

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

Board of Governors Special Meeting
Meeting Materials

December 16, 2019
WSBA Conference Center
Seattle, Washington



**Board of Governors Meeting
WSBA Conference Center
Seattle, WA
December 16, 2019**

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

PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

ALL ITEMS ON THIS AGENDA ARE POTENTIAL ACTION ITEMS

To participate remotely: dial 1.866.577.9294, access code 52810#

MONDAY, DECEMBER 16, 2019

Because there will not be adequate time for public comment, please submit your written comments to the Board by Friday, December 13 at 12PM to shellyb@wsba.org.

12:00 PM – CALL TO ORDER

EXECUTIVE SESSION

- ANNOUNCE BASIS FOR EXECUTIVE SESSION PURSUANT TO RCW 42.30.110(1)(i)

PUBLIC SESSION

- ANTI-HARASSMENT AND ANTI-RETALIATION POLICIES AND PROCEDURES.....3
- LEGISLATIVE COMMITTEE MATTERS, Gov. Kyle Sciuchetti and Sanjay Walkevar 17
 - Expanding Scope of Legislative Committee to Include ABA Matters
 - Legislative Update (if needed)
- POLICY ON NON-DISSEMINATION/PROTECTION OF CONFIDENTIAL REGULATORY INFORMATION, Pres. Rajeev Majumdar 18

2:00 PM - ADJOURN

MEMO

To: WSBA Board of Governors

From: Alec Stephens, BOG Personnel Committee Chair
Felix Neals, WSBA Human Resources Director

Date: December 16, 2019

Re: Proposed revisions to BOG Anti-Harassment Policy & Procedure

ACTION: Adopt proposed revisions to the BOG's Anti-Harassment Policy & Procedure

Attached please find a redline and clean version of proposed amendments to the BOG's Anti-Harassment Policy & Procedure, which were recommended for adoption by the BOG by the Personnel Committee at its meeting on December 9, 2019.

WASHINGTON STATE BAR ASSOCIATION

WSBA Board of Governors ~~No Retaliation~~Anti-Harassment Policy and Procedure

(Adopted by the Board of Governors January 18, 2019); modified December 2019)

Purpose

The Washington State Bar Association (“WSBA”) is firmly committed to maintaining a safe environment that encourages its employees and members of the Board of Governors (“BOG”) and other volunteers to speak up about ~~sexual~~ discrimination or other harassment without fear of retaliation. To that end, ~~and to prevent victimization and other retaliatory behavior towards those who report such conduct to appropriate individuals,~~ the WSBA Board of Governors adopts a ~~No Retaliation~~this Anti-Harassment Policy. ~~This and Procedure.~~ Policy is important for many reasons, including:

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- ~~1. When reports of concerns of discriminatory or harassing conduct, or retaliatory action are made, the WSBA must consider them and take appropriate action. Retaliating against a BOG member or other WSBA volunteer, or WSBA employee who brought attention to inappropriate behavior harms the WSBA’s trustworthiness and reliability. Retaliation harms the public interest by deterring others from reporting complaints.~~
- ~~2. Any kind of retaliatory action, whether intentional or unintentional, may expose the WSBA to a serious legal risk.~~

Scope

This Policy and Procedure applies to ~~all WSBA employees and prospective, current, or former BOG members and other WSBA volunteers (BOG members and other WSBA volunteers hereinafter collectively referred to as “volunteers”). WSBA Employees are subject to provisions under WSBA Officers and the employee handbook policy on “Standards~~Board of Conduct and Discipline” and “Governors. The Board adopts language identical to the WSBA Employee Manual’s Sexual and Other Harassment Policy”~~as determined by the Executive Director, to clearly demonstrate the Board’s commitment,~~

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Policy

~~The WSBA prohibits any form of retaliation against or intimidation of WSBA employees or volunteers who report good faith concerns of discriminatory, harassing, illegal or dishonest conduct or who participate in investigations or other proceedings related to such a report, even if the WSBA ultimately concludes that the report cannot be substantiated or that no violation of law, regulation or WSBA policy has occurred.~~

