • **Evaluate, improve and expand member services programs.** • **Enhance member awareness and increase member engagement in member benefits and services provided by WSBA.** • **Increase member engagement with the WSBA**	• WSBA Members • WSBA Communications Department • WSBA Program Staff • Legal Community Associations, Organizations, Bars • Sections • Budget and Audit Committee • County bar leaders • MBAs	1) Audit of existing services into a useful (and user friendly) one-stop shop 2) Survey of stakeholders to ascertain what services are missing/removed to determine where it is believed we need to go in the future to improve and/or expand member services 3) Professional and ongoing membership surveys (in the works from Member Engagement Committee) 4) Existing research and survey results (including quarterly phone polls)
Goal 2: To uphold and elevate the standard of honor, respect and integrity among WSBA members in order to improve public confidence in the legal profession.	• Washington Law Schools • Seattle University Civility Center for Law • WSBA Professional Responsibility Council • BJA Public Trust and Confidence Committee • Bench Bar Press Committee and its fire brigade • Sections (particularly those that deal with interpersonal relationships, e.g. Family Law and RPPT) • WSBA Communications Department • MBAs	WSBA Creed of Professionalism, https://www.wsba.org/docs/default-source/resources-services/professionalism/creed-of-professionalism.pdf?sfvrsn=c41539f1_3 Public Perspectives on Trust & Confidence in the Court, IAALS (June 2020), https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trust_and_confidence_in_the_courts.pdf WSBA Resources: https://www.wsba.org/for-legal-professionals/member-support/professionalism/professionalism-resources

		Civility Center Resources: https://www.civilitycenterforlaw.org/resources BJA Resources: https://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.displayContent&theFile=content/ptcResources National Center for State Court Resources: https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide US Courts Strategy: https://www.uscourts.gov/statistics-reports/issue-2-preserving-public-trust-confidence-and-understanding Continue with Professionalism in Practice awards as well as APEX Awards; spread the awareness
Goal 3: To promote access to justice and improve public confidence, trust and respect of members of the public in our legal system and bar association. • **Advocate for a uniform court system.** • **Advocate for reforms in the law to ensure justice for clients and the public.** • **Design and implement a rural practice program which brings more legal professionals to serve rural communities.**	• Access to Justice Board • Members of the Alliance for Equal Justice • Members of the public • Courts and Court Personnel • Judicial Associations • Sections • Practice of Law Board • Court Recovery Task Force • County bars • MBAs	1) Public "educational sessions" inviting the public to LEARN more about the in's and out's of the legal system and the Bar Association - Every session would be designed with the following: - High level overview of the topic - discussion of one or two examples -Focus on the fact that the law hinges on the details and that is why what is good for one is not so for another, etc.

• **Explore avenues to increase pro bono and low bono services by members.**	Who isn't a stakeholder in this? Truly, everyone has a stake in seeing this goal achieved.	-Allow for Questions and Answer - either live or pre-submitted -Have one easy location where people can then go for further information.....from us all the way to their local community. 2) Continued – constant cycle – of listening tours – both for the public and the members 3) Lobbying efforts to create a unified court system Focus groups conducted by WSBA in relation to POLB's Legal Health Checkup Public-facing campaign by WSBA: including POLB's Legal Health Checkup, potential Washington Legal Link, pillars of messaging …
Goal 4: To promote diversity, equity and inclusion in the legal system and profession • **Regularly evaluate and improve the culture, policies, procedures and practices of the WSBA so members from communities who have been systemically oppressed can enter, stay and thrive in the legal profession.** • **Partner with various stakeholders such as Minority Bar Associations and others to promote diversity, equity and inclusion within the profession.** • **Provide resources and training that will assist WSBA leaders members, and staff to examine their work through an**	• Minority Bar Associations • WSBA Diversity Committee • Minority & Justice Commission • Gender & Justice Commission • Interpreter Commission • Access to Justice Board • Practice of Law Board • Board of Bar Examiners • Character & Fitness Board • Committee on Professional Ethics • Pro Bono & Public Service Committee • New & Young Lawyers Committee • Civil Rights Law Section • World Peace Through Law Section • Low Bono Section	WSBA Diversity & Inclusion Plan (2013), https://www.wsba.org/docs/default-source/about-wsba/diversity/7-wsba-diversity-and-inclusion-plan-(with-cover-page).pdf?sfvrsn=85be38f1_1 WSBA Membership Study (2012), https://www.wsba.org/docs/default-source/about-wsba/diversity/wsba-membership-study-report-2012be2465f2f6d9654cb471ff1f00003f4f.pdf?sfvrsn=b0fd00f1_0

equity lens and advance diversity, equity and inclusion.	• WSBA Sections, Generally • Supreme Court • Board of Governors • WSBA Employees • Board of Judicial Administration • Judicial Information System Commission • Historically Underrepresented Legal Professionals • Legal professionals, generally • Legal consumers • Local Bar Associations • Courthouse Facilitators • Law Schools • UW Tacoma Legal Pathways Program • Community Colleges • JustLead Washington Leadership Academy • Washington Leadership Institute • Washington Initiative for Diversity • Disability Rights Washington • Legal Voice • NW Justice Project • Alliance for Equal Justice, generally	Washington Race Equity & Justice Initiative Commitments, https://wareji.org/commitments/ Washington State Alliance for Equal Justice Hallmarks of an Effective Legal Aid System (2014), https://www.wsba.org/docs/default-source/legal-community/committees/atj-board/guiding-docs/alliance-hallmarks-20914.pdf?sfvrsn=b0eb3cf1_2 Access to Justice Board 2018-2020 State Plan for the Coordinated Delivery of Civil Legal Aid to Low Income People, https://www.wsba.org/docs/default-source/legal-community/committees/atj-board/guiding-docs/atj-state-plan-final.pdf?sfvrsn=b08d3ef1_2 2015 Washington State Civil Legal Needs Study, http://allianceforequaljustice.org/resources/2015-wa-state-civil-legal-needs-study-update/?wpdmdl=763&refresh=600f8205be9fb1611629061 Access to Justice Technology Principles (2020), http://allianceforequaljustice.org/resources/access-justice-technology-principles/?wpdmdl=509&refresh=600f8205e77f71611629061

		Ensuring Access for People with Disabilities: A Guide for Washington Courts (2011), http://allianceforequaljustice.org/resources/ensuring-equal-access-people-disabilities-guide-washington-courts/?wpdmdl=503&refresh=600f82060221b1611629062 Institute for Inclusion in the Legal Profession, https://theiilp.wildapricot.org/ Minority & Justice Commission Pretrial Reform Task Force Final Recommendations Report (2019), http://www.courts.wa.gov/subsite/mjc/docs/PretrialReformTaskForceReport.pdf Minority & Justice Commission Justice Washington State Survey (2012), http://www.courts.wa.gov/subsite/mjc/docs/JusticeInWashingtonReport_2014.pdf Minority & Justice Commission The Assessment and Consequences of Legal Financial Obligations in Washington State (2008), http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf Gender & Justice Commission Self-Audit for Gender and Racial Equity (2001), http://www.courts.wa.gov/subsite/gjc/documents/Self-Audit.pdf

		Gender & Justice Commission When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts (2000), http://www.courts.wa.gov/subsite/gjc/documents/When%20Bias%20Compounds%20Insuring%20Equal%20Justice%20for%20Women%20of%20Color%20in%20the%20Courts%20A%20Pre%20Program%20Introduction%20Celebration%202000%20Plenary%20Session.pdf Interpreter Commission Deskbook on Language Access in Washington Courts (2017), http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/StateLAP.pdf
Goal 5: To manage the business of the State Bar Association in a prudent, efficient and cost-efficient manner. • **Explore business practices that will maximize efficiency, productivity and enhance WSBA services to the members and the public** • **Explore cash reserves and investment strategies** • **Explore alternative opportunities for office space as we move to a more remote work environment.**	• Budget and Audit Committee • Sections • WSBA Entities • The Supreme Court • WSBA Employees • WSBA Volunteers • Space alternatives: County bars and law schools • MBAs	
Goal 6: Foster an organizational environment and culture that demonstrates a commitment to staff and embodies the organizational mission and stated values of the WSBA.	• WSBA Employees • WSBA Volunteers • Sections • WSBA Entities • The Supreme Court • MBAs	• Climate survey results • Blueprint from Climate and Culture Committee, when ready

• **Examine and implement recommendations from the Climate Survey to address the culture** • **Engage in ongoing assessments to foster an environment that promotes and values employee feedback and input.** • **Provide opportunities for the Board of Governors to increase communication and collaboration with the WSBA Executive Team and WSBA employees.**		

WASHINGTON STATE
BAR ASSOCIATION

WSBA MISSION

The Washington State Bar Association's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

WSBA GUIDING PRINCIPLES

The WSBA will operate a well-managed association that supports its members and advances and promotes:

- **Access to the justice system.**
  Focus: Provide training and leverage community partnerships in order to enhance a culture of service for legal professionals to give back to their communities, with a particular focus on services to underserved low and moderate income people.
- **Diversity, equality, and cultural understanding throughout the legal community.**
  Focus: Work to understand the lay of the land of our legal community and provide tools to members and employers in order to enhance the retention of minority legal professionals in our community.
- **The public's understanding of the rule of law and its confidence in the legal system.**
  Focus: Educate youth and adult audiences about the importance of the three branches of government and how they work together.
- **A fair and impartial judiciary.**
- **The ethics, civility, professionalism, and competence of the Bar.**

MISSION FOCUS AREAS	PROGRAM CRITERIA
Ensuring Competent and Qualified Legal Professionals • Cradle to Grave • Regulation and Assistance **Promoting the Role of Legal Professionals in Society** • Service • Professionalism	• Does the Program further either or both of WSBA's mission-focus areas? • Does WSBA have the competency to operate the Program? • As the mandatory bar, how is WSBA uniquely positioned to successfully operate the Program? • Is statewide leadership required in order to achieve the mission of the Program? • Does the Program's design optimize the expenditure of WSBA resources devoted to the Program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc?

2016 – 2018 STRATEGIC GOALS

- **Equip members with skills for the changing profession**
- **Promote equitable conditions for members from historically marginalized or underrepresented backgrounds to enter, stay and thrive in the profession**
- **Explore and pursue regulatory innovation and advocate to enhance the public's access to legal services**

GR 12
REGULATION OF THE PRACTICE OF LAW

The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. The legal profession serves clients, courts, and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons and entities acting under the Supreme Court's authority.

[Adopted effective September 1, 2017.]

GR 12.1
REGULATORY OBJECTIVES

Legal services providers must be regulated in the public interest. In regulating the practice of law in Washington, the Washington Supreme Court's objectives include: protection of the public; advancement of the administration of justice and the rule of law; meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;

(a) transparency regarding the nature and scope of legal services To be provided, the credentials of those who provide them, and the availability of regulatory protections;

(b) delivery of affordable and accessible legal services;

(c) efficient, competent, and ethical delivery of legal services;

(d) protection of privileged and confidential information;

(e) independence of professional judgment;

(f) Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs;

(g) Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

[Adopted effective September 1, 2017.]

GR 12.2
WASHINGTON STATE BAR ASSOCIATION: PURPOSES, AUTHORIZED ACTIVITIES, AND PROHIBITED ACTIVITIES

In the exercise of its inherent and plenary authority to regulate the practice of law in Washington, the Supreme Court authorizes and supervises the Washington State Bar Association's activities. The Washington State Bar Association carries out the administrative responsibilities and functions expressly delegated to it by this rule and other Supreme Court rules and orders enacted or adopted to regulate the practice of law, including the purposes and authorized activities set forth below.

(a) Purposes: In General. In general, the Washington State Bar Association strives to:

(1) Promote independence of the judiciary and the legal profession.

(2) Promote an effective legal system, accessible to all.

(3) Provide services to its members and the public.

(4) Foster and maintain high standards of competence, professionalism, and ethics among its members.

(5) Foster collegiality among its members and goodwill between the legal profession and the public.

(6) Promote diversity and equality in the courts and the legal profession.

(7) Administer admission, regulation, and discipline of its members in a manner that protects the public and respects the rights of the applicant or member.

(8) Administer programs of legal education.

(9) Promote understanding of and respect for our legal system and the law.

(10) Operate a well-managed and financially sound association, with a positive work environment for its employees.

(11) Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the association and the legal profession.

(b) Specific Activities Authorized. In pursuit of these purposes, the Washington State Bar Association may:

(1) Sponsor and maintain committees and sections, whose activities further these purposes;

(2) Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;

(3) Provide periodic reviews and recommendations concerning court rules and procedures;

(4) Administer examinations and review applicants' character and fitness to practice law;

(5) Inform and advise its members regarding their ethical obligations;

(6) Administer an effective system of discipline of its members, including receiving and investigating complaints of misconduct by legal professionals, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;

(7) Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;

(8) Maintain a program for mediation of disputes between members and others;

(9) Maintain a program for legal professional practice assistance;

(10) Sponsor, conduct, and assist in producing programs and products of continuing legal education;

(11) Maintain a system for accrediting programs of continuing legal education;

(12) Conduct examinations of legal professionals' trust accounts;

(13) Maintain a fund for client protection in accordance with the Admission and Practice Rules;

(14) Maintain a program for the aid and rehabilitation of impaired members;

(15) Disseminate information about the organization's activities, interests, and positions;

(16) Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession;

(17) Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns;

(18) Encourage public service by members and support programs providing legal services to those in need;

(19) Maintain and foster programs of public information and education about the law and the legal system;

(20) Provide, sponsor, and participate in services to its members;

(21) Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the organization's discretion, authorizing collective bargaining;

(22) Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Washington State Bar Association, and collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged. The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable;

(23) Administer Supreme-Court-created boards in accordance with General Rule 12.3.

(c) Activities Not Authorized. The Washington State Bar Association will not:

(1)) Take positions on issues concerning the politics or social positions of foreign nations;

(2)) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or

(3) Support or oppose, in an election, candidates for public office.

[Adopted effective July 17, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2007; September 1, 2013; September 1, 2017.]

GR 12.3
WASHINGTON STATE BAR ASSOCIATION ADMINISTRATION OF SUPREME COURT-CREATED BOARDS AND COMMITTEES

The Supreme Court has delegated to the Washington State Bar Association the authority and responsibility to administer certain boards and committees established by court rule or order. This delegation of authority includes providing and managing staff, overseeing the boards and committees to monitor their compliance with the rules and orders that authorize and regulate them, paying expenses reasonably and necessarily incurred pursuant to a budget approved by the Board of Governors, performing other functions and taking other actions as provided in court rule or order or delegated by the Supreme Court, or taking other actions as are necessary and proper to enable the board or committee to carry out its duties or functions.

[Adopted effective September 1, 2007; amended effective September 1, 2017.]

GR 12.4
WASHINGTON STATE BAR ASSOCIATION ACCESS TO RECORDS

(a) Policy and Purpose. It is the policy of the Washington State Bar Association to facilitate access to Bar records. A presumption of public access exists for Bar records, but public access to Bar records is not absolute and shall be consistent with reasonable expectations of personal privacy, restrictions in statutes, restrictions in court rules, or as provided in court orders or protective orders issued under court rules. Access shall not unduly burden the business of the Bar.

(b) Scope. This rule governs the right of public access to Bar records. This rule applies to the Washington State Bar Association and its subgroups operated by the Bar including the Board of Governors, committees, task forces, commissions, boards, offices, councils, divisions, sections, and departments. This rule also applies to boards and committees under GR 12.3 administered by the Bar. A person or entity entrusted by the
Bar with the storage and maintenance of Bar records is not subject to this rule and may not respond to a request for access to Bar records, absent express written authority from the Bar or separate authority in rule or statute to grant access to the documents.

(c) Definitions.

(1)) "Access" means the ability to view or obtain a copy of a Bar record.

(2)) "Bar record" means any writing containing information relating to the conduct of any Bar function prepared, owned, used, or retained by the Bar regardless of physical form or characteristics. Bar records include only those records in the possession of the Bar and its staff or stored under Bar ownership and control in facilities or servers. Records solely in the possession of hearing officers, non-Bar staff members of boards, committees, task forces, commissions, sections, councils, or divisions that were prepared by the hearing officers or the members and in their sole possession, including private notes and working papers, are not Bar records and are not subject to public access under this rule. Nothing in this rule requires the Bar to create a record that is not currently in possession of the Bar at the time of the request.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation in paper, digital, or other format.

(d) Bar Records--Right of Access.

(1) The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this rule, or any other state statute (including the Public Records Act, chapter 42.56 RCW) or federal statute or rule as they would be applied to a public agency, or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice Rules and associated regulations, the Rules for Enforcement of Limited Practice Officer Conduct, General Rule 25, court orders or protective orders issued under those rules, or any other state or federal statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests or threat to safety or by the above-referenced rules, statutes, or orders, the Bar shall delete identifying details in a manner consistent with those rules, statutes, or orders when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained in writing.

