



WSBA ANNUAL MEETING WITH THE SUPREME COURT

Friday, March 3, 2023

9:00AM to 12:00PM

AGENDA

- 1.** Welcome & Introductions, Chief Justice Steven González
- 2.** WSBA Updates, President Daniel D. Clark
 - a.** FY22 Financial Review & 5 Year historical WSBA financial performance, Treas. Francis Adewale and Director of Finance Tiffany Lynch 2
 - b.** FY23 Goals Review, Executive Director Terra Nevitt 7
 - c.** Update on the Future of WSBA Space & Building-up of Facilities Fund, Treas. Francis, Deputy Executive Director Dua Abudiab, and Director of Finance Tiffany Lynch 8
 - d.** Update on Board Activities to Further Diversity, Equity, and Inclusion, DEI Council Co-Chair Gov. Sunitha Anjilvel 16
 - e.** Updated BOG/Court Meeting Schedule for FY24, Pres. Elect Hunter Abell
 - f.** Practice of Law Board Proposal for Data-Driven Legal Regulatory Reform 34
- 3.** Questions from the Court.

WSBA FINANCIAL UPDATE

Presented by:

Francis Adewale, Treasurer

Tiffany Lynch, Director of Finance



FY 2022 FINANCIAL REVIEW

FUND	CATEGORY	REFORECAST BUDGET	ACTUAL	VARIANCE (ACTUAL vs. REFORECAST)
GENERAL	REVENUE	\$21,531,920	\$22,035,235	\$503,315 Additional Revenue
	EXPENSE	\$21,296,766	\$20,394,141	(\$902,625) Less Expenses
	NET INCOME/(LOSS)	\$235,154	\$1,641,094	\$1,405,940 Favorable
CLE	REVENUE	\$2,219,681	\$1,801,149	(\$418,532) Less Revenue
	EXPENSE	\$1,563,106	\$1,407,892	(\$155,214) Less Expenses
	NET INCOME/(LOSS)	\$656,575	\$393,257	(\$263,318) Unfavorable
CLIENT PROTECTION	REVENUE	\$828,319	\$749,227	(\$79,092) Less Revenue
	EXPENSE	\$503,767	\$569,482	\$65,715 Additional Expenses
	NET INCOME/(LOSS)	\$157,238	\$17,256	(\$139,982) Unfavorable
SECTIONS	REVENUE	\$637,652	\$761,693	\$124,041 Additional Revenue
	EXPENSE	\$899,652	\$467,886	(\$431,766) Less Expenses
	NET INCOME/(LOSS)	(\$262,000)	\$293,807	\$555,807 Favorable

5-YEAR HISTORICAL REVIEW- GENERAL FUND

Fiscal Year	Budgeted Loss or Gain	Actual/Estimated Net Increase	Overall Increase Actual v. Budgeted	Unrestricted General Fund Reserves	Reserve Notes
FY 2018	(\$732,275)	\$432,107	\$1,164,382	\$1,845,858	
FY 2019	(\$101,616)	\$940,679	\$1,042,295	\$2,686,537	\$100,000 of unrestricted net income allocated to Facilities Reserve
FY 2020	(\$591,915)	\$791,697	\$1,383,612	\$3,478,234	
FY 2021	(\$202,779)	\$1,543,940	\$1,746,719	\$4,522,174	\$500,000 of unrestricted net income allocated to Facilities Reserve
FY 2022	(\$89,563)	\$1,641,094	\$1,730,657	\$5,713,268	\$500,000 of unrestricted net income allocated to Operating Reserve, \$50,000 of Facilities Reserve allocated back to Unrestricted General Fund Reserves
FY 2023	(\$561,000)				\$1.7M of unrestricted net income allocated to Facilities Reserve

- 5-year average variance between budget vs. actual= \$1.4M
 - Lowest variance= \$1.04M (2019)
 - Highest=\$1.74M (2021)

WSBA GENERAL FUND RESERVES 2012-2023

FISCAL YEAR	TOTAL GENERAL FUND RESERVES	OPERATING RESERVE	FACILITIES RESERVE	OTHER RESERVES*	UNRESTRICTED RESERVE
2012	\$8,745,117	\$1,500,000	\$3,340,000	\$445,641	\$3,459,476
2013	\$8,960,772	\$1,500,000	\$3,340,000	\$513,911	\$3,606,861
2014	\$7,803,070	\$1,500,000	\$3,340,000	\$337,582	\$2,625,488
2015	\$5,102,534	\$1,500,000	\$3,286,096	\$316,438	\$0
2016	\$3,918,536	\$1,500,000	\$2,114,427	\$304,109	\$0
2017	\$3,363,751	\$1,500,000	\$200,000	\$0	\$1,663,751
2018	\$3,795,858	\$1,500,000	\$450,000	\$0	\$1,845,858
2019	\$4,736,537	\$1,500,000	\$550,000	\$0	\$2,686,537
2020	\$5,528,234	\$1,500,000	\$550,000	\$0	\$3,478,234
2021	\$7,072,174	\$1,500,000	\$1,050,000	\$0	\$4,522,174
2022	\$8,713,268	\$2,000,000	\$1,000,000	\$0	\$5,713,268
2023 BUDGET	\$8,152,071	\$2,000,000	\$2,700,000	\$0	\$3,452,071

*Other Reserves consist of: Capital Reserve and Board Program Reserve from 2012-2016; License Fee Stability Fund and Innovation Fund beginning 2023

WSBA CLE, CLIENT PROTECTION, AND SECTIONS FUND RESERVES 2012-2023

FISCAL YEAR	CLE	CLIENT PROTECTION	SECTIONS
2012	\$1,341,266	\$791,399	\$904,933
2013	\$1,192,124	\$1,213,602	\$1,028,539
2014	\$458,415	\$1,491,177	\$1,074,417
2015	\$53,090	\$2,144,289	\$1,229,704
2016	\$456,568	\$2,646,222	\$1,212,637
2017	\$485,582	\$3,242,299	\$1,197,726
2018	\$604,125	\$3,227,988	\$1,160,342
2019	\$526,285	\$3,816,144	\$1,121,223
2020	\$469,241	\$4,193,131	\$1,210,209
2021	\$648,792	\$4,046,247	\$1,508,842
2022	\$1,042,049	\$4,063,501	\$1,802,650
2023 BUDGET	\$1,259,284	\$4,109,289	\$1,547,699



MISSION

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

PRINCIPLES

Principle 1: To provide relevant and valuable resources to help all of its members achieve professional excellence and success, in service to their clients and public, and to champion justice.

Principle 2: To uphold and elevate the standard of honor, respect and integrity among WSBA members in order to improve public confidence in the legal profession.

Principle 3: To promote access to justice and improve public confidence, trust and respect of members of the public in our legal system and bar association.

Principle 4: To promote diversity, equity and inclusion in the legal system and profession.

Principle 5: To manage the business of the State Bar Association in a prudent, efficient and cost-efficient manner.

Principle 6: Foster an organizational environment and culture that demonstrates a commitment to staff and embodies the organizational mission and stated values of the WSBA.

FY23 GOALS

1. Increase member engagement in WSBA's volunteer community.

- **Purpose:** To create a more member-engaged bar association.
- **Success Looks Like:** (1) A steady increase in the number of members volunteering year over year. (2) Public community/volunteerism increasing as a result of increased member engagement that improves the visibility of the bar in the public arena.

2. Establish a Process for WSBA Program Review.

- **Purpose:** To develop, implement, and institutionalize a process that will enable the BOG to understand and identify what programs the WSBA is reviewing, how effective the programs are at achieving the goals and mission, and whether or not anything needs to change.
- **Success Looks Like:** WSBA can compare discretionary programs in a structured and comprehensive way to make decisions about resource allocations.

3. Support Rural Practice.

- **Purpose:** To support the work of the Small Town and Rural (STAR) Committee in implementing solutions to increase rural practice participation in WA State.
- **Success Looks Like:** Increased awareness and interest in rural practice opportunities by future and current WSBA members that translates to increased presence of legal practitioners in rural communities throughout WA State.

4. Develop a Strategic Plan for the Future of WSBA's Space.

- **Purpose:** To determine options for locating WSBA offices upon expiration of the current lease, and to decide which options to pursue.
- **Success Looks Like:** A decision this fiscal year as to whether WSBA should buy/lease, where the headquarters should be located (how large a space), and whether to establish a satellite office or offices elsewhere in the state. Formation of a BOG committee/work group/task force to begin the implementation process.

5. Increase WSBA's Commitment to Diversity, Equity, and Inclusion.

- **Purpose:** Improving the profession of law and the legal system in Washington by increasing the number of members of diverse backgrounds joyfully participating and thriving in WSBA and decreasing the demographic gap in access to legal services/access to justice.
- **Success Looks Like:** Increased diversity of WSBA volunteers. Increased understanding of DEI and its importance among WSBA members. Increased diverse leadership in law firms, bar leadership, and counsel offices. Having institutional leadership curriculum and tools to promote DEI consistently through WSBA leadership changes. A system in place for regularly measuring the success of our DEI efforts.



