

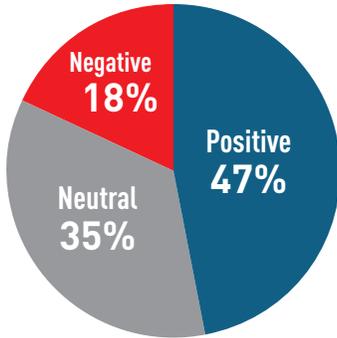
**WASHINGTON STATE**  
**B A R A S S O C I A T I O N**

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

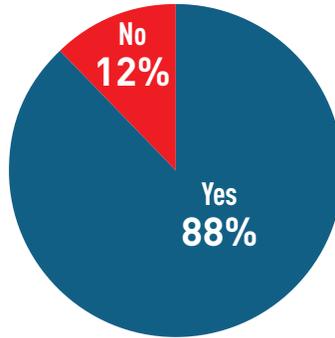
**November 13-14, 2020**  
**Webcast and Teleconference**

<b>BOARD OF GOVERNORS MEETING</b> <b>Late Materials</b> <b>November 13-14, 2020</b> <b>Seattle, WA</b>	
Description	Page Number
FY20 Q4 WSBA Member Survey	LM-3
Reports of Standing or Ongoing BOG Committees <ul style="list-style-type: none"> <li>• Member Engagement Workgroup Update</li> <li>• Treasurer’s Report</li> </ul>	LM-5 LM-6
WSBA Equity & Disparity Workgroup Update	LM-9
Court Rules & Procedures Committee Rule 413 – Immigration Status Rule Change	LM-15
2021 Legislative Review Comm. – Executive Summary – Washington Nonprofit Corporation Act	LM-17
Budget & Audit Committee Materials <ul style="list-style-type: none"> <li>• WSBA Lease Discussion Memo</li> <li>• FY2020 Year End Update</li> <li>• 2022-2023 License Fee Renewal</li> <li>• Recommendation for Reduction of Client Protection Fee</li> <li>• First Read: WSBA Bylaw Amendment, Art. V.A.1, Budget &amp; Audit Committee Class Representation Clarification</li> </ul>	LM-32 LM-33 LM-44 LM-60 LM-66
Revised Materials: Regulatory Matters <ul style="list-style-type: none"> <li>• First Read: Pro Bono Licensure Status</li> <li>• Proposed Amendments to WSBA Admissions Policy</li> </ul>	LM-68 LM-81

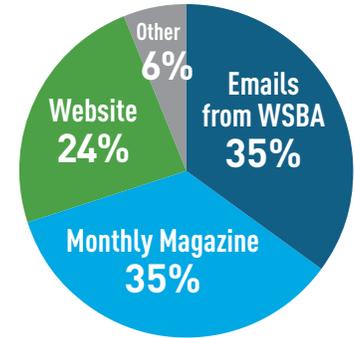
What is your perception of the WSBA?



Do you know the ways you can be involved with the WSBA?



What is your main source of information about the WSBA?



How members grade the WSBA

WSBA REPORT CARD	FY20 Q1	FY20 Q2	FY20 Q3	FY20 Q4
✓ Upholding high-quality standards for Washington’s legal profession	A	A-	A	A-
✓ Providing high-quality CLEs	A	A	A	A-
✓ Supporting diversity and inclusion in the legal profession	A	A	A	A
✓ Providing high-quality professional programs and services	A-	A-	A	A-
✓ Helping legal professionals expand access to justice	B+	B+	B+	B
✓ Preparing the legal profession for changes in the future	B+	B+	B+	B

Sample comments and themes:

*“I like the way that the WSBA deals with lawyers who are unethical and have violated the RPCs.”*

*“I think with everything going on, focusing on the more practical things instead of such high minded stuff would be good.”*

*“I think it does well in terms of offering low-cost research tools.”*

## Member Survey Participants

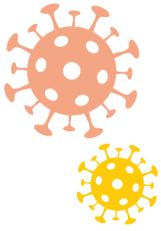
SIZE OF LAW FIRM			
Solo	6	100+	4
2-5	7	Govt/Public	5
6-10	3	In-house	1
11-20	4	Retired	2
21-100	1	Other	1

MEMBER’S CONGRESSIONAL DISTRICT					
District 1	2	District 5	2	District 8	5
District 2	3	District 6	4	District 9	4
District 3	0	District 7S	4	District 10	3
District 4	2	District 7N	4	Out-of-state	1

## Explanation of member survey

This phone survey will be conducted each quarter by randomly selecting members from the full membership and conducting 10-minute phone calls with them. Our response rate for Q4 was 4.7%.

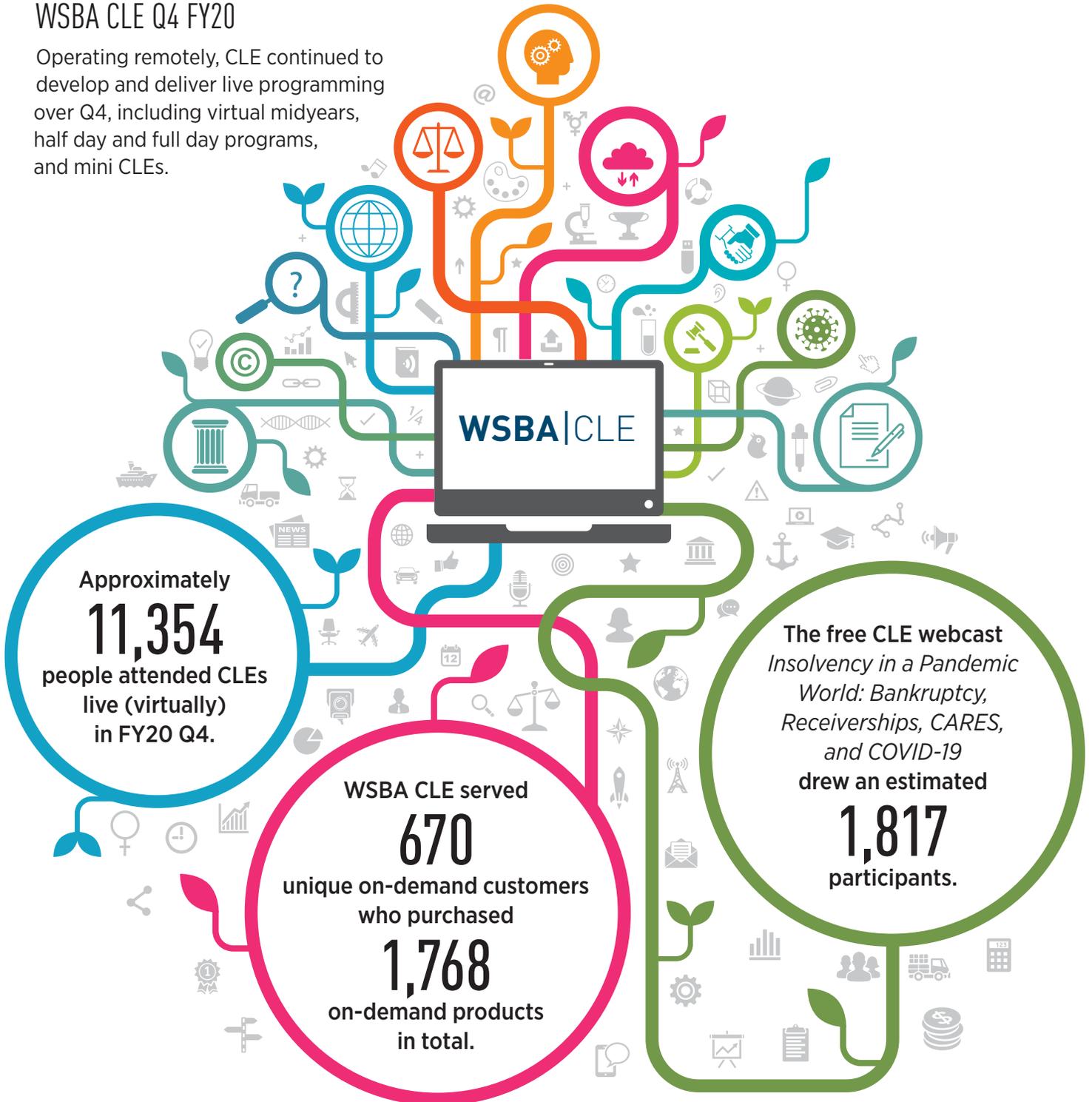
# WSBA Outreach Highlights



Due to the COVID-19 pandemic, most WSBA services and resources were operating remotely in Q4. In lieu of a regular outreach map, we are sharing information about the WSBA CLE team's response to the pandemic.

## WSBA CLE Q4 FY20

Operating remotely, CLE continued to develop and deliver live programming over Q4, including virtual midyears, half day and full day programs, and mini CLEs.



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

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor & Bryn Peterson District 9 Governor Member  
Engagement Co-Chairs.  
**DATE:** November 7, 2020  
**RE:** WSBA Member Engagement Committee November BOG Meeting update

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**ACTION/DISCUSSION** : Update of current activities of Member Engagement Committee

The 2020-21 Member Engagement Committee held its first meeting on November 5, 2020. Unfortunately, not enough members of the committee were able to make the meeting, so we were unable establish a quorum and could not conduct any substantive business.

We have rescheduled this meeting for 11 to noon on November 20, 2020. We are also scheduled to currently meet on November 30, 2020. We look forward to hopefully restarting the committee this year in the midst of the Covid-19 Pandemic and finding ways in this new normal to have the committee reach out to WSBA membership and hopefully increase members' involvement without our organization.

Please remember, the meetings are open for anyone to attend, and anyone can attend and be a non-voting member under our bylaws. Thanks and please let Bryn or I know if you have any questions or ideas for the committee.

Respectfully,

Dan Clark  
WSBA Treasurer/4<sup>th</sup> District Governor  
[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)  
(509) 574-1207 (office)  
(509) 969-4731 (cell)

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** November 9, 2020  
**RE:** WSBA Treasurer Report: November BOG meeting Treasurer Update

**DISCUSSION:** Update of current activities of WSBA Treasurer Daniel Clark and WSBA Budget and Audit Committee to WSBA Board of Governors including WSBA Financial Update as of November 9, 2020.

**The following is an update from WSBA Treasurer Daniel Clark.**

**FY 2021 Budget and Audit Committee Membership:**

President Sciuchetti selected the following Governors to be part of Budget and Audit for the 2020-21 year: Governor Peterson, Higginson, McBride, Grabicki, Boyd, Dresden, and Purtzer. I am happy to welcome all seven to the Budget and Audit Committee and greatly look forward to working with all of them during this Fiscal Year.

**Bylaw Amendment to Budget & Audit Committee size:**

On November 4, 2020, President Sciuchetti removed Governor Higginson from the committee due to a bylaw membership limit compliance issue. I've advocated for a bylaw amendment that would solve this issue and allow all previously appointed Governors to be on the Budget and Audit committee this year. The bylaw amendment should be on for first read this meeting.

**2020-21 Budget and Audit Retreat:**

CFO Jorge Perez and I have scheduled a December 2<sup>nd</sup> Budget and Audit Retreat to attempt to give an orientation to all of the BOG on a voluntary basis of how WSBA typically sets up its annual budgeting process, and to offer a Q and A session for Governors to be able to ask and hopefully have questions answered regarding the FY 2021 Budget and/or issues that are important to them in the Committee crafting the FY 2022 Budget during the summer of 2021. It's my hope that this will be a productive and beneficial process that future Treasurer's will want to continue.

**2022 License Fees:**

The Budget and Audit Committee examined the 2022 License fees and has made a recommendation of maintaining the \$458 current attorney license fee rate for 2022 and then the next four (4) years after that. This recommendation takes into account comments made at the September meeting that some Governors felt that there was too much uncertainty to take action in 2022 and 2023 in setting license fees at this time. The 2023 fees will be discussed and a recommendation made to this BOG later during this Fiscal Year in the fall of 2021. By then

hopefully the BOG and WSBA will have a better understanding of the impact on Covid-19 on membership, financial matters of WSBA, and we'll know how long that it will last.

It should be noted that the 2019-20 Budget and Audit Committee had recommended 7 to 1 to lower 2022 and 2023 license fees by \$10 dollars. The 2020-21 Budget and Audit committee received additional information from CFO Perez that would have allowed for this reduction to go forward, but not likely past the 2023 year without significant drain to the General Fund and/or requiring that we cut additional programs. The Budget and Audit committee of 2020-21 didn't believe that was as prudent right now given Covid-19, so the recommendation is to keep the \$458 rate for 2022 and pledge to do so without raising over at a minimum the next 5 years total.

#### **WSBA Investments:**

The Budget and Audit Committee heard from financial representatives from Merrill Lynch and another representative from Morgan Stanley regarding WSBA's current investment strategy of our financial resources. Currently we have everything in a cash basis, and our return on investment earnings with Money Market Accounts are in the 0.11 to 0.14 range. A subcommittee of the Budget and Audit Committee met with Mr. Jay and are starting to explore potential options to diversify some of our investments in a more lucrative investment strategy, in the 2.5 percent range in a proposed portfolio that would consist of governmental bonds and large cap stocks. This is something that the Budget and Audit Committee will continue to explore. Ultimately if a recommendation were made to make a change in our investment strategy this recommendation would come to the full Board of Governors for consideration and a potential vote. In wanting to be transparent and increase communication regarding what is going on with WSBA, I'm offering you a status update here.

#### **WSBA Lease Sub-Committee:**

The WSBA Budget and Audit Lease-Sub Committee has met with two different real estate brokerage firms regarding potential options with our current Lease at the 4<sup>th</sup> and Union WSBA Office location. The subcommittee ultimately determined that JLL was the appropriate broker that we will be utilizing to examine what if any options exist regarding our current lease that runs through December 31, 2026.

#### **WSBA Client Protection Fund Fee Reduction Recommendation:**

The Budget and Audit Committee voted 5 to 1 to recommend that the 2022 and moving forward client protection fund fees be reduced from \$25 dollars to \$20 dollars annually starting at 2022. Jorge Perez and Treasurer Clark did an analysis that shows that the fund can sustain the \$20 dollar total fee and still remain revenue neutral fund balance each year. The fund currently has approx \$4.2 million in the fund at the end of FY 2020, and is at an all time high as far as fund balance to the CPF. We have a planned loss for 2021 to give members a \$20 dollar reduction in the fee which is anticipated only to result in a \$277k loss to the \$4.2 million fund. In later materials in the BOG book, there will be the power point presentation with slides that show that the fund is sustainable at the recommended \$20 dollar rate. It is my strong recommendation as WSBA Treasurer that we look to pass this reduction on behalf of our members moving forward.

FY 2020 Year End Numbers:

**General Fund: \$742,695** in net positive fund balance increase for FY 2020.

- Projected combined restricted and unrestricted General Fund Balance **\$5,479,233**

**Client Protection Fund: \$377,486** in net positive fund balance increase for FY 2020

- Projected Fund Balance **\$4,199,495.**

**CLE Fund: (\$45k)** in net negative loss for a fund balance decrease for FY 2020.

- Projected Fund Balance **\$480,625.**

**Sections Fund: \$82,898** in net positive fund balance increase for FY 2020.

- Projected Fund Balance **\$1,204,122.**

**Overall: WSBA & the Board of Governors during the last three fiscal years FY 2018 to FY 2020 has accumulated a net increase to the WSBA General Fund of: \$2,115,482!**

**Conclusion:**

It continues to be a huge honor to serve as the 2020-21 WSBA Treasurer. The next Budget and Audit Committee meeting is currently scheduled for November 30, 2020. There will also be a budget retreat scheduled for December 2, 2020. All are welcome to attend. Thank you and please let me know if you have any questions or concerns raised in this report.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)

(509) 574-1207 (office)

(509) 969-4731 (cell)

**MEMO**

**To:** WSBA Board of Governors

**CC:** Executive Director Terra Nevitt

**From:** Alec Stephens, Chair  
Paige Hardy, Staff Liaison

**Date:** November 5, 2020

**Re:** WSBA Equity and Disparity Workgroup Update

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**Background**

The WSBA Board of Governors created the Equity and Disparity Workgroup (“Workgroup”) in June 2020. The goal of the Workgroup is to address rules, policies, and procedures in the legal system that have led to disparate outcomes, disproportionately harming people of color. See attached Memorandum from Past President Majumdar.

The Workgroup consists of members from the Board of Governors, WSBA sections and committees, minority bar associations, and at-large members. See attached current list of members.

**First Meeting**

The Workgroup held its first meeting on October 29, 2020. The Workgroup Chair, Alec Stephens, welcomed everyone and provided some context for the creation of the Workgroup. Members then introduced themselves and shared reasons for their interest in the work of the group.

The Workgroup addressed administrative needs of the group, such as scheduling. As well as ways to solicit input from the broader WSBA membership and the public. Ideas included targeted communications through traditional WSBA channels, social media outreach, and surveys.

The Workgroup then had a robust discussion about the overarching priorities and goals. Several members identified GR 12.2 as a rule to review and consider given its impact on the work of the Bar.

Many members of the workgroup similarly identified the WSBA’s admissions process as worthy of review, to include the Uniform Bar Exam’s passage rate as well as its appeals process. This led to a discussion about other “pipeline” related matters, matters that pertain to the entry into the legal profession, that included the accessibility of the LSAT, law school scholarship processes, and obstacles that prevent students of color from getting into or staying at law school.

Recognizing that the Bar has a statewide reach, the Workgroup discussed the impacts on rural communities in Washington. For example, the lack of public defender agencies in some rural counties and the reliance on private defender contracts. Another rural-related issue included how traditional attorney business models might affect private attorneys, but also clients in these underserved and under resourced communities.

These conversations are in their infancy but will continue at the next meeting when the group continues to hold a generative space for ideas, goals, and eventually move towards priority setting.

**Next Steps**

The Workgroup is planning to meet the third week of November to continue discussions, create sub-committees, and finalize a meeting schedule.



## WSBA Equity & Disparity Workgroup Members

<b>Alec Stephens</b> WSBA Equity & Disparity Workgroup, Chair	
<b>Hunter Abell</b> WSBA Governor	<b>Jefferson Coulter</b> WSBA Court Rules and Procedures Committee
<b>Angelica Gonzalez</b> Latina/o Bar Association of Washington	<b>Melissa Hall</b> QLaw Association
<b>Monte Jewell</b> WSBA Committee on Professional Ethics	<b>Joanne Kalas</b> Vietnamese Bar Association of Washington
<b>Judge David Keenan</b> Access to Justice Board	<b>Jonathan Ko</b> Washington Attorneys with Disabilities Association
<b>Patrice Kreider-Hughes</b> WSBA Equity & Disparity Workgroup, At-Large	<b>Ailene Limric</b> WSBA Equity & Disparity Workgroup, At-Large Filipino Lawyers of Washington
<b>Chalia Stallings-Ala'ilima (Molly Matter, Alternate)</b> WSBA Civil Rights Section	<b>Ron Park</b> Korean American Bar Association of Washington
<b>Rania Rampersad</b> South Asian Bar Association of Washington	<b>Kim Sandher</b> WSBA Equity & Disparity Workgroup, At-Large
<b>Laura Sierra</b> WSBA Equity & Disparity Workgroup, At-Large	<b>Rebecca Stith</b> WSBA Council on Public Defense
<b>Mir Tariq</b> WSBA Practice of Law Board	<b>Aileen Tsao</b> Asian Bar Association of Washington
<b>Terra Nevitt</b> WSBA, Executive Director	<b>Paige Hardy</b> WSBA Staff Liaison
<b>Ex-Officio Members: President Kyle Sciuchetti; President-Elect Brian Tollefson; Immediate Past President Rajeev Majumdar</b>	



On June 26, 2020, the Washington State Bar Association adopted the following resolution:

## **WSBA RESPONSE TO THE NATIONAL DIALOGUE ON RACISM AND UNLAWFUL USE OF FORCE**

The ongoing tragedy in our country concerning racism and the resultant unequal application of the laws to different members of our society is an issue that the WSBA is dedicated to confronting and engaging on. The Supreme Court has specifically charged the WSBA with: promoting an effective legal system, accessible to all;<sup>1</sup> and promoting diversity and equality in the courts and the legal profession.<sup>2</sup>

We have received the messages of many groups of our members that have been sent to us including statements by:

1. [WSBA Civil Rights Section](#)
2. [WSBA Council on Public Defense](#)
3. [The Access to Justice Board](#)
4. [Loren Miller Bar Association](#)
5. [Filipino Lawyers of Washington](#)
6. [Korean American Bar Association](#)
7. [Latina/o Bar Association of Washington](#)
8. [QLAW Association and QLAW Foundation](#)
9. [South Asian Bar Association of Washington](#)
10. [Vietnamese American Bar Association of Washington](#)
11. [Washington Women Lawyers](#)
12. [Association of Washington Assistant Attorneys General and the Solidarity Caucus of the Professional Staff Organizing Committee](#)
13. [Washington State Bar Foundation](#)

And, on June 4, 2020, Washington's Supreme Court called on us to recognize that *"the legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all."* The Washington State Bar Association deeply appreciates the leadership of our Supreme Court and their signaling of the priorities our profession should dedicate itself to tackling.