(2) In addition to exemptions referenced above, the following categories of Bar records are exempt from public access except as may expressly be made public by court rule:

(A) Records of the personnel committee, and personal information in Bar records for employees, appointees, members, or volunteers of the Bar to the extent that disclosure would violate their right to privacy, including home contact information (unless such information is their address of record), Social Security numbers, driver's license numbers, identification or security photographs held in Bar records, and personal data including ethnicity, race, disability status, gender, and sexual orientation. Membership class and status, bar number, dates of admission or licensing, addresses of record, and business telephone
numbers, facsimile numbers, and electronic mail addresses (unless there has been a request that electronic mail addresses not be made public) shall not be exempt, provided that any such information shall be exempt if the Executive Director approves the confidentiality of that information for reasons of personal security or other compelling reason, which approval must be reviewed annually.

(B) Specific information and records regarding

(i) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

(ii) application, investigation, and hearing or proceeding records relating to lawyer, Limited Practice Officer, or Limited License Legal Technician admissions, licensing, or discipline, or that relate to the work of ELC 2.5 hearing officers, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk
Board, the Limited Practice Board, the MCLE Board, the Limited License Legal Technician Board, the Practice of Law Board, or the Disciplinary Board in conducting investigations, hearings or proceedings; and

(iii) the work of the Judicial Recommendation Committee and the Hearing Officer selection panel, unless such records are expressly categorized as public information by court rule.

(C) Valuable formulae, designs, drawings, computer source code or object code, and research data created or obtained by the Bar.

(D) Information regarding the infrastructure, integrity, and security of computer and telecommunication networks, databases, and systems.

(E) Applications for licensure by the Bar and annual licensing forms and related records, including applications for license fee hardship waivers and any decision or determinations on the hardship waiver applications.

(F) Requests by members for ethics opinions to the extent that they contain information identifying the member or a party to the inquiry.

Information covered by exemptions will be redacted from the specific records sought. Statistical information not descriptive of any readily identifiable person or persons may be disclosed.

(3) Persons Who Are Subjects of Records.

(A) Unless otherwise required or prohibited by law, the Bar has the option to give notice of any records request to any member or third party whose records would be included in the Bar's response.

(B) Any person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker.

(C) If the Bar decides to allow access to a requested record, a person who is named in that record, or to whom the records specifically pertains, has a right to initiate review or to participate as a party to any review initiated by a requester. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

(e) Bar Records--Procedures for Access.

(1) General Procedures. The Bar Executive Director shall appoint a Bar staff member to serve as the public records officer to whom all records requests shall be submitted. Records requests must be in writing and delivered to the Bar public records officer, who shall respond to such requests within 30 days of receipt. The Washington State Bar Association must implement this rule and adopt and publish on its website the public records officer's work mailing address, telephone number, fax number, and e-mail address, and the procedures and fee schedules for accepting and responding to records requests by the effective date of this rule. The Bar shall acknowledge receipt of the request within 14 days of receipt, and shall communicate with the requester as necessary to clarify any ambiguities as to the records being requested. Records requests shall not be directed to other Bar staff or to volunteers serving on boards, committees, task forces, commissions, sections, councils, or divisions.

(2) Charging of Fees.

(A) A fee may not be charged to view Bar records.

(B) A fee may be charged for the photocopying or scanning of Bar records according to the fee schedule established by the Bar and published on its web site.

(C) A fee not to exceed $30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

(f) Extraordinary Requests Limited by Resource Constraints. If a particular request is of a magnitude or burden on resources that the Bar cannot fully comply within 30 days due to constraints on time, resources, and personnel, the Bar shall communicate this information to the requester along with a good faith estimate of the time needed to complete the Bar's response. The Bar must attempt to reach

agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the Bar's response, which may include a schedule of installment responses. If the Bar and requester are unable to reach agreement, the Bar shall respond to the extent practicable, clarify how and why the response differs from the request, and inform the requester that it has completed its response.

(g) Denials. Denials must be in writing and shall identify the applicable exemptions or other bases for denial as well as a written summary of the procedures under which the requesting party may seek further review.

(h) Review of Records Decisions.

(1) Internal Review. A person who objects to a record decision or other action by the Bar's public records officer may request review by the Bar's Executive Director.

(A) A record requester's petition for internal review must be submitted within 90 days of the Bar's public records officer's decision, on such form as the Bar shall designate and make available.

(B) The review proceeding is informal, summary, and on the record.

(C) The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(2) External Review. A person who objects to a records review decision by the Bar's Executive Director may request review by the Records Request Appeals Officer (RRAO) for the Bar.

(A) The requesting party's request for review of the Executive Director's decision must be deposited in the mail and postmarked or delivered to the Bar not later than 30 days after the issuance of the decision, and must be on such form as the Bar shall designate and make available.

(B)) The review will be informal and summary, but in the sole discretion of the RRAO may include the submission of briefs no more than 20 pages long and of oral arguments no more than 15 minutes long.

(C) Decisions of the RRAO are final unless, within 30 days of the issuance of the decision, a request for discretionary review of the decision is filed with the Supreme Court. If review is granted, review is conducted by the Chief Justice of the Washington Supreme Court or his or her designee in accordance with procedures established by the Supreme Court. A designee of the Chief Justice shall be a current or former elected judge. The review proceeding shall be on the record, without additional briefing or argument unless such is ordered by the Chief Justice or his or her designee.

(D) The RRAO shall be appointed by the Board of Governors. The Bar may reimburse the RRAO for all necessary and reasonable expenses incurred in the completion of these duties, and may provide compensation for the time necessary for these reviews at a level established by the Board of Governors.

(i) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(j) Effective Date of Rule.

(1) This rule goes into effect on July 1, 2014, and applies to records that are created on or after that date.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test; the Public Records Act, chapter 42.56 RCW, does not apply to such Bar records, but it may be used for nonbinding guidance.

[Adopted effective July 1, 2014; amended effective September 1, 2017.]

GR 12.5
IMMUNITY

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission and Practice Rules, the Rules for Enforcement of Lawyer Conduct, or the disciplinary rules for limited practice officers and limited license legal technicians, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

[Adopted effective January 2, 2008; amended effective September 1, 2017.]

WASHINGTON STATE BAR ASSOCIATION

2020-2021
WSBA BOARD OF GOVERNORS MEETING SCHEDULE

MEETING DATE	LOCATION	POTENTIAL ISSUES / SOCIAL FUNCTION	AGENDA ITEMS DUE FOR EXEC COMMITTEE MTG	EXECUTIVE COMMITTEE MTG 9:00 am–12:00 pm	BOARD BOOK MATERIALS DEADLINE
November 13-14, 2020	Webcast & Teleconference	BOG Meeting	October 20, 2020	October 26, 2020	October 28, 2020
January 14-15, 2021	WSBA Conference Center Seattle, WA	BOG Meeting	December 8, 2020	December 14, 2020	December 30, 2020
March 18-19, 2021 March 19, 2021	Hotel RL, Olympia, WA Temple of Justice	BOG Meeting BOG Meeting with Supreme Court	February 23, 2021	March 1, 2021	March 3, 2021
April 16-17, 2021	Davenport Hotel Spokane, WA	BOG Meeting	March 23, 2021	March 29, 2021	March 31, 2021
May 20-21, 2021	WSBA Conference Center Seattle, WA	BOG Meeting	April 27, 2021	May 3, 2021	May 5, 2021
July 15, 2021 July 16-17, 2021	Hilton Portland Downtown Portland, OR	BOG Retreat BOG Meeting	June 22, 2021	June 28, 2021	June 30, 2021
August 20-21, 2021	TBD Boise, ID	BOG Meeting	July 27, 2021	August 2, 2021	August 4, 2021
September 23-24, 2021	WSBA Conference Center Seattle, WA	BOG Meeting	August 24, 2021	August 30, 2021	September 8, 2021

Note – In-person meetings are dependent upon Covid-19 state guidance on in-person gatherings.

The Board Book Material Deadline is the final due date for submission of materials for the respective Board meeting. Please notify the Executive Director's office in advance of possible late materials. Refer to 1305 BOG Action Procedure on how to bring agenda items to the Board.

This information can be found online at: www.wsba.org/About-WSBA/Governance/Board-Meeting-Schedule-Materials

WSBA Board of Governors
Congressional District Map

2020-2021

Kyle Sciuchetti
President

Brian Tollefson
President-Elect

Rajeev Majumdar
Immediate Past President

Terra Nevitt
Executive Director & Secretary

BRITISH COLUMBIA

Sunitha Anjilvel
Governor District 1

Carla Higginson
Governor District 2

Brett Purtzer
Governor District 6

Matthew Dresden
Governor District 7-North

Jean Kang
Governor District 7-South

Brent Williams-Ruth
Governor District 8

Bryn Peterson
Governor District 9

Thomas A. McBride
Governor District 10

Dan Clark
Governor District 4

P.J. Grabicki
Governor District 5

Lauren Boyd
Governor District 3

Hunter Abell
Governor At-Large

Russell Knight
Governor At-Large

TBD

Governor At-Large

PACIFIC OCEAN

OREGON

IDAHO

BASIC CHARACTERISTICS OF MOTIONS

From: ***The Complete Idiot's Guide to Robert's Rules***
The Guerilla Guide to Robert's Rules

MOTION	PURPOSE	INTERRUPT SPEAKER?	SECOND NEEDED?	DEBATABLE?	AMENDABLE?	VOTE NEEDED
1. Fix the time to which to adjourn	Sets the time for a continued meeting	No	Yes	No[1]	Yes	Majority
2. Adjourn	Closes the meeting	No	Yes	No	No	Majority
3. Recess	Establishes a brief break	No	Yes	No[2]	Yes	Majority
4. Raise a Question of Privilege	Asks urgent question regarding to rights	Yes	No	No	No	Rules by Chair
5. Call for orders of the day	Requires that the meeting follow the agenda	Yes	No	No	No	One member
6. Lay on the table	Puts the motion aside for later consideration	No	Yes	No	No	Majority
7. Previous question	Ends debate and moves directly to the vote	No	Yes	No	No	Two-thirds
8. Limit or extend limits of debate	Changes the debate limits	No	Yes	No	Yes	Two-thirds
9. Postpone to a certain time	Puts off the motion to a specific time	No	Yes	Yes	Yes	Majority[3]
10. Commit or refer	Refers the motion to a committee	No	Yes	Yes	Yes	Majority
11. Amend an amendment (secondary amendment)	Proposes a change to an amendments	No	Yes	Yes[4]	No	Majority
12. Amend a motion or resolution (primary amendment)	Proposes a change to a main motion	No	Yes	Yes[4]	Yes	Majority
13. Postpone indefinitely	Kills the motion	No	Yes	Yes	No	Majority
14. Main motion	Brings business before the assembly	No	Yes	Yes	Yes	Majority

1 Is debatable when another meeting is scheduled for the same or next day, or if the motion is made while no question Is pending

2 Unless no question is pending

3 Majority, unless it makes question a special order

4 If the motion it is being applied to is debatable

Discussion Protocols
Board of Governors Meetings

Philosophical Statement:

"We take serious our representational responsibilities and will try to inform ourselves on the subject matter before us by contact with constituents, stakeholders, WSBA staff and committees when possible and appropriate. In all deliberations and actions we will be courageous and keep in mind the need to represent and lead our membership and safeguard the public. In our actions, we will be mindful of both the call to action and the constraints placed upon the WSBA by GR 12 and other standards."

Governor's Commitments:

1. Tackle the problems presented; don't make up new ones.
2. Keep perspective on long-term goals.
3. Actively listen to understand the issues and perspective of others before making the final decision or lobbying for an absolute.
4. Respect the speaker, the input and the Board's decision.
5. Collect your thoughts and speak to the point – sparingly!
6. Foster interpersonal relationships between Board members outside Board events.
7. Listen and be courteous to speakers.
8. Speak only if you can shed light on the subject, don't be repetitive.
9. Consider, respect and trust committee work but exercise the Board's obligation to establish policy and insure that the committee work is consistent with that policy and the Board's responsibility to the WSBA's mission.
10. Seek the best decision through quality discussion and ample time (listen, don't make assumptions, avoid sidebars, speak frankly, allow time before and during meetings to discuss important matters).
11. Don't repeat points already made.
12. Everyone should have a chance to weigh in on discussion topics before persons are given a second opportunity.
13. No governor should commit the board to actions, opinions, or projects without consultation with the whole Board.
14. Use caution with e-mail: it can be a useful tool for debating, but e-mail is not confidential and does not easily involve all interests.
15. Maintain the strict confidentiality of executive session discussions and matters.

BOARD OF GOVERNORS

WSBA VALUES

Through a collaborative process, the WSBA Board of Governors and Staff have identified these core values that shall be considered by the Board, Staff, and WSBA volunteers (collectively, the "WSBA Community") in all that we do.

To serve the public and our members and to promote justice, the WSBA Community values the following:

- Trust and respect between and among Board, Staff, Volunteers, Members, and the public
- Open and effective communication
- Individual responsibility, initiative, and creativity
- Teamwork and cooperation
- Ethical and moral principles
- Quality customer-service, with member and public focus
- Confidentiality, where required
- Diversity and inclusion
- Organizational history, knowledge, and context
- Open exchanges of information

BOARD OF GOVERNORS

GUIDING COMMUNICATION PRINCIPLES

In each communication, I will assume the good intent of my fellow colleagues; earnestly and actively listen; encourage the expression of and seek to affirm the value of their differing perspectives, even where I may disagree; share my ideas and thoughts with compassion, clarity, and where appropriate confidentiality; and commit myself to the unwavering recognition, appreciation, and celebration of the humanity, skills, and talents that each of my fellow colleagues bring in the spirt and effort to work for the mission of the WSBA. Therefore, I commit myself to operating with the following norms:

- I will treat each person with courtesy and respect, valuing each individual.
- I will strive to be nonjudgmental, open-minded, and receptive to the ideas of others.
- I will assume the good intent of others.
- I will speak in ways that encourage others to speak.
- I will respect others' time, workload, and priorities.
- I will aspire to be honest and open in all communications.
- I will aim for clarity; be complete, yet concise.
- I will practice "active" listening and ask questions if I don't understand.
- I will use the appropriate communication method (face-to-face, email, phone, voicemail) for the message and situation.
- When dealing with material of a sensitive or confidential nature, I will seek and confirm that there is mutual agreement to the ground rules of confidentiality at the outset of the communication.
- I will avoid triangulation and go directly to the person with whom I need to communicate. (If there is a problem, I will go to the source for resolution rather than discussing it with or complaining to others.)
- I will focus on reaching understanding and finding solutions to problems.
- I will be mindful of information that affects, or might be of interest or value to, others, and pass it along; err on the side of over-communication.
- I will maintain a sense of perspective and respectful humor.

BOARD OF GOVERNORS

Anthony David Gipe
President

phone: 206.386.4721
e-mail: adgipeWSBA@gmail.com

November 2014

BEST PRACTICES AND EXPECTATIONS

- **Attributes of the Board**
  - Competence
  - Respect
  - Trust
  - Commitment
  - Humor

- **Accountability by Individual Governors**
  - Assume Good Intent
  - Participation/Preparation
  - Communication
  - Relevancy and Reporting

- **Team of Professionals**
  - Foster an atmosphere of teamwork
    - Between Board Members
    - The Board with the Officers
    - The Board and Officers with the Staff
    - The Board, Officers, and Staff with the Volunteers

  - We all have common loyalty to the success of WSBA

- **Work Hard and Have Fun Doing It**

WASHINGTON STATE
BAR ASSOCIATION

Financial Reports

(Unaudited)

Year to Date February 28, 2021

Prepared by Maggie Yu, Controller
Submitted by
Jorge Perez, Chief Financial Officer
March 17, 2021

Washington State Bar Association Financial Summary
Compared to Fiscal Year 2021 Budget
For the Period from February 1, 2021 to February 28, 2021