FUTURE OF WSBA HEADQUARTERS

March 2023



THE NOW

- Renting ~ **50,000** square feet of office space in downtown Seattle
- One public floor
- Two and a half floors of internal offices and meeting spaces

THE HOW





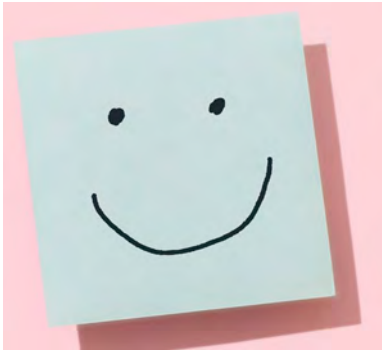
THE WHY

- Shift in the workplace
- Current lease expires December 2026
- Space decision → budget decision



THE WHERE

- **Headquarters' location**
-- Rent OR buy --
- **Satellite office(s)**
-- Rent OR buy --

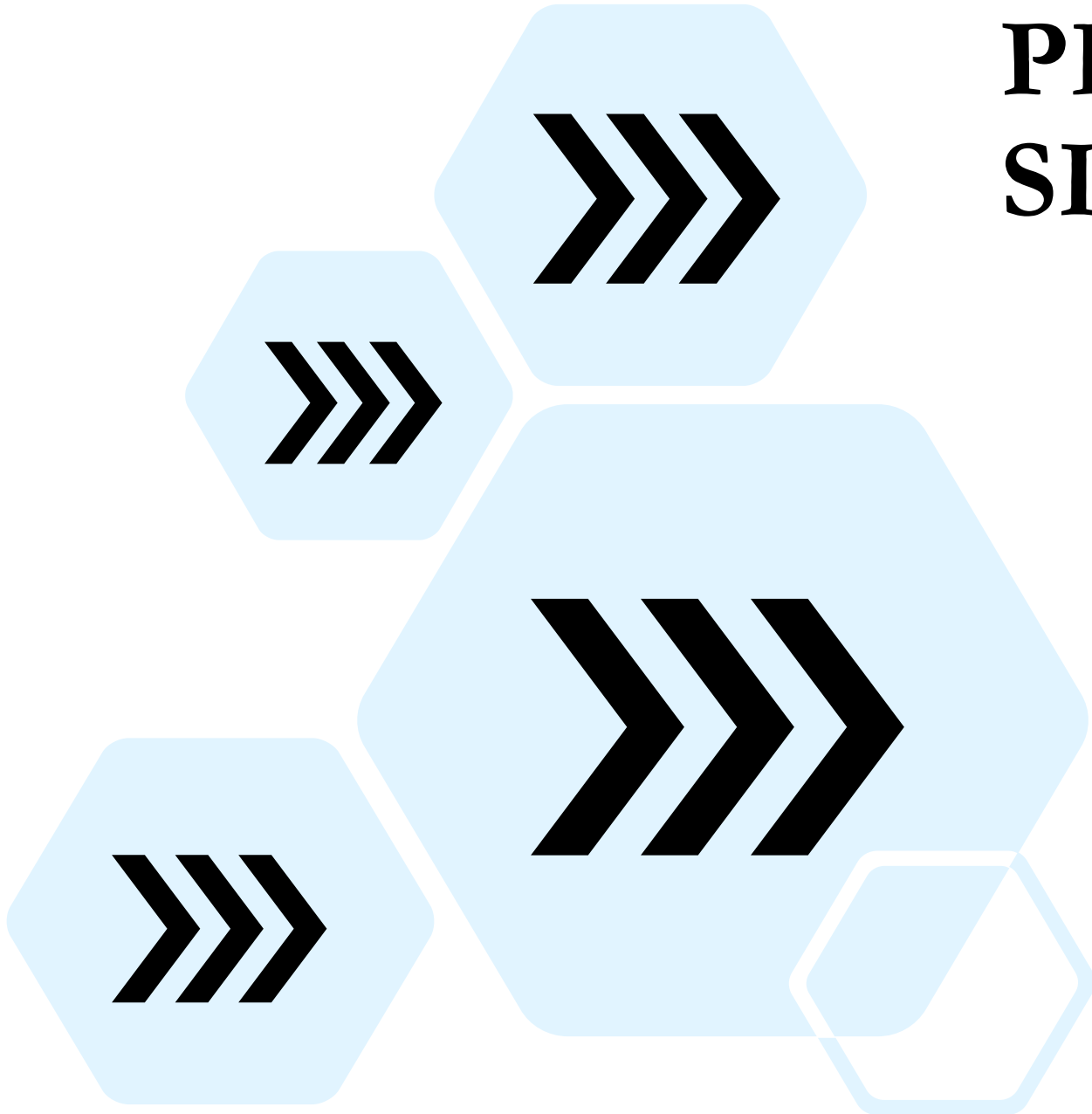


- ✓ Majority of legal professionals are in the Seattle area
- ✓ Value
- ✓ Customized space meets needs
- ✓ Public transportation convenience



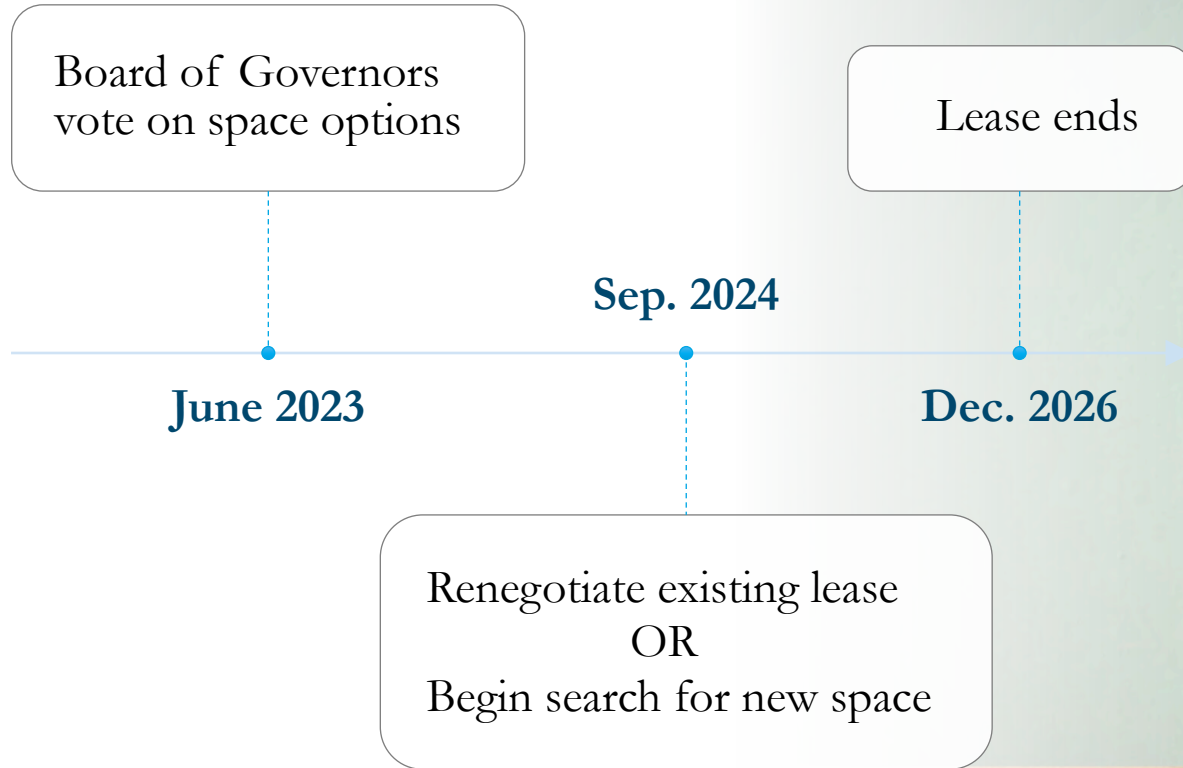
- × "Seattle-centric" image
- × Expensive
- × Inconvenient for non-local volunteers and members
- × Lack of parking

PROGRESS SINCE OCT '22



- Long-Range Strategic Planning Council (LRSPC)
- Budget planning & awareness
- Internal downsizing & data tracking

THE FUTURE





Diversity, Equity and Inclusion in the Legal Profession

**Governor Sunitha Anjilvel, WSBA DEI Council Co-Chair
March 3, 2023**

Overview

Policy Work

- DEI Council
- At-Large Governor Bylaws

Minority Bar Associations

- Building Relationships
- MBA Proposal to BOG - Equity Analysis

Strategic Planning

- Membership Demographic Study
- Organizational Equity Assessment
- DEI Plan



DEI is for everyone.

“Justice will not be served until those who are unaffected are as outraged as those who are.”