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Retaliation Definition

~~Retaliation includes any kind of negative action against a current or former volunteer or employee who has reported actual or potential violations of equal opportunity laws or regulations (protected activity). These adverse take all reasonable actions create to prevent sexual and other harassment and discrimination. Because the Officers and Board members are not WSBA employees, a new procedure is adopted in the event a complaint is made by a WSBA employee against an Officer or Governor.~~

Policy

~~Harassment includes remarks, gestures, or physical contact; display or circulation of written materials or pictures derogatory to either gender or to racial, ethnic, sexual orientation, or religious groups; and basing personnel decisions on an employee's response to sexually oriented requests. Harassment also includes unwelcome conduct or comments that creates an intimidating, hostile, threatening or uncomfortable or offensive working environment for or that is directed at a person who reported alleged because of that person's gender, age, religion, race, sexual orientation, ethnic background, disability, or any other unlawful reason. Harassment may occur as one incident, or a series of incidents.~~

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~~Harassing behavior does not need to be illegal harassment in order for corrective action to be considered. WSBA and the Board of Governors strive to create an environment free from disrespect, divisiveness, incivility, and inappropriate conduct or participated in an behavior. Therefore, behavior that could create a harassing environment should the behavior continue or escalate, will not be tolerated.~~

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~~Engaging in any act that discriminates against an employee because of sex, age, race, color, marital status, national origin, religion, sexual orientation, gender identity, veteran status,~~

genetic information, or the presence of a disability or any other basis prohibited by local, state, or federal laws will not be tolerated.

No one will suffer retaliation for reporting work place concerns, including, but not limited to that an employee who believes that the work environment has become a hostile or offensive place to work, notice of intent to file a lawsuit or charge, even if the filing is not ultimately made; participation in a pending investigation. Examples of retaliatory actions of misconduct or violations; and resisting sexual advances or intervening to protect others. This policy applies during normal working hours, at work related or sponsored functions, and while travelling on work related business.

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Retaliation can occur outside of an employment relationship and may include, but are not limited to:

- ~~• Disparaging~~ disparaging the person to others or in the media-
- ~~Taking, taking~~ actions not directly related to employment or volunteer role/status or by causing the individual harm-, termination or illegal retraction of compensation and benefits, exclusion from events or meetings, any other action that might deter reasonable individuals from engaging in protected activity.
 - ~~• Termination or illegal retraction of compensation and benefits.~~
 - ~~• Exclusion from events or meetings.~~
 - ~~• Any other action that might deter reasonable individuals from engaging in protected activity.~~

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Activity protected by this Policy includes but is not limited to:

- **Board Procedure for Complaints** ~~about workplace harassment or discrimination;~~ **Filed Against Officers or Governors**
 - ~~• Notice of intent to file a lawsuit or charge, even if the filing is not ultimately made;~~

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- ~~Participation in a pending investigation of misconduct or violations; and~~
- ~~Resisting sexual advances or intervening to protect others.~~

~~The WSBA will not interfere with the rights of employees or volunteers to speak out about or disclose conduct violating this policy. When possible, the WSBA encourages open communication in accordance with our “Guiding Communication Principles” and “Conflict Resolution Practices Policy.”~~

Reporting Receipt of Complaints

~~Any person who experiences or becomes aware of conduct described in this policy should immediately bring the matter to that attention of the Human Resources Director.~~

Initial Notification

~~The WSBA Director of Human Resources notifies the WSBA President and Executive Director that the complaint has been received. Notification should be made within 48 hours of receiving the complaint. If the President is not available, then notice should be provided to the President-Elect; however, efforts should continue to notify the President. If the complaint is against the President, then notice should be provided to the President-Elect. In such case, all references to the President in the balance of this policy shall be read to say President-elect. If the Executive Director is not available, then notice should be given to the person the Executive Director has temporarily placed in charge.~~

Threshold Determination

~~A threshold determination shall be made whether the facts as stated in the complaint, if taken as true, constitute harassment or discrimination. This decision shall be made by the WSBA President, Director of HR, and the Ombudsperson.~~

~~If the complaint states facts that, even if true, do not support the complaint of harassment or discrimination, the complaint shall be closed and no further action taken.~~

~~For complaints that are not closed, the HR Director should conduct an initial investigation to determine whether the involved employee and governor or officer agree on the main facts and a~~

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resolution of the complaint. If the matter can be resolved by agreement, no further investigation is necessary.