Category	Actual Revenues	Budgeted Revenues	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
Access to Justice	-	-	87,744	205,966	1	56,824	87,745	262,790	(87,745)	(262,790)
Administration	3,863	100,000	462,079	1,070,204	7,428	15,200	469,506	1,085,404	(465,643)	(985,404)
Admissions/Bar Exam	569,090	1,134,375	336,731	847,813	19,360	318,693	356,091	1,166,506	212,999	(32,131)
Advancement FTE		-	98,669	235,893	-	-	98,669	235,893	(98,669)	(235,893)
Bar News	233,306	468,350	145,411	345,499	182,634	449,665	328,045	795,164	(94,739)	(326,814)
Board of Governors	-	-	89,195	210,537	26,891	406,500	116,086	617,037	(116,086)	(617,037)
Communications Strategies	-	-	190,355	453,887	5,939	76,045	196,294	529,932	(196,294)	(529,932)
Communications Strategies FTE		-	92,014	222,622	-	-	92,014	222,622	(92,014)	(222,622)
Discipline	47,902	97,500	2,407,245	5,826,381	45,370	194,473	2,452,615	6,020,854	(2,404,713)	(5,923,354)
Diversity	135,000	135,374	96,703	325,440	767	26,790	97,470	352,230	37,530	(216,856)
Foundation	-	-	51,495	122,376	3,000.00	12,150	54,495	134,526	(54,495)	(134,526)
Human Resources	-	-	167,691	458,623	-	-	167,691	458,623	(167,691)	(458,623)
Law Clerk Program	153,907	193,000	41,837	95,128	24	10,650	41,861	105,778	112,046	87,222
Legislative	-	-	48,620	126,909	10,658	32,250	59,278	159,159	(59,278)	(159,159)
Licensing and Membership Records	187,049	336,450	246,254	583,749	10,203	21,951	256,458	605,700	(69,409)	(269,250)
Licensing Fees	6,934,028	16,531,113	-	-	-	-	-	-	6,934,028	16,531,113
Limited License Legal Technician	11,783	23,267	43,288	115,845	-	8,203	43,288	124,048	(31,504)	(100,781)
Limited Practice Officers	82,556	195,300	23,040	55,230	1,967	22,785	25,008	78,015	57,548	117,285
Mandatory CLE	415,887	767,950	188,802	473,822	104,997	148,018	293,800	621,840	122,088	146,110
Member Assistance Program	4,176	8,000	38,300	91,838	825.00	1,075	39,125	92,913	(34,949)	(84,913)
Member Benefits	3,969	28,000	54,930	134,790	118,994	188,496	173,924	323,286	(169,955)	(295,286)
Member Services & Engagement	47,393	154,250	172,565	496,743	937	42,990	173,501	539,733	(126,108)	(385,483)
Office of General Counsel	117	-	366,146.95	952,454	7,266.38	18,677.37	373,413.33	971,131	(373,296)	(971,131)
Office of the Executive Director	-	-	259,203	614,257	106	101,651	259,308	715,908	(259,308)	(715,908)
OGC-Disciplinary Board	-	-	69,682	164,644	32,968	91,650	102,650	256,294	(102,650)	(256,294)
Outreach and Engagement	-	-	104,663	260,983	522	28,252	105,185	289,235	(105,185)	(289,235)
Practice of Law Board	-	-	15,128	36,875	-	9,000	15,128	45,875	(15,128)	(45,875)
Professional Responsibility Program	-	-	119,382	276,709	506	7,125	119,888	283,834	(119,888)	(283,834)
Public Service Programs	103,000	130,200	56,358	127,921	46	268,493	56,404	396,414	46,596	(266,214)
Publication and Design Services	-	-	41,595	98,843	4,300	5,730	45,895	104,573	(45,895)	(104,573)
Regulatory Services FTE			164,055	506,486			164,055	506,486	(164,055)	(506,486)
Sections Administration	273,354	300,000	122,866	288,915	6,353	9,875	129,219	298,790	144,136	1,210
Service Center	-	-	292,391	737,344	2,449	8,500	294,840	745,844	(294,840)	(745,844)
Technology	-	-	802,420	1,659,474	-	-	802,420	1,659,474	(802,420)	(1,659,474)
Subtotal General Fund	**9,206,380**	20,603,129	**7,496,859**	18,224,201	**594,510**	2,581,710	**8,091,369**	20,805,911	**1,115,011.08**	**(202,782)**
Expenses using reserve funds							**8,091,369**		-	-
Total General Fund - Net Result from Operations									**1,115,011.08**	**(202,782)**
Percentage of Budget	**44.68%**		**41.14%**		**23.03%**		**38.89%**			
CLE-Seminars and Products	445,550	1,682,000	432,309	1,039,119	35,169	535,891	467,478	1,575,010	(21,928)	106,990
CLE - Deskbooks	99,458	158,000	91,148	215,042	66,023	112,107	157,170	327,149	(57,712)	(169,149)
Total CLE	545,008	1,840,000	523,457	1,254,161	101,191	647,998	624,648	1,902,159	(79,640)	(62,159)
Percentage of Budget	**29.62%**		**41.74%**		**15.62%**		**32.84%**			
Total All Sections	457,759	585,779	-	-	290,545	865,167	290,545	865,167	167,214	(279,388)
Client Protection Fund-Restricted	395,419	529,540	64,810	155,699	1,324	502,400	66,134	658,099	329,286	(128,559)
Totals	10,604,566	23,558,448	8,085,126	19,634,061	987,570	4,597,276	9,072,696	24,231,337	1,531,871	(672,889)
Percentage of Budget	45.01%		41.18%		21.48%		37.44%			

Summary of Fund Balances:	Fund Balances Sept. 30, 2020	2021 Budgeted Fund Balances	Fund Balances Year to date
Restricted Funds:			
Client Protection Fund	4,193,130	4,064,571	4,522,416
Board-Designated Funds (Non-General Fund):			
CLE Fund Balance	469,241	407,082	389,601
Section Funds	1,210,209	930,821	1,377,423
Board-Designated Funds (General Fund):			
Operating Reserve Fund	1,500,000	1,500,000	1,500,000
Facilities Reserve Fund	550,000	550,000	550,000
Unrestricted Funds (General Fund):			
Unrestricted General Fund	3,478,234	3,275,452	4,593,245
Total General Fund Balance	**5,528,234**	**5,325,452**	**6,643,245**
Net Change in general Fund Balance		**(202,782)**	**1,115,011**
Total Fund Balance	**11,400,814.00**	**10,727,925**	**12,932,685**
Net Change In Fund Balance		**(672,889)**	**1,531,871**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
LICENSE FEES									
REVENUE:									
LICENSE FEES	1,986,292.72	1,712,717.92	(273,574.80)	7,227,365.05	6,934,027.78	(293,337.27)	16,531,113.10	9,597,085.32	41.95%
TOTAL REVENUE:	**1,986,293**	**1,712,718**	**(273,575)**	**7,227,365**	**6,934,028**	**(293,337)**	**16,531,113**	**9,597,085**	**41.95%**

Washington State Bar Association

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
ACCESS TO JUSTICE									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
ATJ BOARD RETREAT	-	-	-	-	-	-	2,000	2,000	0
LEADERSHIP TRAINING	667	-	667	1,333	-	1,333	2,000	2,000	0
ATJ BOARD EXPENSE	1,667	-	1,667	6,333	1	6,332	18,000	17,999	0%
STAFF TRAVEL/PARKING	292	-	292	1,458	-	1,458	3,500	3,500	0%
STAFF MEMBERSHIP DUES	-	-	-	120	-	120	120	120	0%
PUBLIC DEFENSE	417	0	416	1,483	0	1,483	4,400	4,400	0%
CONFERENCE/INSTITUTE EXPENSE	1,978	-	1,978	3,956	0	3,956	17,804	17,804	0%
RECEPTION/FORUM EXPENSE	9,000	-	9,000	9,000	-	9,000	9,000	9,000	0%
TOTAL DIRECT EXPENSES:	**14,020**	**0**	**14,020**	**23,684**	**1**	**23,683**	**56,824**	**56,823**	**0.00%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.60 FTE)	9,556	9,647	(92)	46,945	50,484	(3,540)	113835	63,351	44.35%
BENEFITS EXPENSE	3,697	3,692	4	18,648	17,625	1,023	44,524	26,899	39.59%
OTHER INDIRECT EXPENSE	3,896	5,656	(1,760)	19,732	19,635	97	47,607	27,972	41.24%
TOTAL INDIRECT EXPENSES:	**17,148**	**18,996**	**(1,848)**	**85,325**	**87,744**	**(2,419)**	**205,966**	**118,222**	**42.60%**
TOTAL ALL EXPENSES:	**31,168**	**18,996**	**12,172**	**109,009**	**87,745**	**21,264**	**262,790**	**175,044**	**33.39%**
NET INCOME (LOSS):	**(31,168)**	**(18,996)**	**12,172**	**(109,009)**	**(87,745)**	**21,264**	**(262,790)**	**(175,044)**	**33.39%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
ADMINISTRATION									
REVENUE:									
INTEREST INCOME	12,002	3,077	(8,926)	46,120	3,863	(42,257)	100,000	96,137	3.86%
TOTAL REVENUE:	**12,002**	**3,077**	**(8,926)**	**46,120**	**3,863**	**(42,257)**	**100,000**	**96,137**	**3.86%**
DIRECT EXPENSES:									
CONSULTING SERVICES	-	3,500	(3,500)	2,750	6,088	(3,338)	11,000	4,913	55.34%
STAFF TRAVEL/PARKING	350	-	350	1,750	1,340	410	4,200	2,860	31.90%
TOTAL DIRECT EXPENSES:	**350**	**3,500**	**(3,150)**	**4,500**	**7,428**	**(2,928)**	**15,200**	**7,773**	**48.87%**
INDIRECT EXPENSES:									
SALARY EXPENSE (6.92 FTE)	56,869	60,342	(3,473)	283,715	296,343	(12,628)	661603	365,260	44.79%
BENEFITS EXPENSE	16,875	16,824	51	84,578	80,426	4,151	202,703	122,277	39.68%
OTHER INDIRECT EXPENSE	16,850	24,576	(7,726)	85,342	85,309	32	205,898	120,589	41.43%
TOTAL INDIRECT EXPENSES:	**90,594**	**101,743**	**(11,148)**	**453,634**	**462,079**	**(8,445)**	**1,070,204**	**608,125**	**43.18%**
TOTAL ALL EXPENSES:	**90,944**	**105,243**	**(14,298)**	**458,134**	**469,506**	**(11,372)**	**1,085,404**	**615,898**	**43.26%**
NET INCOME (LOSS):	**(78,942)**	**(102,166)**	**(23,224)**	**(412,015)**	**(465,643)**	**(53,629)**	**(985,404)**	**(519,761)**	**47.25%**

Washington State Bar Association

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For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
ADMISSIONS									
REVENUE:									
EXAM SOFT REVENUE	-	-	-	-	-	-	31,500	31,500	0.00%
BAR EXAM FEES	178,761	113,810	(64,951)	595,105	536,240	(58,865)	1,053,235	516,995	50.91%
RULE 9/LEGAL INTERN FEES	596	250	(346)	3,354	2,200	(1,154)	12,000	9,800	18.33%
RPC BOOKLETS	-	5	5	-	5	5	-	(5)	
SPECIAL ADMISSIONS	7,763	3,720	(4,043)	27,545	30,645	3,100	37,640	6,995	81.42%
TOTAL REVENUE:	**187,120**	**117,785**	**(69,335)**	**626,004**	**569,090**	**(56,915)**	**1,134,375**	**565,285**	**50.17%**
DIRECT EXPENSES:									
POSTAGE	150	48	102	750	67	683	1,800	1,733	3.73%
STAFF TRAVEL/PARKING	1,417	133	1,284	7,083	133	6,951	17,000	16,867	0.78%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	800	800	0.00%
SUPPLIES	83	-	83	417	940	(523)	1,000	60	94.00%
FACILITY, PARKING, FOOD	32,000	5,182	26,818	38,050	5,182	32,868	64,700	59,518	8.01%
EXAMINER FEES	-	-	-	-	-	-	20,000	20,000	0.00%
UBE EXMINATIONS	-	-	-	-	-	-	115,900	115,900	0.00%
BOARD OF BAR EXAMINERS	-	-	-	-	-	-	6,000	6,000	0.00%
BAR EXAM PROCTORS	-	-	-	-	(133)	133	27,000	27,133	-0.49%
CHARACTER & FITNESS BOARD	2,716	-	2,716	11,775	-	11,775	12,000	12,000	0.00%
DISABILITY ACCOMMODATIONS	-	2,780	(2,780)	-	2,780	(2,780)	10,000	7,220	27.80%
CHARACTER & FITNESS INVESTIGATIONS	50	-	50	150	6	144	300	294	2.05%
LAW SCHOOL VISITS	75	-	75	95	-	95	920	920	0.00%
COURT REPORTERS	1,250	2,006	(756)	6,250	5,717	533	15,000	9,283	38.11%
DEPRECIATION-SOFTWARE	1,898	1,627	271	9,491	3,392	6,099	22,778	19,386	14.89%
ONLINE LEGAL RESEARCH	372	307	65	743	1,220	(477)	3,345	2,125	36.48%
LAW LIBRARY	17	12	5	33	56	(22)	150	95	36.94%
TOTAL DIRECT EXPENSES:	**40,027**	**12,095**	**27,932**	**74,837**	**19,360**	**55,478**	**318,693**	**299,333**	**6.07%**
INDIRECT EXPENSES:									
SALARY EXPENSE (6.55 FTE)	40,226	40,564	(338)	197,617	187,339	10,278	479,196	291,857	39.09%
BENEFITS EXPENSE	14,417	14,402	15	72,806	68,823	3,983	173,728	104,905	39.62%
OTHER INDIRECT EXPENSE	15,949	23,211	(7,262)	80,779	80,570	209	194,889	114,319	41.34%
TOTAL INDIRECT EXPENSES:	**70,592**	**78,177**	**(7,585)**	**351,201**	**336,731**	**14,470**	**847,813**	**511,082**	**39.72%**
TOTAL ALL EXPENSES:	**110,619**	**90,271**	**20,348**	**426,038**	**356,091**	**69,948**	**1,166,506**	**810,415**	**30.53%**
NET INCOME (LOSS):	**76,501**	**27,513**	**(48,988)**	**199,966**	**212,999**	**13,033**	**(32,131)**	**(245,130)**	**-662.91%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
ADVANCEMENT FTE									
INDIRECT EXPENSES:									
SALARY EXPENSE (1.15 FTE)	13,403	13,391	12	65,845	67,800	(1,955)	159,666	91,866	42.46%
BENEFITS EXPENSE	3,524	3,501	23	17,343	16,650	693	42,009	25,359	39.64%
OTHER INDIRECT EXPENSE	2,800	4,096	(1,296)	14,182	14,218	(36)	34,217	19,999	41.55%
TOTAL INDIRECT EXPENSES:	**19,727**	**20,988**	**(1,261)**	**97,371**	**98,669**	**(1,298)**	**235,893**	**137,224**	**41.83%**
NET INCOME (LOSS):	**(19,727)**	**(20,988)**	**(1,261)**	**(97,371)**	**(98,669)**	**(1,298)**	**(235,893)**	**(137,224)**	**41.83%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
BAR NEWS									
REVENUE:									
ROYALTIES	-	-	-	1,662	1,262	(400)	1,500	238	84.12%
DISPLAY ADVERTISING	31,160	48,233	17,073	114,936	166,954	52,019	300,000	133,046	55.65%
SUBSCRIPT/SINGLE ISSUES	-	36	36	103	72	(31)	350	278	20.57%
CLASSIFIED ADVERTISING	1,313	2,820	1,507	3,882	3,765	(117)	11,500	7,735	32.74%
GEN ANNOUNCEMENTS	1,292	-	(1,292)	4,753	1,350	(3,403)	15,000	13,650	9.00%
PROF ANNOUNCEMENTS	1,962	810	(1,152)	7,729	6,746	(983)	20,000	13,254	33.73%
JOB TARGET ADVERSTISING	14,109	14,652	544	66,850	53,157	(13,693)	120,000	66,843	44.30%
TOTAL REVENUE:	**49,835**	**66,551**	**16,716**	**199,914**	**233,306**	**33,392**	**468,350**	**235,044**	**49.81%**
DIRECT EXPENSES:									
BAD DEBT EXPENSE	-	-	-	-	-	-	750	750	0.00%
POSTAGE	9,556	10,525	(970)	38,125	41,266	(3,141)	95,000	53,734	43.44%
PRINTING, COPYING & MAILING	24,230	24,746	(517)	94,113	98,351	(4,238)	250,000	151,649	39.34%
DIGITAL/ONLINE DEVELOPMENT	917	1,700	(783)	4,583	4,350	233	11,000	6,650	39.55%
GRAPHICS/ARTWORK	125	-	125	625	-	625	1,500	1,500	0.00%
OUTSIDE SALES EXPENSE	10,217	-	10,217	37,814	38,667	(853)	90,000	51,333	42.96%
EDITORIAL ADVISORY COMMITTEE	19	-	19	600	-	600	800	800	0.00%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	615	615	0.00%
TOTAL DIRECT EXPENSES:	**45,063**	**36,972**	**8,092**	**175,860**	**182,634**	**(6,773)**	**449,665**	**267,031**	**40.62%**
INDIRECT EXPENSES:									
SALARY EXPENSE (2.83 FTE)	16,743	17,226	(482)	82,255	86,031	(3,776)	199,458	113,427	43.13%
BENEFITS EXPENSE	5,131	5,132	(1)	26,022	24,512	1,510	61,936	37,424	39.58%
OTHER INDIRECT EXPENSE	6,883	10,045	(3,162)	34,860	34,869	(8)	84,105	49,236	41.46%
TOTAL INDIRECT EXPENSES:	**28,757**	**32,402**	**(3,646)**	**143,137**	**145,411**	**(2,275)**	**345,499**	**200,088**	**42.09%**
TOTAL ALL EXPENSES:	**73,820**	**69,374**	**4,446**	**318,997**	**328,045**	**(9,048)**	**795,164**	**467,119**	**41.26%**
NET INCOME (LOSS):	**(23,984)**	**(2,823)**	**21,161**	**(119,082)**	**(94,739)**	**24,343**	**(326,814)**	**(232,075)**	**28.99%**