On June 3, 2020, our President sent a message to the membership regarding the challenges facing our nation and our profession. An excerpt from that reads:

The killing of George Floyd at the hands of Minneapolis police officers—who have now been charged with murder—has stirred all too familiar unresolved tensions and conflict in our society over racism

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<sup>1</sup> GR 12.2(a)(2)

<sup>2</sup> GR 12.2(a)(6)

and the use of violence. Faced with weeks of isolation at home due to the coronavirus, a potential economic downturn, rapidly rising unemployment rates, and mistrust and misinformation about legal rights, many people in our country are left feeling hopeless, powerless, and fearful of speaking up. The result is a continued cycle of violence and defensiveness, ever more fraying the fabric of our society.

There is no equity without access to the justice our legal system can provide, and there is no access to justice without our profession doing its part to solve problems. It is up to each one of us to stand up and speak for others who cannot so that we may substitute true dialogue and good policy for violence in our society. That is the very point of an effective legal system, and as officers of that system we bear a large share of the burden in its failures if each of us do not work to ever reform it.

The Governing Body of the WSBA affirms and joins the President's message to the membership and dedicates that the organization will redouble its efforts to support our members in their practices and the judiciary's independence such that both members and judges can have the freedom to stand up and speak.<sup>3</sup> The WSBA supports our members in striving to be paragons of ethics and professionalism in crafting lawful solutions to the problems our society is wrestling with.<sup>4</sup> We as an organization will recommit our efforts to provide educational and wellness services to all of our members, including the judiciary, to support them through this time, recognizing that many of them are directly impacted by the injustice that persists in our nation.

Since 2004, WSBA has followed an interpretation of General Rule 12.2(c)(2) that was adopted by the Board of that time. Throughout the years, this rule has been a challenging part of the debate on the WSBA's ability to weigh-in broadly on significant issues that may in fact relate to the practice of law and administration of justice, such as institutional racism. Much has changed since 2004 and it seems appropriate in light of the Court's statement to ask whether WSBA's engagement on these issues is done in the best way to serve its members and the public. Therefore, we direct the Task Force charged with beginning a collaborative discussion with Court regarding delegated administrated entities to also discuss the interpretation of GR 12.2(c)(2) with the Court.

Further, the WSBA stands with its employees in these difficult times. As the people who support our members, and the work of our volunteer policy making bodies, we recognize that our employees are steadfastly doing their work in the face of the great strains of first the global pandemic, and now the international acknowledgment of the racial inequity and violence that persists in our society. We recognize that some of our employees have experienced racism and violence directly. In response to these extraordinary times we support and direct our interim Executive Director and President in providing support for our employees.<sup>5</sup>

On this day, the WSBA has also passed the following items as part of our agenda to confront the issues facing our members and society at large:

1. Approval of Public Statement by WSBA Council on Public Defense;
2. Proposed a new Mission Statement of the WSBA focused on fostering a legal system accessible to all people equally to send out for stakeholder feedback;
3. [Approval of WSBA Equity & Disparity Workgroup](#);
4. [Approval of Resolution Affirming the Rule 6's Program Value and Role in Providing an Additional Path to Justice for Underrepresented Communities](#);
5. Approval of Resolution of the WSBA in Response to National Dialogue.

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<sup>3</sup> GR 12.2(a)(1, 3)

<sup>4</sup> GR 12.2 (a)(4, 9)

<sup>5</sup> GR 12.2(a)(10)

We hope that our actions today are but the first wave of contributions to moving towards healing the fabric of our society, that the WSBA will engage in over the next several years.

Approved by the WSBA Board of Governors on June 26, 2020.



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Rajeev D. Majumdar  
WSBA President, 2019-2020

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

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

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

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

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

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

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

18           **(b) Civil Cases; Evidence Generally Inadmissible.** Except as provided in subsection  
19 (b)(1), evidence of a party's or a witness's immigration status shall not be admissible unless  
20 immigration status is an essential fact to prove an element of a party's cause of action.  
21  
22  
23  
24

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

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

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

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

6           **(2) Procedure to review evidence.** Whenever a party seeks to use or introduce  
7 immigration status evidence, the court shall conduct an in camera review of such evidence. The  
8 motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall  
9 remain under seal unless the court orders otherwise. If the court determines that the evidence  
10 may be used, the court shall make findings of fact and conclusions of law regarding the  
11 permitted use of that evidence.  
12

**PROPOSED REPLACEMENT FOR  
CHAPTER 24.03 RCW, WASHINGTON NONPROFIT CORPORATION ACT  
EXECUTIVE SUMMARY**

This is a summary of the proposed replacement for Chapter 24.03 RCW, the Washington Nonprofit Corporation Act (“Proposed Act”) developed by the Nonprofit Corporations Committee of the Washington State Bar Association. In addition to this summary, the Committee has also prepared a shorter two-page summary, also available on request.

**I. INTRODUCTION**

The Committee developed the Proposed Act for three major reasons, all discussed in greater detail below. First, the existing Nonprofit Corporation Act (“Current Act”) is over 50 years old, and needs modernization throughout. Many provisions of the Current Act do not reflect either modern electronic communications or current best practices in nonprofit governance. Second, the Committee believes the provisions of the Current Act and other Washington statutes protecting charitable assets held by nonprofit corporations could be improved, both to protect those assets more effectively and to bring clarity to some long-murky issues. Third, the Current Act has only very basic provisions relating to membership nonprofit corporations, and the Committee’s view is that a better-developed set of membership provisions comparable to those in many other states would prevent confusion, especially in smaller membership organizations, and lead to more effective governance. In addition to these major goals, the Proposed Act addresses a wide variety of other issues that nonprofits have encountered in their experience under the Current Act.

The revisions summarized here reflect substantial input from various stakeholders in the nonprofit sector. They may undergo further revisions as the Committee and the Law and Justice Committee of the Washington House of Representatives receive feedback from additional key stakeholders, including nonprofit organizations across Washington, the Office of the Attorney General, and members of the Legislature. Please do not hesitate to contact Committee Chair Judith Andrews or recorder David Lawson if you have questions or comments about the issues described here, or the Proposed Act in general.

The Proposed Act clarifies the ways in which a Washington nonprofit corporation incorporated under the Current Act must conduct its affairs; offers default standards, which a corporation may, in its articles or bylaws, modify (sometimes within defined limits); and provides procedures that must be followed when a nonprofit corporation engages in a fundamental transaction such as a merger, a revision of its articles of incorporation, or dissolution. The Proposed Act would allow most Washington nonprofit corporations incorporated under a statute other than the Current Act, such as RCW 24.06, to choose to be governed by the Current Act going forward, if they so wish.

The starting point for the Proposed Act was the American Bar Association’s *Model Nonprofit Corporation Act* (3d ed. 2008) (the “Model Act”), which itself is patterned after the ABA’s *Model Business Corporation Act* (3d ed. 2002). The Committee found the Model Act to provide a solid structure, but revised and added to it extensively. The Committee retained some

provisions of the Current Act; added provisions governing topics incompletely addressed by the Model Act; and revised many Model Act sections as warranted.

## **II. MODERNIZATION OF ELECTRONIC COMMUNICATION RULES**

The Current Act has cumbersome and unintuitive rules governing electronic communications to directors, members, and officers of nonprofit corporations, which date from a time when electronic communications were novel rather than routine. Under current law, individuals must give specific written consent to electronic notice that includes a variety of elements, or such notice is not valid. The Committee's experience is that these requirements are poorly observed in practice, which potentially opens many nonprofit corporations to the risk of having notices (or actions taken without a meeting) challenged on the basis that technical requirements for electronic communication were not met.

The Proposed Act reflects today's reality by allowing electronic communications and notices, by default, to any electronic address (such as an email address) provided by a director, member, or officer to the organization. Organizations may still restrict electronic communications in their articles or bylaws, and the Proposed Act retains protections against delivering electronic notices to addresses that the nonprofit corporation knows to be non-functioning.

The Proposed Act also updates electronic meeting rules to clarify that (1) meetings of directors or members by telephone or videoconference are permitted by default, and (2) such meetings may use any medium in which attendees can simultaneously understand one another, including teletype or other non-audio media that facilitate participation in meetings by people with hearing loss or other disabilities. Current law generally requires that telephone or videoconference meetings be permitted expressly in Articles or Bylaws, although Governor Inslee has issued an emergency proclamation permitting such meetings during the COVID-19 pandemic.

## **III. CHARITABLE ASSETS**

One noteworthy aspect of the Current Act which the Proposed Act retains and modernizes is the differentiation between charitable nonprofits and other nonprofits. Charitable nonprofits (which include all Section 501(c)(3) organizations) hold assets restricted to a charitable purpose or solicit from the public contributions identified as committed to charitable activity. While not all nonprofits have charitable assets, most do, and the Committee believed that the rules governing those assets could be clarified and improved. The Proposed Act sets out detailed requirements for protecting charitable assets and restricting their use to the required charitable purposes.

Washington has several statutes applicable to nonprofit organizations that hold and protect charitable assets in addition to the Current Act. These include Chapter 11.110 RCW, a chapter of the Washington Trust Act (the "*Charitable Trusts Chapter*"); Chapter 19.09 RCW, the Charitable Solicitations Act; Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act; and Chapter 24.55 RCW, the Uniform Prudent Management of Institutional Funds Act. The Committee undertook a comprehensive review of these statutes, seeking to

maximize protection of charitable assets in the Proposed Act while recognizing that the governing bodies of nonprofit corporations are typically in the best position to decide how to optimize the use of charitable assets and need some flexibility to do so, and that donors give contributions that sometimes are subject to restrictions and sometimes are not. The Committee believes that the Proposed Act better protects charitable assets by bringing clarity, consistency, and transparency to the law in this area.

#### **A. Charitable Property Defined**

The Proposed Act defines “property held for charitable purposes” to include (a) all property held by a charitable nonprofit corporation and (b) property held by any nonprofit corporation that is subject to a charitable use restriction contained in a gift instrument, in the nonprofit corporation’s articles or bylaws, or any record adopted by the board of directors. A charitable purpose is any purpose that would make a nonprofit corporation eligible for exemption under Internal Revenue Code Section 501(c)(3) or is considered charitable under any other applicable law.

#### **B. Protection of Charitable Assets**

The Proposed Act protects property held for charitable purposes through three principal mechanisms, supplemented by a variety of other rules intended to ensure that such property is used for its intended purposes.

First, the board of directors generally cannot make distributions of either income or assets dedicated to charitable purposes to directors, officers, or members of the organization, or anyone else in “a position to exercise substantial influence over its affairs.” As in the Current Act, reasonable compensation for services rendered or reimbursement of reasonable expenses to members, directors, or officers is permitted. The Proposed Act also solves a longstanding issue under the Current Act by permitting distributions to members that are themselves charitable corporations or government agencies.

Second, the board of directors of a charitable nonprofit corporation must, in the event of dissolution, distribute its assets to “an entity operating for one or more charitable purposes” or to the federal, state, or local government for a public purpose. This dissolution requirement adopts the standard articulated in Treasury Regulation Section 1.501(c)(3)-1, replacing RCW 24.03.225, which requires that charitable assets be distributed to organizations “engaged in activities substantially similar to those of the dissolving corporation.” These restrictions are designed to protect charitable assets and are consistent with federal tax requirements for Section 501(c)(3) organizations. The Proposed Act also includes private foundation excise tax rules from the Code found in the Current Act and designed to protect charitable assets.

Third, the Proposed Act includes detailed rules for how property held for charitable purposes must be treated in major transactions other than dissolution, including dispositions of substantially all assets, conversions to another type of entity, or redemptions into another state. These rules are discussed further below.

### **C. Distinction between Nonprofit Corporations and Charitable Trusts**

The Proposed Act clarifies which law applies to charitable assets held by specific entities. The Committee proposes a change to the Charitable Trusts Chapter's definition of "trustee," which would establish that the Charitable Trusts Chapter applies to charitable trusts, but not to nonprofit corporations governed by the Proposed Act unless the charitable nonprofit corporation has been asked and has agreed to serve as a charitable trustee. This approach is intended to be consistent with the approach of the Uniform Prudent Management of Institutional Funds Act, which has been adopted in 49 states and the District of Columbia. Thus, nonprofits, their advisors, and the Attorney General's office will know which law to apply to which charitable organization regarding governance of the entity, the duties and standard of care applicable to trustees or directors, how charitable assets may be used and managed, how restricted gifts may be modified, and how the Attorney General may enforce the rules.

### **D. Distinction Between Restricted and Unrestricted Charitable Assets**

The Proposed Act clarifies for donors, nonprofit corporations, and the Attorney General how a donor creates an unrestricted or restricted gift, how the nonprofit corporation can modify a restricted gift, and how and when the Attorney General can bring an action to enforce a gift restriction. Depending on the purpose of a charity, funding for nonprofit corporations may come primarily from contributions, which may have restrictions if donors wish, or from fees. A board of directors of a charitable nonprofit corporation may use income from fees and unrestricted gifts to further any of its charitable purposes. The board, unless restricted by the corporation's articles of incorporation, may change the corporation's purposes by amendment to the articles; certain major changes in purpose must be reported on the corporation's next annual report to the Secretary of State. A nonprofit corporation must adhere to any donor restriction that limits the gift to a charitable purpose or requires that the gift be administered, invested, or managed in a specific manner. Such a restriction may arise from a written gift instrument or from certain other documented sources.

### **E. Modifying Charitable Use Restrictions**

The Proposed Act provides a nonprofit corporation with several ways to modify a charitable use restriction with which it can no longer comply. The nonprofit corporation may seek modification of a restriction by obtaining donor consent in a record, asking a court to modify the restriction under the trust doctrines of *cy pres* or deviation, or by seeking Attorney General approval of the modification through a new procedure similar to the one available for charitable trusts through the Trust and Estate Dispute Resolution Act, RCW 11.96.220. In addition, in certain cases, a nonprofit corporation holding charitable assets may modify a restriction on its own, after providing notice to the Attorney General, if the gift restriction (a) is unlawful, impossible, impracticable, or wasteful; (b) has a total value of less than the amount described in RCW 24.55.045(4); and (c) is more than 20 years old. Except for the provision allowing the Attorney General to approve modifications, all other methods of modifying restrictions in the Proposed Act match those set out in the Uniform Prudent Management of Institutional Funds Act, ensuring consistency among applicable statutes and among states.

The Proposed Act does not change the methods of modification available to charitable trusts under Chapter 11.110 RCW and the common law of *cy pres* and deviation. The scope of the Proposed Act's provisions on modification is limited to property held for charitable purposes, not in trust, by nonprofit corporations.

#### **F. Attorney General Supervision of Charitable Assets**

Under current law, the Attorney General's authority to supervise charitable assets held by nonprofit corporations derives from the Charitable Trusts Chapter. The view of the Committee is that the language in the Charitable Trusts Chapter is oriented toward the trust form, and is not an optimal fit for nonprofit corporations that hold property not in trust. The Charitable Trusts Chapter also is incomplete in defining the scope of the Attorney General's authority and the procedures the Attorney General's office may use in exercising that authority. Accordingly, the Proposed Act includes provisions expressly defining the Attorney General's authority to supervise property held for charitable purposes by nonprofit corporations. The Committee developed these provisions in close cooperation with the Attorney General's office as well as other stakeholders, and intends that they strike a balance between ensuring that the Attorney General can supervise charitable assets effectively and preserving the flexibility of nonprofit boards of directors to determine how best to support their organizations' purposes.

With respect to most nonprofit corporations, the Proposed Act confers three key powers on the Attorney General, all of which the Attorney General has today under the Charitable Trusts Chapter. These are the powers: (1) to bring actions in court (including emergency actions) to secure property held for charitable purposes; (2) to institute investigations upon reasonable suspicion of a violation of the Proposed Act's provisions relating to charitable assets; and (3) to issue civil investigative demands upon reasonable belief that the subject has documentation or knowledge relevant to a properly brought investigation. Each of those powers is subject to procedural provisions in the Proposed Act that do not currently exist under the Charitable Trusts Chapter, providing certainty to both nonprofit corporations and the Attorney General's office with respect to how the Attorney General may exercise its supervisory authority. The procedural requirements for issuing civil investigative demands are based closely on the analogous requirements in the Consumer Protection Act, Chapter 19.86 RCW, which currently apply in investigations of nonprofit corporations under the Charitable Solicitations Act, Chapter 19.09 RCW, and have proven to work well in that context.

The Proposed Act further limits the Attorney General's powers with respect to religious corporations, consistent with constitutional limitations on government supervisory authority. The Charitable Trusts Chapter currently exempts many religious corporations from Attorney General supervision altogether. The Committee's view is that a complete exemption from all supervision is overbroad, but that substantial limitations are appropriate and constitutionally necessary. The Proposed Act defines "religious corporation" to include churches, mosques, synagogues, temples, most ministry organizations, and most faith-based social service agencies, but does not include in that category religious organizations such as schools or hospitals that are substantially engaged in providing goods or services for consideration. Under the Proposed Act, the Attorney General may exercise its supervisory powers with respect to a religious corporation only if either (1) the predicate violation is, or is believed to be, an unlawful distribution of

charitable assets or (2) the board of directors of the religious corporation requests the Attorney General's assistance.

It is the view of the Committee that for many years the Attorney General's office has lacked the resources it needs to supervise charitable assets fairly and to educate organizations about their legal obligations concerning the use and management of those assets. Accordingly, the Proposed Act would impose an additional \$30 fee for the filing of a nonprofit corporation's annual report, with all proceeds from the increase dedicated to funding education and enforcement programs by the Attorney General's office relating to charitable assets. The resulting total fee for a nonprofit corporation's annual report would remain substantially lower than the equivalent fee for a for-profit corporation or limited liability company.

#### **IV. MEMBERSHIP**

The Current Act has only very limited provisions relating to membership, which leave many practical questions relating to members' rights and powers unanswered. The Proposed Act would adopt a more comprehensive set of rules, more comparable to those in many other states.

Under either the Current Act or the Proposed Act, a nonprofit corporation is not required to have members, and not everyone who is called a "member" is necessarily a member for statutory purposes. For instance, many nonprofit corporations refer to their supports as members even though they have no voting or approval rights under the Current Act or the Proposed Act. Unlike the Current Act, the Proposed Act makes it clear that in order for a nonprofit corporation to have members with statutory rights (and therefore be a "*membership corporation*"), (a) the articles must provide for members, and (b) members must have the right to select or vote for the election of directors or to vote on at least one type of fundamental transaction. The Proposed Act ensures that existing nonprofit corporations with membership provisions in their bylaws that confer such rights on at least one class of members will also be considered membership corporations under the Proposed Act.

##### **A. Criteria for Members and Membership Rights**

The articles or bylaws may establish the criteria or procedures for admission of members. Members have only those rights and obligations given or assigned to members in the articles or bylaws or as may be provided in Section 5.04(a) of the Proposed Act (selection of directors). Members may have the right to vote on one, some or all types of fundamental transactions. There may be different classes of membership, and each class may have different rights. The membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles or bylaws. A membership corporation may provide in its articles or bylaws for delegates to act in a representative capacity for the election of directors or for other matters before the membership.

##### **B. Member Resignation, Term, and Suspension**

A member may resign at any time, but resignation does not relieve the member of any obligations incurred prior to resignation. Membership may be terminated or suspended as provided in the articles or bylaws. If a membership corporation has not had contact with the

member for at least three years and takes certain specified actions to contact the member, and the member does not respond, then such membership may automatically be terminated. In addition, unless otherwise provided in the articles or bylaws, if the board of directors or other authorized body is authorized to admit members, then the affirmative vote of two-thirds of that body may terminate a member.

### **C. Meetings of Members**

A membership corporation must hold a meeting of members at least once during each fiscal year. The membership corporation may also hold regular and special meetings of members. Only business described in the meeting notice may be conducted at a special meeting of the members. After fixing a record date for a meeting, the membership corporation must prepare an alphabetical list of the names of all members entitled to notice of that meeting and indicate the address of each member and the number of votes each member is entitled to cast at the meeting. Except as otherwise provided in the articles or bylaws, a member may not vote by proxy.