-Benjamin Franklin

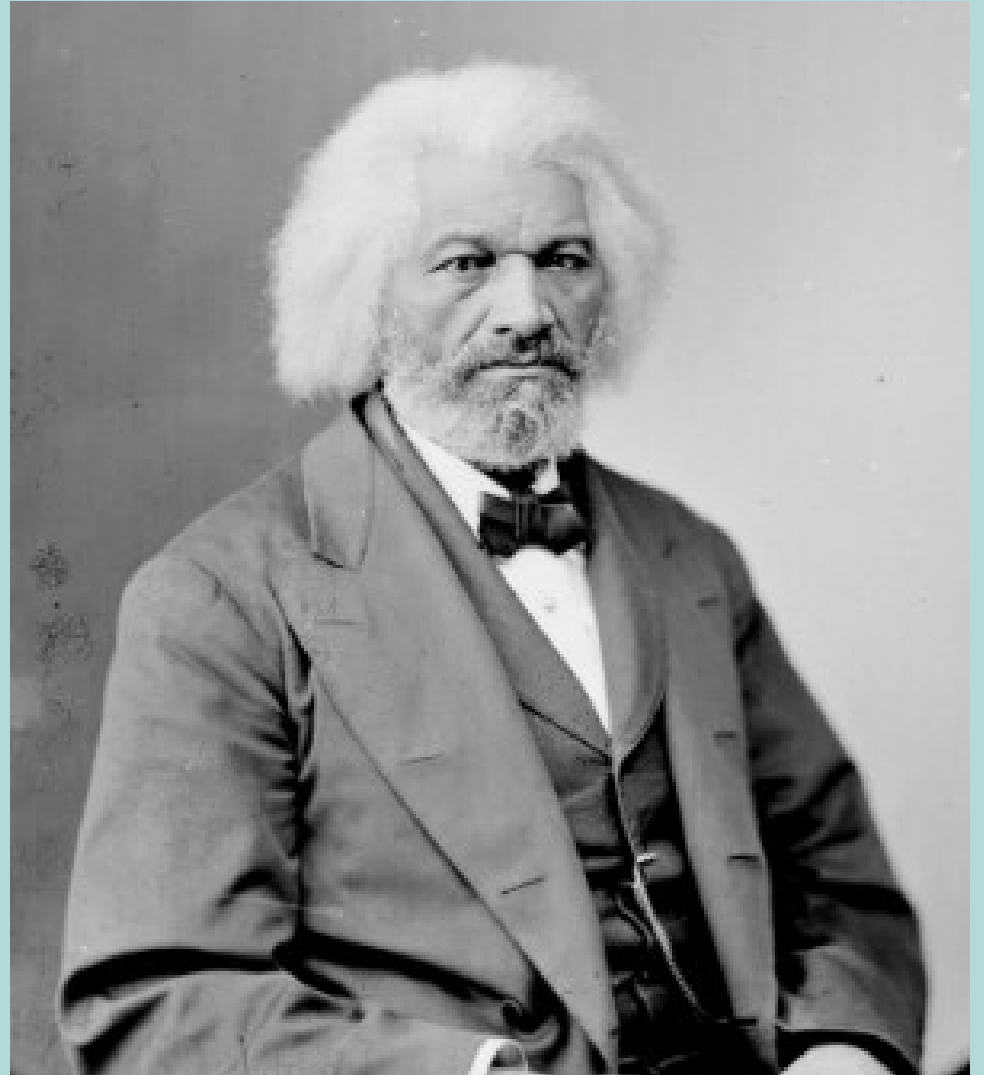




DEI work is not without its obstacles.

“If there is no struggle,
there is no progress.”

- Frederick Douglass





“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.”

- Washington State Supreme Court Justices

Policy Work

"In general, the Washington State Bar Association strives to promote diversity and equality in the courts and the legal profession."

General Rule 12.2(6)

Diversity Committee → DEI Council

- The DEI Council's purpose is to advance diversity, equity and inclusion in the legal profession and legal system.
- The Council members may be WSBA active members, WSBA pro bono status members, WSBA judicial status members and judicial officers, law students, law school faculty and staff, and members of the public.

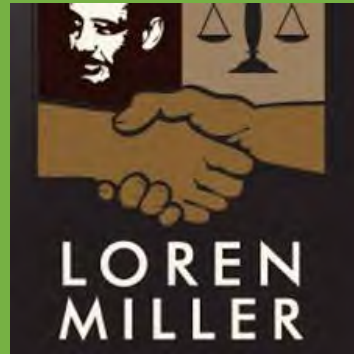
At-Large Governor

3. Eligibility Requirements: Election of At-Large Governors

At-Large Governors shall be elected by the Members as follows:

- a. Member At Large Governors: After notice of the position has been adequately provided to all members, the Diversity, Equity and Inclusion (DEI) Council shall forward at least three candidates who have ~~the~~ a lived experience and knowledge of the needs of those members whose membership is or may be historically underrepresented in governance, ~~or who represent some of the diverse elements of the public of the State of Washington,~~ to the end that the BOG will be a more diverse and representative body than the results of the election of Governors based solely on Congressional Districts may allow. ~~Underrepresentation and diversity may be based upon, but not be limited to age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor will be determinative.~~ Diversity refers to meaningful representation of, and equal opportunities for, individuals who have a lived experience as a member from one or more historically underrepresented communities in the legal profession. Underrepresentation encompasses and is not limited to, race, disability, age, ethnicity, religion, sexual orientation, gender identity, and gender expression. The Executive Director shall then place all candidates forwarded by the DEI Council on the ballot to be elected by all eligible voting members. If the DEI Council forwards less than three candidates by May 1, the Executive Director shall notify the BOG, which may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the DEI Council on the ballot to be elected by all eligible voting members.

Minority Bar Associations





MBA Proposal to the BOG

MBA leaders from KABA, MAMA, ABAW, WADA, LBAW, VABAW, FLOW, LMBA, WWL, Cardozo Society, and QLAW submitted a proposal to the BOG in April 2022.

DEI Competency for BOG



Ensure DEI competency of Governors through DEI educational programming to reduce bias and build skills and protocol for a more inclusive leadership lens

BOG Applicants



Understand the engagement in DEI of BOG applicants.

Restorative Relationships



Develop a restorative protocol for Governors to engage in when there are instances of bias and misconduct.

Equity Analysis



Require considerations on diversity and inclusion before the Governors make a vote or take any action.

MBA Engagement



MBA's commitment to engaging in WSBA.

"We're in this together."

DEI Strategic Planning

To be strategic in our DEI efforts, we are engaged in the following projects:



Membership Demographic Study



Organizational Equity Assessment



New DEI Plan



Engaging in Dialogue

- How can we work to heed your call to action?
- How can we hold the legal profession accountable?
- How can we work with the judiciary across the state to educate our judicial officers at all levels about the importance of acknowledging DEI issues in day-to-day matters before the court.
- How can we meaningfully engage with, inform, and educate members who either disagree fundamentally that DEI is a legitimate purpose of the Washington State Bar Association or who do not understand what diversity, equity and inclusion means?

**JOINT MBA PROPOSAL TO THE
WASHINGTON STATE BAR ASSOCIATION
BOARD OF GOVERNORS**

Date: April 6, 2022

The undersigned minority bar associations of Washington make this joint proposal to the Washington State Bar Association Board of Governors (“Governors”) to continue our dialogue and encourage the Governors in its progress and efforts on diversity, equity, and inclusion in the legal community.

1. Diversity, Equity, and Inclusion Tools for Decision-Making.

The Washington State Bar Association (WSBA) has made multiple commendable commitments to advance diversity and equality in the courts and our legal profession to promote an accessible and equitable justice system for everyone, including via its sign-on to the [Race Equity and Justice Initiative’s Acknowledgments and Commitments \(REJI\)](#) and its [Diversity & Inclusion Plan](#), which is implemented by its Diversity Committee.

In furtherance of these commitments, we propose the Governors implement decision-making tools to ensure due consideration of diversity, equity and inclusion issues when they are most critical: at the decision table. More specifically, **we propose the Governors approve a set procedure of required considerations on diversity and inclusion before the Governors make a vote or take any action.**

As an illustrative example on the need for an institutional framework: on April 17, 2021¹, the Governors approved a Resolution in Support of a Bar Exam to Ensure a Competent, Ethical and Diverse Legal Profession, which included resolution in support of a “continued requirement of passing a bar exam before admission to the WSBA” and “discourage[d] diploma privilege as an alternative to a bar exam”. Prior to passage of the resolution, the Diversity Committee² and community leaders³ issued statements of concern, urging the Governors reconsider the proposed resolutions as premature, highlighting the historical and continuing disparate impact of the bar exam on minority communities, and recognizing the necessary work still to be done by the Washington Supreme Court’s task force through 2022 in examining the bar exam and licensure requirements.

By implementing clear guidelines and requirements for diversity and inclusion analysis: (1) the Governors will proactively engage in the very conversations and considerations consistently raised by the Diversity Committee and community-at-large on issues of significant

¹ [Resolution in Support of a Bar Exam to Ensure a Competent, Ethical and Diverse Legal Profession](#)

² Letter of the WSBA Diversity Committee, dated April 13, 2021.

³ Joint comment by the Washington Women Lawyers, the Filipino Lawyers of Washington, and QLaw, dated April 15, 2021; Statement of the Vietnamese American Bar Association of Washington, dated April 15, 2021; Letter of the Loren Miller Bar Association, dated April 15, 2021; Letter of the Northwest Indian Bar Association, dated April 16, 2021;

disparate impact, bias, and intersectionality⁴; (2) develop critical training and engagement on how diversity and inclusion issues impact and intersect with so many aspects of our profession; and (3) encourage members' confidence in the Governors as representatives and advocates for our entire community.

In addition, such protocol will further advance the WSBA's agreement to REJI Commitment Nos. 2, 3, and 4 to change structures, policies and processes that may harm and disparately impact communities of color; promote and support systemic and public policy changes that advance equitable justice; and continuously examine how the WSBA operates to ensure race equity in its policies and practices.