Washington State Bar Association

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
BOARD OF GOVERNOR									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
BOG MEETINGS	17,542	-	17,542	87,708	34	87,675	210,500	210,466	0.02%
BOG COMMITTEES' EXPENSES	2,500	8	2,492	12,500	8	12,492	30,000	29,992	0.03%
BOG RETREAT	-	98	(98)	-	351	(351)	15,000	14,649	2.34%
BOG CONFERENCE ATTENDANCE	3,667	-	3,667	18,333	497	17,836	44,000	43,503	1.13%
BOG TRAVEL & OUTREACH	2,917	725	2,192	14,583	1,661	12,922	35,000	33,339	4.75%
LEADERSHIP TRAINING	4,167	-	4,167	20,833	-	20,833	50,000	50,000	0.00%
BOG ELECTIONS	-	13,340	(13,340)	-	24,340	(24,340)	12,000	(12,340)	202.83%
PRESIDENT'S DINNER	-	-	-	-	-	-	10,000	10,000	0.00%
TOTAL DIRECT EXPENSES:	**30,792**	**14,170**	**16,621**	**153,958**	**26,891**	**127,068**	**406,500**	**379,609**	**6.62%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.75 FTE)	9,783	10,015	(232)	48,061	51,127	(3,066)	116,541	65,414	43.87%
BENEFITS EXPENSE	3,475	3,475	0	17,598	16,572	1,027	41,926	25,354	39.53%
OTHER INDIRECT EXPENSE	4,261	6,193	(1,932)	21,582	21,497	85	52,070	30,573	41.28%
TOTAL INDIRECT EXPENSES:	**17,519**	**19,684**	**(2,164)**	**87,241**	**89,195**	**(1,954)**	**210,537**	**121,342**	**42.37%**
TOTAL ALL EXPENSES:	**48,311**	**33,854**	**14,457**	**241,200**	**116,086**	**125,113**	**617,037**	**500,951**	**18.81%**
NET INCOME (LOSS):	**(48,311)**	**(33,854)**	**14,457**	**(241,200)**	**(116,086)**	**125,113**	**(617,037)**	**(500,951)**	**18.81%**

Washington State Bar Association

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CLE - PRODUCTS									
REVENUE:									
SHIPPING & HANDLING	83	45	(38)	417	119	(297)	1,000	881	11.93%
COURSEBOOK SALES	667	635	(32)	3,333	1,741	(1,592)	8,000	6,259	21.76%
MP3 AND VIDEO SALES	68,333	110,142	41,809	341,667	214,902	(126,765)	820,000	605,098	26.21%
TOTAL REVENUE:	**69,083**	**110,822**	**41,739**	**345,417**	**216,762**	**(128,654)**	**829,000**	**612,238**	**26.15%**
DIRECT EXPENSES:									
DEPRECIATION	399	485	(86)	1,993	2,423	(430)	3,188	765	76.00%
STAFF MEMBERSHIP DUES	50	-	50	250	573	(323)	600	27	95.43%
TRANSCRIPTION SERVICES	-	270	(270)	-	270	(270)	-	(270)	
COST OF SALES - COURSEBOOKS	125	62	63	625	131	494	1,500	1,369	8.74%
A/V DEVELOP COSTS (RECORDING)	167	-	167	833	-	833	2,000	2,000	0.00%
ONLINE PRODUCT HOSTING EXPENSES	4,000	4,075	(75)	20,000	18,635	1,365	48,000	29,365	38.82%
POSTAGE & DELIVERY-COURSEBOOKS	42	37	5	208	109	100	500	391	21.74%
TOTAL DIRECT EXPENSES:	**4,782**	**4,930**	**(148)**	**23,909**	**22,140**	**1,769**	**55,788**	**33,648**	**39.69%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.45 FTE)	7,855	8,089	(234)	38,588	39,596	(1,008)	93,571	53,975	42.32%
BENEFITS EXPENSE	3,128	3,128	1	15,813	14,897	916	37,712	22,815	39.50%
OTHER INDIRECT EXPENSE	3,531	5,120	(1,589)	17,882	17,773	109	43,143	25,371	41.19%
TOTAL INDIRECT EXPENSES:	**14,514**	**16,337**	**(1,823)**	**72,283**	**72,266**	**18**	**174,427**	**102,161**	**41.43%**
TOTAL ALL EXPENSES:	**19,296**	**21,266**	**(1,971)**	**96,193**	**94,406**	**1,787**	**230,215**	**135,809**	**41.01%**
NET INCOME (LOSS):	**49,788**	**89,556**	**39,768**	**249,224**	**122,356**	**(126,868)**	**598,785**	**476,429**	**20.43%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
CLE - SEMINARS									
REVENUE:									
SEMINAR REGISTRATIONS	68,750	113,777	45,027	343,750	228,788	(114,962)	825,000	596,212	27.73%
SEMINAR-EXHIB/SPNSR/ETC	-	-	-	1,500	-	(1,500)	28,000	28,000	0.00%
TOTAL REVENUE:	**68,750**	**113,777**	**45,027**	**345,250**	**228,788**	**(116,462)**	**853,000**	**624,212**	**26.82%**
DIRECT EXPENSES:									
BAD DEBT EXPENSE	54	-	54	271	-	271	650	650	0.00%
STAFF TRAVEL/PARKING	1,250	-	1,250	6,250	73	6,177	15,000	14,927	0.49%
STAFF MEMBERSHIP DUES	71	-	71	355	763	(408)	853	90	89.50%
SUPPLIES	83	-	83	417	-	417	1,000	1,000	0.00%
COURSEBOOK PRODUCTION	125	-	125	625	-	625	1,500	1,500	0.00%
POSTAGE - FLIERS/CATALOGS	667	(936)	1,603	3,333	-	3,333	8,000	8,000	0.00%
POSTAGE - MISC./DELIVERY	67	-	67	333	-	333	800	800	0.00%
ACCREDITATION FEES	250	(96)	346	1,250	2,676	(1,426)	3,000	324	89.20%
SEMINAR BROCHURES	1,667	-	1,667	8,333	-	8,333	20,000	20,000	0.00%
FACILITIES	23,250	2,000	21,250	116,250	8,400	107,850	279,000	270,600	3.01%
SPEAKERS & PROGRAM DEVELOP	4,167	789	3,377	20,833	1,116	19,718	50,000	48,884	2.23%
SPLITS TO SECTIONS	-	-	-	100,000	-	100,000	100,000	100,000	0.00%
CLE SEMINAR COMMITTEE	21	-	21	104	-	104	250	250	0.00%
CONFERENCE CALLS	4	-	4	21	-	21	50	50	0.00%
TOTAL DIRECT EXPENSES:	**31,675**	**1,757**	**29,918**	**258,376**	**13,028**	**245,348**	**480,103**	**467,075**	**2.71%**
INDIRECT EXPENSES:									
SALARY EXPENSE (6.97 FTE)	39,856	39,777	79	195,802	202,041	(6,239)	474,795	272,754	42.55%
BENEFITS EXPENSE	15,143	15,136	7	76,511	72,186	4,325	182,511	110,325	39.55%
OTHER INDIRECT EXPENSE	16,972	24,722	(7,751)	85,958	85,817	141	207,386	121,569	41.38%
TOTAL INDIRECT EXPENSES:	**71,971**	**79,635**	**(7,665)**	**358,271**	**360,044**	**(1,772)**	**864,692**	**504,648**	**41.64%**
TOTAL ALL EXPENSES:	**103,646**	**81,392**	**22,254**	**616,647**	**373,072**	**243,575**	**1,344,795**	**971,723**	**27.74%**
NET INCOME (LOSS):	**(34,896)**	**32,384**	**67,280**	**(271,397)**	**(144,284)**	**127,113.48**	**(491,795)**	**(347,511.07)**	**29.34%**

Washington State Bar Association

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41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
CONTINUING LEGAL EDUCATION (CLE)									
REVENUE:									
SEMINAR REGISTRATIONS	68,750	113,777	45,027	343,750	228,788	(114,962)	825,000	596,212	27.73%
SEMINAR-EXHIB/SPNSR/ETC	-	-	-	1,500	-	(1,500)	28,000	28,000	0.00%
SHIPPING & HANDLING	83	45	(38)	417	119	(297)	1,000	881	11.93%
COURSEBOOK SALES	667	635	(32)	3,333	1,741	(1,592)	8,000	6,259	21.76%
MP3 AND VIDEO SALES	68,333	110,142	41,809	341,667	214,902	(126,765)	820,000	605,098	26.21%
TOTAL REVENUE:	**137,833**	**224,599**	**86,766**	**690,667**	**445,550**	**(245,116)**	**1,682,000**	**1,236,450**	**26.49%**
DIRECT EXPENSES:									
COURSEBOOK PRODUCTION	125	-	125	625	-	625	1,500	1,500	0.00%
POSTAGE - FLIERS/CATALOGS	667	(936)	1,603	3,333	-	3,333	8,000	8,000	0.00%
POSTAGE - MISC./DELIVERY	67	-	67	333	-	333	800	800	0.00%
DEPRECIATION	399	485	(86)	1,993	2,423	(430)	3,188	765	76.00%
ONLINE EXPENSES	4,000	4,075	(75)	20,000	18,635	1,365	48,000	29,365	38.82%
ACCREDITATION FEES	250	(96)	346	1,250	2,676	(1,426)	3,000	324	89.20%
SEMINAR BROCHURES	1,667	-	1,667	8,333	-	8,333	20,000	20,000	0.00%
FACILITIES	23,250	2,000	21,250	116,250	8,400	107,850	279,000	270,600	3.01%
TRANSACTION SERVICES	-	270	(270)	-	270	(270)	-	(270)	
SPEAKERS & PROGRAM DEVELOP	4,167	789	3,377	20,833	1,116	19,718	50,000	48,884	2.23%
SPLITS TO SECTIONS	-	-	-	100,000	-	100,000	100,000	100,000	0.00%
CLE SEMINAR COMMITTEE	21	-	21	104	-	104	250	250	0.00%
BAD DEBT EXPENSE	54	-	54	271	-	271	650	650	0.00%
STAFF TRAVEL/PARKING	1,250	-	1,250	6,250	73	6,177	15,000	14,927	0.49%
STAFF MEMBERSHIP DUES	121	-	121	605	1,336	(731)	1,453	117	91.95%
SUPPLIES	83	-	83	417	-	417	1,000	1,000	0.00%
CONFERENCE CALLS	4	-	4	21	-	21	50	50	0.00%
COST OF SALES - COURSEBOOKS	125	62	63	625	131	494	1,500	1,369	8.74%
A/V DEVELOP COSTS (RECORDING)	167	-	167	833	-	833	2,000	2,000	0.00%
POSTAGE & DELIVERY-COURSEBOOKS	42	37	5	208	109	100	500	391	21.74%
TOTAL DIRECT EXPENSES:	**36,457**	**6,687**	**29,770**	**282,286**	**35,169**	**247,117**	**535,891**	**500,722**	**6.56%**
INDIRECT EXPENSES:									
SALARY EXPENSE (8.42 FTE)	47,710.87	47,866	(155)	234,390	241,636	(7,246)	568,366	326,730	42.51%
BENEFITS EXPENSE	18,271	18,263	8	92,324	87,083	5,241	220,223	133,140	39.54%
OTHER INDIRECT EXPENSE	20,502	29,843	(9,340)	103,840	103,590	251	250,529	146,939	41.35%
TOTAL INDIRECT EXPENSES:	**86,485**	**95,972**	**(9,487)**	**430,555**	**432,309**	**(1,755)**	**1,039,119**	**606,809**	**41.60%**
TOTAL ALL EXPENSES:	**122,942**	**102,659**	**20,283**	**712,840**	**467,478**	**245,362**	**1,575,010**	**1,107,532**	**29.68%**
NET INCOME (LOSS):	**14,892**	**121,940**	**107,048**	**(22,173)**	**(21,928)**	**246**	**106,990**	**128,918**	**-20.50%**

Washington State Bar Association

Statement of Activities

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41.67% OF YEAR COMPLETE

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
COMMUNICATION STRATEGIES									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	392	-	392	1,958	990	968	4,700	3,710	21.06%
STAFF MEMBERSHIP DUES	99	-	99	493	380	113	1,183	803	32.12%
SUBSCRIPTIONS	254	604	(349)	1,272	1,320	(48)	3,052	1,732	43.25%
DIGITAL/ONLINE DEVELOPMENT	67	-	67	333	-	333	800	800	0.00%
APEX DINNER	-	-	-	-	837	(837)	25,000	24,163	3.35%
50 YEAR MEMBER TRIBUTE LUNCH	-	-	-	10,708	-	10,708	10,708	10,708	0.00%
COMMUNICATIONS OUTREACH	2,083	-	2,083	10,417	1,965	8,452	25,000	23,035	7.86%
TELEPHONE	25	88	(63)	125	447	(322)	300	(147)	148.90%
CONFERENCE CALLS	25	-	25	126	-	126	302	302	0.00%
MISCELLANEOUS	417	-	417	2,083	-	2,083	5,000	5,000	0.00%
TOTAL DIRECT EXPENSES:	**3,361**	**692**	**2,670**	**27,515**	**5,939**	**21,576**	**76,045**	**70,106**	**7.81%**
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	21,598	21,332	266	106,107	110,659	(4,552)	257,297	146,637	43.01%
BENEFITS EXPENSE	6,910	6,912	(2)	35,056	32,979	2,077	83,426	50,447	39.53%
OTHER INDIRECT EXPENSE	9,261	13,458	(4,197)	46,905	46,717	188	113,165	66,448	41.28%
TOTAL INDIRECT EXPENSES:	**37,769**	**41,703**	**(3,933)**	**188,068**	**190,355**	**(2,287)**	**453,887**	**263,532**	**41.94%**
TOTAL ALL EXPENSES:	**41,131**	**42,394**	**(1,264)**	**215,583**	**196,294**	**19,290**	**529,932**	**333,639**	**37.04%**
NET INCOME (LOSS):	**(41,131)**	**(42,394)**	**(1,264)**	**(215,583)**	**(196,294)**	**19,290**	**(529,932)**	**(333,639)**	**37.04%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
COMMUNICATION STRATEGIES FTE									
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	12,555	12,457	99	61,679	62,669	(990)	149565	86,896	41.90%
BENEFITS EXPENSE	3,653	3,628	25	17,730	16,989	742	43,303	26,315	39.23%
OTHER INDIRECT EXPENSE	2,435	3,560	(1,125)	12,333	12,356	(24)	29,754	17,398	41.53%
TOTAL INDIRECT EXPENSES:	**18,643**	**19,644**	**(1,001)**	**91,742**	**92,014**	**(272)**	**222,622**	**130,608**	**41.33%**
NET INCOME (LOSS):	**(18,643)**	**(19,644)**	**(1,001)**	**(91,742)**	**(92,014)**	**(272)**	**(222,622)**	**(130,608)**	**41.33%**

Washington State Bar Association

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41.67% OF YEAR COMPLETE

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
CLIENT PROTECTION FUND									
REVENUE:									
CPF RESTITUTION	290	43,572	43,282	992	49,936	48,944	4,000	(45,936)	1248.40%
CPF MEMBER ASSESSMENTS	29,517	33,030	3,513	311,829	342,640	30,811	515,540	172,900	66.46%
INTEREST INCOME	833	1,310	476	4,167	2,843	(1,324)	10,000	7,157	28.43%
TOTAL REVENUE:	**30,640**	**77,912**	**47,272**	**316,988**	**395,419**	**78,432**	**529,540**	**134,121**	**74.67%**
DIRECT EXPENSES:									
BANK FEES - WELLS FARGO	120	162	(42)	479	916	(437)	1,000	84	91.58%
GIFTS TO INJURED CLIENTS	25,116	4,400	20,716	30,223	387	29,836	500,000	499,613	0.08%
CPF BOARD EXPENSES	517	-	517	862	21	840	1,200	1,179	1.78%
STAFF MEMBERSHIP DUES	200	-	200	200	-	200	200	200	0.00%
TOTAL DIRECT EXPENSES:	**25,953**	**4,562**	**21,392**	**31,763**	**1,324**	**30,439**	**502,400**	**501,076**	**0.26%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.23 FTE)	7,091	7,084	7	34,838	36,097	(1,259)	84,478	48,381	42.73%
BENEFITS EXPENSE	2,880	2,877	3	14,466	13,649	817	34,624	20,975	39.42%
OTHER INDIRECT EXPENSE	2,995	4,340	(1,345)	15,169	15,064	105	36,598	21,533	41.16%
TOTAL INDIRECT EXPENSES:	**12,966**	**14,301**	**(1,334)**	**64,473**	**64,810**	**(337)**	**155,699**	**90,889**	**41.62%**
TOTAL ALL EXPENSES:	**38,919**	**18,862**	**20,057**	**96,236**	**66,134**	**30,103**	**658,099**	**591,966**	**10.05%**
NET INCOME (LOSS):	**(8,280)**	**59,049**	**67,329**	**220,752**	**329,286**	**108,534**	**(128,559)**	**(457,845)**	**-256.14%**