### **D. Actions by Members**

Members may take action at a meeting only if a quorum of the members entitled to vote on such actions is present. Unless otherwise provided in the articles or bylaws, the default quorum is 10% of the members entitled to vote on such actions. If a quorum is present, unless otherwise provided in the articles, bylaws, or applicable law, then action on a matter (other than the election of directors) is approved if the votes cast favoring action exceed the votes cast opposing the action. The articles or bylaws may provide for a higher or lower quorum or higher voting requirement than is provided in the Proposed Act either generally or with respect to specific matters. Except as otherwise provided in the articles or bylaws, (a) directors are elected by a plurality of the votes cast by the members entitled to vote in the election and (b) members do not have a right to cumulate their votes for directors. If a membership corporation was formed prior to the date of the Proposed Act, members who were entitled to cumulate their votes for the election of directors may continue to do so until otherwise provided in an amendment to the articles or bylaws.

Except as otherwise provided in the articles or bylaws, any action taken at a meeting may be taken by unanimous written consent (which may be by email if permitted by the articles or bylaws). Except as otherwise restricted by the articles or bylaws, any action that may be taken at a meeting of members may be taken without a meeting if the membership corporation delivers a ballot to every member entitled to vote on the ballot. All requests for votes by ballot must (a) indicate the number of responses needed to meet quorum requirements, (b) state the percentage of approvals necessary to approve each matter other than election of directors, and (c) specify the time by which a ballot must be received by the membership corporation in order to be counted, which cannot be less than ten days after the ballot is delivered to the member.

Except as provided in the articles or bylaws, each member is entitled to one vote on each matter on which the member is entitled to vote. If the articles or bylaws allow voting agreements, then members may provide for the manner in which they will vote by executing a voting agreement.

## **V. DIRECTORS AND OFFICERS**

### **A. Directors**

The Proposed Act substantially clarifies provisions of the Current Act applicable to directors and officers. As under the Current Act, a nonprofit corporation must have a board of directors, by or under the authority of which all corporate powers must be exercised, unless specifically reserved for the members or other persons. Because it is uncertain whether a minor could be held accountable for a breach of fiduciary duty, the Proposed Act requires that directors must be at least 18 years old. The articles or bylaws may specify other qualifications for directors.

#### **1. Fiduciary Duties of Directors**

Directors are subject to traditional fiduciary duties of care and loyalty to the nonprofit corporation. The Proposed Act clarifies that a director is not a trustee with respect to any property held or administered by the nonprofit corporation, and is subject to director duties rather than trustee duties. A director is generally not liable to the nonprofit corporation or to its members (if any) for any action or inaction, except as provided in the articles, the bylaws, or the Proposed Act. The Proposed Act provides that a director *is* liable to the corporation for the value of any benefit received by the director to which the director was not legally entitled, or for loss to the corporation caused by the director's intentional misconduct or knowing violation of law.

#### **2. Number and Term of Directors**

The board of a 501(c)(3) organization that is classified as a public charity must consist of at least three directors. The board of other nonprofit corporations, including private foundations, must consist of one or more directors. In either case, the number is specified or fixed in accordance with the articles or bylaws. Directors must be elected or appointed in accordance with the articles, bylaws, and applicable law. The articles or bylaws may specify the terms of directors. If a term is not specified, the default term is one year; a term may not exceed five years. Directors may be reelected, subject to any term limits contained in the articles or bylaws. The articles or bylaws may provide for staggered terms. A director may resign at any time. The sole remaining director of a charitable nonprofit must notify the Attorney General within ten calendar days after the effective date of that director's resignation. If there are no directors of a charitable nonprofit, the Attorney General may appoint one or more directors.

#### **3. Removal of Directors**

Unless otherwise specified in the articles or bylaws, a director of a membership corporation may be removed with or without cause by the members, but only in limited circumstances by the board of directors. The board may remove with or without cause a director elected by the board unless the articles or bylaws specify that a director may be removed only for cause. The nonprofit corporation must give notice of any meeting at which a director may be removed, and such notice should indicate that removal of a director will be discussed at such meeting. Except as provided in the articles or bylaws, a director who is appointed by persons other than members or directors may be removed with or without cause only by those persons. Notwithstanding any of the above, the board may remove a director (a) who is incompetent,

(b) who has been convicted of a felony, (c) who has missed the number of meetings specified in the articles or bylaws, or (d) for other limited reasons. A director of a charitable nonprofit corporation may be removed by the board of directors if the director's continued service would cause the charitable nonprofit corporation to be prohibited from soliciting charitable funds under the provisions of RCW 19.09.100(13). A director may also be removed by judicial proceedings in limited circumstances.

#### **4. Actions by the Board of Directors**

Unless otherwise provided in the articles or bylaws, the board of directors may permit directors to participate in any meetings through the use of remote communication methods through which all of the directors may simultaneously participate with each other during the meeting. Unless otherwise prohibited by the articles or bylaws, action may be taken without a meeting by unanimous written consent (which may be by email if permitted by the articles or bylaws). "Interested directors" should abstain in writing from providing consent if a conflict of interest is present.

Directors may take action at a meeting only if a quorum of the directors is present. Unless otherwise provided in the articles or bylaws, the default quorum is a majority of directors in office before the meeting begins. In no event may the quorum consist of less than one-third of the number of directors in office. If a quorum is present, unless otherwise provided in the articles, bylaws, or applicable law, action on a matter is approved by majority vote.

#### **5. Committees**

Unless the articles, the bylaws or the Proposed Act provide otherwise, a board of directors may create committees with board-delegated power ("*board committees*"). All board committees must consist of two or more directors. The Proposed Act clarifies ambiguous language in the Current Act about whether nondirectors may serve on board committees. Under the Proposed Act, a board committee shall not include nondirectors with voting rights unless it is impossible or impracticable, without the inclusion of such persons, for the nonprofit corporation to comply with applicable law other than the Proposed Act. The Proposed Act specifies a series of actions that may not be undertaken by a board committee. A nonprofit corporation may also create one or more advisory committees, which may not exercise any of the powers of the board.

#### **B. Officers**

A nonprofit corporation must have officers that fill the roles of president, secretary, and treasurer. (The Current Act's additional requirement for a vice president is eliminated.) Officers fulfilling those roles may have other titles, such as chair instead of president. Other officers may be authorized by the articles, the bylaws, or the board of directors. An individual may simultaneously hold more than one office, except that the president and secretary may not be the same individual. Officers are subject to fiduciary duties.

Officers may resign at any time. Except as provided in the articles or bylaws, an officer may be removed at any time with or without cause by (a) the board of directors, (b) the officer who appointed the officer being removed (unless the board provides otherwise), or (c) as otherwise specified.

### **C. Restrictions on Directors and Officers**

Any director who consents to an unlawful distribution and any officer who participates in the making of that unlawful distribution (other than purely ministerial functions) is personally liable to the nonprofit corporation for the unlawful amount, provided that the director or officer violated his or her fiduciary duties when taking the action or that the conduct constituted gross negligence.

Except in extremely limited circumstances, a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer. The fact that a loan or guarantee is made in violation of the Proposed Act does not affect the borrower's liability on the loan. Directors who consented to a loan or guarantee in violation of the Proposed Act are personally liable on a joint and several basis to the nonprofit corporation.

As under the Current Act, the indemnification provisions in RCW 23.B.08.500 through 23B.08.603, or their successors, continue to apply to nonprofit corporations.

### **D. Conflict of Interest**

Unless otherwise provided in the articles or bylaws, a contract or transaction between a nonprofit corporation and one or more interested parties is not void or voidable solely because an interested member, director, or officer is present or participates in the meeting where the contract or transaction is authorized if (a) the material facts are disclosed and the board of directors in good faith approves the contract or transaction by the affirmative vote of a majority of disinterested directors even though the disinterested directors constitute less than a quorum, (b) the material facts are disclosed and members entitled to vote thereon specifically approve in good faith such contract or transaction, or (c) the contract or transaction is fair as of the time it is approved, authorized, or ratified by the board or the members.

If a director or officer brings a business opportunity to the attention of the nonprofit corporation and the members or directors disclaim the nonprofit corporation's interest in the opportunity *before* the director or officer becomes legally obligated or entitled, then the director or officer may take advantage of such opportunity without being subject to equitable relief and without giving rise to an award of damages or other sanctions, provided the board of directors or the members follow the nonprofit corporation's conflict of interest procedures.

## **VI. FUNDAMENTAL TRANSACTIONS**

A nonprofit corporation may wish to amend its governing documents, merge with another organization, or cease its operations. These actions are often referred to as "fundamental transactions," and procedures for them are set out in detail in the Proposed Act. In addition, the Proposed Act adds redomestication and entity conversion to the fundamental transactions available to nonprofit corporations, provided that the applicable corporate statute applicable in the other state or to the other type of entity also allows the transaction. A brief description of these fundamental transactions follows. The articles or bylaws of a membership corporation will determine whether any members have the right to vote on some or all of the fundamental transactions.

## **A. Amendment of Articles of Incorporation and Bylaws**

### **1. Articles of Incorporation**

The Proposed Act sets forth the statutory procedure for amending articles. The proposed amendments must be approved by the board of directors and, if the nonprofit corporation has voting members, by the members in a membership meeting for which notice satisfying the requirements of the Proposed Act has been given. After appropriate approval, articles of amendment must be filed with the secretary of state. Certain significant changes of purpose must also be reported on the nonprofit corporation's annual report.

The board has authority, without member approval, to restate the articles to consolidate all amendments into one document without any substantive change. Once approved by the board, restated articles must be filed with the secretary of state. Restated articles supersede the original articles and all amendments thereto.

### **2. Bylaws**

In most cases, the board of directors has the authority to amend or repeal the bylaws, or adopt new bylaws, unless otherwise provided in the articles, the bylaws, or the Proposed Act. For membership corporations, the Proposed Act requires a vote of the members for the board to approve amendments that would affect the rights, powers, or privileges of membership, provide some members with different rights or obligations than others, levy dues or fees on members, or provide for the termination or suspension of members or the purchase of memberships.

## **B. Mergers, Domestications, and Conversions**

One or more nonprofit corporations may merge with one or more other nonprofit corporations or into a newly created nonprofit corporation. The Proposed Act uses the term *merger* to include both mergers and consolidations. The Proposed Act has reinforced provisions addressing the handling of charitable assets in mergers, described below. A *noncharitable* nonprofit corporation may merge with an entity other than a nonprofit corporation, such as a for-profit corporation, provided that certain conditions are met.

The Proposed Act provides a new series of procedures by which a nonprofit corporation incorporated in another state may become a Washington nonprofit corporation or, conversely, a Washington nonprofit corporation may become incorporated in another state ("*domestication*") and a new series of procedures by which a nonprofit corporation may become a different form of entity ("*conversion*"). The other state must also permit a domestication or conversion.

A proposed merger, domestication, or conversion must be approved by the board of directors and, if the nonprofit corporation has voting members, by the members in a membership meeting for which notice satisfying the requirements of the Proposed Act has been given. Upon approval of a merger, domestication, or conversion, articles of merger, articles of domestication, or articles of conversion, respectively, must be filed with the Secretary of State.

### **C. Disposition of Assets**

Under the Proposed Act, the board of directors of a nonprofit corporation with voting members must obtain member approval in order to sell, lease, or otherwise dispose of corporate assets if the assets to be disposed of represent 50% or more of the nonprofit corporation's total assets unless the articles or bylaws provide otherwise.

### **D. Protection of Charitable Assets**

The Proposed Act specifies that property held for charitable purposes by a nonprofit corporation may not be diverted from such charitable purposes in a merger, domestication, conversion, or disposition of assets.

The Proposed Act includes a new requirement that a charitable nonprofit corporation or a nonprofit corporation holding property for charitable purposes must deliver to the Attorney General notice of its intent to consummate a merger or disposition of assets at least 20 days prior to the meeting at which the transaction is to be approved; the notice period is extended to 45 days for domestications and conversions. No such merger, domestication, conversion, or disposition of assets may be implemented without the approval of the Attorney General or a court in a proceeding in which the Attorney General is a party. Approval is deemed to be given if the Attorney General does not deliver notice of objection by the end of the notice period.

### **E. Dissolution**

The Proposed Act provides procedures for voluntary dissolution of a nonprofit corporation, administrative dissolution by the Secretary of State's office, and judicial dissolution.

#### **1. Voluntary Dissolution**

The Proposed Act sets forth a procedure for authorizing the dissolution of a nonprofit corporation that is largely similar to the one in the current Act.

The dissolution must be authorized by the board of directors and, if the nonprofit corporation has voting members, by the members in a membership meeting for which notice satisfying the requirements of the Proposed Act has been given. After the authorization of dissolution, the nonprofit corporation continues its corporate existence but may carry out only those activities appropriate to winding up and liquidating its affairs. The Proposed Act sets forth the order in which assets of the corporation are to be distributed.

There are special distribution requirements for a nonprofit corporation holding property for charitable purposes, including a charitable nonprofit. Such a nonprofit must adopt a plan of distribution of assets conforming to these requirements in the Proposed Act. The plan of distribution must, like the dissolution itself, be authorized by the board of directors and, if the nonprofit has voting members entitled to vote on dissolution, by the members. A nonprofit holding property for charitable purposes must give notice to the Attorney General of its intention to dissolve, including a copy of the plan of distribution. The notice must be sent at least 20 days prior to the meeting at which the transaction is to be approved. The dissolution may not be implemented without the approval of the Attorney General or a court in a proceeding in which

the Attorney General is a party. Approval is deemed to be given if the Attorney General does not deliver notice of objection within 20 days.

Under the Proposed Act, directors are required to cause the dissolved nonprofit corporation to discharge or make reasonable provision for the payment of claims against the nonprofit corporation first, and then to make distributions of assets in accordance with the plan of distribution. The Proposed Act requires the dissolved nonprofit corporation to notify all of the nonprofit corporation's known claimants of the dissolution and provides a process for publishing notice of dissolution for other claims. If the nonprofit corporation follows the process set out in the Proposed Act, claimants are barred from enforcement two years after dissolution.

After dissolution is properly authorized, articles of dissolution are filed with the Secretary of State. A nonprofit corporation may revoke its dissolution within 120 days of its effective date by satisfying the requirements for such revocation in the Proposed Act.

## **2. Administrative Dissolution**

As under the Current Act, nonprofit corporations that do not file timely annual reports are administratively dissolved by the Secretary of State. The dissolved corporation may apply to the Secretary of State for reinstatement in accordance with the procedures set forth in Chapter 23.95 RCW. Notwithstanding such procedures, the Secretary of State may, where exigent or mitigating circumstances are presented, reinstate a nonprofit corporation.

## **3. Judicial Dissolution**

The Proposed Act clarifies the circumstances when judicial dissolution is available. The court may dissolve a nonprofit corporation in a proceeding:

- Brought by the Attorney General, if:
  - it is established that the nonprofit corporation obtained its articles by fraud or has exceeded or abused its legal authority;
  - the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to break the deadlock and such deadlock will cause irreparable harm to the nonprofit corporation or threaten its mission, or
  - the nonprofit corporation is misapplying or wasting property held for charitable purposes.
- Brought by a certain number or percentage of voting members or by a director, if:
  - it is established that the directors are deadlocked in the management of the corporate affairs to an extent that will cause irreparable harm to the nonprofit corporation or threaten its mission, and the members, if any, cannot break the deadlock;

- the directors or those in control have acted or are acting in an illegal, oppressive, or fraudulent manner;
  - the members are deadlocked;
  - corporate assets are being misapplied or wasted; or
  - the nonprofit corporation has insufficient assets and can no longer assemble a quorum of directors or members.
- Brought by a creditor, if it is established that a creditor's claim has been reduced to judgment, the judgment's execution is unsatisfied, and the nonprofit corporation is insolvent, or if it established that the nonprofit corporation has admitted that the claim is due and owing and the nonprofit corporation is insolvent.

The Proposed Act also permits a court to impose remedies short of dissolution in such a proceeding: to issue injunctions, take other action required to preserve corporate assets, and carry on the nonprofit corporation's activities until a full hearing. The court may appoint one or more receivers to wind up and liquidate or to manage the affairs of the nonprofit corporation.

## **VII. OTHER MATTERS**

### **A. Incorporation**

The Proposed Act provides for incorporation procedures largely similar to those in the Current Act. The Proposed Act sets forth items in the articles that are mandatory (such as name, address, purposes, and members), and items that are optional (such as management of the business, internal governance, and indemnification). Like the Current Act, the Proposed Act generally defers to the Uniform Business Organizations Code, Chapter 23.95 RCW, with respect to filing, naming conventions, registered agents, and other administrative requirements.

### **B. Purposes and Powers**

Unless otherwise prohibited in the articles or bylaws, purposes can be modified by making the required amendments to the nonprofit corporation's articles or bylaws while safeguarding the status of any gift restrictions, either by continuing such restrictions or modifying them as allowed by the Proposed Act. The nonprofit corporation must report certain substantial changes in purposes in its next annual report. The decision to modify a nonprofit corporation's purposes will be subject to judicial review only for abuse of discretion. The Proposed Act provides for emergency powers and modifications to corporate procedures if a catastrophic event occurs.

### **C. Foreign Corporations**

The Proposed Act does not make significant changes to provisions of previous Washington law relating to the registration and authority to conduct business of foreign nonprofit corporations. Consistent with the addition of conversion and redomestication provisions to the Proposed Act, it adds provisions clarifying the registration obligations of foreign nonprofit

corporations that undergo conversion or redomestication. The Proposed Act codifies the principle, generally recognized in corporate law but not explicitly stated in the Current Act, that Washington does not have authority to regulate the internal affairs of nonprofit corporations incorporated in other states.

#### **D. Records and Reports**

Recordkeeping requirements in the Proposed Act provide more specific guidance than the Current Act as to the scope of records to be kept, procedures related to inspection, and the scope of the inspection right. The Proposed Act contains additional provisions with respect to the inspection of confidential information and the provision of financial statements to members. The Proposed Act also contains new limitations on the furnishing of membership lists for commercial or solicitation purposes.

### **VIII. TRANSITION PROVISIONS**

The Proposed Act replaces the Current Act in its entirety as of the effective date, currently expected to be January 1, 2022. It immediately applies to all nonprofit corporations incorporated under the Current Act and all foreign nonprofit corporations as of that date. The Committee has designed the Proposed Act with the intent that very few existing nonprofit corporations will need to make changes to their governing documents to be in compliance. If the Proposed Act is adopted, nonprofit corporations that do have provisions in their governing documents that are inconsistent with the Proposed Act should amend their governing documents effective on or before January 1, 2022.

The Proposed Act does not replace any chapter of Title 24 RCW except Chapter 24.03 RCW, or apply automatically to corporations incorporated under any other chapter, although corporations incorporated under other chapters of Title 24 RCW may elect voluntarily to be governed under the modernized provisions of the Proposed Act.

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

**TO:** WSBA Board of Governors  
**FROM:** Dan Clark Treasurer, Terra Nevitt Executive Director  
**DATE:** November 14, 2020  
**RE:** Office Disposition

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**DISCUSSION:** WSBA Seattle Disposition Proposal

We will have representatives of Jones Lang Lassalle presenting the current state of the Seattle Sublet Market and how this impacts our current opportunities for partial disposition of WSBA facilities located at 1325 4<sup>th</sup> Ave Seattle.

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

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** November 9, 2020  
**RE:** FY 2020 Financial Accomplishments of WSBA Board of Governors and Budget and Audit Committee.

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**ACTION/DISCUSSION:** Power Point Presentation of pertinent accomplishments of the WSBA Budget and Audit Committee & Board of Governors during the 2019-20 BOG year which makes up FY 2020.

The following is a power point presentation that I have developed to present to the Board to highlight and summarize the many outstanding accomplishments that the Board of Governors and Budget and Audit Committee accomplished during the FY2020 year. Because of the very hard work of Governors, the BOG and WSBA staff, I felt it pertinent to provide a financial update of the many accomplishments on behalf of the membership and this organization that we've done this last year.

Attached is the power point presentation that will be presented at the November 14, 2020 BOG meeting.