To create and implement these decision-making tools, **we urge the Governors to collaborate with the Diversity Committee to formulate clear terms for required discussion on diversity and inclusion at the decision table.** The undersigned bar associations also offer our support and engagement in this critical work.

2. Diversity, Equity, and Inclusion Competency for Candidates and Governors.

Progress is dependent on leadership. As Governors, you are not only role models to the legal community of the expectations and standards we all hold ourselves to but also must be front-line advocates for continuing improvement of our community. Development of diversity, equity and inclusion in our community does not fall on just a few Governors. **It is the responsibility of each and every Governor.**

To this end, we propose the WSBA require:

(a) Comprehensive program on diversity, equity and inclusion specific to Governors: generally in our experience, voluntary diversity trainings are frequently self-selective and ineffective on their own⁵. It appears this is similarly the case for the WSBA Governors; it is our understanding certain Governors have not attended any of the offered voluntary diversity trainings since the events of last year⁶, which precipitated these trainings.

Therefore, we propose the WSBA comprehensively implement a diversity program specifically designed for the Board of Governors to reduce bias and build skills and protocol for a more inclusive leadership lens⁷. This is in line with the WSBA's Diversity & Inclusion Plan and

⁴ The pandemic and world response in particular has caused immense [disproportional impact](#) on minority communities and individuals with intersectional identities. As Governors themselves may be personally experiencing, parenting during the pandemic is a relatable example of how attorneys with intersectional identities are in continuing exhaustion and burn out. It is more critical than ever before for the Board of Governors to intentionally, consistently, and methodically consider how their decisions will impact our community as a whole.

⁵ On July 20, 2020, the MCLE Board issued its [Report and Recommendation](#) for amendment to Admission and Practice Rule (APR) 11 to require attorneys complete at least one (1) ethics credit in the topic of equity, inclusion, and the mitigation of both implicit and explicit bias, noting the "need for this requirement is highlighted by increased demand for the legal profession to refresh its commitment to address systemic inequities and increase awareness of both conscious and unconscious biases." On July 1, 2021, the Washington Supreme Court entered [order NO. 25700-A-1349](#), which amended APR 11 to include the foregoing credit requirement.

⁶ See Letter of Past-President of the WSBA, Kyle Sciuchetti, on November 17, 2020.

⁷ The above recommendation on tools for decision-making may also be a component of such a program.

its “*commitment to its own culture of inclusion and cultural competence*”, including to “develop tools and shared language for WSBA representatives to educate members why diversity matters to everyone”; and to “*deliver consistent, ongoing training on cultural competence and inclusion*” (emphasis added).

Local law firms and legal employers have implemented diversity programs, including mandatory diversity trainings, for both their employees and management, in recognition of not only the need for a formal program and trainings but also the vital message sent to everyone that competency on diversity issues matter⁸. In addition, for many if not all of the undersigned, we have similarly engaged in diversity programs and trainings both at work and at our respective organizations. It is past time for the Governors to catch up. Recognizing Governors are very busy, **we propose the Governors collaborate with the Diversity Committee to structure programming with flexibility in mind**, e.g. by following the WSBA’s continuing legal education framework: require specific hours or number of in-person and virtual training, offered throughout the year for Governors to fulfill in groups and/or at times most suitable for them.

(b) Mandatory statement on diversity, equity and inclusion as part of the application process from all future candidates for any position of leadership with the WSBA: leaders must be ready to advance the commitments of the organization to which they apply and this includes future Governors (and other leaders) of the WSBA. As such, candidates who may one day hold considerable power over our legal community should be vetted properly, including in regards to their commitment on diversity and inclusion⁹. This is in line with the WSBA’s Diversity & Inclusion Plan to “*provide tools, systems, and evaluation for intentional recruitment of diverse faculty and leadership in collaboration with Minority Bar Associations*” (emphasis added).

We propose election candidates for any Governor position or other significant leadership position be required to submit as part of their application, a statement on how they have and will support diversity and inclusion work with the WSBA, complementary to the mission and values of the WSBA. **We urge the Governors collaborate with the Diversity Committee to formulate clear guidelines for such a statement from candidates.**

3. Restorative Protocol for Board Conduct.

Following the events of last year¹⁰, it is our understanding the Governors still do not have any formal process to resolve harmful board conduct. Therefore, in the event a Governor says or engages in offensive conduct which harms the board and/or the community, there is no clear

⁸ See [2020 Vault/MCCA Survey Results](#) (96% of surveyed law firms have a diversity committee, with 92% including management representation; 75% have hired a full-time professional to implement diversity programs; 92% support internal affinity groups; and 91% implement bias interrupters with respect to hiring, assignments, evaluations, compensation, and promotions).

⁹ Law firms are already taking account of diversity representation in leadership, requiring diversity in their candidate pool for leadership roles. See [2021 Bloomberg Law Diversity, Equity, and Inclusion Framework](#) (58% of surveyed firms require diversity within a pool of candidates for management and leadership roles, and of those, an average of 23% of slated candidates must be diverse).

¹⁰ Letter of Past-President of the WSBA, Kyle Sciuchetti, on November 17, 2020.

recourse. This is deeply disturbing. By failing to address this lack of restorative protocol, the WSBA Governors have created a questionable and potentially unsafe environment for leaders with diverse backgrounds. Indeed, harm has already occurred. And this harm is continuing. Community leaders have already voiced concerns and reluctance to engage and participate in the WSBA because of the apparent acceptance for any and all conduct amongst Governors – as evidenced by the lack of effective change in the wake of last year’s events. Again, in direct contrast, local law firms and legal employers have implemented policies and clear protocol for reproachable conduct. **We urge the WSBA Governors to prioritize redress on this matter.**

Based on discussions over the last year, we recognize Governors are sensitive to both the legal rights of their colleagues and the potential organizational liability that inevitably connects with board conduct. These are legitimate concerns. However, they are not insurmountable. And they are not an excuse to do nothing. Indeed, **the WSBA Governors are well aware of the dire cost of doing nothing.** After the mishandling of its employee’s sexual harassment allegations against a Governor in 2019 and direct recommendation of the Washington Supreme Court to adopt explicit policy changes¹¹, the WSBA implemented its [anti-harassment policy](#) for employees. It is our sincere hope the Governors will proactively do all it can to avoid yet another national spotlight¹² on the WSBA, which has already severely fractured the community’s faith in its leaders and damaged the reputation of the WSBA.

As a first step, **we urge the Governors to properly analyze with their legal counsel the parameters for action**, balancing the rights of the Governors with the need for a respectful and inclusive board. Next, **we urge the Governors to reflect on what accountability means for them** and how their lived experiences may apply as creative solutions to this matter (e.g. how do you resolve conflict with your family, coworkers and friends? What do you do in your personal lives when you make a mistake?). With a year already passed with little known movement, **we encourage the Governors to form an ad-hoc committee or task force to solely focus on implementing clear processes to resolve unacceptable board conduct.** With the adoption of its anti-harassment policy, much of the foundational groundwork for ways to implement accountability with due process is already available. In summary, the WSBA Governors needs to implement institutional and express protocol to ensure accountability amongst themselves and to restore the trust of the legal community that the Governors are not immune and will genuinely be held accountable in a restorative process.

4. Engagement of the Minority Bar Associations.

We recognize much of the WSBA’s work on diversity and inclusion is not a one-way street. We further recognize our roles and responsibilities as leaders of local bar associations to meaningfully engage with the WSBA in support of its diversity and inclusion work. Already, we have made great strides in fostering relationships with the WSBA Governors and building a strong

¹¹ [Letter of Chief Justice Mary Fairhurst, dated December 9, 2019.](#)

¹² [https://www.abajournal.com/web/article/washington-state-bars-board-mishandled-employees-harassment-complaint-report-finds.](https://www.abajournal.com/web/article/washington-state-bars-board-mishandled-employees-harassment-complaint-report-finds)

network of leaders to implement change and offer resources to members, e.g. joint and/or collaborative trainings and presentations.

That said, **we highlight our commitment to continuing to build our respective relationships with the WSBA in furtherance of our mutual missions and values.** For example, at a recent joint minority bar association meeting, we raised the idea of civic trainings to better aid our competency in supporting the WSBA. As a result of these conversations, it is our understanding the WSBA Equity and Justice Team is preparing civic trainings for the local bar associations to participate and learn more about the WSBA's governance and engagement opportunities. We look forward to this educational training on how the WSBA governs over our legal community, the powers of the Governors and how it implements action items, and ways in which the community-at-large can be more involved. We are also eager to collaborate with Governors to provide more outreach support and resources to our community on important issues, including on informational voting outreach.

We are encouraged by and are invested in ongoing dialogue and collective efforts amongst the WSBA and the various local community organizations to achieve our respective and mutual goals. It is our sincere goal this proposal provides support to the WSBA Board of Governors, both in ideas for improvement and in community allyship. **We are in this together.**

[Signatures Follow]

Sincerely,

Michelle Su, Diversity Outreach Chair
Korean American Bar Association of Washington

John Laney, President
Asian Bar Association of Washington

Amy Klosterman, President
MAMA Seattle

Elizabeth Calora, President
Washington Women Lawyers

Cardozo Law Society

Lionel Greaves IV, President
Loren Miller Bar Association

Dana Savage, President
QLaw Bar Association

Lindsay Appleton, President
Filipino Lawyers of Washington

Joanne Kalas, President
Vietnamese-American Bar Association of Washington

Favian Valencia, President
Latina/o Bar Association of Washington

Jonathan Ko, President
Washington Attorneys with Disabilities Association

WASHINGTON STATE BAR ASSOCIATION

To: Washington Supreme Court
Board of Governors

From: Terra Nevitt, Executive Director
Tiffany Lynch, Director of Finance

Date: February 23, 2023

Subject: Fiscal Analysis of Data-Driven Legal Regulatory Reform

In response to a request for fiscal analysis of the Practice of Law Board's recommendation for Data-Driven Legal Regulatory Reform, we have gathered information from a variety of sources including the Practice of Law Board, WSBA staff experience with development of new license processes and programs, and reporting and data from bar associations in Utah and Arizona who have experience with implementing regulatory reform. The information collected was used to develop the analysis below which is intended to give a general sense of the fiscal impact of this proposal on the WSBA. We anticipate that if the recommendation proceeds and rules are drafted, a second fiscal analysis will be performed at that time based on updated information.

Assumptions and Analysis

The fiscal analysis is built on an 8-year model covering three stages: (1) Requirements Gathering and Design: constitution and recruitment of the Board, identification of tools to be used and development of procedures and application processes, establishment of communication plan, (2) Design and Implementation: establishment of board routine and workflow, initial roll out of application processes, initiate tracking process and communication plan, and (3) Maintenance and Growth: focus on tracking of data, outreach and continuous review/recommendations for rule changes, and design and implementation of licensure process. Based on these stages, we have incorporated the following assumptions:

- Participation in the lab occurs over a two-year time span before transitioning to license for those eligible¹
- Analysis is presented in two different models which differ based on the number of applications. This impacts revenue for application and licensure fees and is intended to represent a range of fiscal impact attributed as a driver that is relatively unknown at this time. The first model uses a 65% rate of approval, and the second model uses a rate of 80%.
- Estimates for quantity of applications, participants, and licenses assume a smaller number to start in the first two years during initial startup with an increase to full activity in years 3 through 8.²
- Establishment of 3 separate fee types³:
 1. Application fees- \$500 per applicant
 2. Participation fees- \$2,000 per participant which covers 2 years of participation in the lab
 3. Licensure fees- \$2,000 per licensee annually

¹ The Practice of Law Board's proposal allows for shorter paths to licensing, but because we cannot predict the complexity of the initial applications, two years was assumed.

² This estimate is especially hard to predict because the Practice of Law Board's proposal to limit initial applications differs markedly from Utah's process.

³ The fee amounts were selected for modeling purposes only and can vary greatly, depending on the fiscal requirements of the lab.

- Assumes that participants will cover all costs incurred beyond the set participant fee.
- Assumes that 80% of participants will move on to become licensed.
- Direct expenses are estimated to support the cost of 6 in-person Board meetings, in addition to costs for outreach which during initial startup will require more funds to support communication and outreach, cost will reduce as the lab becomes more established.
- Staffing costs (salaries, benefits, overhead) include a variety of staff needed to administer the work of the Board and provide support to establish and maintain the lab and process for licensure. FTE count ranges from 1.0 to 1.63 FTEs, which includes the hiring of new positions, reallocation of existing staff resources, and contract employees. We've included positions such as an attorney, auditor/investigator, communications specialist, etc. Additionally, there is a need for specific skills including data analysis and algorithm review and the Practice of Law Board intends to require members of the new Board to have these specific skills. However, these skills are needed whether or not a volunteer can be appointed and WSBA's oversight role may require a separate data analyst position. Therefore, we have provided additional cost information to reflect Data Analyst staffing costs if the work is not able to be performed by a volunteer.
- Benefits and overhead assume a 3% increase in cost each year.
- Benefits are taken as a percentage of salary, ranging from 25-31% over the course 8 years.
- Overhead is allocated on a per FTE basis.

REGULATORY LAB PROJECTIONS MODEL 1								
STAGE	REQUIREMENT AND DESIGN			MAINTENANCE AND GROWTH				
		DESIGN AND IMPLEMENTATION						
DESCRIPTION	YEAR 1 (FY23)	YEAR 2 (FY24)	YEAR 3 (FY25)	YEAR 4 (FY26)	YEAR 5 (FY27)	YEAR 6 (FY28)	YEAR 7 (FY29)	YEAR 8 (FY30)
REVENUE								
APPLICATION FEES	\$2,500	\$7,500	\$13,500	\$17,500	\$23,000	\$24,000	\$25,000	\$26,500
PARTICIPATION FEES	\$6,000	\$20,000	\$36,000	\$46,000	\$60,000	\$62,000	\$66,000	\$68,000
LICENSURE FEES	\$0	\$0	\$6,000	\$26,000	\$70,000	\$134,000	\$218,000	\$316,000
GRANTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL REVENUE	\$8,500	\$27,500	\$55,500	\$89,500	\$153,000	\$220,000	\$309,000	\$410,500
EXPENSES								
BOARD EXPENSES	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
OUTREACH	\$10,000	\$10,000	\$8,000	\$6,000	\$4,000	\$2,000	\$2,000	\$2,000
STAFF TRAVEL/PARKING	\$1,500	\$1,500	\$1,500	\$1,000	\$1,000	\$500	\$500	\$500
TOTAL DIRECT EXPENSES	\$23,500	\$23,500	\$21,500	\$19,000	\$17,000	\$14,500	\$14,500	\$14,500
SALARY AND BENEFITS	\$122,779	\$118,548	\$113,882	\$94,286	\$100,213	\$104,253	\$106,332	\$108,409
OVERHEAD	\$50,504	\$48,827	\$43,718	\$34,873	\$35,919	\$36,996	\$38,106	\$39,249
TOTAL INDIRECT EXPENSES	\$173,282	\$167,376	\$157,600	\$129,158	\$136,131	\$141,250	\$144,438	\$147,659
TOTAL EXPENSES	\$196,782	\$190,876	\$179,100	\$148,158	\$153,131	\$155,750	\$158,938	\$162,159
NET INCOME/(LOSS)	\$ (188,282)	\$ (163,376)	\$ (123,600)	\$ (58,658)	\$ (131)	\$ 64,250	\$ 150,062	\$ 248,341
CUMULATIVE NET INCOME/(LOSS)	\$ (188,282)	\$ (351,658)	\$ (475,258)	\$ (533,917)	\$ (534,048)	\$ (469,798)	\$ (319,736)	\$ (71,394)
Supplemental Cost Information:								
TOTAL INDIRECT EXPENSES W/DATA ANALYST STAFFING	\$ 189,930	\$ 201,670	\$ 216,472	\$ 189,797	\$ 198,589	\$ 205,581	\$ 210,699	\$ 215,907
NET INCOME/LOSS	\$ (204,930)	\$ (197,670)	\$ (182,472)	\$ (119,297)	\$ (62,589)	\$ (81)	\$ 83,801	\$ 180,093

The first model assumes total revenue of \$1,273,500 and total expenses of \$1,344,894 over the 8-year projection, with the lab achieving an annual net zero budget by year 5 and annual net income in years 6 through 8. The modeling does not include assumptions about start-up cost recovery. This assumes that 65% of applicants are approved to participate and that 80% of participants become licensed.

REGULATORY LAB PROJECTIONS MODEL 2								
STAGE	REQUIREMENT AND DESIGN		DESIGN AND IMPLEMENTATION		MAINTENANCE AND GROWTH			
	YEAR 1 (FY23)	YEAR 2 (FY24)	YEAR 3 (FY25)	YEAR 4 (FY26)	YEAR 5 (FY27)	YEAR 6 (FY28)	YEAR 7 (FY29)	YEAR 8 (FY30)
DESCRIPTION								
REVENUE								
APPLICATION FEES	\$2,500	\$7,500	\$13,500	\$17,500	\$23,000	\$24,000	\$25,000	\$26,500
PARTICIPATION FEES	\$8,000	\$24,000	\$44,000	\$56,000	\$74,000	\$76,000	\$80,000	\$84,000
LICENSURE FEES	\$0	\$0	\$6,000	\$32,000	\$86,000	\$166,000	\$268,000	\$388,000
GRANTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL REVENUE	\$10,500	\$31,500	\$63,500	\$105,500	\$183,000	\$266,000	\$373,000	\$498,500
EXPENSES								
BOARD EXPENSES	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
OUTREACH	\$10,000	\$10,000	\$8,000	\$6,000	\$4,000	\$2,000	\$2,000	\$2,000
STAFF TRAVEL/PARKING	\$1,500	\$1,500	\$1,500	\$1,000	\$1,000	\$500	\$500	\$500
TOTAL DIRECT EXPENSES	\$23,500	\$23,500	\$21,500	\$19,000	\$17,000	\$14,500	\$14,500	\$14,500
SALARY AND BENEFITS	\$122,779	\$118,548	\$113,882	\$94,286	\$100,213	\$104,253	\$106,332	\$108,409
OVERHEAD	\$50,504	\$48,827	\$43,718	\$34,873	\$35,919	\$36,996	\$38,106	\$39,249
TOTAL INDIRECT EXPENSES	\$173,282	\$167,376	\$157,600	\$129,158	\$136,131	\$141,250	\$144,438	\$147,659
TOTAL EXPENSES	\$196,782	\$190,876	\$179,100	\$148,158	\$153,131	\$155,750	\$158,938	\$162,159
NET INCOME/(LOSS)	\$ (186,282)	\$ (159,376)	\$ (115,600)	\$ (42,658)	\$ 29,869	\$ 110,250	\$ 214,062	\$ 336,341
CUMULATIVE NET INCOME/(LOSS)	\$ (186,282)	\$ (345,658)	\$ (461,258)	\$ (503,917)	\$ (474,048)	\$ (363,798)	\$ (149,736)	\$ 186,606
Supplemental Cost Information:								
TOTAL INDIRECT EXPENSES W/DATA ANALYST STAFFING	\$ 189,930	\$ 201,670	\$ 216,472	\$ 189,797	\$ 198,589	\$ 205,581	\$ 210,699	\$ 215,907
NET INCOME/LOSS	\$ (202,930)	\$ (193,670)	\$ (174,472)	\$ (103,297)	\$ (32,589)	\$ 45,919	\$ 147,801	\$ 268,093

The second model assumes total revenue of \$1,531,500 and total expenses of \$1,344,894 over the 8-year projection, with the lab achieving an annual net income budget by year 5 with increasing net income in years 6 through 8. This assumes that 80% of applicants are approved to participate and that 80% of participants become licensed.

Supplemental cost information reflects the fiscal impact if data analyst work was not able to be supported through Board volunteers. While both models achieve an annual net zero budget by year 5, the potential for net income in years 6 through 8 is higher in model 2.

Remaining Variables and Considerations

The model being proposed is based on many assumptions and variables, that if altered, would impact the model and

the financial results. This includes:

- The composition of the Board and ability to use volunteers to support some of the work needed (ex: Data Analyst- WSBA paid vs. Board volunteer).
- The extent to which WSBA could reallocate existing staff resources rather than hiring new staff.
- The type and amount of staff needed to support the work as it becomes more defined.
- After the initial outreach, the staffing needs will be affected by the complexity and number of applications received. The impact of some regulatory reforms will be easier to study than others. The level of analysis required to determine the anticipated risks and benefits, and how to collect the appropriate data will vary with each applicant. Specific applications could present needs to determine whether there are unintended impacts of the requested regulatory reforms on other regulatory rules, requirements, laws, etc. A very complicated application could require more staff time or additional professional advice costs. It is hard to estimate these costs without experience.
- The fee structure and amounts are currently undefined (outside of what has been provided for modeling purposes) and could change depending upon the collection of more data (for example the license fee could be raised or lowered depending on data such as the number of participants after year 1 and 2) and/or to achieve certain financial benchmarks. For example, license fees could be charged based on a percentage of the licensee's annual income as opposed to a standard flat rate. This model could potentially bring in more revenue than what is currently modeled.
- Ability to place "checkpoints" in place for fiscal viability review as the lab progresses and more data is gathered. If established, it allows for course correction if needed.

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

**RECOMMENDATION FOR A NEW AVENUE
FOR PERSONS NOT CURRENTLY AUTHORIZED TO
PRACTICE LAW
VIA
DATA-DRIVEN LEGAL REGULATORY REFORM**

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I. IDENTITY AND INTERESTS OF RECOMMENDATION PREPARER

Under GR 25 Practice of Law Board,¹ the Practice of Law Board is charged with the responsibility to consider and recommend to the Supreme Court new avenues for persons not currently authorized to practice law to provide legal and law-related services that might otherwise constitute the practice of law as defined in GR 24 Practice of Law.²

Such recommendations must be accompanied by a determination:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by authorizing the recommended legal service provider or legal service delivery model; (B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained legal service providers; (C) that if the public interest requires regulation under Supreme Court authority, such regulation considers any regulatory objectives in GR 12 et seq. and is tailored to promote access to affordable legal and law-related services while ensuring that those

¹ WA. Gen. R. 25(b)(2).

² WA. Gen. R. 24.

whose important rights are at stake can reasonably rely on the quality, skill and ability of the authorized legal service providers; (D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with all applicable court rules, including the requirement that such funds be placed in interest-bearing accounts, with interest paid to the Legal Foundation of Washington; and (E) that the recommended program, including the costs of regulation, is financially self-supporting within a reasonable period of time.³

To fulfill this responsibility, the Practice of Law Board is filing this recommendation with the Supreme Court for data-driven legal regulatory reform processes to add a new path to the existing processes for the Supreme Court to approve reforms to legal rules and regulations.

II. RECOMMENDATION PRESENTED

Data-driven legal regulatory reform adds a new data-focused pathway to the existing processes for approving legal regulatory reform to encourage more innovation in the delivery

³ WA. Gen. R. 25(b)(2).

of legal services to the public and to allow the public to bring ideas for legal reform to the Supreme Court for approval.

III. DATA-DRIVEN LEGAL REGULATORY REFORM

Data-driven legal regulatory reform is a set of processes that uses scientific methods as a framework for reforming legal rules, regulations, or procedures. Generally, the scientific method is based on a willingness to change based on new evidence, after significant peer review and criticism that considers relevant data, and verifiable results. It naturally tends to limit claims of usefulness until there is accurate measurement of positive and negative effects.

As applied to legal regulatory reform, the scientific method relies on testing any proposed reform by collecting and analyzing data to ensure the anticipated benefits are achievable and outweigh and minimize any harm.

The scientific method begins by stating a hypothesis, then designing an experiment to validate the hypothesis,

conducting the experiment in a safe environment, analyzing the results of the experiment, and publishing the results.

Applied to legal reform, the hypothesis is the proposed rule change or reform. For example, a hypothesis might define a more efficient approach to testing the competency of law school graduates than a bar exam. A test would then be designed to evaluate the benefits and potential harms of the hypothesis, in this case a different measure of legal competency. This test would then be run using safe and monitored processes, and the data from the experiment would be collected and evaluated. Such a process would allow debate surrounding the legal reform to be more data-driven. If the benefits are achievable and the risks manageable, then the Supreme Court could approve a court order to implement the reform.

Other parties, including other entities, states, or jurisdictions should be capable of replicating the legal reform experiment and obtaining similar results to further validate the hypothesis and ensure the experiment produces a consistent

outcome. The scientific method also allows for iterative change to the hypothesis based on the data and revising the test to evaluate the modified hypothesis.

Data-driven legal regulatory reform could facilitate timely changes to legal rules and help the judiciary address the access to justice gap by streamlining and improving the work of existing legal practitioners and introducing new and innovative legal services to the existing market for legal services.

The existing market for legal services is changing rapidly. A study in 2019 shows there are more than 130 technology companies entering the legal services market in 16 different categories from drafting, contract management and review, and services which offer legal services primarily to legal professions.⁴ This does not include online legal services that provide legal services to consumers, which are gaining

⁴ LawGeex, *2019 Legal Tech Buyer's Guide*, available at https://ltbg2019.lawgeex.com/?utm_source=blog&utm_campaign=ltbg121119.

investments from venture capitalists as well as gaining public use and acceptance as sources of legal services.⁵

“The combining of law with technology is driven by powerful economic forces. Now more so than at any other time in history, law is in the process of moving from a pervasive model of one-to-one consultative legal services to one where technology enables one-to-many legal solutions.”⁶

Although there can be no guarantee that the introduction of data-driven legal reform will result in new legal services and make it easier for people to get access to affordable legal services and reduce the access to justice gap, the addition of new and innovative services that scale better than the existing

⁵ See Hannah Green, *Hello Prenup Finalizes Shark Tank Deal*, BOSTON BUS. J., Feb. 24, 2022, available at <https://www.bizjournals.com/boston/inno/stories/news/2022/02/24/helloprenup-finalizes-its-shark-tank-deal.html>

⁶ William D. Henderson, *Legal Market Landscape Report*, Commissioned by the State Bar of California, July 19, 2018, at 11, available at <https://live-iclr.pantheonsite.io/wp-content/uploads/2019/10/Henderson-report.pdf>.

services have traditionally reduced costs and made services more available.⁷

Regardless, the advantage of data-driven legal regulatory reform is that the collection of data that quantifies the benefits and any harms, has the potential to catch any harm as soon as possible, and to address such harms while they are most amenable to correction and mitigation.

The Practice of Law Board has designed a system for data-driven legal regulatory reform which is currently documented in a blueprint that will become an operation manual for data-driven legal regulatory reform.⁸ This blueprint

⁷ See generally, Tim Stobierski, *What are Network Effects*, HARVARD BUS. SCHOOL ONLINE, Nov. 2020, available at <https://online.hbs.edu/blog/post/what-are-network-effects>, discussing how the value of a product, service, or platform depends on the number of buyers, sellers, or users who leverage it and how typically, the greater the number of buyers, sellers, or users, the greater the network effect—and the greater the value created by the offering.

⁸ See generally, Washington Court Practice of Law Board, *Blueprint for a Legal Regulatory Lab*, Feb. 2022, available at <https://www.wsba.org/docs/default-source/legal->

expands the work of the Utah Supreme Court Office of Innovation's regulatory sandbox.⁹

Data-driven legal regulatory reform is additive to, rather than a replacement for existing reform processes. That is, while it provides a new set of processes for accomplishing legal regulatory reform, it does not replace existing or traditional methods of enacting such reform.

IV. THE NEED FOR DATA-DRIVEN LEGAL REGULATORY REFORM

People in Washington State with a legal problem have difficulty finding assistance from a legal professional. Using 2020 US Census Data¹⁰ and extrapolating based on the 2015

community/committees/practice-of-law-board/polb_legal-regulatory-lab_2.0_02-2022.pdf?sfvrsn=b67110f1_5.

⁹ See generally, David Freeman Engstrom, Lucy Ricca, Graham Ambrose, Maddie Walsh, *Legal Innovation After Reform: Evidence from Regulatory Change*, Deborah L. Rhode Center on the Legal Profession, September 2022, available at <https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/>.

¹⁰ See US Census data, available at <https://www.census.gov/library/stories/state-by->

Washington Civil Needs Study, over 543,953 people faced legal problems (71%), but only 157,746 of these people got help for their legal problem (29%).¹¹ This means 386,207 people with a legal problem faced the prospect of handling their problem alone—without competent legal representation or guidance.

This gap between people with and without access to competent legal assistance may be growing rather than shrinking. Judicial and legislative changes, as well as the COVID-19 pandemic,¹² have likely increased the number of people looking for assistance with legal matters.¹³ In *State v.*

state/washington-population-change-between-census-decade.html

¹¹ Washington Supreme Court Civil Legal Needs Study Update Committee, *2015 Washington State Civil Legal Needs Study Update*, Oct. 2015, at 5, available at https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

¹² Closure of the courts during lockdowns to prevent the spread of the virus as the courts adapted to remote trials and hearings, likely added to the backlog of both criminal and civil cases.

¹³ Michael Houlberg, Janet Drobinske, *The Landscape of Allied Legal Professionals in the United States*, IAALS, Nov. 2022, at

Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), the Supreme Court held Washington’s drug possession laws unconstitutional, entitling many people previously convicted of drug possession to get their convictions vacated.¹⁴ In April 2021, Governor Inslee signed Senate Bill 5160 into law, which established a “right to appointed counsel for indigent tenants.”¹⁵ Although these changes increase available judicial remedies for legal issues, the availability of competent legal assistance from authorized legal professionals likely remains elusive.

Addressing the access to justice gap is difficult, in part because the provision of legal services by legal professionals

3, available at https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf.

¹⁴ See generally, Washington Law Help, *How to Clear (vacate) Your Drug Possession Conviction After State v. Blake*, available at <https://www.washingtonlawhelp.org/resource/blake>.

¹⁵ See generally, Washington State Office of Civil Legal Aid, *Right to Counsel for Indigent Tenants: Implementation Plan*, at 4, Final Rev. 10-2021, available at <https://ocla.wa.gov/wp-content/uploads/2021/10/Implementation-Plan-Right-to-Counsel-for-Indigent-Tenants-Rev-10-8-21-Final.pdf>.

does not appear to scale. For example, although pro bono and legal aid are critically important and socially valuable in addressing the access to justice gap, some have argued that “we can’t rely on lawyers alone,” and “even a doubling or tripling of pro bono hours won’t put a dent in the problem.”¹⁶

Therefore, addressing the access to justice gap will require innovation. One such innovation is implementing data-driven legal regulatory reform to address the problem with the current methods of legal regulatory reform being too slow and failing to measure whether the result achieved met the desired goal. Such innovation has the potential to add to the market new legal services that are more affordable and better serve consumers when they are looking for legal assistance.

¹⁶ David Freeman Engstrom, *Stanford Law’s David Freeman Engstrom on California’s Access-to-Justice Crisis and the State Bar’s Working Group*, STANFORD LAW SCHOOL, Dec. 17, 2021, available at <https://law.stanford.edu/2021/12/17/stanford-laws-david-freeman-engstrom-on-californias-access-to-justice-crisis-and-the-state-bars-closing-the-justice-gap-working-group/>.

At least one jurisdiction, Arizona, has decided that the value of innovation exceeds the risk and is moving forward by instituting reforms that permit alternative business structures, without using data-driven legal regulatory reform or a sandbox.¹⁷

V. A MODEL FOR DATA-DRIVEN LEGAL REGULATORY REFORM

Borrowing heavily from the Utah Supreme Court's Office of Innovation, the Practice of Law Board has designed a model for data-driven legal regulatory reform. The Board used Utah as a model because the Utah sandbox is operating and showing success in bringing new legal services to the market.¹⁸

¹⁷ Supreme Court of Arizona, *Order Amending the Arizona Rules of the Supreme Court and the Arizona Rules of Evidence*, No. R-20-0034, Aug. 27, 2020, available at <https://www.azcourts.gov/Portals/215/Documents/082720FOrderR-20-0034LPABS.pdf?ver=2020-08-27-153342-037> (eliminating Rule 5.4).

¹⁸ Logan Cornett and Zachariah DeMeola, *Data from Utah's Sandbox Shows Extraordinary Promise, Refutes Fears of Harm*, IAALS, Sept. 15, 2021, <https://iaals.du.edu/blog/data-utahs-sandbox-shows-extraordinary-promise-refutes-fears-harm>.

As stated previously, the complete design for a data-driven legal reform model for Washington is documented as a blueprint. This evolving document is intended to be continually revised as data is analyzed and benefits and risks of the model are better understood.

Under the proposed data-driven legal regulatory reform model, a person or entity with an idea for legal regulatory reform completes an application documenting the anticipated benefits of the proposed service or reform, impact on the access to justice gap, risks, including risks of harm, and a cost estimate for the testing and data analysis. The application materials would be reviewed by a new Supreme Court Board set up to supervise data-driven legal regulatory reform for initial analysis and review.

Managing data-driven legal regulatory reform would not be a role of the Practice of Law Board, as it is conflicted due to its role in the coordination of the unauthorized practice of law. Nor would it be a role for WSBA, as WSBA members are

market participants. Rather, the supervising board would be a new Supreme Court board, modelled on the current Practice of Law Board and the Access to Justice Board.

During the application review process, the Supreme Court Board (herein supervisory board) would work with the applicant to understand the metes and bounds of the proposed legal regulatory reform, including whether the benefits appear achievable, and whether the risks can be adequately managed. If the applicant—after determining the costs for using the data-driven legal regulatory reform processes during the application process—is willing to pay the costs for testing, the supervisory board would prepare a recommendation for the Supreme Court. The Supreme Court would review the supervisory board recommendation and may issue a time-limited (typically two or three year) court order granting the authority for the applicant to test the legal reform under the documented test conditions and supervision of the Supreme Court through the supervising board.

As the applicant provides the legal service defined by the court order, they would file quarterly reports with the supervising board, which would monitor and review the data for the duration of the testing period. People who are getting the legal service would have the ability to immediately report any problems to the supervising board for the appropriate investigation and action.

The supervising board would analyze the data and work with the applicant to determine whether the tested reform should continue as designed, or whether the test and type and amount of data being collected needs modification. The supervising board will thus need appointed members who can evaluate the collected data.

At the end of the testing period, the applicant would file a final report with the supervising board, which would review the report and the data, and prepare a final report for the Supreme Court. The Supreme Court, upon a determination that the regulatory reform provides benefits without undue risk to the

public, may license the new legal services via a court order that defines supported limitations or conditions, and includes a requirement for a license fee and annual review.

The role of the supervising board in this model is to work with the applicant to find a way to test the applicant's hypothesis, that minimizes the potential of harm to the public. The supervising board should not act as a gatekeeper that throttles reform.

This model replaces the more hope-driven model that a reform produces the intended result with a data-driven model that collects and analyzes data designed to scientifically determine whether the reform has the desired positive impact. Because the developing services and regulations can be modified as the data is analyzed, reform should take less time than the traditional reform process. In the first year of operation, only three to five applications will be accepted to allow the process to be modified or improved as data about the processes is collected and analyzed.

Another key benefit of data-driven legal regulatory reform is that the public would be an active participant in the reform, rather than a stakeholder who may be involved only if they hear about the change and choose to comment. This is because the public would be involved with full transparency in the testing of the proposed reform.

The collection and analysis of data distinguishes this approach to regulatory reform from traditional methods of legal reform, which generally rely on subject matter experts drafting documents and debating their impact. Much time is spent on each word and comma, but little analysis of any data is used as a basis for decisions. Therefore, much of the traditional reform of legal regulatory matters is based on anecdotal evidence. For example, consider the recent regulatory reform to the RPC 1.4 Communications. There, WSBA as the proponent recommended adoption of amendments and six new comments to this RPC that would require disclosure of a lawyer's malpractice insurance status to clients and prospective clients if

the lawyer's insurance did not meet minimum levels.¹⁹ This reform came after several years of rule drafting and debate among a group of interested legal practitioners, with little active involvement from stakeholders such as insurance brokers and the public.²⁰ Although this rule was revised after several years of study, this change took far longer than it should have, and was made without any plan to measure the impact. It was assumed it would have a desired effect of encouraging more lawyers to acquire malpractice insurance. Therefore, it is unknown whether the change has resulted in more legal professionals acquiring insurance, or more legal professionals choosing to merely report and disclose while remaining essentially self-insured or uninsured.

¹⁹ See generally, GR 9 Cover Sheet, Suggested Amendments to Rules of Professional Conduct Rule 1.4, available at https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=5794.

²⁰ It should be noted that an individual harmed by a lawyer who was uninsured did voice his opinion on the change, advocating for mandatory insurance at BOG meetings where this change was presented to the governors.