Washington State Bar Association

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
DESKBOOKS									
REVENUE:									
SHIPPING & HANDLING	250	234	(16)	1,250	1,960	710	3,000	1,040	65.32%
DESKBOOK SALES	8,333	7,090	(1,243)	41,667	66,591	24,925	100,000	33,409	66.59%
SECTION PUBLICATION SALES	417	1,100	683	2,083	9,590	7,507	5,000	(4,590)	191.80%
CASEMAKER ROYALTIES	4,167	-	(4,167)	20,833	21,317	484	50,000	28,683	42.63%
TOTAL REVENUE:	**13,167**	**8,424**	**(4,743)**	**65,833**	**99,458**	**33,625**	**158,000**	**58,542**	**62.95%**
DIRECT EXPENSES:									
COST OF SALES - DESKBOOKS	4,740	2,673	2,068	23,700	33,740	(10,040)	56,880	23,140	59.32%
COST OF SALES - SECTION PUBLICATION	167	343	(177)	833	2,856	(2,022)	2,000	(856)	142.79%
SPLITS TO SECTIONS	1,250	1,412	(162)	6,250	3,193	3,057	15,000	11,807	21.29%
DESKBOOK ROYALTIES	274	199	75	274	199	75	500	301	39.87%
POSTAGE & DELIVER-DESKBOOKS	250	634	(384)	1,250	2,620	(1,370)	3,000	380	87.35%
FLIERS/CATALOGS	125	-	125	625	2,507	(1,882)	1,500	(1,007)	167.15%
ONLINE LEGAL RESEARCH	151	153	(3)	302	610	(308)	1,672	1,062	36.48%
POSTAGE - FLIERS/CATALOGS	63	936	(874)	313	936	(624)	750	(186)	124.83%
COMPLIMENTARY BOOK PROGRAM	83	-	83	417	-	417	1,000	1,000	0.00%
OBSOLETE INVENTORY	1,750	2,945	(1,195)	8,750	14,726	(5,976)	21,000	6,274	70.12%
BAD DEBT EXPENSE	8	-	8	42	-	42	100	100	0.00%
RECORDS STORAGE - OFF SITE	675	1,350	(675)	3,375	4,450	(1,075)	8,100	3,650	54.94%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	220	220	0.00%
MISCELLANEOUS	17	-	17	83	-	83	200	200	0.00%
SUBSCRIPTIONS	-	-	-	-	185	(185)	185	0	99.98%
TOTAL DIRECT EXPENSES:	**9,553**	**10,645**	**(1,093)**	**46,213**	**66,023**	**(19,809)**	**112,107**	**46,085**	**58.89%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.52 FTE)	10,472	10,499	(27)	51,447	54,462	(3,014)	124754	70,292	43.66%
BENEFITS EXPENSE	3,744	3,736	8	18,856	17,898	958	45,062	27,164	39.72%
OTHER INDIRECT EXPENSE	3,701	5,413	(1,711)	18,746	18,788	(43)	45,226	26,438	41.54%
TOTAL INDIRECT EXPENSES:	**17,917**	**19,648**	**(1,730)**	**89,049**	**91,148**	**(2,099)**	**215,042**	**123,894**	**42.39%**
TOTAL ALL EXPENSES:	**27,470**	**30,293**	**(2,823)**	**135,262**	**157,170**	**(21,908)**	**327,149**	**169,979**	**48.04%**
NET INCOME (LOSS):	**(14,303)**	**(21,869)**	**(7,566)**	**(69,429)**	**(57,712)**	**11,717**	**(169,149)**	**(111,437)**	**34.12%**

Washington State Bar Association

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
DISCIPLINE									
REVENUE:									
COPY FEES	-	-	-	-	60	60	-	(60)	
AUDIT REVENUE	208	234	25	1,042	659	(383)	2,500	1,841	26.35%
RECOVERY OF DISCIPLINE COSTS	6,667	10,207	3,540	33,333	39,983	6,650	80,000	40,017	49.98%
DISCIPLINE HISTORY SUMMARY	1,250	1,530	1,530	6,250	7,200	950	15,000	7,800	48.00%
TOTAL REVENUE:	**8,125**	**11,971**	**5,096**	**40,625**	**47,902**	**7,277**	**97,500**	**49,598**	**49.13%**
DIRECT EXPENSES:									
PUBLICATIONS PRODUCTION	21	181	(160)	104	181	(76)	250	69	72.24%
STAFF TRAVEL/PARKING	2,917	-	2,917	14,583	7,920	6,663	35,000	27,080	22.63%
STAFF MEMBERSHIP DUES	420	-	420	2,098	3,080	(982)	5,035	1,955	61.17%
TELEPHONE	242	184	58	1,208	901	307	2,900	1,999	31.08%
COURT REPORTERS	2,917	160	2,757	14,583	5,537	9,046	35,000	29,463	15.82%
OUTSIDE COUNSEL/AIC	417	-	417	2,083	-	2,083	5,000	5,000	0.00%
LITIGATION EXPENSES	2,917	492	2,425	14,583	2,215	12,368	35,000	32,785	6.33%
DISABILITY EXPENSES	833	4,900	(4,067)	4,167	4,900	(733)	10,000	5,100	49.00%
ONLINE LEGAL RESEARCH	4,441	4,450	(9)	22,203	17,691	4,513	53,288	35,597	33.20%
LAW LIBRARY	1,000	49	951	5,000	2,943	2,057	12,000	9,057	24.52%
TRANSLATION SERVICES	83	-	83	417	-	417	1,000	1,000	0.00%
CONFERENCE CALLS	-	2	(2)	-	2	(2)	-	(2)	
TOTAL DIRECT EXPENSES:	**16,206**	**10,418**	**5,789**	**81,030**	**45,370**	**35,660**	**194,473**	**149,103**	**23.33%**
INDIRECT EXPENSES:									
SALARY EXPENSE (37.00 FTE)	301,968	297,423	4,545	1,483,591	1,517,517	(33,926)	3,627,767	2,110,250	41.83%
BENEFITS EXPENSE	91,622	91,303	319	456,360	434,068	22,292	1,097,713	663,645	39.54%
OTHER INDIRECT EXPENSE	90,094	131,268	(41,174)	456,306	455,660	646	1,100,901	645,241	41.39%
TOTAL INDIRECT EXPENSES:	**483,684**	**519,993**	**(36,310)**	**2,396,257**	**2,407,245**	**(10,988)**	**5,826,381**	**3,419,136**	**41.32%**
TOTAL ALL EXPENSES:	**499,890**	**530,411**	**(30,521)**	**2,477,288**	**2,452,615**	**24,672**	**6,020,854**	**3,568,238**	**40.74%**
NET INCOME (LOSS):	**(491,765)**	**(518,440)**	**(26,676)**	**(2,436,663)**	**(2,404,713)**	**31,949**	**(5,923,354)**	**(3,518,640)**	**40.60%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
DIVERSITY									
REVENUE:									
DONATIONS	10,417	-	(10,417)	52,083	135,000	82,917	125,000	(10,000)	108.00%
WORK STUDY GRANTS	865	-	(865)	4,323	-	(4,323)	10,374	10,374	0.00%
TOTAL REVENUE:	**11,281**	**-**	**(11,281)**	**56,406**	**135,000**	**78,594**	**135,374**	**374**	**99.72%**
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	333	-	333	1,667	-	1,667	4,000	4,000	0.00%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	640	640	0.00%
COMMITTEE FOR DIVERSITY	500	-	500	1,400	17	1,383	4,900	4,883	0.34%
DIVERSITY EVENTS & PROJECTS	1,438	-	1,438	7,188	750	6,438	17,250	16,500	4.35%
TOTAL DIRECT EXPENSES:	**2,271**	**-**	**2,271**	**10,254**	**767**	**9,487**	**26,790**	**26,023**	**2.86%**
INDIRECT EXPENSES:									
SALARY EXPENSE (2.46 FTE)	16,197	5,571	10,626	79,715	42,992	36,722	193,096	150,104	22.26%
BENEFITS EXPENSE	4,904	4,902	2	24,822	23,412	1,409	59,149	35,737	39.58%
OTHER INDIRECT EXPENSE	5,990	8,728	(2,738)	30,338	30,298	40	73,195	42,897	41.39%
TOTAL INDIRECT EXPENSES:	**27,091**	**19,202**	**7,889**	**134,874**	**96,703**	**38,171**	**325,440**	**228,737**	**29.71%**
TOTAL ALL EXPENSES:	**29,362**	**19,202**	**10,160**	**145,129**	**97,470**	**47,659**	**352,230**	**254,760**	**27.67%**
NET INCOME (LOSS):	**(18,081)**	**(19,202)**	**(1,121)**	**(88,723)**	**37,530**	**126,253**	**(216,856)**	**(254,386)**	**-17.31%**

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41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
FOUNDATION									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
CONSULTING SERVICES	3,000	3,000	-	3,000	3,000	-	3,000	-	100.00%
PRINTING & COPYING	75	-	75	375	-	375	900	900	0.00%
STAFF TRAVEL/PARKING	500	-	500	500	-	500	500	500	0.00%
SUPPLIES	21	-	21	104	-	104	250	250	0.00%
SPECIAL EVENTS	-	-	-	-	-	-	5,000	5,000	0.00%
BOARD OF TRUSTEES	133	-	133	362	-	362	2,000	2,000	0.00%
POSTAGE	-	-	-	500	-	500	500	500	0.00%
TOTAL DIRECT EXPENSES:	**3,728**	**3,000**	**728**	**4,841**	**3,000**	**1,841**	**12,150**	**9,150**	**24.69%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	6,443	6,438	6	31,655	32,843	(1,188)	76,759	43,916	42.79%
BENEFITS EXPENSE	1,309	1,311	(2)	6,698	6,296	402	15,863	9,567	39.69%
OTHER INDIRECT EXPENSE	2,435	3,560	(1,125)	12,333	12,356	(24)	29,754	17,398	41.53%
TOTAL INDIRECT EXPENSES:	**10,188**	**11,308**	**(1,120)**	**50,685**	**51,495**	**(810)**	**122,376**	**70,881**	**42.08%**
TOTAL ALL EXPENSES:	**13,916**	**14,308**	**(392)**	**55,526**	**54,495**	**1,031**	**134,526**	**80,031**	**40.51%**
NET INCOME (LOSS):	**(13,916)**	**(14,308)**	**(392)**	**(55,526)**	**(54,495)**	**1,031**	**(134,526)**	**(80,031)**	**40.51%**

Washington State Bar Association

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41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
HUMAN RESOURCES									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	-	-	-	44	-	44	741	741	0.00%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	193	193	0.00%
SUBSCRIPTIONS	295	-	295	574	173	401	3,505	3,332	4.93%
STAFF TRAINING- GENERAL	8,333	-	8,333	41,667	209	41,458	100,000	99,791	0.21%
RECRUITING AND ADVERTISING	583	14,313	(13,730)	2,917	15,310	(12,394)	7,000	(8,310)	218.72%
PAYROLL PROCESSING	1,767	1,346	421	16,573	17,694	(1,121)	49,000	31,306	36.11%
SALARY SURVEYS	242	-	242	1,208	-	1,208	2,900	2,900	0.00%
CONSULTING SERVICES	-	16,000	(16,000)	-	23,200	(23,200)	37,500	14,300	61.87%
CONFERENCE CALLS	-	13	(13)	-	13	(13)	-	(13)	
TRANSFER TO INDIRECT EXPENSE	(11,220)	(31,672)	20,452	(62,983)	(56,599)	(6,383)	(200,839)	(144,240)	28.18%
TOTAL DIRECT EXPENSES:	-	-	-	-	-	**0.00**	-	-	
INDIRECT EXPENSES:									
SALARY EXPENSE (3.00 FTE)	24,214	34,725	(10,511)	118,955	96,787	22,168	288,452	191,665	33.55%
BENEFITS EXPENSE	7,081	7,057	24	35,676	34,005	1,672	85,241	51,236	39.89%
OTHER INDIRECT EXPENSE	7,021	10,630	(3,609)	35,632	36,900	(1,268)	84,930	48,030	43.45%
TOTAL INDIRECT EXPENSES:	**38,315**	**52,412**	**(14,097)**	**190,263**	**167,691**	**22,572**	**458,623**	**290,932**	**36.56%**
TOTAL ALL EXPENSES:	**38,315**	**52,412**	**(14,097)**	**190,263**	**167,691**	**22,572**	**458,623**	**290,932**	**36.56%**
NET INCOME (LOSS):	**(38,315)**	**(52,412)**	**(14,097)**	**(190,263)**	**(167,691)**	**22,572**	**(458,623)**	**(290,932)**	**36.56%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
LAW CLERK PROGRAM									
REVENUE:									
LAW CLERK FEES	37,714	38,125	411	155,506	152,907	(2,599)	190,000	37,093	80.48%
LAW CLERK APPLICATION FEES	88	100	12	1,055	1,000	(55)	3,000	2,000	33.33%
TOTAL REVENUE:	**37,802**	**38,225**	**423**	**156,561**	**153,907**	**(2,654)**	**193,000**	**39,093**	**79.74%**
DIRECT EXPENSES:									
SUBSCRIPTIONS	-	-	-	-	-	-	250	250	0.00%
CHARACTER & FITNESS INVESTIGATIONS	-	-	-	-	-	-	100	100	0.00%
LAW CLERK BOARD EXPENSE	1,395	0	1,395	3,526	24	3,502	7,000	6,976	0.34%
STAFF TRAVEL/PARKING	40	-	40	40	-	40	300	300	0.00%
LAW CLERK OUTREACH	456	-	456	2,252	-	2,252	3,000	3,000	0.00%
TOTAL DIRECT EXPENSES:	**1,891**	**0**	**1,891**	**5,818**	**24**	**5,794**	**10,650**	**10,626**	**0.22%**
INDIRECT EXPENSES:									
SALARY EXPENSE (0.90 FTE)	4,146	4,592	(446)	20,369	23,381	(3,012)	49,392	26,011	47.34%
BENEFITS EXPENSE	1,569	1,572	(3)	7,974	7,454	521	18,957	11,503	39.32%
OTHER INDIRECT EXPENSE	2,191	3,170	(978)	11,099	11,002	97	26,779	15,777	41.08%
TOTAL INDIRECT EXPENSES:	**7,907**	**9,333**	**(1,427)**	**39,443**	**41,837**	**(2,394)**	**95,128**	**53,291**	**43.98%**
TOTAL ALL EXPENSES:	**9,797**	**9,333**	**464**	**45,260**	**41,861**	**3,400**	**105,778**	**63,917**	**39.57%**
NET INCOME (LOSS):	**28,005**	**28,892**	**887**	**111,301**	**112,046**	**746**	**87,222**	**(24,824)**	**128.46%**

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LEGISLATIVE									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	1,374	-	1,374	2,900	-	2,900	4,550	4,550	0.00%
STAFF MEMBERSHIP DUES	-	-	-	450	-	450	450	450	0.00%
SUBSCRIPTIONS	-	-	-	2,000	1,982	18	2,000	18	99.09%
OLYMPIA RENT	-	-	-	65	-	65	2,500	2,500	0.00%
CONTRACT LOBBYIST	3,333	4,333	(1,000)	6,667	8,667	(2,000)	20,000	11,333	43.33%
LEGISLATIVE COMMITTEE	-	-	-	-	10	(10)	2,500	2,490	0.39%
BOG LEGISLATIVE COMMITTEE	-	-	-	-	-	-	250	250	0.00%
TOTAL DIRECT EXPENSES:	**4,707**	**4,333**	**374**	**12,081**	**10,658**	**1,423**	**32,250**	**21,592**	**33.05%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	5,902	3,128	2,774	28,996	25,638	3,358	70,311	44,673	36.46%
BENEFITS EXPENSE	2,228	2,227	1	11,249	10,625	623	26,844	16,219	39.58%
OTHER INDIRECT EXPENSE	2,435	3,560	(1,125)	12,333	12,356	(24)	29,754	17,398	41.53%
TOTAL INDIRECT EXPENSES:	**10,565**	**8,914**	**1,651**	**52,577**	**48,620**	**3,958**	**126,909**	**78,289**	**38.31%**
TOTAL ALL EXPENSES:	**15,272**	**13,248**	**2,025**	**64,658**	**59,278**	**5,381**	**159,159**	**99,881**	**37.24%**
NET INCOME (LOSS):	**(15,272)**	**(13,248)**	**2,025**	**(64,658)**	**(59,278)**	**5,381**	**(159,159)**	**(99,881)**	**37.24%**

Washington State Bar Association

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LICENSING & MEMBERSHIP RECORDS									
REVENUE:									
STATUS CERTIFICATE FEES	2,389	2,525	136	13,729	13,680	(49)	26,300	12,620	52.01%
INVESTIGATION FEES	2,125	1,800	(325)	10,526	8,600	(1,926)	24,000	15,400	35.83%
PRO HAC VICE	22,900	47,174	24,274	114,500	163,048	48,548	274,800	111,752	59.33%
MEMBER CONTACT INFORMATION	309	456	147	8,243	1,601	(6,641)	11,000	9,399	14.56%
PHOTO BAR CARD SALES	15	24	9	174	120	(54)	350	230	34.29%
TOTAL REVENUE:	**27,738**	**51,979**	**24,241**	**147,172**	**187,049**	**39,877**	**336,450**	**149,401**	**55.59%**
DIRECT EXPENSES:									
DEPRECIATION	96	-	96	480	1,151	(671)	1,151	0	99.98%
POSTAGE	-	87	(87)	4,507	6,207	(1,700)	18,300	12,093	33.92%
LICENSING FORMS	-	-	-	2,500	2,845	(345)	2,500	(345)	113.81%
TOTAL DIRECT EXPENSES:	**96**	**87**	**9**	**7,487**	**10,203**	**(2,717)**	**21,951**	**11,748**	**46.48%**
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	31,142	30,202	940	146,718	148,998	(2,280)	343,552	194,555	43.37%
BENEFITS EXPENSE	10,572	10,541	31	53,126	50,540	2,586	127,131	76,591	39.75%
OTHER INDIRECT EXPENSE	9,253	13,458	(4,206)	46,864	46,717	147	113,066	66,349	41.32%
TOTAL INDIRECT EXPENSES:	**50,967**	**54,201**	**(3,234)**	**246,708**	**246,254**	**453**	**583,749**	**337,495**	**42.18%**
TOTAL ALL EXPENSES:	**51,063**	**54,289**	**(3,226)**	**254,194**	**256,458**	**(2,263)**	**605,700**	**349,242**	**42.34%**
NET INCOME (LOSS):	**(23,325)**	**(2,309)**	**21,015**	**(107,022)**	**(69,409)**	**37,613**	**(269,250)**	**(199,841)**	**25.78%**