For complaints that will be sent to an outside investigator, the officer or governor involved is automatically recused from discussing or voting on any matter related to the allegations until the investigation is completed, unless the Ombudsperson recommends otherwise.

Notice of these threshold determinations shall be provided to the complainant and to the involved governor or officer.

Ombudsperson

The Ombudsperson shall be appointed by the Chief Justice of the Washington Supreme Court to serve a three year term. The Ombudsperson is intended to serve in a neutral capacity with no actual or perceived prior connection to WSBA, including as an officer, Governor, or employee and should have experience with the laws pertaining to harassment and investigations. The Ombudsperson does not receive compensation but can be reimbursed for reasonable expenses according to the WSBA reimbursement policy.

Investigation

When an investigation is necessary, the Ombudsperson will choose an investigator from a list of vetted investigators maintained by the WSBA BOG Personnel Committee. The Committee should strive to maintain a list of at least five and less than ten vetted investigators. WSBA shall contract with the investigator to perform the required investigation.

The investigator shall provide an oral report to the HR Director, WSBA President and the Ombudsperson. The report shall include a summary of the facts determined, including any harm caused by the conduct.

If the report does not substantiate any discriminatory or harassing conduct, the complaint shall be closed and no further action taken. All records related to these matters shall be maintained by the Director of HR.

If the report does substantiate discriminatory or harassing conduct, the HR Director, WSBA President, and the Ombudsperson decide on any recommended correction actions against the

involved governor or officer and on the continued recusal of the involved governor or officer. The involved governor or officer is contacted by the HR Director and offered an opportunity to agree to the recommended corrective action. If the governor or officer agrees to the recommended corrective action, the matter is considered closed.

If the governor or officer does not agree to the recommended outcome, the Personnel Committee reviews the recommendation and submits the matter to the Board of Governors. The board's decision must be approved by the Chief Justice, except where the Board of Governors has voted to remove the governor or officer and made the issue moot.

Corrective Action Considerations-Factors

In determining whether corrective action against the involved governor or officer is necessary and appropriate, the following factors should be considered:

Whether harassment or discrimination was found by the investigation;

The seriousness of the conduct determined by the investigation;

Whether a pattern of conduct was found by the investigation;

Whether additional education would sufficiently address the conduct;

The degree of harm caused by the conduct, as determined by the investigation;

Level of cooperation with the investigation;

Remorse or acceptance of responsibility as determined by the investigation; and

Whether the conduct knowingly violated a rule, law or advice given.

Corrective Action Options

The following corrective actions may be recommended to the Board of Governors, but do not represent the exclusive list of appropriate actions:

None, if no corrective or disciplinary actions are necessary and appropriate;

Written or oral apology, if agreed to by the complaining employee and the governor or officer involved;

Mediated conversation between the complaining employee and the governor or officer involved, if agreed;

Required course of education by date certain;

Written censure by President or Full Board;

Exclusion from a specific number of meetings, or until the required course of education is completed; or

Removal of the governor or officer from office. This option requires the appropriate vote of the full Board of Governors as required by the WSBA Bylaws.

Policy Volunteers may file complaints with the President of the WSBA, the Chair of the BOG Personnel Committee or the Executive Director. WSBA employees may file complaints internally to their immediate supervisor, the Director of Human Resources or the Executive Director. Reports from volunteers or employees of misconduct or suspected violations will be investigated thoroughly and those who report or participate in the investigation must be protected from retaliation.

Appropriate action will be taken against a volunteer who is found to have engaged in prohibited harassing or retaliatory conduct, up to and including removal from the volunteer position as determined in accordance with the WSBA Bylaws and/or Washington Supreme Court rules.

Filing False Reports

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate action.

