

WSBA LEGISLATION AND COURT RULE COMMENT POLICY

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(Amended November 13, 2015 Board of Governors Meeting)

Purpose: This policy governs Section, 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 changes¹ 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. For purposes of commenting on legislation and court rules, subcommittees and subsets of a Section may serve in an advisory capacity to the Section's governing body; however only the Entity's governing body or an entity member who has been expressly authorized by the Entity's governing body may publicly comment on legislation and 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.