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LIMITED LICENSE LEGAL TECHNICIAN PROGRAM									
REVENUE:									
SEMINAR REGISTRATIONS	-	-	-	227	796	569	1,750	954	45.49%
LLLT LICENSE FEES	1,147	815	(332)	4,533	3,281	(1,252)	10,905	7,624	30.09%
LLLT LATE LICENSE FEES	-	206	206	412	206	(206)	412	206	50.02%
INVESTIGATION FEES	-	-	-	133	-	(133)	300	300	0.00%
LLLT EXAM FEES	-	1,200	1,200	5,004	7,500	2,496	9,600	2,100	78.13%
LLLT WAIVER FEES	-	-	-	-	-	-	300	300	0.00%
TOTAL REVENUE:	**1,147**	**2,221**	**1,074**	**10,310**	**11,783**	**1,474**	**23,267**	**11,484**	**50.64%**
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	-	-	-	49	-	49	200	200	0.00%
LLLT BOARD	1,136	-	1,136	2,765	-	2,765	7,000	7,000	0.00%
LLLT OUTREACH	42	-	42	468	-	468	1,000	1,000	0.00%
LICENSING FORMS	-	-	-	-	-	-	3	3	0.00%
TOTAL DIRECT EXPENSES:	**1,177**	**-**	**1,177**	**3,282**	**-**	**3,282**	**8,203**	**8,203**	**0.00%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	5,249	3,867	1,383	25,788	21,632	4,156	62,533	40,901	34.59%
BENEFITS EXPENSE	1,952	1,954	(2)	9,892	9,299	593	23,558	14,259	39.47%
OTHER INDIRECT EXPENSE	2,435	3,560	(1,125)	12,333	12,356	(24)	29,754	17,398	41.53%
TOTAL INDIRECT EXPENSES:	**9,637**	**9,380**	**256**	**48,013**	**43,288**	**4,725**	**115,845**	**72,557**	**37.37%**
TOTAL ALL EXPENSES:	**10,814**	**9,380**	**1,434**	**51,295**	**43,288**	**8,007**	**124,048**	**80,760**	**34.90%**
NET INCOME (LOSS):	**(9,667)**	**(7,159)**	**2,508**	**(40,985)**	**(31,504)**	**9,481**	**(100,781)**	**(69,277)**	**31.26%**

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LIMITED PRACTICE OFFICERS									
REVENUE:									
INVESTIGATION FEES	-	-	-	151	600	449	1,000	400	60.00%
LPO EXAMINATION FEES	1,422	1,400	(22)	8,323	10,000	1,677	18,400	8,400	54.35%
LPO LICENSE FEES	16,437	16,262	(175)	71,095	71,956	860	171,400	99,444	41.98%
LPO LATE LICENSE FEES	-	-	-	865	-	(865)	4,500	4,500	0.00%
TOTAL REVENUE:	**17,859**	**17,662**	**(197)**	**80,435**	**82,556**	**2,121**	**195,300**	**112,744**	**42.27%**
DIRECT EXPENSES:									
FACILITY, PARKING, FOOD	-	-	-	-	-	-	100	100	0.00%
EXAM WRITING	-	-	-	-	-	-	9,750	9,750	0.00%
ONLINE LEGAL RESEARCH	151	153	(3)	302	610	(308)	1,672	1,062	36.48%
LAW LIBRARY	183	294	(111)	366	1,353	(987)	3,663	2,310	36.94%
LPO BOARD	510	-	510	809	4	805	3,000	2,996	0.15%
LPO OUTREACH	34	-	34	34	-	34	4,000	4,000	0.00%
PRINTING & COPYING	100	-	100	100	-	100	100	100	0.00%
STAFF TRAVEL/PARKING	-	-	-	-	-	-	500	500	0.00%
TOTAL DIRECT EXPENSES:	**977**	**447**	**530**	**1,611**	**1,967**	**(356)**	**22,785**	**20,818**	**8.63%**
INDIRECT EXPENSES:									
SALARY EXPENSE (0.50 FTE)	2,454	2,417	38	12,057	12,569	(511)	29,238	16,669	42.99%
BENEFITS EXPENSE	921	921	(1)	4,672	4,378	294	11,115	6,737	39.39%
OTHER INDIRECT EXPENSE	1,217	1,755	(538)	6,166	6,094	73	14,877	8,783	40.96%
TOTAL INDIRECT EXPENSES:	**4,592**	**5,094**	**(501)**	**22,895**	**23,040**	**(145)**	**55,230**	**32,190**	**41.72%**
TOTAL ALL EXPENSES:	**5,570**	**5,541**	**29**	**24,506**	**25,008**	**(502)**	**78,015**	**53,007**	**32.05%**
NET INCOME (LOSS):	**12,289**	**12,122**	**(168)**	**55,929**	**57,548**	**1,619**	**117,285**	**59,737**	**49.07%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
MEMBER ASSISTANCE PROGRAM									
REVENUE:									
DIVERSIONS	1,000	1,125	125	6,000	4,176	(1,824)	8,000	3,824	52.20%
TOTAL REVENUE:	**1,000**	**1,125**	**125**	**6,000**	**4,176**	**(1,824)**	**8,000**	**3,824**	**52.20%**
DIRECT EXPENSES:									
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	225	225	0.00%
PROF LIAB INSURANCE	-	825	(825)	811	825	(14)	850	25	97.06%
TOTAL DIRECT EXPENSES:	**-**	**825**	**(825)**	**811**	**825**	**(14)**	**1,075**	**250**	**76.74%**
INDIRECT EXPENSES:									
SALARY EXPENSE (0.50 FTE)	4,394	4,391	3	21,586	22,401	(816)	52,342	29,941	42.80%
BENEFITS EXPENSE	2,052	2,042	10	10,257	9,805	451	24,619	14,814	39.83%
OTHER INDIRECT EXPENSE	1,217	1,755	(538)	6,166	6,094	73	14,877	8,783	40.96%
TOTAL INDIRECT EXPENSES:	**7,663**	**8,188**	**(525)**	**38,008**	**38,300**	**(292)**	**91,838**	**53,538**	**41.70%**
TOTAL ALL EXPENSES:	**7,663**	**9,013**	**(1,350)**	**38,819**	**39,125**	**(306)**	**92,913**	**53,788**	**42.11%**
NET INCOME (LOSS):	**(6,663)**	**(7,888)**	**(1,225)**	**(32,819)**	**(34,949)**	**(2,130)**	**(84,913)**	**(49,964)**	**41.16%**

Washington State Bar Association

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For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
MEMBERSHIP BENEFITS									
REVENUE:									
SPONSORSHIPS	1,358	-	(1,358)	1,358	-	(1,358)	9,000	9,000	0.00%
INTERNET SALES	-	588	588	-	3,969	3,969	19,000	15,031	20.89%
TOTAL REVENUE:	**1,358**	**588**	**(770)**	**1,358**	**3,969**	**2,611**	**28,000**	**24,031**	**14.18%**
DIRECT EXPENSES:									
TRANSCRIPTION SERVICES	-	-	-	-	-	-	1,500	1,500	0.00%
CONFERENCE CALLS	2,000	-	2,000	2,000	-	2,000	2,000	2,000	0.00%
LEGAL LUNCHBOX SPEAKERS & PROGRAM	167	-	167	833	-	833	2,000	2,000	0.00%
WSBA CONNECTS	-	1,200	(1,200)	27,591	20,600	6,991	46,560	25,960	44.24%
CASEMAKER & FASTCASE	-	5,416	(5,416)	100,852	98,394	2,458	136,436	38,042	72.12%
TOTAL DIRECT EXPENSES:	**2,167**	**6,616**	**(4,449)**	**131,277**	**118,994**	**12,283**	**188,496**	**69,502**	**63.13%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.16 FTE)	6,522	5,541	981	32,040	31,790	250	77,694	45,903	40.92%
BENEFITS EXPENSE	1,868	1,870	(2)	9,507	8,921	585	22,582	13,661	39.51%
OTHER INDIRECT EXPENSE	2,825	4,096	(1,271)	14,306	14,218	88	34,515	20,297	41.19%
TOTAL INDIRECT EXPENSES:	**11,214**	**11,507**	**(293)**	**55,853**	**54,930**	**923**	**134,790**	**79,861**	**40.75%**
TOTAL ALL EXPENSES:	**13,381**	**18,123**	**(4,742)**	**187,130**	**173,924**	**13,206**	**323,286**	**149,362**	**53.80%**
NET INCOME (LOSS):	**(12,023)**	**(17,535)**	**(5,513)**	**(185,771)**	**(169,955)**	**15,816**	**(295,286)**	**(125,331)**	**57.56%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
MANDATORY CONTINUING LEGAL EDUCATION									
REVENUE:									
ACCREDITED PROGRAM FEES	40,000	41,700	1,700	200,000	217,600	17,600	480,000	262,400	45.33%
FORM 1 LATE FEES	12,500	17,900	5,400	62,500	93,800	31,300	150,000	56,200	62.53%
MEMBER LATE FEES	225	600	375	1,125	1,950	825	2,700	750	72.22%
ANNUAL ACCREDITED SPONSOR FEES	-	-	-	42,250	42,250	-	42,250	-	100.00%
ATTENDANCE LATE FEES	6,667	9,150	2,483	33,333	51,500	18,167	80,000	28,500	64.38%
COMITY CERTIFICATES	433	1,364	931	12,112	8,787	(3,325)	13,000	4,213	67.59%
TOTAL REVENUE:	**59,825**	**70,714**	**10,889**	**351,321**	**415,887**	**64,567**	**767,950**	**352,063**	**54.16%**
DIRECT EXPENSES:									
DEPRECIATION	11,920	20,866	(8,945)	59,602	104,332	(44,730)	143,045	38,713	72.94%
STAFF MEMBERSHIP DUES	-	-	-	500	-	500	500	500	0.00%
ONLINE LEGAL RESEARCH	186	153	33	372	610	(238)	1,672	1,062	36.48%
LAW LIBRARY	17	12	5	33	56	(22)	150	95	36.95%
MCLE BOARD	-	-	-	1,300	-	1,300	2,600	2,600	0.00%
STAFF TRAVEL/PARKING	4	-	4	21	-	21	50	50	0.00%
TOTAL DIRECT EXPENSES:	**12,127**	**21,031**	**(8,904)**	**61,828**	**104,997**	**(43,169)**	**148,018**	**43,021**	**70.94%**
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	20,010	19,936	74	126,649	104,985	21,664	266,722	161,737	39.36%
BENEFITS EXPENSE	7,800	7,802	(2)	39,436	37,101	2,335	94,034	56,933	39.45%
OTHER INDIRECT EXPENSE	9,253	13,458	(4,206)	46,864	46,717	147	113,066	66,349	41.32%
TOTAL INDIRECT EXPENSES:	**37,063**	**41,196**	**(4,133)**	**212,948**	**188,802**	**24,146**	**473,822**	**285,020**	**39.85%**
TOTAL ALL EXPENSES:	**49,190**	**62,228**	**(13,037)**	**274,777**	**293,800**	**(19,023)**	**621,840**	**328,040**	**47.25%**
NET INCOME (LOSS):	**10,635**	**8,487**	**(2,148)**	**76,544**	**122,088**	**45,544**	**146,110**	**24,022**	**83.56%**

Washington State Bar Association

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For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
MEMBER SERVICES & ENGAGEMENT									
REVENUE:									
ROYALTIES	3,046.04	4,485.89	1,439.85	16,138.07	22,215.80	6,077.73	49,250.00	27,034.20	45.11%
NMP PRODUCT SALES	3,780	1,464	(2,316)	56,508	7,984	(48,524)	80,000	72,016	9.98%
SEMINAR REGISTRATIONS	3,308	9,915	6,607	3,308	17,194	13,886	15,000	(2,194)	114.63%
TRIAL ADVOCACY PROGRAM	-	-	-	-	-	-	10,000	10,000	0.00%
TOTAL REVENUE:	**10,133**	**15,865**	**5,732**	**75,953**	**47,393**	**(28,560)**	**154,250**	**106,857**	**30.73%**
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	208	-	208	1,042	-	1,042	2,500	2,500	0.00%
SUBSCRIPTIONS	42	-	42	208	60	148	500	440	12.00%
CONFERENCE CALLS	18	-	18	35	-	35	300	300	0.00%
YLL SECTION PROGRAM	(173)	(35)	(138)	948	770	178	1,500	730	51.33%
WYLC CLE COMPS	-	-	-	-	-	-	1,000	1,000	0.00%
WYLC OUTREACH EVENTS	-	-	-	150	-	150	2,500	2,500	0.00%
WYL COMMITTEE	765	-	765	9,341	-	9,341	12,500	12,500	0.00%
TRIAL ADVOCACY EXPENSES	-	-	-	0	-	0	5,000	5,000	0.00%
RECEPTION/FORUM EXPENSE	-	-	-	1,699	67	1,632	4,000	3,933	1.67%
WYLC SCHOLARSHIPS/DONATIONS/GRANT	-	-	-	-	-	-	5,000	5,000	0.00%
STAFF MEMBERSHIP DUES	37	-	37	148	-	148	490	490	0.00%
LENDING LIBRARY	2,463	-	2,463	2,823	40	2,783	6,200	6,160	0.65%
NMP SPEAKERS & PROGRAM DEVELOPMENT	256	-	256	541	-	541	1,500	1,500	0.00%
TOTAL DIRECT EXPENSES:	**3,616**	**(35)**	**3,651**	**16,935**	**937**	**15,998**	**42,990**	**42,053**	**2.18%**
INDIRECT EXPENSES:									
SALARY EXPENSE (4.13 FTE)	24,009	14,356	9,653	117,949	87,037	30,912	286,011	198,974	30.43%
BENEFITS EXPENSE	7,274	7,277	(3)	36,930	34,749	2,181	87,848	53,099	39.56%
OTHER INDIRECT EXPENSE	10,056	14,629	(4,572)	50,934	50,779	154	122,884	72,105	41.32%
TOTAL INDIRECT EXPENSES:	**41,339**	**36,261**	**5,078**	**205,812**	**172,565**	**33,248**	**496,743**	**324,178**	**34.74%**
TOTAL ALL EXPENSES:	**44,955**	**36,226**	**8,729**	**222,747**	**173,501**	**49,246**	**539,733**	**366,232**	**32.15%**
NET INCOME (LOSS):	**(34,822)**	**(20,361)**	**14,461**	**(146,794)**	**(126,108)**	**20,686**	**(385,483)**	**(259,375)**	**32.71%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
OFFICE OF THE EXECUTIVE DIRECTOR									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
WASHINGTON LEADERSHIP INSTITUTE	6,667	-	6,667	33,333	-	33,333	80,000	80,000	0.00%
ABA DELEGATES	417	-	417	2,083	-	2,083	5,000	5,000	0.00%
SECTION/COMMITTEE CHAIR MTGS	-	-	-	500	-	500	500	500	0.00%
VOLUNTEER SUPPORT	917	-	917	4,583	-	4,583	11,000	11,000	0.00%
BOG ELECTIONS	-	-	-	1	-	1	1	1	0.00%
ED TRAVEL & OUTREACH	417	-	417	2,083	-	2,083	5,000	5,000	0.00%
LAW LIBRARY	15	12	3	104	56	49	150	95	36.95%
STAFF MEMBERSHIP DUES	-	-	-	-	50	(50)	-	(50)	
TOTAL DIRECT EXPENSES:	**8,432**	**12**	**8,420**	**42,689**	**106**	**42,583**	**101,651**	**101,546**	**0.10%**
INDIRECT EXPENSES:									
SALARY EXPENSE (3.00 FTE)	33,547	34,890	(1,342)	164,807	174,173	(9,366)	399,638	225,465	43.58%
BENEFITS EXPENSE	10,743	10,677	66	50,699	48,130	2,569	125,357	77,227	38.39%
OTHER INDIRECT EXPENSE	7,305	10,630	(3,325)	36,998	36,900	98	89,262	52,362	41.34%
TOTAL INDIRECT EXPENSES:	**51,595**	**56,197**	**(4,602)**	**252,504**	**259,203**	**(6,699)**	**614,257**	**355,054**	**42.20%**
TOTAL ALL EXPENSES:	**60,027**	**56,209**	**3,818**	**295,192**	**259,308**	**35,884**	**715,908**	**456,600**	**36.22%**
NET INCOME (LOSS):	**(60,027)**	**(56,209)**	**3,818**	**(295,192)**	**(259,308)**	**35,884**	**(715,908)**	**(456,600)**	**36.22%**

