

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

**Board of Governors Special Meeting**  
**Public Session**  
**Late Materials**

**December 17, 2018**  
**WSBA Conference Center**  
**Seattle, Washington**

## DRAFT

### PROCESS FOR ADDRESSING PENDING LITIGATION AND POTENTIAL LITIGATION MATTERS

#### **1. Policy Intent:**

It is the intent of this policy to clarify that the Washington State Bar Association (WSBA) Board of Governors (Board) directs all matters and makes all decisions related to pending and threatened litigation except as delegated below.

#### **2. Claim Presented or Litigation Filed:**

- (a) When a demand for monetary compensation, injunctive relief, or a tort claim for damages is received or service of process is made against the WSBA, General Counsel will promptly provide a copy of all documents and communications received to the Board by password protected email.
- (b) For each matter, the Board will first determine if the matter is suitable for handling by General Counsel of the Washington State Bar Association, or if such a matter may require outside legal counsel to be consulted and/or retained for such representation on behalf of the entity. If the matter is the subject of insurance coverage, the provisions of the applicable policy shall apply, to the extent inconsistent with this Policy.
- (c) If time is determined to be of the essence for the entity to respond to a litigation matter, motion, or an appeal, General Counsel is authorized to make a notice of appearance on behalf of the entity, and shall be authorized to take professionally reasonable actions to defend the entity until such a determination by the Board can be made regarding the assignment of the claim to General Counsel, or to an outside legal representative.

#### **3. Claims Assigned to WSBA General Counsel:**

- (a) For claims, litigations, and appeals, or litigations involving decisions of WSBA Admissions, Licensing, and Disciplinary matters and appeals, including decisions of the Rule 6 Law Clerk program, in which the Board and General Counsel do not believe that there is a reasonable likelihood of potential financial liability on behalf of the entity, these claims shall be presumed to be assigned to WSBA General Counsel to handle.
- (b) The intent of this policy is to allow WSBA General Counsel as highly skilled employed legal professionals representing the WSBA to be able to provide as much legal representation as possible to the entity to avoid outside litigation costs and expense for the entity, and to allow the office of WSBA General Counsel who has

specific expertise in representation and defending WSBA administrative appeals, admissions, licensing and disciplinary matters and other WSBA matters involving the administrative of the entity to represent the entity without the use of outside legal counsel.

- (c) In such cases that are assigned to General Counsel by the Board, the designated General Counsel employee shall keep the Board, WSBA President and Executive Director informed as to pending litigation by providing at least monthly, by password protected email in box, and at regularly scheduled Board meetings or special meetings as may be called from time-to-time a status update on the litigation.
- (d) General Counsel is authorized to make general litigation decisions and strategy decisions and to keep the Board reasonably informed of such decisions.
- (e) During the course of representation by General Counsel on behalf of the entity, if it is determined that outside legal counsel or various legal litigation expenses are needed that may reasonably be expected to result in a cost greater than \$25,000 to the entity, such request must be made to the Board for authorization.
- (f) Any monetary payout in settlement of such claim and/or litigation matters that are assigned to General Counsel shall require consent of a majority of the Board of Governors unless such consent has been delegated previously in the specific litigation to the Executive Director, or General Counsel by a majority vote of the Board of Governors.
- (g) The Board may by a majority vote delegate settlement authority of a specific litigation matter to the Executive Director, WSBA President, and/or General Counsel.

#### **4. Claims and Litigations Not Assigned to General Counsel:**

- (a) In cases of monetary claims for damages, Complaints filed, and/or litigation filed against WSBA that state a requested monetary damage compensation from the entity, such matters shall be evaluated by General Counsel and a recommendation made to the Board for potential assignment, subject to the provisions of any applicable insurance policy.
- (b) In such cases, if a majority of the Board votes that such a matter is appropriate for referral to, and/or Insurance dictates that it is prudent that outside legal counsel be retained and/or consulted by the Board on behalf of WSBA to help facilitate resolution of a claim and/or litigation matter against WSBA, the following policy is intended to apply.
- (c) The Board shall select a committee composed of one to three governors ("Designated Governor(s)") to be the primary points of contact for the WSBA with regard to the specific litigation. . Designated Governor(s) shall work with any applicable insurance

company along with General Counsel to select outside defense counsel, and to work with the outside defense counsel and the insurance company claims representative. No other WSBA staff or WSBA Governor will communicate with either defense counsel or the insurance company without prior authorization of the Board.