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~~All WSBA employees and volunteers are required to cooperate with investigations undertaken in response to a complaint under this policy. In particular, among other things, WSBA employees and volunteers are required to make themselves available to investigators immediately upon request, be forthcoming and truthful with investigators, and provide complete and accurate information. Failing to cooperate with an investigation may also be grounds for removal from a volunteer position. WSBA Employees are subject to the policies and procedures in the employee handbook. Distribution~~

~~This Policy shall be distributed to all new Governors during orientation and annually to all Governors and Officers during anti-harassment training.~~

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WASHINGTON STATE BAR ASSOCIATION

WSBA Board of Governors Anti-Harassment Policy and Procedure

(Adopted by the Board of Governors January 18, 2019; amended December __, 2019)

Purpose

The Washington State Bar Association (“WSBA”) is firmly committed to maintaining a safe environment that encourages its employees and members of the Board of Governors (“BOG”) and other volunteers to speak up about discrimination or other harassment without fear of retaliation. To that end, the WSBA Board of Governors adopts this Anti-Harassment Policy and Procedure.

Scope

This Policy and Procedure applies to WSBA Officers and the Board of Governors. The Board adopts language identical to the WSBA Employee Manual’s Sexual and Other Harassment Policy to clearly demonstrate the Board’s commitment to take all reasonable actions to prevent sexual and other harassment and discrimination. Because the Officers and Board members are not WSBA employees, a new procedure is adopted in the event a complaint is made by a WSBA employee against an Officer or Governor.

Policy

Harassment includes remarks, gestures, or physical contact; display or circulation of written materials or pictures derogatory to either gender or to racial, ethnic, sexual orientation, or religious groups; and basing personnel decisions on an employee’s response to sexually oriented requests. Harassment also includes unwelcome conduct or comments that creates an intimidating, hostile, or offensive working environment or that is directed at a person because of that person’s gender, age, religion, race, sexual orientation, ethnic background, disability, or any other unlawful reason. Harassment may occur as one incident, or a series of incidents.

Harassing behavior does not need to be illegal harassment in order for corrective action to be considered. WSBA and the Board of Governors strive to create an environment free from

disrespect, divisiveness, incivility, and inappropriate behavior. Therefore, behavior that could create a harassing environment should the behavior continue or escalate, will not be tolerated.

Engaging in any act that discriminates against an employee because of sex, age, race, color, marital status, national origin, religion, sexual orientation, gender identity, veteran status, genetic information, or the presence of a disability or any other basis prohibited by local, state, or federal laws will not be tolerated.

No one will suffer retaliation for reporting work place concerns, including, but not limited to that an employee who believes that the work environment has become a hostile or offensive place to work, notice of intent to file a lawsuit or charge, even if the filing is not ultimately made; participation in a pending investigation of misconduct or violations; and resisting sexual advances or intervening to protect others. This policy applies during normal working hours, at work related or sponsored functions, and while travelling on work related business.

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Board Procedure for Complaints Filed Against Officers or Governors

Receipt of Complaints

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Initial Notification

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President, then notice should be provided to the President-Elect. In such case, all references to the President in the balance of this policy shall be read to say President-elect. If the Executive Director is not available, then notice should be given to the person the Executive Director has temporarily placed in charge.

Threshold Determination

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If the complaint states facts that, even if true, do not support the complaint of harassment or discrimination, the complaint shall be closed and no further action taken.

For complaints that are not closed, the HR Director should conduct an initial investigation to determine whether the involved employee and governor or officer agree on the main facts and a resolution of the complaint. If the matter can be resolved by agreement, no further investigation is necessary.

For complaints that will be sent to an outside investigator, the officer or governor involved is automatically recused from discussing or voting on any matter related to the allegations until the investigation is completed, unless the Ombudsperson recommends otherwise.

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If the report does substantiate discriminatory or harassing conduct, the HR Director, WSBA President, and the Ombudsperson decide on any recommended correction actions against the involved governor or officer and on the continued recusal of the involved governor or officer. The involved governor or officer is contacted by the HR Director and offered an opportunity to agree to the recommended corrective action. If the governor or officer agrees to the recommended corrective action, the matter is considered closed.

If the governor or officer does not agree to the recommended outcome, the Personnel Committee reviews the recommendation and submits the matter to the Board of Governors. The board's decision must be approved by the Chief Justice, except where the Board of Governors has voted to remove the governor or officer and made the issue moot.