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	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
OFFICE OF GENERAL COUNSEL									
REVENUE:									
COPY FEES	-	90	90	-	117	117	-	(117)	
TOTAL REVENUE:	**-**	**90**	**90**	**-**	**117**	**117**	**-**	**(117)**	
DIRECT EXPENSES:									
DEPRECIATION	139	-	139	695	-	695	1,668	1,668	0.00%
STAFF TRAVEL/PARKING	8	-	8	42	-	42	100	100	0.00%
STAFF MEMBERSHIP DUES	1,500	-	1,500	1,500	25	1,475	1,500	1,475	1.67%
ONLINE LEGAL RESEARCH	1,115	921	194	2,230	3,660	(1,430)	10,034	6,374	36.48%
LAW LIBRARY	-	24	(24)	-	1,804	(1,804)	-	(1,804)	
COURT RULES COMMITTEE	-	2	(2)	1,055	2	1,053	2,250	2,248	0.10%
DISCIPLINE ADVISORY ROUNDTABLE	-	-	-	-	-	-	375	375	0.00%
CUSTODIANSHIPS	819	-	819	870	1,750	(881)	2,500	750	70.02%
ADMIN HEARINGS	-	7	(7)	-	7	(7)	-	(7)	
LITIGATION EXPENSES	21	-	21	104	-	104	250	250	0.00%
SUPPLIES	-	0	(0)	-	0	(0)	-	(0)	
CONFERENCE CALLS	-	17	(17)	-	17	(17)	-	(17)	
TOTAL DIRECT EXPENSES:	**3,602**	**972**	**2,630**	**6,496**	**7,266**	**(770)**	**18,677**	**11,411**	**38.90%**
INDIRECT EXPENSES:									
SALARY EXPENSE (6.38 FTE)	50,179	46,526	3,653	246,516	223,008	23,507	597,771	374,763	37.31%
BENEFITS EXPENSE	13,817	13,776	41	68,205	64,600	3,605	164,926	100,326	39.17%
OTHER INDIRECT EXPENSE	15,529	22,626	(7,097)	78,651	78,539	112	189,757	111,218	41.39%
TOTAL INDIRECT EXPENSES:	**79,526**	**82,928**	**(3,403)**	**393,371**	**366,147**	**27,224**	**952,454**	**586,307**	**38.44%**
TOTAL ALL EXPENSES:	**83,128**	**83,900**	**(772)**	**399,867**	**373,413**	**26,454**	**971,131**	**597,718**	**38.45%**
NET INCOME (LOSS):	**(83,128)**	**(83,810)**	**(682)**	**(399,867)**	**(373,296)**	**26,571**	**(971,131)**	**(597,835)**	**38.44%**

Washington State Bar Association

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
OFFICE OF GENERAL COUNSEL - DISCIPLINARY BOARD									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF MEMBERSHIP DUES	100	-	100	100	-	100	100	100	0.00%
LAW LIBRARY	-	73	(73)	-	336	(336)	-	(336)	
DISCIPLINARY BOARD EXPENSES	71	70	1	360	133	227	1,500	1,367	8.84%
CHIEF HEARING OFFICER	2,619	2,500	119	13,095	12,500	595	33,000	20,500	37.88%
HEARING OFFICER EXPENSES	-	-	-	1,629	-	1,629	1,500	1,500	0.00%
HEARING OFFICER TRAINING	-	-	-	229	-	229	550	550	0.00%
OUTSIDE COUNSEL	4,502	4,000	502	21,512	20,000	1,512	55,000	35,000	36.36%
TOTAL DIRECT EXPENSES:	**7,292**	**6,643**	**649**	**36,925**	**32,968**	**3,957**	**91,650**	**58,682**	**35.97%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.30 FTE)	7,840	7,832	8	38,516	40,785	(2,268)	93,398	52,613	43.67%
BENEFITS EXPENSE	2,710	2,709	1	13,598	12,817	780	32,566	19,749	39.36%
OTHER INDIRECT EXPENSE	3,165	4,632	(1,467)	16,032	16,080	(48)	38,680	22,600	41.57%
TOTAL INDIRECT EXPENSES:	**13,715**	**15,173**	**(1,458)**	**68,147**	**69,682**	**(1,535)**	**164,644**	**94,962**	**42.32%**
TOTAL ALL EXPENSES:	**21,008**	**21,817**	**(809)**	**105,072**	**102,650**	**2,421**	**256,294**	**153,644**	**40.05%**
NET INCOME (LOSS):	**(21,008)**	**(21,817)**	**(809)**	**(105,072)**	**(102,650)**	**2,421**	**(256,294)**	**(153,644)**	**40.05%**

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	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
OUTREACH & ENGAGEMENT									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	117	-	117	583	-	583	1,400	1,400	0.00%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	1,152	1,152	0.00%
ABA DELEGATES	948	-	948	948	-	948	5,600	5,600	0.00%
ANNUAL CHAIR MEETINGS	-	-	-	541	-	541	600	600	0.00%
JUDICIAL RECOMMENDATIONS COMMITTEE	375	-	375	1,875	-	1,875	4,500	4,500	0.00%
BAR OUTREACH	1,250	-	1,250	6,250	522	5,728	15,000	14,478	3.48%
TOTAL DIRECT EXPENSES:	**2,690**	**-**	**2,690**	**10,197**	**522**	**9,675**	**28,252**	**27,730**	**1.85%**
INDIRECT EXPENSES:									
SALARY EXPENSE (2.00 FTE)	12,549	9,769	2,780	61,650	59,519	2,132	149,495	89,976	39.81%
BENEFITS EXPENSE	4,313	4,308	5	21,788	20,601	1,186	51,981	31,379	39.63%
OTHER INDIRECT EXPENSE	4,870	7,071	(2,201)	24,665	24,543	122	59,508	34,965	41.24%
TOTAL INDIRECT EXPENSES:	**21,732**	**21,148**	**585**	**108,103**	**104,663**	**3,440**	**260,983**	**156,320**	**40.10%**
TOTAL ALL EXPENSES:	**24,422**	**21,148**	**3,275**	**118,300**	**105,185**	**13,115**	**289,235**	**184,050**	**36.37%**
NET INCOME (LOSS):	**(24,422)**	**(21,148)**	**3,275**	**(118,300)**	**(105,185)**	**13,115**	**(289,235)**	**(184,050)**	**36.37%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR	% USED OF ANNUAL BUDGET
PRACTICE OF LAW BOARD									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
PRACTICE OF LAW BOARD	1,337	-	1,337	2,511	-	2,511	9,000	9,000	0.00%
TOTAL DIRECT EXPENSES:	**1,337**	**-**	**1,337**	**2,511**	**-**	**2,511**	**9,000**	**9,000**	**0.00%**
INDIRECT EXPENSES:									
SALARY EXPENSE (0.15 FTE)	2,200	2,199	1	10,806	10,994	(188)	26,203	15,209	41.96%
BENEFITS EXPENSE	543	539	5	2,406	2,272	133	6,209	3,937	36.59%
OTHER INDIRECT EXPENSE	365	536	(171)	1,850	1,862	(12)	4,463	2,601	41.72%
TOTAL INDIRECT EXPENSES:	**3,108**	**3,274**	**(166)**	**15,061**	**15,128**	**(66)**	**36,875**	**21,747**	**41.02%**
TOTAL ALL EXPENSES:	**4,445**	**3,274**	**1,171**	**17,573**	**15,128**	**2,445**	**45,875**	**30,747**	**32.98%**
NET INCOME (LOSS):	**(4,445)**	**(3,274)**	**1,171**	**(17,573)**	**(15,128)**	**2,445**	**(45,875)**	**(30,747)**	**32.98%**

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PROFESSIONAL RESPONSIBILITY PROGRAM									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	250	-	250	1,250	-	1,250	3,000	3,000	0.00%
STAFF MEMBERSHIP DUES	31	-	31	156	250	(94)	375	125	66.67%
LAW LIBRARY	-	49	(49)	-	225	(225)	-	(225)	
CPE COMMITTEE	841	18	823	1,977	31	1,945	3,750	3,719	0.84%
TOTAL DIRECT EXPENSES:	**1,123**	**67**	**1,055**	**3,383**	**506**	**2,877**	**7,125**	**6,619**	**7.10%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.69 FTE)	13,521	14,259	(738)	66,427	72,625	(6,199)	161,077	88,452	45.09%
BENEFITS EXPENSE	5,438	5,418	20	27,207	25,937	1,270	65,273	39,336	39.74%
OTHER INDIRECT EXPENSE	4,121	5,998	(1,877)	20,873	20,820	53	50,359	29,539	41.34%
TOTAL INDIRECT EXPENSES:	**23,081**	**25,674**	**(2,594)**	**114,507**	**119,382**	**(4,875)**	**276,709**	**157,327**	**43.14%**
TOTAL ALL EXPENSES:	**24,203**	**25,742**	**(1,539)**	**117,890**	**119,888**	**(1,998)**	**283,834**	**163,946**	**42.24%**
NET INCOME (LOSS):	**(24,203)**	**(25,742)**	**(1,539)**	**(117,890)**	**(119,888)**	**(1,998)**	**(283,834)**	**(163,946)**	**42.24%**

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PUBLIC SERVICE PROGRAMS									
REVENUE:									
DONATIONS & GRANTS	-	-	-	130,000.00	103,000.00	(27,000.00)	130,000.00	27,000.00	79.23%
PSP PRODUCT SALES	-	-	-	132	-	(132)	200	200	0.00%
TOTAL REVENUE:	**-**	**-**	**-**	**130,132**	**103,000**	**(27,132)**	**130,200**	**27,200**	**79.11%**
DIRECT EXPENSES:									
DONATIONS/SPONSORSHIPS/GRANTS	19,433	-	19,433	97,164	-	97,164	233,193	233,193	0.00%
STAFF TRAVEL/PARKING	167	-	167	833	-	833	2,000	2,000	0.00%
PRO BONO & PUBLIC SERVICE COMMITTEE	233	18	215	867	46	821	2,500	2,454	1.84%
PUBLIC SERVICE EVENTS AND PROJECTS	-	-	-	-	-	-	27,000	27,000	0.00%
PRO BONO CERTIFICATES	317	-	317	1,583	-	1,583	3,800	3,800	0.00%
TOTAL DIRECT EXPENSES:	**20,149**	**18**	**20,131**	**100,447**	**46**	**100,401**	**268,493**	**268,447**	**0.02%**
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	6,104	8,370	(2,266)	29,985	33,918	(3,933)	72,710	38,792	46.65%
BENEFITS EXPENSE	2,112	2,111	1	10,674	10,084	590	25,457	15,373	39.61%
OTHER INDIRECT EXPENSE	2,435	3,560	(1,125)	12,333	12,356	(24)	29,754	17,398	41.53%
TOTAL INDIRECT EXPENSES:	**10,650**	**14,040**	**(3,390)**	**52,991**	**56,358**	**(3,367)**	**127,921**	**71,563**	**44.06%**
TOTAL ALL EXPENSES:	**30,800**	**14,058**	**16,742**	**153,438**	**56,404**	**97,034**	**396,414**	**340,010**	**14.23%**
NET INCOME (LOSS):	**(30,800)**	**(14,058)**	**16,742**	**(23,306)**	**46,596**	**69,901**	**(266,214)**	**(312,810)**	**-17.50%**

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PUBLICATION & DESIGN SERVICES									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
EQUIPMENT, HARDWARE & SOFTWARE	25	-	25	125	-	125	300	300	0.00%
SUBSCRIPTIONS	17	-	17	83	200	(117)	200	0	99.99%
SUPPLIES	13	-	13	63	-	63	150	150	0.00%
IMAGE LIBRARY	-	-	-	4,744	4,100	644	5,080	980	80.71%
TOTAL DIRECT EXPENSES:	**54**	**-**	**54**	**5,015**	**4,300**	**715**	**5,730**	**1,430**	**75.04%**
INDIRECT EXPENSES:									
SALARY EXPENSE (0.87 FTE)	4,529	4,880	(351)	22,250	23,436	(1,186)	53,952	30,516	43.44%
BENEFITS EXPENSE	1,574	1,575	(1)	7,988	7,496	492	19,005	11,509	39.44%
OTHER INDIRECT EXPENSE	2,118	3,072	(954)	10,729	10,664	66	25,886	15,222	41.19%
TOTAL INDIRECT EXPENSES:	**8,221**	**9,527**	**(1,306)**	**40,967**	**41,595**	**(628)**	**98,843**	**57,248**	**42.08%**
TOTAL ALL EXPENSES:	**8,275**	**9,527**	**(1,252)**	**45,982**	**45,895**	**87**	**104,573**	**58,678**	**43.89%**
NET INCOME (LOSS):	**(8,275)**	**(9,527)**	**(1,252)**	**(45,982)**	**(45,895)**	**87**	**(104,573)**	**(58,678)**	**43.89%**

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REGULATORY SERVICES FTE									
INDIRECT EXPENSES:									
SALARY EXPENSE (2.70 FTE)	27,832	18,024	9,808	136,729	92,952	43,777	331552	238,600	28.04%
BENEFITS EXPENSE	7,873	7,828	45	39,488	37,927	1,561	94,598	56,671	40.09%
OTHER INDIRECT EXPENSE	6,574	9,557	(2,983)	33,298	33,176	122	80,336	47,160	41.30%
TOTAL INDIRECT EXPENSES:	**42,279**	**35,410**	**6,869**	**209,515**	**164,055**	**45,460**	**506,486**	**342,431**	**32.39%**
NET INCOME (LOSS):	**(42,279)**	**(35,410)**	**6,869**	**(209,515)**	**(164,055)**	**45,460**	**(506,486)**	**(342,431)**	**32.39%**

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SERVICE CENTER									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
TRANSLATION SERVICES	850	359	491	3,950	2,449	1,501	8,500	6,051	28.81%
TOTAL DIRECT EXPENSES:	**850**	**359**	**491**	**3,950**	**2,449**	**1,501**	**8,500**	**6,051**	**28.81%**
INDIRECT EXPENSES:									
SALARY EXPENSE (6.71 FTE)	34,454	29,483	4,971	163,105	148,408	14,697	381,740	233,332	38.88%
BENEFITS EXPENSE	12,921	12,941	(19)	65,505	61,382	4,123	155,954	94,572	39.36%
OTHER INDIRECT EXPENSE	16,339	23,796	(7,457)	82,752	82,601	151	199,650	117,049	41.37%
TOTAL INDIRECT EXPENSES:	**63,714**	**66,220**	**(2,505)**	**311,362**	**292,391**	**18,970**	**737,344**	**444,953**	**39.65%**
TOTAL ALL EXPENSES:	**64,564**	**66,579**	**(2,015)**	**315,312**	**294,840**	**20,471**	**745,844**	**451,004**	**39.53%**
NET INCOME (LOSS):	**(64,564)**	**(66,579)**	**(2,015)**	**(315,312)**	**(294,840)**	**20,471**	**(745,844)**	**(451,004)**	**39.53%**

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SECTIONS ADMINISTRATION									
REVENUE:									
REIMBURSEMENTS FROM SECTIONS	28,307	28,434	126	263,589	273,354	9,766	300,000	26,646	91.12%
TOTAL REVENUE:	**28,307**	**28,434**	**126**	**263,589**	**273,354**	**9,766**	**300,000**	**26,646**	**91.12%**
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	51	-	51	516	-	516	1,740	1,740	0.00%
SUBSCRIPTIONS	34	-	34	171	410	(239)	410	0	99.90%
CONFERENCE CALLS	4	-	4	13	8	5	300	292	2.81%
MISCELLANEOUS	-	-	-	-	-	-	300	300	0.00%
SECTION/COMMITTEE CHAIR MTGS	-	-	-	457	-	457	1,000	1,000	0.00%
DUES STATEMENTS	-	-	-	5,866	5,935	(69)	6,000	65	98.92%
STAFF MEMBERSHIP DUES	-	-	-	-	-	-	125	125	0.00%
TOTAL DIRECT EXPENSES:	**89**	**-**	**89**	**7,022**	**6,353**	**669**	**9,875**	**3,522**	**64.33%**
INDIRECT EXPENSES:									
SALARY EXPENSE (2.68 FTE)	13,661	16,245	(2,584)	67,115	71,578	(4,463)	162,744	91,166	43.98%
BENEFITS EXPENSE	3,834	3,846	(11)	19,590	18,281	1,308	46,430	28,149	39.37%
OTHER INDIRECT EXPENSE	6,526	9,509	(2,983)	33,051	33,007	45	79,741	46,734	41.39%
TOTAL INDIRECT EXPENSES:	**24,021**	**29,599**	**(5,578)**	**119,756**	**122,866**	**(3,110)**	**288,915**	**166,049**	**42.53%**
TOTAL ALL EXPENSES:	**24,111**	**29,599**	**(5,489)**	**126,778**	**129,219**	**(2,441)**	**298,790**	**169,571**	**43.25%**
NET INCOME (LOSS):	**4,196**	**(1,166)**	**(5,362)**	**136,811**	**144,136**	**7,325**	**1,210**	**(142,926)**	**11912.06%**