Respectfully,

Dan Clark  
WSBA Treasurer/4<sup>th</sup> District Governor  
[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)  
(509) 574-1207 (office)  
(509) 969-4731 (cell)



**FY 2020 WSBA BUDGET AND AUDIT COMMITTEE  
& BOARD OF GOVERNORS FINANCIAL REPORT**

**Daniel D. Clark, WSBA Treasurer**

**District 4 Governor & Member of Budget & Audit committee since 2017**

**November 5, 2020**

# INTRODUCTION:

- This report is meant to update members of the BOG and WSBA regarding the FY 2020 accomplishments of the Budget and Audit Committee & Board of Governors
- The FY 2020 Budget & Audit Committee was comprised of: Treasurer Dan Clark, Governor Bryn Peterson, Carla Higginson, Tom McBride, PJ Grabicki, Alec Stephens, Paul Swegle and Brian Tollefson
- Treasurer Clark would like to thank the hard work and dedication of all of the above committee members, Jorge Perez, Terra Nevitt and the rest of the WSBA financial staff

# UNAUDITED FY 2020 WSBA ENDING FINANCIAL NET INCREASES AND PROJECTED BALANCE BY FUND

- General Fund:

- \$742,695 in net positive fund balance increase for FY 2020
- Projected Fund Balance - \$5,479,233

- Client Protection Fund:

- \$377,486 in net positive fund balance increase for FY 2020
- Projected Fund Balance – \$4,199,495

- CLE Fund:

- \$45K in net negative for a fund balance decrease for FY 2020
- Projected Fund Balance - \$480,625

- Sections Fund:

- \$82,898 in net positive fund balance increase for FY 2020
- Projected Fund Balance - \$1,204,122

# FY 2020 WSBA GENERAL FUND:

- WSBA netted a **\$742,695** increase to the General Fund. Considering FY 2020 budget called for a loss of **\$594,000**, we ended generating a net increase total of **\$1,336,695** to the unrestricted General Fund over budget
- Bottom Line - **\$2,115,482** increase in last three years. Total WSBA general fund balance including unrestricted and restricted funds is **\$5,479,233** at the end of September 2020.

# FY 2013-2020 WSBA HISTORIC FINANCIAL PERFORMANCE:

Fiscal Year	Net Income/(Loss)	General Fund Reserves
FY 2013	\$215,655	\$8,960,772
FY 2014	(\$1,157,702)	\$7,803,070
FY 2015	(\$2,700,536)	\$5,102,534
FY 2016	(\$1,723,998)	\$3,918,536
FY 2017	(\$554,785)	\$3,363,751
FY 2018	\$432,107	\$3,795,858
FY 2019	\$940,680	\$4,736,538
<b>FY 2020</b>	<b>\$742,695</b>	<b>\$5,479,233</b>

# INCREASED MEMBER BENEFITS

- Permanent **\$5.00** reduction to Client Protect Fund Payments by Members
- 2021: a total of **\$20.00** one-time reduction in payments by members in license fee renewal
- FY 2021 license fees for Attorney members kept flat
- Doubled hardship exemption, extended CLE reporting dates, approved military spouse fee exemption and adopted pro bono legal services for license fee waiver for Emeritus members
- Expanded free CLE's for members and approved increases to legal research tools for members for free Casemaker and Fast Case legal research tools for members uses

# INCREASED WSBA FINANCIAL TRANSPARANCY

- Treasurer Clark created annual Bar News Treasurer Column with routine updates and greatly increased communication on WSBA budget and financial issues including comprehensive written updates in each BOG meeting of WSBA financial matters
- Adoption of WSBA employee salary transparency posting on WSBA website of salary range and benefits
- Established employee hour tracking between cost centers to improve proper FTE allocations for future budgeting

# IMPROVED EFFICIENCIES & INCREASED INTERNAL CONTROLS

- Successful completion of FY 2020 “Deep Dive” Audit. This was the first extensive deep dive audit of WSBA in WSBA history.
- Successful completion of annual WSBA Audit by Accounting firm Clark Nuber. No significant material findings in their audit of WSBA
- Successful completion of FY 2020 Budget Reforecast. Resulted in elimination of three (3) FTE employees and reduction in WSBA expenditures for FY 2020
- New innovative WSBA Financial Software to greatly improve financial forecasting and eliminated one (1) future FTE position

# LLLT BUSINESS PLAN ANALYSIS AND PRESENTATION TO SUPREME COURT

- Budget and Audit Committee reviewed, met with LLLT Board and ultimately voted to reject plan for expansion by 8 to 0 vote
- Treasurer Clark did comprehensive detailed written analysis of LLLT Business plan and prepared comprehensive report and Power Point Presentation for Supreme Court
- May 12, 2020, Treasurer Clark and President-Elect Tollefson presented Treasurer Clark's finding to the Supreme Court
- Supreme Court ultimately voted 7 to 2 to sunset LLLT Program due to non-compliance with revenue cost neutral requirement of license under Court Order 25700-A and/or GR 25 (E)

# CONCLUSION:

- FY 2020 **\$742,695** positive net gain in General Fund and overall **\$5,479,233** General Fund Balance
- WSBA Members are paying \$20 dollars less for the 2021 licensing year due to one time CPF reduction, increased free CLE's, legal research tools, and member benefits
- WSBA managed to maintain robust programs and services to serve membership and the public and did so more efficiently

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** November 9, 2020  
**RE:** 2022 WSBA member license fees

**ACTION/DISCUSSION:** Recommendation by WSBA Treasurer Dan Clark & WSBA Budget and Audit Committee for adoption of 2022 license fee recommendations by Budget & Audit Committee.

The WSBA Budget and Audit Committee met on September 10, 2020 and discussed and ultimately voted to approve recommendations to the Board of Governors for approval of 2022 and 2023 WSBA member license fees. The Committee members voted 7 to 1 to recommend that the Board of Governors reduce the active attorney license fee by \$10 dollars for 2022 and 2023.

After the September BOG meeting, and comments received from approximately half of the Board of Governors, Treasurer Clark requested that CFO Perez provide additional materials and analysis regarding establishing the 2022 license fee. Treasurer Clark and CFO Perez recommend that the Board not set 2023 until the fall of 2021 to attempt to give us additional time to study the potential impacts of COVID-19 on membership, revenue and expenses for the organization.

The FY 2021 Budget and Audit Committee met on November 5, 2020 and examined the additional data. The committee voted by a vote of 6 to 0 to recommend that the BOG adopt 2022 attorney license fees with the same \$458 rate as in 2020, and 2021. The Committee determined that while we could cover a \$10 dollar reduction for 2022 and 2023 in license fees that it would be a better long term use to look to keep the license fees flat and from raising for a much longer period of time. The Committee also highly recommends in doing so that the Board pledge to keep active attorney rates from increasing pass the \$458 rate for the next five (5) years or through 2026 which also is the end of our current WSBA Lease.

**Active Attorney License Fees:**

The proposed active attorney license fee for 2022 is recommended to remain at the current rate of \$458.

**LLLT Proposed Fees:**

The 2022 and 2023 proposed license fee rates for LLLT members are directly taken from the LLLT Board's 2020 Business plan recommendation to the Supreme Court for 2022 and 2023. They are for a proposed increase from 2021's rate of \$229 to \$240 for 2022 and \$250 for 2023.

**LPO Proposed Fees:**

Given the current rate of robust revenue over expenditures that the LPO license type is generating within its cost center, the Committee recommends keeping the \$200 dollar license fee the same for 2022 and 2023.

**Other License Type Proposed Fees:**

The Committee recommends that rates for inactive attorneys, retired attorneys, judicial attorney rates, and the annual tuition for the APR Rule 6 Law Clerk Program remain the same.

**Conclusion:**

My strong recommendation as WSBA Treasurer would be for the Board of Governors to approve these recommended license fees for 2022 and 2023.

The attached license fee proposal and analysis is included herein

Year	License Type	Proposed Amount
2022	Active Attorney Full rate	\$458
2022	New Active Attorney	\$229
2022	Active LLLT	\$240
2022	Active LLLT New Admitted	\$120
2022	Active LPO	\$200
2022	Active LPO New Admitted	\$100
2022	Inactive LLLT or LPO	\$100
2022	Inactive/Emeritus Lawyer	\$200
2022	Judicial	\$50
2022	APR Rule 6 Law Clerk annual tuition	\$2000 (plus \$100 initial application fee).

All of the different Attorney Rates are listed here as follows for 2022 and 2023 if the 10 dollar license fee reduction is made:

Active	\$458.00
Active 50%	\$229.00
FLC	\$458.00
HC	\$458.00
Inactive	\$200.00
Emeritus	\$200.00
Judicial	\$ 50.00
Pro Hac Vice	\$458.00
New Admittee 25%	\$114.50
New Admittee 50%	\$229.00
New Admittee 100%	\$458.00

Based on the above following, I recommend that we approve the 2022 license fees as indicated above, and se defer discussion and setting the 2023 fees until the fall of 2021.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

[DanClarkBoG@yahoo.com](mailto:DanClarkBoG@yahoo.com)

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# **BUDGET AND AUDIT COMMITTEE LICENSE FEES 2022**

November 5<sup>th</sup> 2020

# 2022-23 LICENSE FEE DISCUSSION HISTORY

- The Budget and Audit Committee at the September B & A Meeting voted 7 to 1 to recommend to the Board of Governors that the 2022 and 2023 WSBA Active Attorney license fees be reduced \$10.00 which would set Attorney fees at \$448 and \$224 for New/Young Attorneys for the 2022 and 2023 license year
- The 2019-20 Board of Governors voted 7 to 6 to table discussion of the license fee vote until the November BOG Meeting

# SEPTEMBER BOG COMMENTS

- Approximately half of the 2019-20 Governors strongly supported the \$10 dollar license fee reduction
- Some 2019-20 Governors expressed concerns with passing 2022 and 2023 license fees now with unknown data of how Covid-19 will impact potential membership growth, revenue, and expenses
- Some saw the reduction as a symbolic in nature and worried that the \$10 dollar reduction would not be sustainable for multiple years
- Some Governors wanted more information before they made a decision, which ultimately let to the 7 to 6 vote to table to the November BOG meeting

# 2022 & 2023 LICENSE FEE DISCUSSION

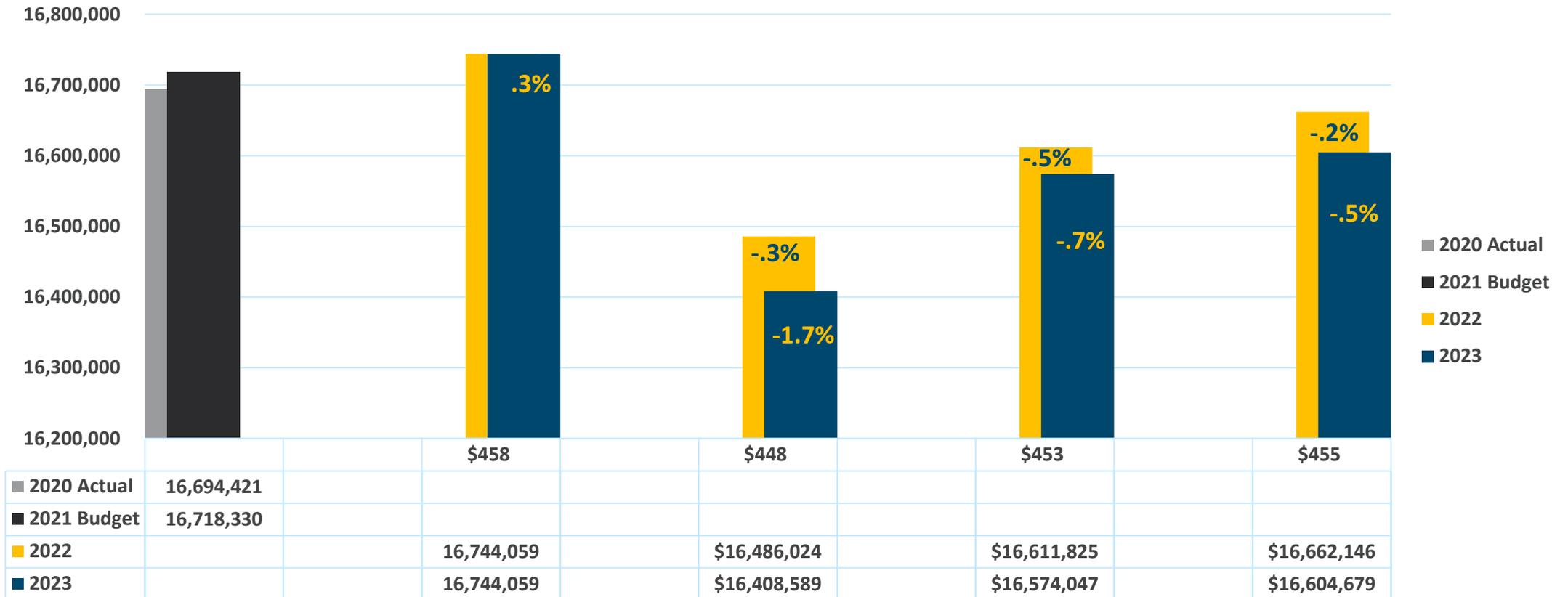
- In wanting to be respectful of all concerns of Governors, Treasurer Clark has asked WSBA staff to prepare potential options for the committee to consider a range from the \$10 dollar reduction, a \$5.00 reduction, \$3.00 reduction and zero reduction
- Treasurer Clark recommends Committee consider only look at 2022 license fees now and defer setting 2023 until next fall when we have more information on how Covid-19 will impact revenue and expenses for WSBA
- Treasurer Clark believes is also important when this committee examines the license fee, to examine potentially looking at continuing to recommend a reduction to the Client Protection Fund to achieve an overall annual reduction to membership

# LICENSE FEES ACTUAL/BUDGET/PROJECTIONS

ACTUALS							
Members	FISCAL YEAR	License Fee Rates	License Fee Revenue	Total General Fund Revenue	Total General Fund Expenses	Net Income/(Loss)	General Fund Reserves
	FY 2013	\$325	\$11,390,193	\$15,349,822	\$15,134,167	\$215,655	\$8,960,772
	FY 2014	\$325	\$10,760,723	\$15,335,749	\$16,493,451	(\$1,157,702)	\$7,803,070
34,211	FY 2015	\$325	\$11,133,170	\$15,266,002	\$17,966,538	(\$2,700,536)	\$5,102,534
34,690	FY 2016	\$385	\$12,819,372	\$16,397,121	\$18,121,119	(\$1,723,998)	\$3,918,536
35,983	FY 2017	\$385	\$13,512,192	\$17,584,851	\$18,139,636	(\$554,785)	\$3,363,751
36,327	FY 2018	\$449	\$15,408,528	\$19,614,585	\$19,182,478	\$432,107	\$3,795,858
36,746	FY 2019	\$458	\$16,217,199	\$21,127,959	\$20,187,279	\$940,680	\$4,736,538
36,475	FY 2020	\$458	\$16,692,516	\$21,173,197	\$20,430,500	\$742,697	\$5,479,235
BUDGET							
37,081	FY 2021	\$458	\$16,713,418	\$20,603,129	\$20,805,908	(\$202,779)	\$5,276,456

# LICENSE FEES PROPOSED FEE REDUCTION VS ACTUAL

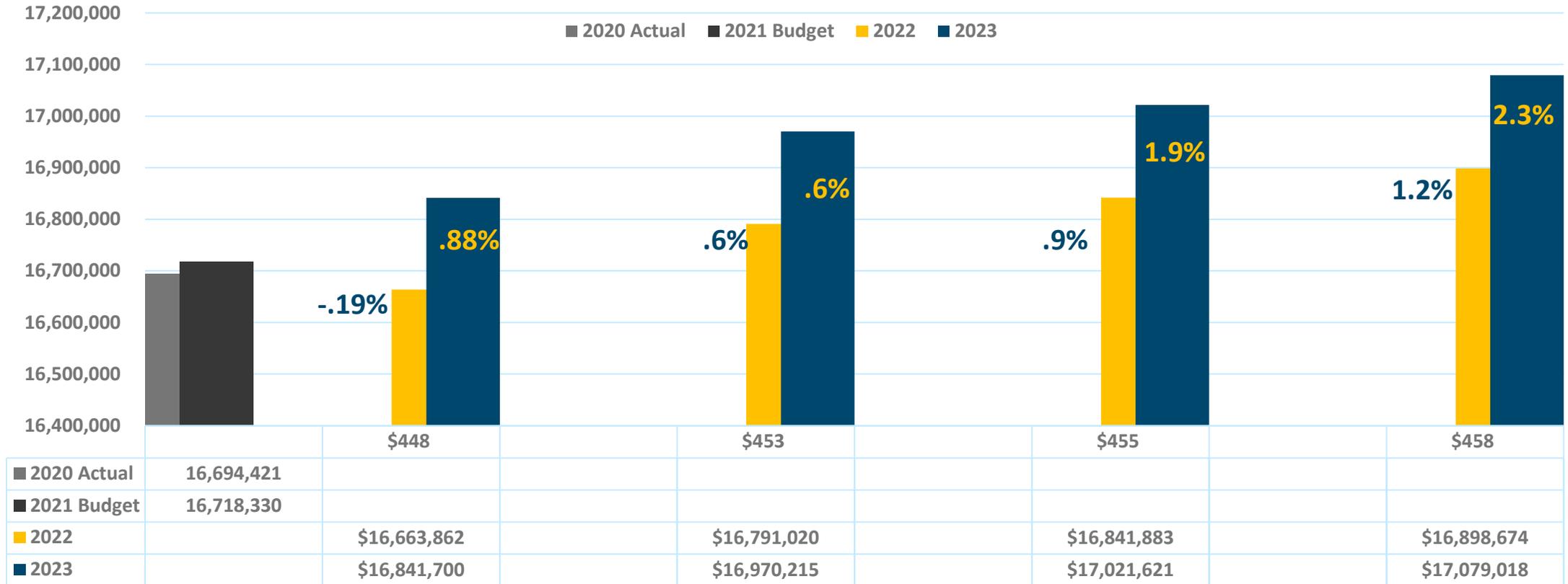
Fees Actuals/Budget/Forecast



# LICENSE FEES INCREMENTAL MEMBERSHIP PROPOSED FEE REDUCTION VS ACTUAL

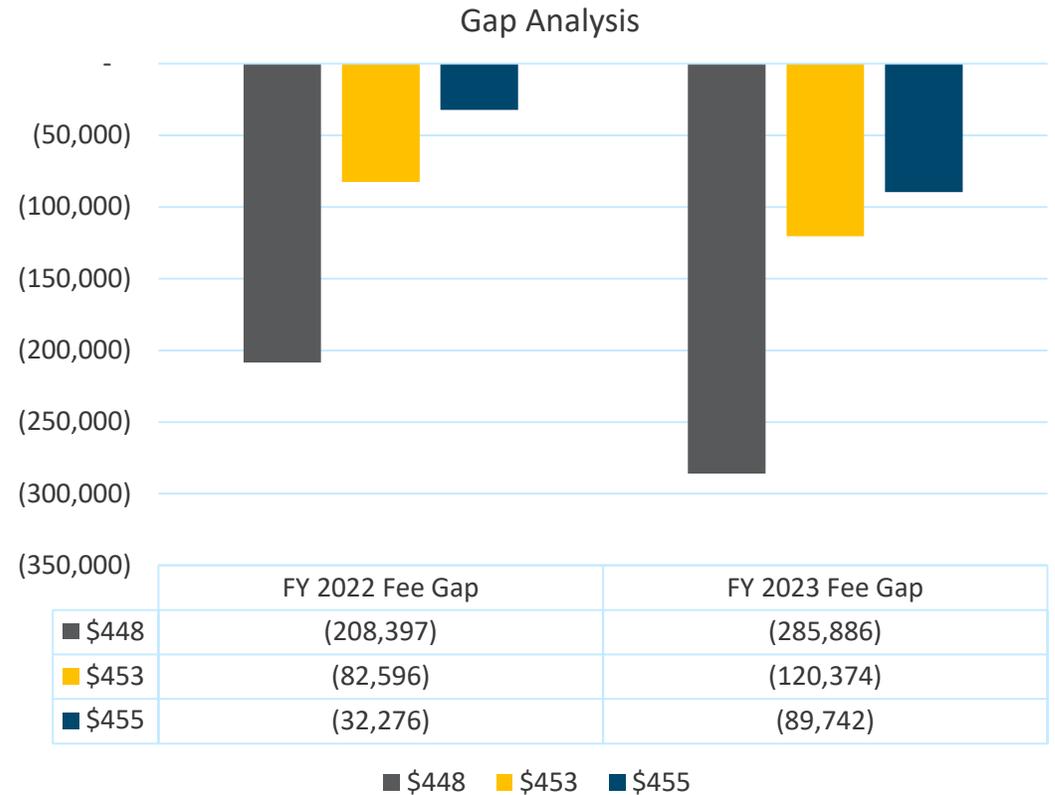
Fees Actuals/Budget/Forecast

Assumes 1% Membership Growth Per Annum  
Results in \$180K Increase Per Year



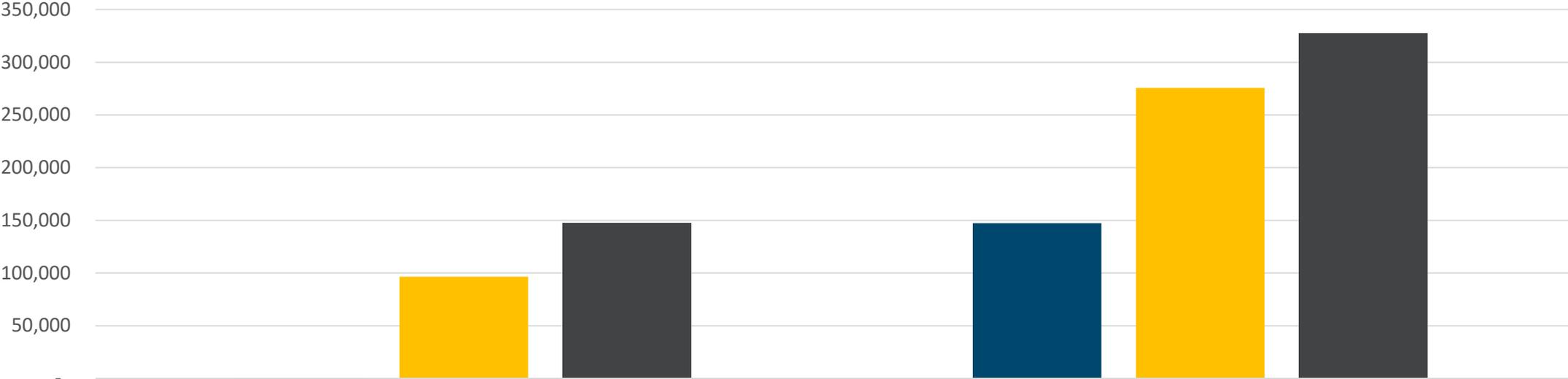
# TOTAL BASE COST OF POTENTIAL REDUCTIONS CONSTANT MEMBERSHIP

- A \$10 dollar license fee reduction would be -\$208K for 2022 and \$-286K 2023 as compared to 2020 Actual
- A \$5 dollar license fee reduction would be \$-82.6K for 2022 and \$-120.4KK for 2023
- A \$3 dollar license fee reduction would be \$-32.3K for 2022 and \$-89.7K for 2023
- There would be zero fee reduction if the Board chooses to maintain the \$458.00 license fee for either year



# GAP ANALYSIS INCREASED MEMBERSHIP \$10.00,\$5.00,\$3.00 REDUCTIONS

Gap Analysis



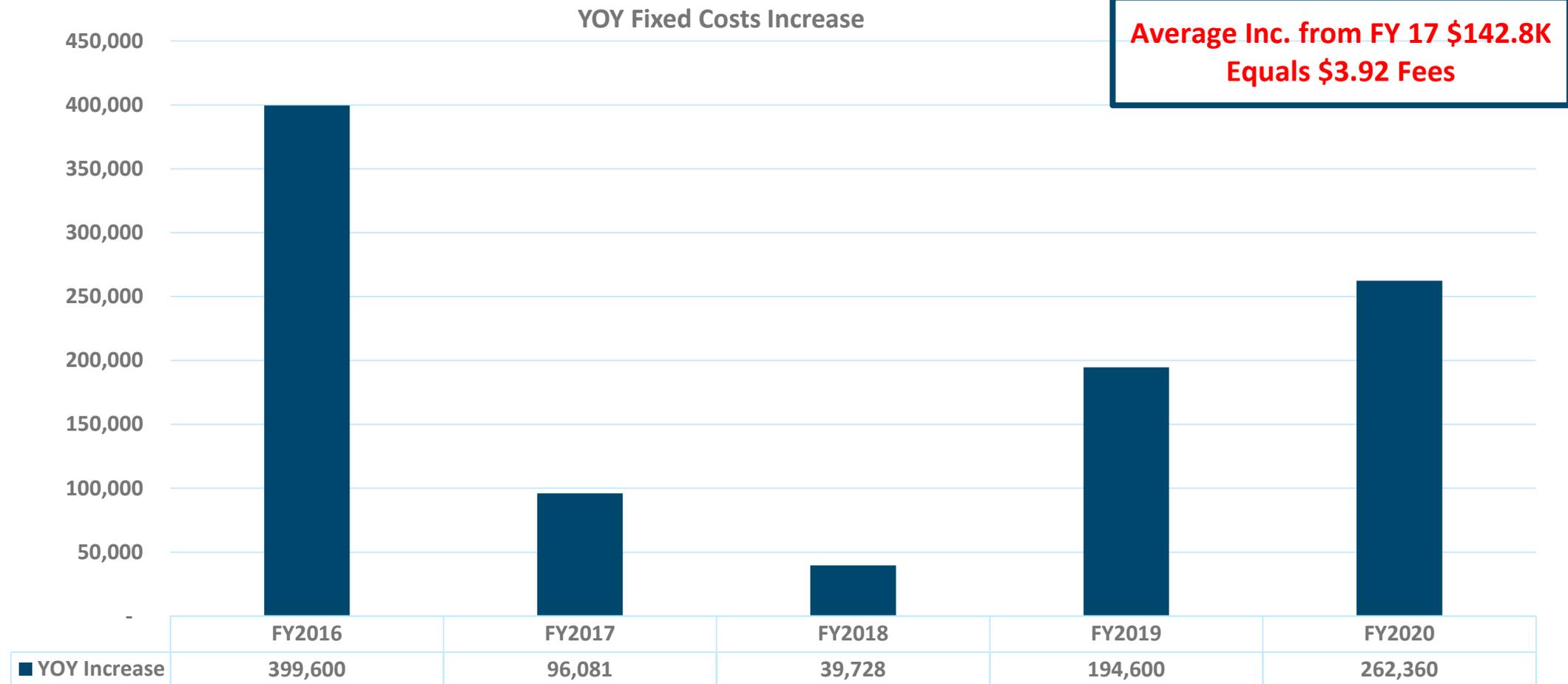
	FY 2022 Fee Gap	FY 2033 Fee Gap
■ 455	(30,559)	147,279
■ 453	96,599	275,794
■ 448	147,462	327,200

■ 455 ■ 453 ■ 448

## GAP ANALYSIS:

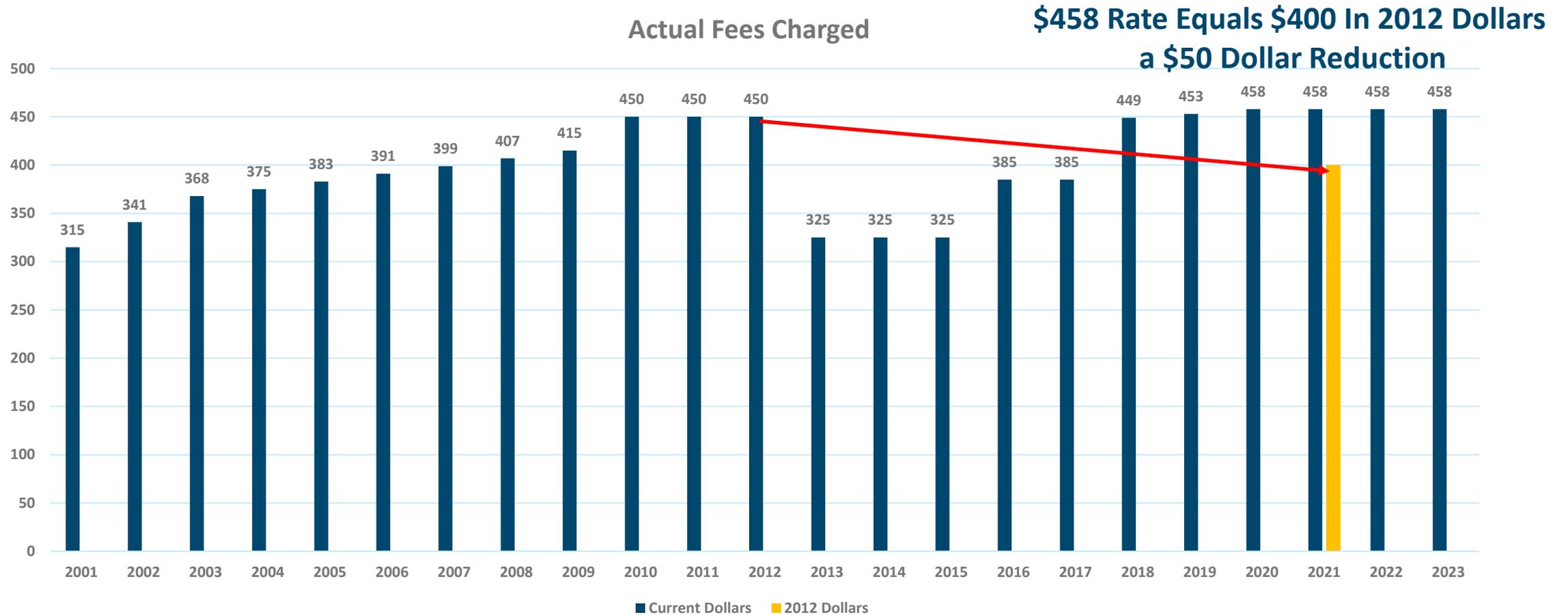
- While the previous slide shows the overall impact to Revenue of reducing license fees, it is important to note that WSBA incurs ongoing fixed cost increases (Rent increases, Lease real estate taxes, etc.) that average an annual increase of \$143,000 a year
- Such costs amount to a per member annual increase of approximately \$3.92 a year
- The following two slides incorporate CFO Perez's estimate of what costs in 2022 and 2023 exist within this Gap analysis

# FIXED COSTS ARE NOT FIXED



LM-57

# HISTORICAL LICENSE FEES CONSTANT DOLLAR ANALYSIS



# LICENSE FEE DATA DISCUSSION SUMMARY

**WSBA's General fund reserve balance is such that allow for a reduction in the FY 2022 License Fees by \$3.00 with minimal risk. A \$5.00 reduction can also be accommodated given the current balances but with increased risk. A \$10.00 dollar reduction can be accomplished for FY 2022 and 2023 but it will significantly reduce WSBA's general fund balance and is not sustainable long term without significant reductions to current WSBA financial expenditures.**

- Risk
  - Financially the risk is acceptable at the \$3.00 and \$5.00 proposed reduction. However other considerations specifically the risk of a referendum is always present. However, the risk of this seems slight. The \$10.00 reduction poses obviously higher risk due to the greater reduction in revenue
- Possibility
  - Maintain Fee Constant for 5 Years, provides stability and an ongoing commitment of the Bar to manage costs

**TO:** Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** November 9, 2020  
**RE:** WSBA Treasurer & Budget and Audit Committee recommendation for reduction to Client Protection Fund Per Member Fee.

**ACTION/DISCUSSION :** Recommendation of approval of 2022 Client Protection Fund Rate being lowered from \$25.00 per Member Rate to \$20.00 per member rate.

On the November 13-14, 2020 Board of Governors agenda there will be a request for the BOG to consider adopting a recommendation to the Supreme Court to lower the 2022 annual client protection assessment from \$25.00 to \$20.00. The following information is meant to support such a proposal and show that such a proposal is reasonable and will still result in a robust fund balance for the fund.

The Budget and Audit committee unanimously approved 5 to 1 this recommendation at the November 5, 2020 Budget and Audit meeting. The following will detail information in support of the recommendation and justification for the recommendation from the Budget and Audit Committee, and myself as WSBA Treasurer.

**Client Protect Fund Assessment Information:**

The most recent financial information available for the end of FY 2020, shows that the Client Protection Fund balance has grown to an all time high fund balance of \$4,199,495, and enjoyed a \$377,486 net revenue increase for the fund in FY 2020 with revenue over client expenses.

The following is true and correct fund balances for the client protection fund over the last few years:

FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Aug 2019
\$791,399	\$1,213,602	\$1,746,010	\$2,144,289	\$2,646,222	\$3,242,299	\$3,582,278	\$4,039,921.19

As the above chart illustrates the Client Protection fund has continued to grow annually about \$450k per year annually. The current fund has went from a balance of \$184,640 in FY 2009 to approximately 4.2 million which is the last available information on the fund. Over a period of 11 years, the fund has grown approximately \$4 million dollars in size.

For FY 2019, through August, the Client protection fund had generated the following statistics:

Actual Revenue	Budgeted Revenue	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
\$1,105,364	\$992,500	\$136,792	\$164,210	\$157,639	\$504,000	\$293,431	\$668,210	\$811,933	\$324,290

WSBA Chief Financial Officer Perez and the WSBA financial staff put together the following forecast model for the Client Protection Fund that we believe supports the recommendation to reduce the fee from 25 to 20 dollars and still maintain a very robust fund balance at least through 2028 based on historical performance of the fund. The graph is included on two power point slides that will be included with this letter, but for ease it is illustrated in pertinent part as follows:

Year	Fee	Active Members	Gifts	Fee Revenue	Fund Balance	Gain Or Loss
2019	30	32,801	800,000	984,030	3,816,143	184,030
2020	30	32,116	586,000	963,486	4,199,495	377,486
2021	10	32,272	600,353	322,724	3,921,867	(277,629)
2022	20	32,595	669,778	651,903	3,903,992	(17,875)
2023	20	32,921	715,879	658,422	3,846,535	(57,457)
2024	20	33,250	673,768	665,007	3,837,773	(8,762)
2025	20	33,583	648,522	671,657	3,860,908	23,135
2026	20	33,919	661,660	678,373	3,877,621	16,713
2027	20	34,258	673,921	685,157	3,888,856	11,235
2028	20	34,600	674,750	692,008	3,906,115	17,258

This model shows that the 20 dollar proposed fee will be sustainable and will maintain a robust fund balance and also allowing WSBA to provide an additional 5 dollars of economic relief to membership during Covid 19. The WSBA and Budget and Audit committee has determined that the average rate of average gifts over the last five years has been roughly \$670k payouts a year.

Taking all of the above information into consideration, it is the 5 to 1 opinion of the Budget and Audit Committee, and myself as WSBA Treasurer to make the following recommendation to the Board of Governors that a majority vote approve and recommend to the Supreme Court potential adoption of the following:

- **That the FY 2021 Client Protection Fund Annual Assessment be reduced from \$25.00 per member to \$20.00 per member.**

Included is the power point presentation put together by CFO Jorge Perez. In any event, thank you and please let me know if you have any questions or comments.

Respectfully,

Dan Clark

WSBA Treasurer/4<sup>th</sup> District Governor

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# CLIENT PROTECTION FUND

2022 Proposal

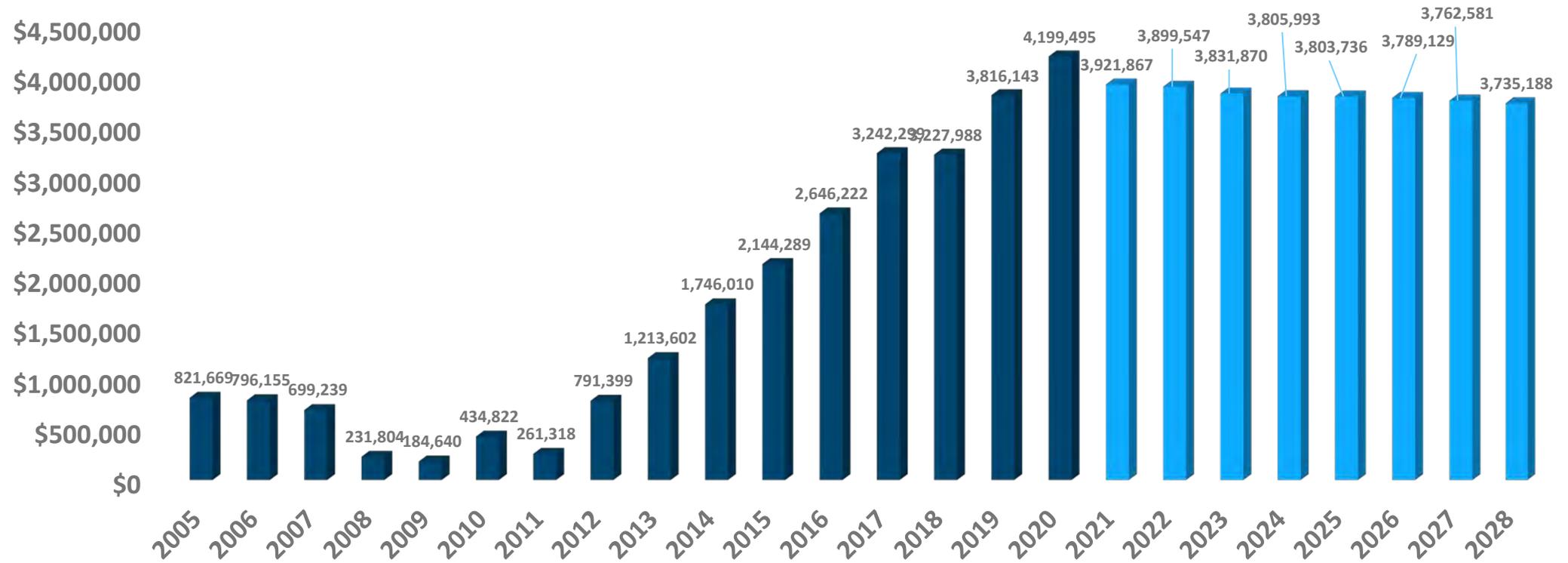
# CLIENT PROTECTION FUND FINANCIAL FORECAST \$5 REDUCTION

Year	Active Fee	Active Professionals	Gifts	Contribution to Fund	CPF Balance	Gain and Loss	Gain and Loss @\$25
2019	30	32,801	\$ 800,000	\$ 984,030	\$ 3,816,143	\$ 184,030	
2020	30	32,116	\$ 586,000	\$ 963,486	\$ 4,199,495	\$ 377,486	
2021	10	32,272	\$ 600,353	\$ 322,724	\$ 3,921,867	\$ (277,629)	
2022	20	32,595	\$ 669,778	\$ 651,903	\$ 3,903,992	\$ (17,875)	\$ 127,226
2023	20	32,921	\$ 715,879	\$ 658,422	\$ 3,846,535	\$ (57,457)	\$ 49,692
2024	20	33,250	\$ 673,768	\$ 665,007	\$ 3,837,773	\$ (8,762)	\$ 148,728
2025	20	33,583	\$ 648,522	\$ 671,657	\$ 3,860,908	\$ 23,135	\$ 214,184
2026	20	33,919	\$ 661,660	\$ 678,373	\$ 3,877,621	\$ 16,713	\$ 203,019
2027	20	34,258	\$ 673,921	\$ 685,157	\$ 3,888,856	\$ 11,235	\$ 193,760
2028	20	34,600	\$ 674,750	\$ 692,008	\$ 3,906,115	\$ 17,258	\$ 207,519

\*Gifts Starting 2022 Based on Predictive Model dated 11/2019

# CLIENT PROTECTION FUND FINANCIAL FORECAST \$5 REDUCTION

CPF Fund Balance



**TO:** WSBA Board of Governors

**FROM:** Daniel D. Clark, WSBA Treasurer and District 4 Governor

**DATE:** November 6, 2020

**RE:** **Recommended Clarifications and Changes to membership of Budget and Audit Committee**

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**ACTION/DISCUSSION:** First Read--Recommended Bylaw Change to Budget and Audit Committee (Art. V.A.1).

The WSBA Treasurer recommends three changes to the WSBA Bylaw Article V.A.1: clarifying the required Governor class representation on the Committee, increasing the voting membership of the Budget and Audit Committee by one Governor, and correcting the legacy reference to Chief Operations Officer. Redline and clean versions of the changes are attached.

WSBA Bylaws Article XVI.B requires bylaw amendments to be presented for a “first read” at least one Board meeting prior to the meeting at which the Board votes on the proposed amendment.

#### **Clarifying Class Representation and Increasing the Voting Membership of the Budget and Audit Committee**

The current Bylaw language is potentially confusing and can be interpreted as internally inconsistent. The current language requires that the Budget and Audit Committee consists of two Governors from each class, not exceed seven Governors, and must include the Treasurer. This language could be interpreted to require two from each class plus the treasurer, or two from each class, including the treasurer, and one additional Governor. The first interpretation results in the Treasurer’s class always having three representatives on the Committee. The second interpretation allows the President the discretion to include an additional Governor based on the President’s policy priorities or other factors.

To clarify the intent, the Treasurer recommends making clear that the Committee consists of a minimum of two Governors from each class. This clarification maintains the current structure of Governor class representation on the Budget and Audit Committee, while providing discretion to the President to determine which class receives the additional representative.

In addition to this clarification, the Treasurer recommends increasing the size of the Committee by one. This provides an additional discretionary appointment for the President. The Treasurer recognizes that increasing the size of the Committee to an equal number of voting members increases the opportunity for tie votes. However, the Treasurer believes that because the work of this Committee can involve technical considerations such as an investment strategy and long term issues such as real estate considerations, the Committee can benefit from an additional Governor. Nothing in the change alters the Board’s decision-making authority.

Enclosures

## REDLINE

### V. APPROPRIATIONS AND EXPENSES

#### A. APPROPRIATIONS

Appropriations of Bar funds and authorization for payment of expenses will be made by the BOG through the adoption of an annual budget or by special appropriation as required.

1. The President appoints a BOG Budget and Audit Committee, which consists of a minimum of two Governors from each class, not to exceed seven-eight Governors, one of whom must be the Treasurer. The President, President-Elect, Executive Director and Chief Operations-Financial Officer serve as ex officio, non voting members, and the Treasurer serves as Chair of the Committee and has a vote on the committee.
2. The Treasurer, together with the Budget and Audit Committee, will present a proposed Annual Budget to the BOG for approval prior to each fiscal year.
3. Decisions regarding non-budgeted appropriations must be made in accordance with the BOG-approved fiscal policies and procedures.

## CLEAN

### V. APPROPRIATIONS AND EXPENSES

#### A. APPROPRIATIONS

Appropriations of Bar funds and authorization for payment of expenses will be made by the BOG through the adoption of an annual budget or by special appropriation as required.

1. The President appoints a BOG Budget and Audit Committee, which consists of a minimum of two Governors from each class, not to exceed eight Governors, one of whom must be the Treasurer. The President, President-Elect, Executive Director and Chief Financial Officer serve as ex officio, non-voting members, and the Treasurer serves as Chair of the Committee and has a vote on the committee.
2. The Treasurer, together with the Budget and Audit Committee, will present a proposed Annual Budget to the BOG for approval prior to each fiscal year.
3. Decisions regarding non-budgeted appropriations must be made in accordance with the BOG-approved fiscal policies and procedures.

**TO:** WSBA Board of Governors  
**FROM:** Renata de Carvalho Garcia, Chief Regulatory Counsel  
**DATE:** October 21, 2020  
**RE:** Proposed Amendments to WSBA Bylaws Articles III, IX, and XI Re: Pro Bono Status

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**FIRST READ :** The Regulatory Services Department presents for first reading proposed technical amendments to the WSBA Bylaws related to the recently adopted amendments to APR 3(g), Pro Bono Admission.

By orders dated October 7, 2020, the Washington Supreme Court recently adopted amendments to APR 3(g), Pro Bono Admission, and approved related amendments to the WSBA Bylaws. Those amendments related to changing the name of emeritus pro bono status to simply pro bono status. Those amendments also modified some of the requirements for pro bono status. The amendments submitted to and approved by the Court did not capture all references to emeritus pro bono status in the WSBA Bylaws. Thus, these proposed amendments align all references to pro bono status with the newly amended APR 3(g). In addition, there is one proposed amendment correcting the name of the Pro Bono and Public Service Committee. There are no new substantive changes to the Bylaws due to these proposed amendments.

Attachments:

- Proposed Amendments to WSBA Bylaws – Redline and Clean

### III. MEMBERSHIP

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#### 2. Inactive

Inactive members must not practice law in Washington, nor engage in employment or duties that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee or board.

- a. Inactive members may:
  - 1) Join Bar sections as non-voting members,
  - 2) Continue their affiliation with the Bar;
  - 3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;
  - 4) Request a free subscription to the Bar's official publication; and
  - 5) Receive member benefits available to Inactive members.
- b. Types of Inactive membership:
  - 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
  - 2) Disability: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
  - 3) Honorary: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, a Pro Bono member.

#### 3. Judicial

- a. A member may qualify to become a Judicial member if the member is one of the following:
  - 1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;
  - 2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;
  - 3) A current senior status or recall judge in the courts of the United States;
  - 4) An administrative law judge, which is defined as either:
    - (a) Current federal judges created under Article I and Article II of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or
    - (b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or
  - 5) A current Tribal Court judge in the State of Washington.

- 5) A member of any type who has transferred to Inactive status during the pendency of a grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the ELC, ELPOC, or ELLTC.

**b. Transfer from Judicial to Active.**

A Judicial member may request to transfer to any other status, including Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his or her affiliation with the Bar must change to another membership status within the Bar.

- 1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership status may transfer to Active by submitting an application for change to Active membership status and
  - (a) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as a Judicial member for the same licensing year; and
  - (b) complying with the MCLE requirements for members returning from Inactive to Active. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.
- 2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or pay the annual license fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Active, be required to pay the Active license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.

**c. Transfer from Pro Bono to Active**

A Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is no limit on how long a member may be Pro Bono before returning to Active status.

**d. Referral to Character and Fitness Board**

All applications for readmission, reinstatement or transfer to Active status will be reviewed by Bar staff and handled consistent with the provisions of APR 20-24.3. In all cases reviewed by it, the Character and Fitness Board has broad authority to recommend withholding a transfer to Active status or imposing

conditions on readmission to Active status, which may include retaking and passing the licensing examination applicable to the member's license type. The member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

#### **E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE**

1. Any member who is an Active, Judicial, or Pro Bono member and who is not Suspended will become an Inactive member when the member files a request for Inactive membership with the Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive member status upon leaving service as a judicial officer, who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Inactive, be required to pay the Active license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

2. Members are transferred to Disability Inactive pursuant to Title 8 of the ELC, ELPOC, or ELLLTC. Any member seeking to transfer from Disability Inactive to Inactive member status must first establish that the member has complied with the requirements of Title 8 of the ELC, ELPOC, or ELLLTC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive members.
3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for Honorary status. A qualified member may request to change to Honorary status by submitting a written request and any required application.
4. An Active member may apply to change from Active to Inactive status while grievances or disciplinary proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

#### **F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL**

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

#### **G. CHANGE OF MEMBERSHIP STATUS TO PRO BONO**

A member may become a Pro Bono member by complying with the requirements of APR 3(g), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Pro Bono, be required to pay

months of that calendar year and 25% of the full active license fee if admitted in Washington in the last six months of that calendar year.

- 6) All members in their first two full licensing years after admission or licensure to practice law in any jurisdiction will pay 50% of the applicable full Active license fee.
- 7) An Active member of the Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States will be exempt from the payment of license fees and assessments for the Client Protection Fund upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

**b. Inactive Members**

- 1) The annual license fee for Inactive members will be as established by resolution of the BOG and as approved by the Washington Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members will apply to Inactive members.
- 2) Honorary and Disability Inactive status members will be exempt from license fees and assessments, unless otherwise provided by Supreme Court order.

**c. Judicial Members [Effective January 1, 2012]**

Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer must pay the annual license fee established by the Bar and as approved by the Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

**d. Pro Bono Members**

Pro Bono members must pay the annual license fee required of Inactive members with the same type of license unless the member qualifies for the license fee waiver as provided for in APR 3(g). Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Pro Bono members.

### IX. COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES

#### A. GENERALLY

1. The work of the Bar shall be accomplished by the BOG, the officers, and the Bar staff. To facilitate the work of the Bar in accordance with its purposes as provided in Article I, the BOG may delegate such work to an appropriate Bar entity, such as sections, committees, councils, task forces, or other Bar entity, however that may be designated by the BOG.
2. The work of any Bar entity established by the BOG must:
  - a. have a defined scope that requires the active and continuing attention of the BOG;
  - b. further the Bar's Guiding Principles and/or the purposes of the Bar outlined in General Rules promulgated by the Supreme Court; and
  - c. enhance consideration of a topic that is beyond the time and expertise of the BOG and staff by incorporating expertise and additional viewpoints from the broader community.
3. A list of the current committees, councils, and task forces, and their functions, will be maintained by the Executive Director. The BOG may terminate any recurring committee whenever in its opinion such committee is no longer necessary. Any nonrecurring Bar entity shall automatically terminate pursuant to the terms of its charter or originating document.
4. Governors appointed to serve as BOG liaisons to any Bar entity are not voting members. However, if a Governor is appointed as a member of any Bar entity, then he or she may vote in accordance with the terms of the charter or originating document for that entity.

#### B. COMMITTEES AND OTHER BAR ENTITIES

##### 1. Committees

Committees are created and authorized by the BOG to study matters relating to the general purposes and business of the Bar which are of a continuous and recurring character. The number, size, and functions of each committee will be determined from time to time by the BOG.

- a. Committee members, Chairs, and Vice Chairs must be Active members of the Bar. Exceptions: (a) up to two Pro Bono members are permitted to serve on the Pro Bono and Public Service Committee (PBPS) and may be appointed to serve as the Chair, Co-Chair, or Vice-Chair of that committee; and (b) faculty of Washington state law schools who are not Active members of the Bar are permitted to serve on the Committee on Professional Ethics (CPE).
- b. Committee members are appointed by the BOG. Appointments to committees are for a two-year term unless the BOG determines otherwise. A committee member's service on any committee is limited to two consecutive terms, after which the member cannot be reappointed to that committee for three years, subject to individual exceptions for cause as approved by the BOG. Appointments to the Legislative Committee will be made pursuant to the written BOG policy for that committee.

## XI. SECTIONS

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### B. ESTABLISHING SECTIONS

1. The BOG will consider the establishment of a new section on a petition and report endorsed by at least 150 Active members of the Bar. Any such petition must be filed with the Executive Director at least one BOG meeting prior to the meeting at which action on the proposal is contemplated and must substantially set forth:
  - a. The contemplated purpose of the section, which will be within the purposes of the Bar and not in substantial conflict with the purpose of any existing section or committee, the continuance of which is contemplated after the section is established;
  - b. Proposed bylaws of the section, which must contain a definition of its purpose;
  - c. The names of any proposed committees of the section;
  - d. A proposed budget of the section for the first two years of its operation;
  - e. A list of members of the Bar who have signed statements that they intend to apply for membership in the section;
  - f. A statement of the need for the proposed section.
2. The BOG may create a new section by combining sections as set forth in these Bylaws.

### C. MEMBERSHIP

1. Any Active member of the Bar may be a voting member of a section and eligible for election to office in the section upon paying the annual dues established by the section. Inactive members may not be voting members of sections.
2. If provided for in the section bylaws, any Pro Bono member pursuant to APR 3(g), Judicial member, House Counsel under APR 8(f), professor at a Washington law school (whether licensed in Washington or not), or any lawyer who is a full time lawyer in a branch of the military who is stationed in Washington but not licensed in Washington, may be a voting member of the section and eligible for election to office in the section.
3. Law students will be allowed to be nonvoting members of any section at a standard annual dues amount set by the BOG.
4. Sections may adopt bylaw provisions authorizing inactive members, and others not eligible for section membership as voting members, to be nonvoting members or “subscribers” of the section.

### D. DUES

Dues will be paid annually in the amount determined by the section executive committee and approved by the BOG. Any person who fails to pay the annual dues will cease to be a member of the section.

### E. BYLAWS AND POLICIES

Sections are subject to all Bar Bylaws, policies, and procedures. Each section must have bylaws consistent with the Bar Bylaws. Amendments to section bylaws may be made by a majority vote of the voting executive committee members or by a majority vote of section members present at a section meeting. Section bylaws or amendments thereof will become effective when approved by the BOG.

### III. MEMBERSHIP

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#### 2. Inactive

Inactive members must not practice law in Washington, nor engage in employment or duties that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee or board.

- a. Inactive members may:
  - 1) Join Bar sections as non-voting members,
  - 2) Continue their affiliation with the Bar;
  - 3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;
  - 4) Request a free subscription to the Bar's official publication; and
  - 5) Receive member benefits available to Inactive members.
- b. Types of Inactive membership:
  - 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
  - 2) Disability: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
  - 3) Honorary: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, ~~an Emeritus~~ Pro Bono member.

#### 3. Judicial

- a. A member may qualify to become a Judicial member if the member is one of the following:
  - 1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;
  - 2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;
  - 3) A current senior status or recall judge in the courts of the United States;
  - 4) An administrative law judge, which is defined as either:
    - (a) Current federal judges created under Article I and Article II of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or
    - (b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or
  - 5) A current Tribal Court judge in the State of Washington.

- 5) A member of any type who has transferred to Inactive status during the pendency of a grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the ELC, ELPOC, or ELLTC.

**b. Transfer from Judicial to Active.**

A Judicial member may request to transfer to any other status, including Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his or her affiliation with the Bar must change to another membership status within the Bar.

- 1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership status may transfer to Active by submitting an application for change to Active membership status and
  - (a) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as a Judicial member for the same licensing year; and
  - (b) complying with the MCLE requirements for members returning from Inactive to Active. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.
- 2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or pay the annual license fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Active, be required to pay the Active license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.

**c. Transfer from ~~Emeritus~~ Pro Bono to Active**

~~An Emeritus~~ Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is no limit on how long a member may be ~~Emeritus~~ Pro Bono before returning to Active status.

**d. Referral to Character and Fitness Board**

All applications for readmission, reinstatement or transfer to Active status will be reviewed by Bar staff and handled consistent with the provisions of APR 20-24.3. In all cases reviewed by it, the Character and Fitness Board has broad authority to recommend withholding a transfer to Active status or imposing

conditions on readmission to Active status, which may include retaking and passing the licensing examination applicable to the member's license type. The member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

#### **E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE**

1. Any member who is an Active, Judicial, or ~~Emeritus~~-Pro Bono member and who is not Suspended will become an Inactive member when the member files a request for Inactive membership with the Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive member status upon leaving service as a judicial officer, who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Inactive, be required to pay the Active license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

2. Members are transferred to Disability Inactive pursuant to Title 8 of the ELC, ELPOC, or ELLLTC. Any member seeking to transfer from Disability Inactive to Inactive member status must first establish that the member has complied with the requirements of Title 8 of the ELC, ELPOC, or ELLLTC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive members.
3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for Honorary status. A qualified member may request to change to Honorary status by submitting a written request and any required application.
4. An Active member may apply to change from Active to Inactive status while grievances or disciplinary proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

#### **F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL**

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

#### **G. CHANGE OF MEMBERSHIP STATUS TO ~~EMERITUS~~-PRO BONO**

A member ~~who is otherwise retired from the practice of law~~ may become ~~an Emeritus~~-a Pro Bono member by complying with the requirements of APR 3(g), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to ~~Emeritus~~-Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to ~~Emeritus~~-Pro Bono, be required to pay

months of that calendar year and 25% of the full active license fee if admitted in Washington in the last six months of that calendar year.

- 6) All members in their first two full licensing years after admission or licensure to practice law in any jurisdiction will pay 50% of the applicable full Active license fee.
- 7) An Active member of the Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States will be exempt from the payment of license fees and assessments for the Client Protection Fund upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

**b. Inactive Members**

- 1) The annual license fee for Inactive members will be as established by resolution of the BOG and as approved by the Washington Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members will apply to Inactive members.
- 2) Honorary and Disability Inactive status members will be exempt from license fees and assessments, unless otherwise provided by Supreme Court order.

**c. Judicial Members [Effective January 1, 2012]**

Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer must pay the annual license fee established by the Bar and as approved by the Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

**d. Emeritus Pro Bono Members**

**Emeritus** Pro Bono members must pay the annual license fee required of Inactive members with the same type of license unless the member qualifies for the license fee waiver as provided for in APR 3(g). Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to **Emeritus** Pro Bono members.

### IX. COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES

#### A. GENERALLY

1. The work of the Bar shall be accomplished by the BOG, the officers, and the Bar staff. To facilitate the work of the Bar in accordance with its purposes as provided in Article I, the BOG may delegate such work to an appropriate Bar entity, such as sections, committees, councils, task forces, or other Bar entity, however that may be designated by the BOG.
2. The work of any Bar entity established by the BOG must:
  - a. have a defined scope that requires the active and continuing attention of the BOG;
  - b. further the Bar's Guiding Principles and/or the purposes of the Bar outlined in General Rules promulgated by the Supreme Court; and
  - c. enhance consideration of a topic that is beyond the time and expertise of the BOG and staff by incorporating expertise and additional viewpoints from the broader community.
3. A list of the current committees, councils, and task forces, and their functions, will be maintained by the Executive Director. The BOG may terminate any recurring committee whenever in its opinion such committee is no longer necessary. Any nonrecurring Bar entity shall automatically terminate pursuant to the terms of its charter or originating document.
4. Governors appointed to serve as BOG liaisons to any Bar entity are not voting members. However, if a Governor is appointed as a member of any Bar entity, then he or she may vote in accordance with the terms of the charter or originating document for that entity.

#### B. COMMITTEES AND OTHER BAR ENTITIES

##### 1. Committees

Committees are created and authorized by the BOG to study matters relating to the general purposes and business of the Bar which are of a continuous and recurring character. The number, size, and functions of each committee will be determined from time to time by the BOG.

- a. Committee members, Chairs, and Vice Chairs must be Active members of the Bar. Exceptions: (a) up to two **Emeritus**-Pro Bono members are permitted to serve on the Pro Bono **Legal Aid and Public Service** Committee (**PBLACPBPSC**) and may be appointed to serve as the Chair, Co-Chair, or Vice-Chair of that committee; and (b) faculty of Washington state law schools who are not Active members of the Bar are permitted to serve on the Committee on Professional Ethics (CPE).
- b. Committee members are appointed by the BOG. Appointments to committees are for a two-year term unless the BOG determines otherwise. A committee member's service on any committee is limited to two consecutive terms, after which the member cannot be reappointed to that committee for three years, subject to individual exceptions for cause as approved by the BOG. Appointments to the Legislative Committee will be made pursuant to the written BOG policy for that committee.

## XI. SECTIONS

### B. ESTABLISHING SECTIONS

1. The BOG will consider the establishment of a new section on a petition and report endorsed by at least 150 Active members of the Bar. Any such petition must be filed with the Executive Director at least one BOG meeting prior to the meeting at which action on the proposal is contemplated and must substantially set forth:
  - a. The contemplated purpose of the section, which will be within the purposes of the Bar and not in substantial conflict with the purpose of any existing section or committee, the continuance of which is contemplated after the section is established;
  - b. Proposed bylaws of the section, which must contain a definition of its purpose;
  - c. The names of any proposed committees of the section;
  - d. A proposed budget of the section for the first two years of its operation;
  - e. A list of members of the Bar who have signed statements that they intend to apply for membership in the section;
  - f. A statement of the need for the proposed section.
2. The BOG may create a new section by combining sections as set forth in these Bylaws.

### C. MEMBERSHIP

1. Any Active member of the Bar may be a voting member of a section and eligible for election to office in the section upon paying the annual dues established by the section. Inactive members may not be voting members of sections.
2. If provided for in the section bylaws, any ~~Emeritus~~ Pro Bono member pursuant to APR 8(e)3(g), Judicial member, House Counsel under APR 8(f), professor at a Washington law school (whether licensed in Washington or not), or any lawyer who is a full time lawyer in a branch of the military who is stationed in Washington but not licensed in Washington, may be a voting member of the section and eligible for election to office in the section.
3. Law students will be allowed to be nonvoting members of any section at a standard annual dues amount set by the BOG.
4. Sections may adopt bylaw provisions authorizing inactive members, and others not eligible for section membership as voting members, to be nonvoting members or “subscribers” of the section.

### D. DUES

Dues will be paid annually in the amount determined by the section executive committee and approved by the BOG. Any person who fails to pay the annual dues will cease to be a member of the section.

### E. BYLAWS AND POLICIES

Sections are subject to all Bar Bylaws, policies, and procedures. Each section must have bylaws consistent with the Bar Bylaws. Amendments to section bylaws may be made by a majority vote of the voting executive committee members or by a majority vote of section members present at a section meeting. Section bylaws or amendments thereof will become effective when approved by the BOG.

**TO:** WSBA Board of Governors

**FROM:** Renata de Carvalho Garcia, Chief Regulatory Counsel

**DATE:** October 28, 2020

**RE:** Proposed Amendments to Admissions Policies of the Washington State Bar Association

**ACTION:** The Regulatory Services Department asks the Board of Governors to approve proposed amendments to the Admissions Policies of the Washington State Bar Association with an effective date of December 1, 2020.

## **BACKGROUND**

The Admissions Policies adopted by the Board of Governors supplement the Washington Supreme Court's Admission and Practice Rules (APR). Many of the policies are adopted because the Court has directed through court rule that the WSBA establish policies for various details regarding applications for the admission to the practice of law in Washington. See, for example, APR 3(i) which directs the Bar to prescribe the form and manner of the application, pay a fee set by the Board of Governors, and establish policies for refunds and transfers of applications. Other policies are adopted to ensure consistent administration and handling of all applications for admission and to provide direction to the staff of the Regulatory Services Department.

The Admissions Policies are not amended frequently. Usually there is a significant change in procedures, technology or exam format that precipitates a review and the necessity to amend the policies. When a precipitating event occurs, all policies are reviewed and amended as necessary to be current with new or anticipated procedures. Currently, the Regulatory Services Department is working toward implementation of a new online admissions site that will allow applicants of all the various application types for a license or admission to practice law to be completed and submitted online. Thus, the need for the amendments to the Admissions Policies being proposed at this time.

## **EXPLANATION OF CHANGES**

The primary reasons for proposing amendments at this time is to make sure that the policies align with the technical requirements for the new online admissions site, include all license types that will be submitting applications online with a fee, and incorporate new or anticipated procedures or processes brought about by changes in technology, efficiencies or to replace outdated procedures or processes.

The new online admissions site will allow for online filing of applications for all license types. Thus, these amendments add foreign law consultants and house counsel to the types of applicants that will adhere to the relevant admissions policies. In addition, under an anticipated change in procedure with the new online admissions



site, there will not be a “foreign” applicant type. Instead, applicants who are lawyers or who have a law degree from outside the United States will be handled almost entirely the same as any other general or attorney applicant and have the same application filing deadlines.

Three pre-exam deadlines are modified under these amendments. First, the deadline to request accommodations under the Americans with Disabilities Act has been modified to be 45 days prior to the first day of the exam instead of 80 days. This will allow applicants with disabilities more time to complete medical appointments and gather necessary documentation. The second modification is to change the deadline for resolution of character and fitness issues to 18 days prior to the exam rather than 60 days prior. This is consistent with the deadlines for all other applicants to complete any missing application materials and allows more opportunity for more applicants with character and fitness issues to avoid a delay in sitting for the exam. Lastly, the deadline to withdraw from an exam with a partial refund has also been changed to 18 days prior to the first day of the exam instead of 60 days prior. This aligns with the deadline applicants have to complete and resolve all missing application materials, information and issues. We expect a negligible financial impact due to this amendment.

There is a new provision that permits the LLLT Board and Limited Practice Board to establish a different exam schedule and application deadlines. The primary reason for this provision is to permit the LLLT Board to have a final LLLT exam outside the regular schedule prior to the sun-setting of the LLLT program as announced by the Washington Supreme Court. We do not anticipate that either board will deviate from the regular exam schedule except for one instance in the Spring of 2022.

The amendments to the sections related to character and fitness, the NCBE report, and ADA accommodations clarify and expand on current procedures and processes.

ILG Exam360 is the company that is providing the new online admissions site. In addition, ILG is the provider for the testing software used by the examinees during the exams. These amendments make that change in provider and related policies of ILG relating to software for those using a laptop during the exam.

The amendments also remove an antiquated policy of posting the names of the successful exam applicants at the headquarters of the Bar. At one time, this may have served a purpose, however, in modern times posting on the website reaches a much larger audience and very few members, and even fewer members of the public, visit the Bar office.

Finally, there is a new provision relating to applicants who transfer a UBE score from another jurisdiction. This provision would allow a person to apply in Washington as a UBE score transfer applicant while at the same time applying elsewhere to actually take the UBE. It clarifies that one cannot be both an exam and score transfer applicant.

#### **EFFECTIVE DATE**

We ask that the amendments take effect on December 1, 2020. The reason for this date is because we anticipate launching the new online admissions site on or about December 1. By this date, all the applications for the Winter

2021 exams will have been submitted. Applicants for the Summer 2021 exams will begin preparing their applications about this time in order to submit them when the application period opens on February 1, 2021. Thus, the Winter 2021 exam applicants would be the last group to whom the current admissions policies apply.

### **CONCLUSION**

As described above, the proposed amendments seek to align policies with current, new or anticipated procedures related to changes in the times and in technology and are meant to provide guidance to and efficiency for the staff and consistency in application of the rules and policies for all applicants. An effective date of December 1, 2020, is necessary so that all applicants for the Summer 2021 exams are aware of the new policies as they begin their applications in the new online admissions site.

### Attachments:

- Proposed Amendments to Admissions Policies – Redline
- Proposed Amendment to Admissions Policies – Clean

# WASHINGTON STATE BAR ASSOCIATION

## ADMISSIONS POLICIES OF THE WASHINGTON STATE BAR ASSOCIATION

Under the authority of, and consistent with, the Washington Supreme Court's Admission and Practice Rules, the Board of Governors of the Washington State Bar Association (Bar) has adopted the following Admissions Policies in administering those rules. These policies apply to individuals seeking admission to the Bar as a lawyer, limited license legal technician (LLLT), limited practice officer (LPO), house counsel or foreign law consultant. These policies supplement APR 3-5, 8(f), 14 and 20-25. Any discrepancy or conflict between these policies and the Admission and Practice Rules (APR) is unintentional and will be resolved in favor of strict compliance with the APR.

Adopted July 1, 2012. Amended July 28, 2017, amendments effective September 1, 2017.  
Amended \*\*\*, amendments effective December 1, 2020.

Proposed



## I. GENERAL PROVISIONS AND DEFINITIONS

### A. Applications

Applications for admission to practice law in Washington must be completed and submitted online or as prescribed by the Bar's admissions staff. Permission to submit an application in a paper format may be requested and granted for good cause shown.

### B. Definitions

"Approved Law School" means a law school approved by the Board of Governors. Only those law schools approved, or provisionally approved, by the American Bar Association at the time the J.D. was conferred are approved by the Board of Governors. A list of ABA approved law schools is available on the ABA website.

"Attorney Applicant" means a person applying for admission as a lawyer under APR 3 who, at the time of filing the application, has ever been admitted to practice law as a lawyer (or the equivalent for that jurisdiction) in any jurisdiction other than Washington.

"Foreign Law Consultant Applicant" means a person applying for licensure as a foreign law consultant under APR 14.

"General Applicant" means a person applying for admission as a lawyer under APR 3 who, at the time of filing the application, has never been admitted to practice law as a lawyer (or the equivalent for that jurisdiction) in any jurisdiction other than Washington.

"House Counsel Applicant" means a person applying for licensure as a house counsel under APR 8(f).

"LLLT Applicant" means a person applying for admission as a limited license legal technician.

"LPO Applicant" means a person applying for admission as a limited practice officer.

## II. APPLICATION REQUIREMENTS

### A. Application Submission Policy

All applicants must submit electronically, within the filing deadlines specified below, the following:

- a completed application in the form required by the Bar including any required supplemental documentation;
- two Certificates of Good Moral Character, dated within 6 months prior to the application date and completed by two lawyers admitted to practice law in any U.S. jurisdiction or the foreign jurisdiction in which the applicant is admitted to practice law. For LLLT Applicants and LPO Applicants the certificates may be completed by LLLTs or LPOs admitted to practice in Washington; and
- an Authorization and Release form. The form must be signed and notarized within 6 months prior to the application date.

In addition, Attorney Applicants must submit:

- a Certificate of Good Standing from each jurisdiction in which the applicant has ever been admitted (including federal courts and tribal courts). Certificates of Good Standing (or similar document) for Attorney Applicants admitted to practice law must be issued by the admitting authority (e.g., State Bar or highest state court) in each jurisdiction where the applicant has been admitted. If the applicant is no longer admitted in the jurisdiction, the applicant must submit a letter from the jurisdiction that includes the dates of admission and status history. The certificate or letter must be signed and dated within 6 months prior to the application date.

All documents must be in English or accompanied by a certified English translation.

**B. Application Filing Deadlines**

Only applications for an exam have a filing deadline. Applications for admission by exam are accepted beginning February 1 for the summer exam and September 1 for the winter exam. Filing deadlines for applications to take an examination are as follows:

<b>Examination</b>	<b>Applications Accepted</b>	<b>First Deadline</b>	<b>Late Filing Deadline</b>	<b>Failed the Immediately Preceding Winter WA Exam Deadline With No Late Fee</b>
Summer Exam	February 1	March 5	April 5	May 5
Winter Exam	September 1	October 5	November 5	N/A

The deadline will be the next business day when a deadline falls on a Saturday, Sunday or holiday.

Late filing requires payment of a late filing fee as provided in the fee schedule. No applications will be accepted after the late filing deadline except for applicants who failed the immediately preceding winter Washington exam and are applying for the following summer Washington exam; those applicants are not required to pay the late filing fee and the deadline will be May 5.

Applications, including payment, Authorization and Release form, and Certificates of Good Moral Character, must be submitted online by 11:59 P.M. (PST/PDT) the day of the deadline. Applications, authorization and release forms, or certificates of good moral character filed after the first deadline will incur a late filing fee. Applications with incomplete or missing payment, authorization and release forms or certificates of good moral character will not be processed and will be disqualified if not received by the final deadline.

The LLLT Board or Limited Practice Board may schedule exams at times other than the lawyer bar exams and set application deadlines for those exams. Any such exams and the corresponding application deadlines will be posted on the Bar’s website.

**C. Other Deadlines**

- Request ADA accommodations..... 45 days prior to first day of exam.
- File all requested and/or additional items..... 18 days prior to first day of exam.
- Character and fitness resolution..... 18 days prior to first day of exam.
- Exam360 (laptop) registration ..... 18 days prior to first day of exam.

Change of exam method.....	18 days prior to first day of exam.
Change of exam location .....	18 days prior to first day of exam.
Special requests for exam room .....	18 days prior to first day of exam.
Withdraw from exam with partial refund.....	18 days prior to first day of exam.
UBE Score Transfer Applications.....	No deadline, may apply at any time.
Admission by Motion Applications .....	No deadline, may apply at any time.
House Counsel Applicants.....	No deadline, may apply at any time.
Foreign Law Consultant Applicants.....	No deadline, may apply at any time.
Withdraw a non-exam application with partial refund .....	One year from date of application.

**III. FEES**

A. Fee Schedule

(1) General Applicants.....	\$585
Late Filing Fee (exam applicants only).....	\$300
(2) Attorney Applicants .....	\$620
Late Filing Fee (exam applicants only).....	\$300
(3) LLLT Applicants.....	\$300
Practice Area Exam Only .....	\$250
Professional Responsibility Exam Only.....	\$80
Late Filing Fee.....	\$150
(4) LPO Applicants .....	\$200
Late Filing Fee.....	\$100
(5) House Counsel Applicants.....	\$620
(6) Foreign Law Consultant Applicants.....	\$620

All bank card transactions are subject to a separate non-refundable transaction fee of 2.5%. There is no transaction fee for payments by electronic funds transfer or check.

For exam applicants, payments by check must be received or postmarked by the application deadline. Payments received or postmarked after the first deadline will incur a late filing fee as outlined in section II (B). Applications will not be accepted if payment is received or postmarked after the final deadline.

B. NCBE Investigation Fee

Applications for General Applicants applying under APR 3(b)(4)(B), House Counsel Applicants, Foreign Law Consultant Applicants, and all Attorney Applicants, except for applicants eligible for military spouse admission by motion under APR 3(c)(2), are referred to the National Conference of Bar Examiners (NCBE) for verification and investigation of the information in the application. Applicants are required to pay a nonrefundable investigation fee to the NCBE. See section V of these policies for all NCBE requirements.

C. Withdrawals and Refunds

For all applicants, the application fee includes a non-refundable administrative processing fee as set forth below. An exam applicant must withdraw an application at least 18 days prior to the date of the examination for a partial refund. All other applicants must withdraw their applications no later than one year after filing the application to receive a partial refund. The Bar will issue a refund of the application fee less the administrative fee. Any late filing fees paid and any investigation costs are nonrefundable. No refunds will be issued for withdrawals or disqualifications made less than 18 days prior to the date of the exam. Exam applicants forfeit all fees if they do not show up for the exam.

The partial refund policy applies to applications that are disqualified.

Administrative Fee (nonrefundable portion of application fee):

General, Attorney, House Counsel and Foreign Law Consultant Applicants.....	\$300
LLLT Applicants.....	\$150
LPO Applicants .....	\$100

If there are extraordinary circumstances that prevent an applicant from taking the examination (e.g., a serious medical emergency, death in the immediate family, significant health problems, house fire), a written request must be delivered to the Bar within 18 days after the exam in order to receive a partial refund as set forth above. The Bar may require the applicant to submit supporting documentation for the request.

For good cause shown, Bar staff has discretion to change the application type upon request of the applicant and transfer any application fee already paid to the new application type.

**IV. CHARACTER & FITNESS REVIEW**

All applicants are subject to a character and fitness review prior to being admitted to practice law in Washington State. The responsibility for full disclosure rests entirely upon the applicant. Permission to sit for the examination or admission to practice law may be withheld pending a hearing before the Character and Fitness Board and a final determination by the Washington Supreme Court regarding whether the applicants have met their burden of proving that they are of good moral character, fit to practice law and have met the Essential Eligibility Requirements. See APR 20-24.3. Factors considered by Admissions staff and Bar Counsel when determining whether an applicant should be referred to the Character and Fitness Board are set forth in APR 21(a).

Washington requires resolution of all character and fitness issues at least 18 days prior to sitting for the exam. Exam applicants with unresolved character and fitness issues after this deadline will not be permitted to sit for the exam and will have their application transferred to the next exam. Applicants may choose to withdraw from the exam and receive a partial refund if the request is made at least 18 days prior to the first day of the exam in lieu of transferring to the next exam. Therefore, applicants who disclose any information that may raise an issue of character or fitness are advised to file their applications early in the registration period. Early filing or providing information prior to the 18 day deadline does not guarantee all issues will be resolved 18 days prior to the exam.

## **V. NCBE REPORT REQUIREMENT**

Applications for General Applicants applying under APR 3(b)(4)(B), House Counsel Applicants, Foreign Law Consultant Applicants, and all Attorney Applicants, except for applicants eligible for military spouse admission by motion under APR 3(c)(2), are referred to the National Conference of Bar Examiners (NCBE) for verification and investigation of the information in the application. Applicants who have an application that is referred to the NCBE will be contacted by the NCBE and required to pay an investigation fee and submit authorization and release forms directly to the NCBE. The Bar cannot finish processing applications until the report is received from the NCBE.

Applicants applying for an exam will not be allowed to sit for the exam if the Bar does not receive a report back from the NCBE at least 18 days prior to the first day of the exam; in that case, the application will be transferred to the next exam.

Applicants may choose to withdraw from the exam and receive a partial refund if the request is made at least 18 days prior to the first day of the exam in lieu of transferring to the next exam.

NCBE reports are valid for one calendar year from the date the Bar receives the completed report from the NCBE, after which a supplemental or new NCBE report will be required. See the NCBE website for additional information: <http://www.ncbex.org/character-and-fitness/jurisdiction/wa>.

## **VI. REASONABLE ACCOMMODATIONS UNDER THE ADA**

Any applicant with a disability for which reasonable accommodation is needed must request such accommodation through the online admissions site at least 45 days prior to the examination date. Applicants requesting reasonable accommodations because of disabilities must provide appropriate documentation of the disability and specify the extent to which the standard testing procedures need to be modified. The burden of proof is on the applicant to show the need for any reasonable accommodations. The Bar reserves the right to make final judgment concerning testing accommodations and may have documentation reviewed by a medical specialist, psychologist or learning disability specialist. See the online admissions site for additional information regarding accommodations requests and required documentation.

Any reasonable accommodation may not compromise the integrity or security of the examination or affect the standards set for the examination. The Bar and any applicant granted accommodations must agree to and accept the terms and conditions of the accommodations no less than 18 days prior to the first day of the examination.

## **VII. SPECIAL REQUESTS FOR THE EXAM ROOM**

For good cause shown, applicants may be permitted to bring otherwise prohibited items into the exam room. Examples of items are: pillows/lumbar supports, ergonomic chairs, book stand, wrist rest, medication, external keyboard or mouse, and religious headgear. In addition, applicants may request a specific seating location in the exam room due to a medical condition.

The Bar will provide a room for nursing mothers upon request. Nursing mothers may use the nursing room before and after the exam, during breaks and during the exam. An applicant must be accompanied by a proctor if the nursing room is used during the exam session.

All special requests for an exam must be made on the online admissions site no less than 18 days prior to the first day of the exam. All requests must be supported (if applicable) by a doctor's note.

### **VIII. LAPTOP USE AND EXAM360 SOFTWARE**

Applicants for an exam requesting to use a laptop computer for the written portions of the exam must register, pay for, and download software from ILG Exam360. Exam360 must be purchased and downloaded for each administration of the exam, even if used in the past. Fees paid to ILG Exam360 are nonrefundable and nontransferable. Laptop users must sign a waiver of liability on exam day. Applicants who do not purchase and download the software by 18 days prior to the exam will be required to handwrite the exam.

If an exam applicant's laptop fails prior to the exam, the applicant must contact ILG Exam360 to download Exam360 again.

### **IX. EXAMINATION PROVISIONS**

#### **A. Grading and Results for All Examinations**

(1) All applicants for all exams are to abide by the Exam Security Policy as established by the Bar.

(2) Grading of examinations shall be anonymous. Graders shall be provided exam answers with only the applicant ID number to identify to whom the answer belongs. Names or other personal information that would identify an applicant is not provided to the graders. All information matching names and numbers of the applicants shall be kept in the custody of the Bar until all examinations have been graded and each examination has been given either a pass or fail grade by applicant number only.

(3) There is no review or appeal of final examination results. APR 4(b).

(4) The names of successful applicants will be posted on the Bar's website.

(5) Unsuccessful exam applicants may reapply and retake the exam in the same manner as any other applicant.

#### **B. Lawyer Bar Examination**

(1) All lawyer bar exam applicants must pass the Uniform Bar Exam prepared and coordinated by the National Conference of Bar Examiners. The UBE consists of Multistate Bar Exam (MBE), Multistate Essay Exam (MEE) and Multistate Performance Test (MPT) questions. The UBE is administered over two days in accordance with the procedures established by the NCBE.

(2) The Board of Bar Examiners is responsible for the grading of the MEE and MPT questions on the UBE. In order to assure fairness and uniformity in grading, the Board of Bar Examiners shall follow NCBE-prescribed standards for grading to be used by all graders. The Board of Bar Examiners shall, as soon as practicable and within any guidelines prepared by the NCBE, certify the scores on the MEE and MPT portions for all applicants who have taken the UBE.

(3) Upon completion of the grading and certification, the Bar shall cause each lawyer bar exam applicant to be notified of the result of the examination. All results shall be reported to the NCBE in accordance with procedures established by the NCBE. All scaled scores and the applicant's national percentile rank for the MBE will also be reported to the applicant's law school.

(4) All lawyer bar exam applicants will be provided with the scaled written (MEE+MPT) score, scaled MBE score, total scaled UBE score and their national percentile rank for the MBE. Unsuccessful lawyer bar exam applicants will receive copies of their written essay and performance test questions and answers and written raw scores. No other raw scores, results information or examination materials will be provided to the applicants.

C. Washington Law Component

All applicants qualifying for admission as a lawyer under APR 3 must pass the Washington Law Component (WLC). The WLC is comprised of online materials and an online multiple choice test based on areas or subjects of law that are specific to Washington State. The Board of Bar Examiners is responsible for the content of the WLC and shall publish the Washington state specific materials for applicants.

The WLC is self-administered by applicants and is available to applicants after submitting the application. There is no fee to take the WLC. The WLC is an open-book test. Applicants may take the WLC as many times as necessary to achieve the minimum pass score. There is a mandatory waiting period of 24 hours after failing to pass the WLC the first time. Subsequent fails of the WLC require a 72 hour waiting period before retaking the test. The WLC minimum pass score is 80% correct. If an applicant fails the UBE or withdraws from the UBE after taking the WLC, that applicant must retake the WLC after applying for the next UBE administration.

**X. UBE SCORE TRANSFER APPLICANT PROVISIONS**

UBE score transfer applicants must have a qualifying UBE score and must meet one of the qualifications for lawyer bar examination applicants as set forth in APR 3(b).

UBE score transfer applicants may apply in Washington as a UBE score transfer applicant while applying in a different UBE jurisdiction to take the UBE, with the intent of transferring a qualifying score from that jurisdiction to Washington. The applicant must notify the Bar of the jurisdiction where the applicant will take the UBE.

Applicants are not permitted to apply at the same time for admission in Washington as both an applicant to take the UBE in Washington and an applicant seeking to transfer a UBE score to Washington.