- (d) Outside Defense Counsel and Designated Governor(s) shall keep the Board apprised of the status of the claim or case at least monthly, by password protected email, and at regularly scheduled Board meetings or special meetings as may be called from time-to-time. Such communications are intended to be attorney-client privileged communication updates. Emergency meetings will not be called to provide reports or other information except when a decision by the Board is required.
- (e) Outside Defense Counsel, General Counsel, and Designated Governor(s) shall schedule an initial meeting with the claims representative, if any, to go over the pros and cons of possible early dispute resolution. If mediation is deemed appropriate by defense counsel and/or claims representative and the Designated Governor(s), they shall select a proposed mediator and terms of mediation, and report the same and all mediation developments to the Board.
- (f) Defense Counsel shall provide regular litigation reports, at least monthly, to the Designated Governor(s) to circulate to the Board for review and action.
- (g) Unless delegated to the Designated Governor(s), the Board after consultation with outside defense counsel, general counsel, the Executive Director, and WSBA President, shall have final and ultimate authority to decide with respect to litigation strategy, case management, and responses to the press, after consultation with the Designated Governor(s) and after consultation with any public relations firm hired by the Board to assist with responses to the press, subject to the provisions of any applicable insurance policy. The Designated Governors shall then convey these decisions to defense counsel and, for responses to the press, the public relations firm, to act in accordance therewith.
- (h) The Designated Governor(s) shall attend mediations and report to the Board on the mediation. Upon request from the Board or majority of the Designated Governor(s), or outside counsel, General Counsel, the Executive Director the WSBA President and any other deemed necessary party shall also attend.
- (i) The Designated Governors(s) and any other previously authorized representative as identified above in section (h), shall attend the trial and may work with defense counsel on matters that arise during trial that require a decision of the client, other than responding to or tendering settlement offers.
- (j) Responding to or tendering settlement offers during a trial shall require the decision of the Board at an emergency meeting, unless such authority has been previously delegated by the Board.

## **5. Settlement Authority & Litigation Decisions Including Appeals:**

- (a) This policy is meant to provide the Board with final and ultimate decision-making authority on authorization of settlement of claims and litigations filed against the Entity.
- (b) The Board under this policy shall exercise good business judgment of prudent fiduciaries of the entity.
- (c) The Board in making such a decision may consult General Counsel, the Executive Director, WSBA President, outside legal counsel, insurance representative(s), and any other third parties for determination of settlement.
- (d) Subject to the provisions of any applicable insurance policy and any prior delegation of such authority, the Board shall retain ultimate decision-making authority whether to initiate settlement negotiations after consultation with defense counsel, and the decision on how to respond to a settlement offer rests with the Board after consultation with defense counsel and General Counsel.
- (e) The Board shall retain ultimate decision-making authority with regard to an appeal of a judgment, and/or decision to settle the same, subject to the provision of any applicable insurance policy and any prior delegation of such authority.
- (f) The Board shall retain ultimate decision-making authority with regard to whether a cross claim, or indemnification claim is filed against a third party on behalf of the Entity. Such decisions shall be made after consultation with the Executive Director, General Counsel, Outside legal counsel, the entity's insurance representative and any other involved necessary party. Such authority may be delegated by the Board.
- (g) Actions and decisions of the Board regarding settlements of litigation are ultimately reviewable and subject to veto by a majority vote of the Washington State Supreme Court upon review.

Adopted by a majority vote of the Board of Governors of the Washington State Bar Association this 17<sup>th</sup> Day of December 2018.