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SECTIONS OPERATIONS									
REVENUE:									
SECTION DUES	42,753.40	45,241.36	2,487.96	393,623.50	427,817.94	34,194.44	439,445.00	11,627.06	97.35%
SEMINAR PROFIT SHARE	721	-	(721)	70,309	-	(70,309)	98,364	98,364	0.00%
INTEREST INCOME	13	-	(13)	67	-	(67)	1,470	1,470	0.00%
PUBLICATIONS REVENUE	1,711	2,194	483	1,827	3,976	2,148	6,000	2,024	66.26%
OTHER	8,250	6,100	(2,150)	19,664	25,965	6,301	40,500	14,535	64.11%
TOTAL REVENUE:	**53,448**	**53,536**	**87**	**485,490**	**457,759**	**(27,732)**	**585,779**	**128,020**	**78.15%**
DIRECT EXPENSES:									
DIRECT EXPENSES OF SECTION ACTIVITIES	24,423	3,284	21,140	125,164	17,190	107,974	584,594	567,404	2.94%
REIMBURSEMENT TO WSBA FOR INDIRECT I	26,996	28,434	(1,438)	251,893	273,354	(21,461)	280,573	7,218	97.43%
TOTAL DIRECT EXPENSES:	**51,419**	**31,717**	**19,702**	**377,058**	**290,545**	**86,513**	**865,167**	**574,622**	**33.58%**
NET INCOME (LOSS):	**2,029**	**21,819**	**19,789**	**108,433**	**167,214**	**58,781**	**(279,388)**	**(446,602)**	**-59.85%**

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TECHNOLOGY									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
CONSULTING SERVICES	9,167	11,115	(1,949)	45,833	33,877	11,956	110,000	76,123	30.80%
STAFF TRAVEL/PARKING	208	-	208	1,042	-	1,042	2,500	2,500	0.00%
STAFF MEMBERSHIP DUES	-	-	-	150	-	150	450	450	0.00%
TELEPHONE	1,929	1,383	546	8,128	6,204	1,923	22,000	15,796	28.20%
COMPUTER HARDWARE	5,000	17,586	(12,586)	25,000	17,864	7,136	60,000	42,136	29.77%
COMPUTER SOFTWARE	9,350	44,389	(35,039)	46,750	68,563	(21,813)	112,200	43,637	61.11%
HARDWARE SERVICE & WARRANTIES	-	242	(242)	38,537	18,957	19,580	55,000	36,043	34.47%
SOFTWARE MAINTENANCE & LICENSING	-	3,455	(3,455)	135,724	139,974	(4,250)	336,600	196,626	41.58%
TELEPHONE HARDWARE & MAINTENANCE	87	-	87	427	-	427	7,000	7,000	0.00%
COMPUTER SUPPLIES	833	-	833	4,167	982	3,185	10,000	9,018	9.82%
THIRD PARTY SERVICES	10,833	36,254	(25,421)	54,167	54,177	(10)	130,000	75,823	41.67%
TRANSFER TO INDIRECT EXPENSES	(37,407)	(114,425)	77,017	(359,923)	(340,599)	(19,325)	(845,750)	(505,151)	40.27%
TOTAL DIRECT EXPENSES:	**(0)**	**-**	**(0)**	**(0)**	**-**	**(0)**	**-**	**-**	
INDIRECT EXPENSES:									
SALARY EXPENSE (12.00 FTE)	95,113	88,450	6,663	467,444	433,455	33,989	1,120,558	687,103	38.68%
BENEFITS EXPENSE	29,848	29,757	91	150,256	143,078	7,178	359,195	216,117	39.83%
CAPITAL LABOR & OVERHEAD	(13,333)	87,075	(100,408)	(66,667)	77,949	(144,616)	(160,000)	(237,949)	-48.72%
OTHER INDIRECT EXPENSE	28,083	42,618	(14,535)	142,528	147,937	(5,409)	339,721	191,784	43.55%
TOTAL INDIRECT EXPENSES:	**139,711**	**247,900**	**(108,189)**	**693,561**	**802,420**	**(108,858)**	**1,659,474**	**857,054**	**48.35%**
TOTAL ALL EXPENSES:	**139,711**	**247,900**	**(108,189)**	**693,561**	**802,420**	**(108,858)**	**1,659,474**	**857,054**	**48.35%**
NET INCOME (LOSS):	**(139,711)**	**(247,900)**	**(108,189)**	**(693,561)**	**(802,420)**	**(108,858)**	**(1,659,474)**	**(857,054)**	**48.35%**

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INDIRECT EXPENSES:									
SALARIES	985251.89	956,221	29,031	4,840,242	4,769,549	70,693	11,737,007	6,967,458	40.64%
ALLOWANCE FOR OPEN POSITIONS	(16,667)	-	(16,667)	(83,333)	-	(83,333)	(200,000)	(200,000)	0.00%
TEMPORARY SALARIES	15,771	7,718	8,054	98,237	28,518	69,719	162,458	133,940	17.55%
CAPITAL LABOR & OVERHEAD	(13,333)	87,075	(100,408)	(66,667)	77,949	(144,616)	(160,000)	(237,949)	-48.72%
EMPLOYEE ASSISTANCE PLAN	448	-	448	2,240	1,600	640	5,376	3,776	29.76%
EMPLOYEE SERVICE AWARDS	152	-	152	758	-	758	1,820	1,820	0.00%
FICA (EMPLOYER PORTION)	61,034	69,184	(8,150)	288,759	336,573	(47,815)	715,455	378,881	47.04%
L&I INSURANCE	4,181	-	4,181	20,904	10,447	10,457	50,169	39,722	20.82%
WA STATE FAMILY MEDICAL LEAVE (EMPL(	1,406	1,352	54	7,030	6,510	520	16,871	10,361	38.59%
FFCRA LEAVE (EMPLOYER PORTION)	-	-	-	-	(1,456)	1,456	-	1,456	
MEDICAL (EMPLOYER PORTION)	120,388	119,797	591	596,045	570,119	25,926	1,438,763	868,644	39.63%
PARKING BENEFITS	-	1,164	(1,164)	-	10,276	(10,276)	-	(10,276)	
RETIREMENT (EMPLOYER PORTION)	127,679	116,097	11,582	627,239	580,362	46,877	1,520,993	940,630	38.16%
TRANSPORTATION ALLOWANCE	-	-	-	35,620	(23,777)	59,397	35,620	59,397	-66.75%
UNEMPLOYMENT INSURANCE	4,167	11,110	(6,943)	20,833	25,810	(4,976)	50,000	24,190	51.62%
STAFF DEVELOPMENT-GENERAL	525	-	525	2,625	-	2,625	6,300	6,300	0.00%
TOTAL SALARY & BENEFITS EXPENSE:	**1,291,003**	**1,369,717**	**(78,714)**	**6,390,533**	**6,392,480**	**(1,948)**	**15,380,832**	**8,988,351**	**41.56%**
WORKPLACE BENEFITS	3,250	4,169	(919)	16,250	5,917	10,333	39,000	33,083	15.17%
HUMAN RESOURCES POOLED EXP	11,220	31,672	(20,452)	62,982	56,599	6,383	200,838	144,239	28.18%
MEETING SUPPORT EXPENSES	1,250	537	713	4,375	973	3,402	13,125	12,152	7.41%
RENT	162,583	279,971	(117,388)	812,917	905,624	(92,707)	1,951,000	1,045,376	46.42%
PERSONAL PROP TAXES-WSBA	958	466	492	4,792	2,864	1,928	11,500	8,636	24.90%
FURNITURE, MAINT, LH IMP	2,500	2,388	112	12,500	4,319	8,181	30,000	25,681	14.40%
OFFICE SUPPLIES & EQUIPMENT	3,584	812	2,772	18,911	4,568	14,343	44,000	39,432	10.38%
FURN & OFFICE EQUIP DEPRECIATION	4,294	4,684	(390)	21,472	22,614	(1,142)	51,533	28,919	43.88%
COMPUTER HARDWARE DEPRECIATION	4,315	2,950	1,365	21,576	15,202	6,374	51,782	36,581	29.36%
COMPUTER SOFTWARE DEPRECIATION	11,091	10,419	672	55,454	53,618	1,836	133,089	79,471	40.29%
INSURANCE	16,275	17,881	(1,606)	81,375	93,119	(11,744)	195,300	102,181	47.68%
PROFESSIONAL FEES-AUDIT	36,000	(3,000)	39,000	46,000	32,000	14,000	46,000	14,000	69.57%
PROFESSIONAL FEES-LEGAL	20,833	955	19,879	104,167	65,549	38,618	250,000	184,451	26.22%
TELEPHONE & INTERNET	2,750	7,332	(4,582)	13,750	26,851	(13,101)	33,000	6,149	81.37%
POSTAGE - GENERAL	2,333	1,951	382	11,667	6,874	4,793	28,000	21,126	24.55%
RECORDS STORAGE	3,500	4,678	(1,178)	17,500	11,182	6,318	42,000	30,818	26.62%
STAFF TRAINING	8,576	924	7,652	22,190	6,691	15,499	57,922	51,231	11.55%
BANK FEES	4,208	5,409	(1,200)	21,042	29,995	(8,953)	50,500	20,505	59.40%
PRODUCTION MAINTENANCE & SUPPLIES	1,000	(1,002)	2,002	5,000	3,490	1,510	12,000	8,510	29.08%
COMPUTER POOLED EXPENSES	37,408	114,425	(77,017)	359,923	344,598	15,325	845,750	501,152	40.74%
TOTAL OTHER INDIRECT EXPENSES:	**337,930**	**487,622**	**(149,692)**	**1,713,841**	**1,692,645**	**21,195**	**4,086,339**	**2,393,694**	**41.42%**
TOTAL INDIRECT EXPENSES:	**1,628,933**	**1,857,339**	**(228,406)**	**8,104,373**	**8,085,126**	**19,248**	**19,467,171**	**11,382,045**	**41.53%**

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2021 to February 28, 2021

41.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON	
	FISCAL 2021 BUDGET CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE BUDGET	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 BUDGET ANNUAL	REMAINING BALANCE OF YEAR
SUMMARY PAGE								
ACCESS TO JUSTICE	(31,168)	(18,996)	12,172	(109,009)	(87,745)	21,264	(262,790)	(175,044)
ADMINISTRATION	(78,942)	(102,166)	(23,224)	(412,015)	(465,643)	(53,629)	(985,404)	(519,761)
ADMISSIONS/BAR EXAM	76,501	27,513	(48,988)	199,966	212,999	13,033	(32,131)	(245,130)
ADVANCEMENT FTE	(19,727)	(20,988)	(1,261)	(97,371)	(98,669)	(1,298)	(235,893)	(137,224)
BAR NEWS	(23,984)	(2,823)	21,161	(119,082)	(94,739)	24,343	(326,814)	(232,075)
BOARD OF GOVERNORS	(48,311)	(33,854)	14,457	(241,200)	(116,086)	125,113	(617,037)	(500,951)
CLE - PRODUCTS	49,788	89,556	39,768	249,224	122,356	(126,868)	598,785	476,429
CLE - SEMINARS	(34,896)	32,384	67,280	(271,397)	(144,284)	127,113	(491,795)	(347,511)
CLIENT PROTECTION FUND	(8,280)	59,049	67,329	220,752	329,286	108,534	(128,559)	(457,845)
COMMUNICATIONS	(41,131)	(42,394)	(1,264)	(215,583)	(196,294)	19,290	(529,932)	(333,639)
COMMUNICATIONS FTE	(18,643)	(19,644)	(1,001)	(91,742)	(92,014)	(272)	(222,622)	(130,608)
DESKBOOKS	(14,303)	(21,869)	(7,566)	(69,429)	(57,712)	11,717	(169,149)	(111,437)
DISCIPLINE	(491,765)	(518,440)	(26,676)	(2,436,663)	(2,404,713)	31,949	(5,923,354)	(3,518,640)
DIVERSITY	(18,081)	(19,202)	(1,121)	(88,723)	37,530	126,253	(216,856)	(254,386)
FOUNDATION	(13,916)	(14,308)	(392)	(55,526)	(54,495)	1,031	(134,526)	(80,031)
HUMAN RESOURCES	(38,315)	(52,412)	(14,097)	(190,263)	(167,691)	22,572	(458,623)	(290,932)
LAW CLERK PROGRAM	28,005	28,892	887	111,301	112,046	746	87,222	(24,824)
LEGISLATIVE	(15,272)	(13,248)	2,025	(64,658)	(59,278)	5,381	(159,159)	(99,881)
LICENSE FEES	1,986,293	1,712,718	(273,575)	7,227,365	6,934,028	(293,337)	16,531,113	9,597,085
LICENSING AND MEMBERSHIP	(23,325)	(2,309)	21,015	(107,022)	(69,409)	37,613	(269,250)	(199,841)
LIMITED LICENSE LEGAL TECHNICIAN	(9,667)	(7,159)	2,508	(40,985)	(31,504)	9,481	(100,781)	(69,277)
LIMITED PRACTICE OFFICERS	12,289	12,122	(168)	55,929	57,548	1,619	117,285	59,737
MANDATORY CLE ADMINISTRATION	10,635	8,487	(2,148)	76,544	122,088	45,544	146,110	24,023
MEMBER ASSISTANCE PROGRAM	(6,663)	(7,888)	(1,225)	(32,819)	(34,949)	(2,130)	(84,913)	(49,964)
MEMBER BENEFITS	(12,023)	(17,535)	(5,513)	(185,771)	(169,955)	15,816	(295,286)	(125,331)
MEMBER SERVICES & ENGAGEMENT	(34,822)	(20,361)	14,461	(146,794)	(126,108)	20,686	(385,483)	(259,375)
OFFICE OF GENERAL COUNSEL	(83,128)	(83,810)	(682)	(399,867)	(373,296)	26,571	(971,131)	(597,835)
OFFICE OF THE EXECUTIVE DIRECTOR	(60,027)	(56,209)	3,818	(295,192)	(259,308)	35,884	(715,908)	(456,600)
OGC-DISCIPLINARY BOARD	(21,008)	(21,817)	(809)	(105,072)	(102,650)	2,421	(256,294)	(153,644)
OUTREACH & ENGAGEMENT	(24,422)	(21,148)	3,275	(118,300)	(105,185)	13,115	(289,235)	(184,050)
PRACTICE OF LAW BOARD	(4,445)	(3,274)	1,171	(17,573)	(15,128)	2,445	(45,875)	(30,747)
PROFESSIONAL RESPONSIBILITY PROGRAM	(24,203)	(25,742)	(1,539)	(117,890)	(119,888)	(1,998)	(283,834)	(163,946)
PUBLIC SERVICE PROGRAMS	(30,800)	(14,058)	16,742	(23,306)	46,596	69,901	(266,214)	(312,810)
PUBLICATION & DESIGN SERVICES	(8,275)	(9,527)	(1,252)	(45,982)	(45,895)	87	(104,573)	(58,678)
REGULATORY SERVICES FTE	(42,279)	(35,410)	6,869	(209,515)	(164,055)	45,460	(506,486)	(342,431)
SECTIONS ADMINISTRATION	4,196	(1,166)	(5,362)	136,811	144,136	7,325	1,210	(142,926)
SECTIONS OPERATIONS	2,029	21,819	19,789	108,433	167,214	58,781	(279,388)	(446,602)
SERVICE CENTER	(64,564)	(66,579)	(2,015)	(315,312)	(294,840)	20,471	(745,844)	(451,004)
TECHNOLOGY	(139,711)	(247,900)	(108,189)	(693,561)	(802,420)	(108,858)	(1,659,474)	(857,054)
INDIRECT EXPENSES	(1,628,933)	(1,857,339)	(228,406)	(8,104,373)	(8,085,126)	19,248	(19,467,171)	(11,382,045)
TOTAL OF ALL	**(945,293)**	**(1,387,037)**	**(441,744)**	**(7,035,673)**	**(6,553,255)**	**482,418**	**(20,140,059)**	**(13,586,804)**
NET INCOME (LOSS)	**683,639**	**470,302**	**(213,337)**	**1,068,701**	**1,531,871**	**463,170**	**(672,889)**	**(2,204,759)**

Washington State Bar Association
Analysis of Cash Investments
As of February 28, 2021

Checking & Savings Accounts

General Fund

Checking

Bank	Account		Amount
Wells Fargo	General	$	2,589,072
		Total	

Investments	Rate		Amount
Wells Fargo Money Market	0.02%	$	13,777,581
UBS Financial Money Market	0.00%	$	1,081,173
Morgan Stanley Money Market	0.00%	$	3,353,681
Merrill Lynch Money Market	0.01%	$	1,983,397
	General Fund Total	**$**	**22,784,904**

Client Protection Fund

Checking

Bank		Amount
Wells Fargo	$	555,727

Investments	Rate		Amount
Wells Fargo Money Market	0.02%	$	4,107,134
Morgan Stanley Money Market	0.00%	$	106,908
	Client Protection Fund Total	**$**	**4,769,769**

Grand Total Cash & Investments	**$**	**27,554,673**