Corrective Action Considerations-Factors

In determining whether corrective action against the involved governor or officer is necessary and appropriate, the following factors should be considered:

Whether harassment or discrimination was found by the investigation;

The seriousness of the conduct determined by the investigation;

Whether a pattern of conduct was found by the investigation;

Whether additional education would sufficiently address the conduct;

The degree of harm caused by the conduct, as determined by the investigation;

Level of cooperation with the investigation;

Remorse or acceptance of responsibility as determined by the investigation; and

Whether the conduct knowingly violated a rule, law or advice given.

Corrective Action Options

The following corrective actions may be recommended to the Board of Governors, but do not represent the exclusive list of appropriate actions:

None, if no corrective or disciplinary actions are necessary and appropriate;

Written or oral apology, if agreed to by the complaining employee and the governor or officer involved;

Mediated conversation between the complaining employee and the governor or officer involved, if agreed;

Required course of education by date certain;

Written censure by President or Full Board;

Exclusion from a specific number of meetings, or until the required course of education is completed; or

Removal of the governor or officer from office. This option requires the appropriate vote of the full Board of Governors as required by the WSBA Bylaws.

Policy Distribution

This Policy shall be distributed to all new Governors during orientation and annually to all Governors and Officers during anti-harassment training.

MEMO

To: WSBA Board of Governors

From: Kyle Sciuchetti, BOG Legislative Committee Chair; Sanjay Walvekar, WSBA Outreach and Legislative Affairs Manager

Date: December 16, 2019

Re: Expanding Scope of Legislative Committee to Include ABA Matters

<p>ACTION: Expand the scope of the BOG Legislative Committee to include consideration of ABA matters, as recommended by the BOG Legislative Committee</p>
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Overview:

The WSBA strives to be more engaged and responsive to requests, proclamations and proposals by the ABA that may affect the WSBA and its members. For a variety of reasons, the WSBA Board of Governors is limited in its ability to quickly review ABA legislative initiatives and respond when necessary. The BOG Legislative Committee (BLC) acts as a more rapid-response body and is authorized to conduct GR 12.2 analyses and take positions on behalf of the BOG, making it better suited to respond to the needs of ABA delegates.

On December 2, 2019, the BLC voted to recommend to the full Board of Governors that the Board delegate matters regarding the ABA to the BLC.

TO: WSBA Board of Governors
FROM: Rajeev D. Majumdar
DATE: December 3, 2019
RE: Proposed Policy Adoption re: Regulatory Responsibilities Involving Confidential Regulatory Information

ACTION: Adopt Proposed Policy on non-dissemination/propagation of information made confidential by court rule or other law.

Background

Under Supreme Court rules, certain non-public regulatory information, including disciplinary information, information about applicants and applications for admission, and information about character and fitness investigations and proceedings, is strictly confidential, and WSBA staff, agents, and volunteers are obligated to maintain the confidentiality of such information, regardless of its source. Recently, Governors and WSBA staff have been asked to reproduce or disseminate materials identifying persons about whom disciplinary grievances have been filed. There is nothing in the court rules preventing a grievant from making such identifications on their own, but analysis by the Office of Disciplinary Counsel, the Regulatory Services Department, and the Office of General Counsel, which I concur with, makes it clear we are prohibited from reproducing or facilitating such disclosures. To be proactive and protect the organization and its constituents from liability, inappropriate requests, and to support the Supreme Court's mandates, the attached policy is proposed for adoption.

WASHINGTON STATE BAR ASSOCIATION

Proposed BOG Policy on Non-Dissemination/Propagation of Confidential Regulatory Information

Under Supreme Court rules, certain non-public regulatory information, including disciplinary information, information about applicants and applications for admission, and information about character and fitness investigations and proceedings, is strictly confidential, and WSBA staff, agents, and volunteers are obligated to maintain the confidentiality of such information, regardless of its source. If the WSBA Board of Governors or individual officers or governors receive information known to be confidential under court rule or receive information the dissemination of which is known to be prohibited by other law, it is the policy of the Board of Governors that such information will not be made public, released, or otherwise disseminated to the public, except as specifically authorized by court rule or other law. When the Association becomes aware that such information has been made part of a bar record during a public meeting of the Board of Governors or one of its committees, it is the policy of the Board of Governors that any confidential information must be redacted from the record prior to it being made public or as soon as reasonably practicable if the record has already been made public, so as to not violate court rule or other law.

Adopted:

Rajeev D. Majumdar, WSBA President

Date: