

NOTICE OF REQUEST FOR WSBA TO FILE AMICUS CURIAE BRIEF

The Washington State Bar Association Amicus Curiae Brief Committee is considering a request that the WSBA appear as amicus curiae in support of a petition to the Supreme Court for review in the case, *Afrique V. Nero, individually and as Guardian of C.A. Nero, a minor, Plaintiff-Appellants v. Virginia Mason Medical Center, a Washington non-profit corporation; Cyrus Cryst, M.D. and Jane Does Cryst, and the marital community comprised thereof; and John Does 1-10, Defendant-Appellees*. The Committee will consider this request at its regularly scheduled meeting on Wednesday April 10, 2013.

The issue that the WSBA is requested to address in an amicus curiae brief is: “whether, *as a matter of law*, evidence appealing to racial biases or stereotypes should be *inadmissible* in litigation that does not otherwise involve issues of race.” In the subject case, a two week medical malpractice jury trial resulted in a defense verdict. One of the documents in evidence was a medical record, originally submitted by both parties as part of their ER 904 submissions, containing a racially charged statement reportedly made by the mother of the patient to the treating physician. The plaintiffs objected to the submission of the document to the jury, which was overruled; the submission of this document to the jury was the basis for the original appeal. The Court of Appeals, Division I, in an unpublished opinion, affirmed the trial court’s ruling. Plaintiff-Appellants have filed a motion for reconsideration.

Any person or entity may submit comments to the Committee and the Board of Governors on whether this request meets the criteria set forth in the WSBA Amicus Curiae Brief Policy, which may be reviewed at:

http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/~media/Files/Legal%20Community/Committees_Boards_Panels/Amicus%20Curiae%20Committee/amicuspolicy.ashx

Comments should be addressed to Jean McElroy, General Counsel/Chief Regulatory Counsel, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or to jeanm@wsba.org.

Comments must be received by 5:00 p.m., Tuesday, April 9, 2013.