# WASHINGTON STATE BAR ASSOCIATION

## ADMISSIONS POLICIES OF THE WASHINGTON STATE BAR ASSOCIATION

Under the authority of, and consistent with, the Washington Supreme Court's Admission and Practice Rules, the Board of Governors of the Washington State Bar Association (Bar) has adopted the following Admissions Policies in administering those rules. These policies apply to individuals seeking admission to the Bar as a lawyer, limited license legal technician (LLLT), ~~or~~ limited practice officer (LPO), house counsel or foreign law consultant. ~~and~~ These policies supplement APR 3-5, 8(f), 14 and 20-25. Any discrepancy or conflict between these policies and the Admission and Practice Rules (APR) is unintentional and will be resolved in favor of strict compliance with the APR.

Adopted July 1, 2012. Amended July 28, 2017, amendments effective September 1, 2017.  
Amended ~~\*\*\*~~, amendments effective December 1, 2020.

Proposed



## I. GENERAL PROVISIONS AND DEFINITIONS

### A. Applications

Applications for admission to practice law in Washington must be completed ~~online~~ and submitted ~~electronically~~ online or as prescribed by the Bar's admissions staff. ~~Where electronic submission is required, p~~Permission to submit an application in a paper format may be requested and granted for good cause shown.

### B. Definitions

"Approved Law School" means a law school approved by the Board of Governors. Only those law schools approved, or provisionally approved, by the American Bar Association at the time the J.D. was conferred are approved by the Board of Governors. A list of ABA approved law schools is available on the ABA website.

"Attorney Applicant" means a person applying for admission as a lawyer under APR 3 who, at the time of filing the application, has ever been admitted to practice law as a lawyer (or the equivalent for that jurisdiction) in any ~~U.S.~~-jurisdiction other than Washington.

"Foreign Law Consultant Applicant" means a person applying for licensure as a foreign law consultant under APR 14.

"General Applicant" means a person applying for admission as a lawyer under APR 3 who, at the time of filing the application, has never been admitted to practice law as a lawyer (or the equivalent for that jurisdiction) in any jurisdiction ~~except other than Washington, and who does not meet the definition of a Foreign Applicant.~~

~~"Foreign Applicant" means a person applying for admission as a lawyer who 1) has ever been admitted to the practice of law as a lawyer (or the equivalent for that jurisdiction) in any foreign jurisdiction (designated herein as "Foreign Attorney Applicant" when relevant), or 2) has a law degree from a law school outside the U.S. that would qualify the applicant to practice law as a lawyer (or the equivalent for that jurisdiction) in that jurisdiction and that was received prior to a law degree received in the U.S.~~

"House Counsel Applicant" means a person applying for licensure as a house counsel under APR 8(f).

"LLLT Applicant" means a person applying for admission as a limited license legal technician.

"LPO Applicant" means a person applying for admission as a limited practice officer.

## II. APPLICATION REQUIREMENTS

### A. Application Submission Policy

All applicants must ~~complete and file with the Bar~~ submit electronically, within the filing deadlines specified below, the following:

- a completed application in the form required by the Bar including any required supplemental documentation;
- two Certificates of Good Moral Character, dated within 6 months ~~of~~ prior to the application date and completed by two lawyers admitted to practice law in any U.S. jurisdiction or the foreign jurisdiction in which the applicant is admitted to practice law. For LLLT Applicants and LPO Applicants the certificates ~~also~~ may be completed by LLLTs or LPOs admitted to practice in Washington; and
- an Authorization and Release form. The form must be signed and notarized within 6 months ~~of~~ prior to the application date.

In addition, Attorney Applicants, ~~including Foreign Attorney Applicants~~, must ~~file~~ submit:

- a Certificate of Good Standing from each jurisdiction in which the applicant is has ever been admitted (~~excluding Federal Courts including federal courts and tribal courts~~). Certificates of Good Standing (or similar document) for Attorney Applicants ~~and Foreign Applicants~~ admitted to practice law must be issued by the admitting authority (e.g., State Bar or highest state court) in each jurisdiction where the applicant has been admitted. If the applicant is no longer admitted in the jurisdiction, the applicant must submit a letter from the jurisdiction that includes the dates of admission and status history. The certificate or letter must be signed and dated within 6 months ~~of~~ prior to the application date.

All documents must be in English or accompanied by a certified English translation.

B. Application Filing Deadlines

Only applications for an exam have a filing deadline. Applications for admission by exam, ~~except those of Foreign Applicants~~, are accepted beginning February 1 for the summer exam and September 1 for the winter exam. ~~Applications for Foreign Applicants are accepted beginning September 1 for the summer exam and February 1 of the year prior to the exam for the winter exam.~~ Filing deadlines for applications to take an examination are as follows:

~~All Exam Applicants EXCEPT Foreign Applicants:~~

<b>Examination</b>	<b>Applications Accepted</b>	<b>First Deadline</b>	<b>Late Filing Deadline</b>	<b><u>Failed Previous the Immediately Preceding Winter WA Exam Deadline With No Late Fee</u></b>
Summer Exam	February 1	March 5	April 5	May 5
Winter Exam	September 1	October 5	November 5	<del>October 5</del> <u>N/A</u>

~~Foreign Applicants:~~

<b>Examination</b>	<b>Applications Accepted</b>	<b>First Deadline</b>	<b>Late Filing Deadline</b>	<b><u>Failed Previous WA Exam Deadline With No Late Fee</u></b>
Summer Exam	September 1 (year prior)	October 5	November 5	October 5
Winter Exam	February 1 (year prior)	March 5	April 5	May 5

The deadline will be the next business day when a deadline falls on a Saturday, Sunday or holiday.

Late filing requires payment of a late filing fee as provided in the fee schedule. No applications will be accepted after the late filing deadline except for applicants who failed the ~~most recent past~~ immediately preceding winter Washington exam and are applying for the following summer Washington exam; those applicants are not required to pay the late filing fee and the deadline will be May 5.

~~Electronic aApplications, including payment, Authorization and Release form, and Certificates of Good Moral Character, must be filed submitted online by 11:59 P.M. (PST/PDT) the day of the application deadline. Applications, authorization and release forms, or certificates of good moral character filed after the first deadline will incur a late filing fee. Applications with incomplete or missing payment, authorization and release forms or certificates of good moral character will not be processed and will be disqualified if not received by the final deadline. Applications in other formats and any payments by check must be filed, received or postmarked by the application deadline.~~

~~Payments received or postmarked after the first deadline will incur a late filing fee. Applications will not be accepted if payment is received or postmarked after the final deadline.~~

The LLLT Board or Limited Practice Board may schedule exams at times other than the lawyer bar exams and set application deadlines for those exams. Any such exams and the corresponding application deadlines will be posted on the Bar’s website.

C. Other Deadlines

<u>Request ADA accommodations</u> .....	<u>45 days prior to first day of exam.</u>
<u>File all requested and/or additional items</u> .....	<u>18 days prior to first day of exam.</u>
<u>Character and fitness resolution</u> .....	<u>18 days prior to first day of exam.</u>
<u>ExamSoft Exam360 (laptop) registration</u> .....	<u>18 days prior to first day of exam.</u>
<u>Change of exam method</u> .....	<u>18 days prior to first day of exam.</u>
<u>Change of exam location</u> .....	<u>18 days prior to first day of exam.</u>
<u>Request special needs Special requests for exam room</u> .....	<u>18 days prior to first day of exam.</u>
<u>Withdraw from exam with partial refund</u> .....	<del>60</del> <u>18 days prior to first day of exam.</u>
<u>Request ADA accommodations</u> .....	<u>80 days prior to first day of exam.</u>
<u>UBE Score Transfer Applications</u> .....	<u>No deadline, may apply at any time.</u>
<u>Admission by Motion Applications</u> .....	<u>No deadline, may apply at any time.</u>
<u>House Counsel Applicants</u> .....	<u>No deadline, may apply at any time.</u>
<u>Foreign Law Consultant Applicants</u> .....	<u>No deadline, may apply at any time.</u>
<u>Withdraw a non-exam application with partial refund</u> .....	<u>One year from date of application.</u>

**III. FEES**

A. Fee Schedule

(1) <u>General Applicants, including Foreign Applicants not previously admitted to the practice of law in any jurisdiction</u> .....	\$585
<u>Late Filing Fee (exam applicants only)</u> .....	\$300
(2) <u>Attorney Applicants, including Foreign Attorney Applicants</u> .....	\$620
<u>Late Filing Fee (exam applicants only)</u> .....	\$300

(3) LLLT Applicants.....	\$300
Practice Area Exam Only .....	\$250
Professional Responsibility Exam Only.....	\$80
Late Filing Fee.....	\$150
(4) LPO Applicants .....	\$200
Late Filing Fee.....	\$100
(5) House Counsel Applicants.....	\$620
(6) Foreign Law Consultant Applicants.....	\$620

All bank card transactions are subject to a separate non-refundable transaction fee of 2.5%. There is no transaction fee for payments by electronic funds transfer or check.

For exam applicants, payments by check must be received or postmarked by the application deadline. Payments received or postmarked after the first deadline will incur a late filing fee as outlined in section II (B). Applications will not be accepted if payment is received or postmarked after the final deadline.

B. NCBE Investigation Fee

Applications for General Applicants applying under APR 3(b)(4)(B), House Counsel Applicants, Foreign Law Consultant Applicants, and all Attorney Applicants, except for applicants eligible for military spouse admission by motion under APR 3(c)(2), and Foreign Applicants are referred to the National Conference of Bar Examiners (NCBE) for verification and investigation of the information in the application. All eligible Attorney Applicants and Foreign Applicants are required to pay a nonrefundable investigation fee to the National Conference of Bar Examiners (NCBE). After review of the application by the WSBA office, the NCBE will contact the applicant and provide NCBE payment and authorization and release forms that will need to be executed by the applicant. See section V of these policies for all NCBE requirements.

<http://www.ncbex.org/character-and-fitness/jurisdiction/wa>

C. Withdrawals and Refunds

For all applicants, the application fee includes a non-refundable administrative processing fee as set forth below. An exam applicant must request to withdraw an application at least 60 18 days prior to the date of the examination for a partial refund. All other applicants must withdraw their applications no later than one year after filing the application to receive a partial refund. The Bar will issue a refund of the application fee less the administrative fee. Any late filing fees paid, and any investigation costs are nonrefundable. No refunds will be issued for withdrawals requested, or disqualifications made, less than 60 18 days prior to the date of the exam. Exam applicants forfeit all fees if they do not show up for the exam.

~~Applicants with an admission by motion or UBE score transfer application who withdraw their application will receive a refund less the administrative fee provided the application is withdrawn less than 12 months after filing it.~~

The partial refund policy applies to applications that are disqualified.

Administrative Fee (nonrefundable portion of application fee):

General, Attorney, <u>House Counsel</u> and Foreign <u>Law Consultant</u> Applicants.....	\$300
LLLT Applicants.....	\$150
LPO Applicants .....	\$100

If there are extraordinary circumstances that prevent an applicant from taking the examination (e.g., a serious medical emergency, death in the immediate family, significant health problems, house fire), a written request must be delivered to the WSBA Bar within 18 days after the exam in order to receive a partial refund as set forth above. The Bar may require the applicant to submit supporting documentation for the request.

For good cause shown, Bar staff has discretion to change the application type upon request of the applicant and transfer any application fee already paid to the new application type.

#### **IV. CHARACTER & FITNESS REVIEW**

All applicants are subject to a character and fitness review prior to being admitted to practice law in Washington State. The responsibility for full disclosure rests entirely upon the applicant. Permission to sit for the examination or admission to practice law may be withheld pending a hearing before the Character and Fitness Board and a final determination by the Washington Supreme Court regarding whether the applicants have met their burden of proving that they are of good moral character, fit to practice law and have met the Essential Eligibility Requirements. See APR 20-24.3. Factors considered by Admissions staff and Bar Counsel when determining whether an applicant should be referred to the Character and Fitness Board are set forth in APR 21(a).

Washington requires resolution of all character and fitness issues at least ~~60~~ 18 days prior to sitting for the exam. Exam applicants with unresolved character and fitness issues after this deadline will not be permitted to sit for the exam and will have their application transferred to the next exam. Applicants may choose to withdraw from the exam and receive a partial refund if the request is made at least 18 days prior to the first day of the exam in lieu of transferring to the next exam. Therefore, applicants who disclose any information that may raise an issue of character or fitness are advised to file their applications early in the registration period. Early filing or providing information prior to the 18 day deadline does not guarantee all issues will be resolved ~~60~~ 18 days prior to the exam.

~~The WSBA Character and Fitness Board will not consider applications from attorney applicants including foreign attorney applicants who are currently under disciplinary suspension from another jurisdiction in which they are admitted to practice law.~~

#### **V. NCBE REPORT REQUIREMENT ~~FOR ATTORNEY AND FOREIGN APPLICANTS~~**

Applications for General Applicants applying under APR 3(b)(4)(B), House Counsel Applicants, Foreign Law Consultant Applicants, and all Attorney Applicants, except for applicants eligible for military spouse admission by motion under APR 3(c)(2), are referred to the National Conference of Bar Examiners (NCBE) for verification and investigation of the information in the application. All attorney and foreign applicants will have their applications investigated and verified by the National Conference of Bar

~~Examiners (NCBE). Applicants who have an application that is referred to the NCBE will be contacted by the NCBE and required to pay an investigation fee and submit authorization and release forms directly to the NCBE. The Bar cannot finish processing applications until the report is received from the NCBE.~~

~~Attorney applicants Applicants applying for an exam will not be allowed to sit for the exam if the WSBA Bar does not receive a report back from the NCBE at least 18 days prior to the first day of the exam; in that case, the application will be transferred to the next exam. Foreign applicants must apply during the application period for the exam prior to the one they want to take (see Application Filing Deadlines in section II B).~~

~~All applicants will be given the option to transfer their registration fees and application to the next exam if the character and fitness review is not complete or the NCBE report is not received by the appropriate deadline. Applicants may also choose to withdraw from the exam and receive a partial refund if the request is made at least 60 18 days prior to the first day of the exam in lieu of transferring to the next exam.~~

~~NCBE reports are valid for one calendar year from the date the Bar receives the completed report from the NCBE, after which a supplemental or new NCBE report will be required. See the NCBE website for additional information: <http://www.ncbex.org/character-and-fitness/jurisdiction/wa>. Applications with a completed NCBE report may be used for two consecutive exam cycles after which a new investigation will be required.~~

## **VI. REASONABLE ACCOMMODATIONS UNDER THE ADA**

~~Any applicant with a disability for which reasonable accommodation is needed must request such accommodation in writing through the online admissions site at least 80 45 days prior to the examination date. Applicants requesting reasonable accommodations because of disabilities must provide appropriate documentation of the disability and specify the extent to which the standard testing procedures need to be modified. The burden of proof is on the applicant to show the need for any reasonable accommodations. The Bar reserves the right to make final judgment concerning testing accommodations and may have documentation reviewed by a medical specialist, psychologist or learning disability specialist. See the online admissions site for additional information regarding accommodations requests and required documentation.~~

~~Any reasonable accommodation may not compromise the integrity or security of the examination or affect the standards set for the examination. WSBA The Bar and any applicant granted accommodations must agree to and accept the terms and conditions of the accommodations no less than 60 18 days prior to the first day of the examination.~~

## **VII. SPECIAL REQUESTS FOR THE EXAM ROOM**

~~For good cause shown, applicants may be permitted to bring otherwise prohibited items into the exam room. Examples of items are: pillows/lumbar supports, ergonomic chairs, book stand, wrist rest, medication, external keyboard or mouse, and religious headgear. In addition, applicants may request a specific seating location in the exam room due to a medical condition.~~

The ~~WSBA Bar~~ will provide a room for nursing mothers upon request. Nursing mothers may use the nursing room before and after the exam, during breaks and during the exam. An applicant must be accompanied by a proctor if the nursing room is used during the exam session.

All special requests for ~~the lawyer bar an~~ exam must be made on the online admissions site ~~using the special request tool~~ at least no less than 18 days prior to the first day of the exam. ~~All requests from LLLT and LPO applicants must be in writing.~~ All requests must be supported (if applicable) by a doctor's note.

### **VIII. LAPTOP USE AND ~~EXAMSOFT~~ EXAM360 SOFTWARE**

Applicants for ~~the lawyer bar an~~ exam requesting to use a laptop computer for the ~~MEE and MPT written portions of the exam~~ must register, pay for, and download software from ~~ExamSoft ILG Exam360~~. ~~Lawyer bar exam applicants using a laptop are required to purchase and download the Examsoft software~~ Exam360 must be purchased and downloaded for each administration of the bar exam, even if they have used it in the past. Fees paid to ~~ExamSoft ILG Exam360~~ are nonrefundable and nontransferable. ~~Lawyer bar exam applicants who will be using a laptop to take the exam~~ Laptop users must sign a waiver of liability on exam day. ~~Lawyer bar exam a~~ Applicants who do not purchase and download the software by 18 days prior to the exam will be required to ~~handwrite~~ the exam.

If an exam applicant's laptop fails prior to the exam, the applicant must contact ILG Exam360 to download Exam360 again.

### **IX. EXAMINATION PROVISIONS**

#### **A. Grading and Results for All Examinations**

(1) All applicants for all exams are to abide by the Exam Security Policy as established by the Bar.

(2) Grading of examinations shall be anonymous. Graders shall be provided exam answers with only the applicant ID number to identify to whom the answer belongs. Names or other personal information that would identify an applicant is not provided to the graders. All information matching names and numbers of the applicants shall be kept in the custody of the Bar until all examinations have been graded and each examination has been given either a pass or fail grade by applicant number only.

(3) There is no review or appeal of final examination results. APR 4(b).

(4) The names of successful applicants ~~shall~~ will be posted ~~at the headquarters of the Bar and~~ on the Bar's website.

(5) Unsuccessful exam applicants may reapply and retake the exam in the same manner as any other applicant.

#### **B. Lawyer Bar Examination**

(1) All lawyer bar exam applicants must pass the Uniform Bar Exam prepared and coordinated by the National Conference of Bar Examiners. The UBE consists of Multistate Bar Exam (MBE), Multistate Essay Exam (MEE) and Multistate Performance Test (MPT) questions. The UBE is administered over two days in accordance with the procedures established by the NCBE.

(2) The Board of Bar Examiners is responsible for the grading of the MEE and MPT questions on the UBE. In order to assure fairness and uniformity in grading, the Board of Bar Examiners shall follow NCBE-prescribed standards for grading to be used by all graders. The Board of Bar Examiners shall, as soon as practicable and within any guidelines prepared by the NCBE, certify the scores on the MEE and MPT portions for all applicants who have taken the UBE.

(3) Upon completion of the grading and certification, the Bar shall cause each lawyer bar exam applicant to be notified of the result of the examination. All results shall be reported to the NCBE in accordance with procedures established by the NCBE. All scaled scores and the applicant's national percentile rank for the MBE will also be reported to ~~a lawyer bar exam~~ the applicant's law school.

(4) All lawyer bar exam applicants will be provided with the scaled written (MEE+MPT) score, scaled MBE score, total scaled UBE score and their national percentile rank for the MBE. Unsuccessful lawyer bar exam applicants will receive copies of their written essay and performance test questions and answers and written raw scores. No other raw scores, results information or examination materials will be provided to the applicants.

#### C. Washington Law Component

All applicants qualifying for admission as a lawyer under APR 3 must pass the Washington Law Component (WLC). The WLC is comprised of online materials and an online multiple choice test based on areas or subjects of law that are specific to Washington State. The Board of Bar Examiners is responsible for the content of the WLC and shall publish the Washington state specific materials for applicants.

The WLC is self-administered by applicants and is available to applicants after ~~filling~~ submitting the application for the bar exam. There is no fee to take the WLC. The WLC is an open-book test. Applicants may take the WLC as many times as necessary to achieve the minimum pass score. There is a mandatory waiting period of 24 hours after failing to pass the WLC the first time. Subsequent fails of the WLC require a 72 hour waiting period before retaking the test. The WLC minimum pass score is 80% correct. If an applicant fails the UBE or withdraws from the UBE after taking the WLC, that applicant must retake the WLC after applying for the next UBE administration.

#### **X. UBE SCORE TRANSFER APPLICANT PROVISIONS**

UBE score transfer applicants must have a qualifying UBE score and must meet one of the qualifications for lawyer bar examination applicants as set forth in APR 3(b).

UBE score transfer applicants may apply in Washington as a UBE score transfer applicant while applying in a different UBE jurisdiction to take the UBE, with the intent of transferring a qualifying score from that jurisdiction to Washington. The applicant must notify the Bar of the jurisdiction where the applicant will take the UBE.

Applicants are not permitted to apply at the same time for admission in Washington as both an applicant to take the UBE in Washington and an applicant seeking to transfer a UBE score to Washington.