When legal reform takes too long, and the traditional method can take up to sixty months, risk increases such that by the time the reform is implemented, the issues have evolved and thus it no longer addresses the problem it targeted.²¹ This is because many of the matters that reform is intended to address do not stop while reform is being debated. Rather, the matter tends to evolve and change and become more entrenched or have additional complications or issues. Allowing iterative changes to reform based on data gathered during the testing phase will significantly improve the issue of timely reform.

Although the model and processes being recommended in Washington for data-driven legal regulatory reform borrow heavily from the experiences of the Utah Courts' Office of Innovation, the Practice of Law Board benefits from being able

²¹ Consider for example, changes to lawyer advertising and RPC 7.1, which began in Apr. 2015, were published for comment by the Supreme Court in Apr. 2019 (available at https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2698), and ultimately adopted in Jan. 2021.

to observe Utah’s sandbox and data, and modify its plan as needed.²² For example, the Practice of Law Board has designed a more nuanced approach to assigning and measuring risk and has determined that from the beginning, it is important to measure impact on the access to justice gap, rather than assuming any increase of legal services will reduce the gap.

In working with the Utah Office of Innovation, the Practice of Law Board has shared the proposed processes for risk analysis, measuring access to justice, and the applicant-based payment model.

VI. SUPERVISING DATA-DRIVEN LEGAL REGULATORY REFORM

To address matters important to the Supreme Court, such as addressing access to justice and the practice of law, the Washington Supreme Court has chosen to create boards that

²² See generally, *Innovation Office Activity Report*, Utah Office of Innovation, Nov. 18, 2022, available at <https://utahinnovationoffice.org/wp-content/uploads/2022/11/IO-Monthly-Public-Report-October-2022.pdf>.

report to the Supreme Court, while being administered by WSBA. Such administration functions include staffing, budgeting, and oversight.

The Supreme Court boards are particularly important in areas that have the potential to be considered to violate antitrust law under *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494, 135 S.Ct. 1101, 191 L.Ed.2d 35 (2015), where the U.S. Supreme Court held that because “a controlling number of decision makers on a board were ‘active market participants in the occupation the board regulates,’ the board would not enjoy immunity unless it was subject to a clear articulation of state policy and active supervision by a non-market participant.”²³ For example, the Practice of Law Board, not WSBA, has the responsibility to

²³ Benjamin Baron and Deborah Rhode, “*Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*,” *Hastings Law Journal*, Vol. 70:955, May 2019, at 977, available at <https://hastingslawjournal.org/wp-content/uploads/70.4-Barton-Rhode1.pdf>.

collect and refer complaints alleging the unauthorized practice of law to the appropriate authority per GR 25, under the active supervision of the Supreme Court.²⁴

Therefore, the Practice of Law Board is recommending that the Supreme Court authorize another independent board that reports to the Supreme Court to supervise data-driven legal regulatory reform.

Like the Practice of Law Board, the new supervisory board for data-driven legal regulatory reform would be composed of volunteer members. The supervisory board would include a core set of volunteer members, representing legal professionals who are active members of WSBA, and an equal number of members of the public. Additional at-large-members would be appointed due to their expertise in a particular field relevant to an applicant with an idea for legal regulatory reform. For example, if an applicant had a proposal to reform the

²⁴ WA. Gen. R. 25(b)(3).

practice of family law, the at-large-members for this application could include a family practice lawyer, a limited license legal technician, and a data scientist to help analyze the data. The number of at-large members could differ based on the applicant, the complexity of the proposed reform, and the number of applicants who are in process. Therefore, the size of the board could grow as needed, but each recommendation would be based on the concurrence of the legal representative and public members.

Should the supervisory board need to acquire expertise in a particular area, such as data science, and such expertise had an associated cost, then such costs would be paid by the applicant.

In addition, for continuity between the Practice of Law Board, which is bringing this data-driven legal regulatory reform proposal to the Supreme Court, and the new supervisory board, for at least the first year of the new supervisory board's operation, one or two members of the supervisory board would

be members of the Practice of Law Board to advise and help resolve any issues not anticipated in the design of the process.²⁵

Like the other Supreme Court Boards, the new supervisory board would be administered by WSBA under GR12.3.²⁶

It should be noted that because this supervisory board would be administered by WSBA per GR 12, some WSBA member funds would be spent on such administration. For the purposes of this document and the Blueprint as revised per this recommendation, these direct costs, including for example, meeting costs, should not be substantially different from the direct cost for the other court-created boards.

VII. WHO CAN USE DATA-DRIVEN LEGAL REGULATORY REFORM?

Legal professionals, members of the public, and entities can apply to take part in data-driven legal regulatory reform.

²⁵ This will require a rule change to GR 24 and a new General Rule to create the new supervisory board.

²⁶ WA. Gen. R. 12.3.

Experience in Utah shows that the largest number of applicants are legal professionals, who were mostly interested in investigating alternative business structures for their legal firms. Many applicants to Utah’s sandbox were proposed reform to the RPCs such as RPC 5.4 (a), which generally prohibits fee-splitting with non-lawyers, and 5.4 (b), which generally prohibits formation of a partnership or professional corporation with a non-lawyer for the practice of law.²⁷

Based on the Utah sandbox’s experience, the Practice of Law Board anticipates that online legal service providers who offer a variety of legal services in areas such as family law (primarily divorce) and immigration will apply to reform regulations, such as the court rules defining the unauthorized practice of law.

²⁷ See generally, *Innovation Office Activity Report*, Utah Office of Innovation, Nov. 18, 2022, available at <https://utahinnovationoffice.org/wp-content/uploads/2022/11/IO-Monthly-Public-Report-October-2022.pdf>.

Many online service providers are already offering legal services primarily from internet websites hosted in a variety of states, including Washington. Such firms have no path to authorized practice under the current statutes and regulations, despite strong support from consumers who are using and benefiting from these alternative but possibly unauthorized legal services.

Although it is conceivable that some entities with an idea for legal regulatory reform may not have access to legal professionals, this would not prevent them from participating in data-driven legal regulatory reform, but it would make their application require additional scrutiny to ensure sufficient information is available to decide whether the proposal adequately protects the public from undue risk of harm.

VIII. FUNDING DATA-DRIVEN LEGAL REGULATORY REFORM

The Utah Supreme Court Office of Innovation initially funded its activities via legal grants. As these grants run out, Utah will need to look for funding from a variety of sources.²⁸

Under GR 25(b)(2)(E), any innovation that the Practice of Law Board proposes to the Supreme Court must at a reasonable point cover its costs, “including the costs of regulation,” and be “financially self-supporting within a reasonable period of time.”²⁹ Although reasonable is undefined in the court rule, the Practice of Law Board recommends that a five-year period is reasonable.

²⁸ See *Utah Supreme Court Standing Order No. 15*, stating that the Innovation Office will be funded initially by a grant from the State Justice Institute and in-kind contributions from the National Center for State Courts and the Institute for the Advancement of the American Legal System. The Innovation Office will have the authority to seek additional grant funding and may also be supported through licensing fees as noted in Section 4.9., available at https://legacy.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/09/REVISED-Utah-Supreme-Court-Standing-Order-No.-15.Clean_.pdf.

²⁹ WA. Gen. R. 25(b)(2)(E).

Therefore, the Practice of Law Board's initial plans for data-driven legal regulatory reform attempted to find a funding mechanism that would not use WSBA member dues. It investigated a variety of funding mechanisms including grants, but the Board has never obtained a definitive answer as to whether a Supreme Court Board can solicit grants, and if a grant was awarded, whether the Supreme Court Board could accept the monies as it is an entity administered by the bar but is not an entity that has its own bank account or non-exempt status.

The Practice of Law Board, in conjunction with the executive staff of the WSBA, built an extensive budget model showing what a fully permanent staffed board, based on the cost structures of WSBA might cost. This budget model used WSBA member funding to start the data-driven legal regulatory reform. The model is based on liberal costs, and conservative numbers of applicants and eventual licensing fees for any successful applicant who receives a court order license to

provide new legal services. Based on this model a five-to-seven-year payback, with continued profitable operation beyond that point is feasible. Although one could debate line items in this budget model, doing so would not likely change the model by plus or minus ten percent, and therefore, the Board accepts this as a conservative budget for a full-time, staffed supervisory board.

However, this budget model does not address whether it is equitable to use WSBA member license fees to fund the business activities of other members or non-members. For example, the use of such funds to bootstrap the LLLT program led to an expense of \$1.4 million and only thirty-eight active LLLTs.³⁰

³⁰ Lacy Ashworth, *Nonlawyers in the Legal Profession: Lessons from the Sunsetting of Washington's LLLT Program*, 74 Ark. L. Rev., Jan. 2022, at 691, available at https://www.wsba.org/docs/default-source/licensing/lllt/nonlawyers-in-the-legal-profession_lessons-from-the-sunsetting-of-washington's-lllt-program.pdf?sfvrsn=e5b11f1_4.

Therefore, the Practice of Law Board is recommending a volunteer-based supervisory board, and that applicants pay the costs of their data-driven legal regulatory reform. That is, they must be willing to cover all costs for their application during the data-driven legal regulatory reform process and up to final authorization. After final authorization, if granted, they would continue to pay an annual fee to cover ongoing monitoring and the costs of licensing.

Bootstrapping data-driven legal regulatory reform has an added positive effect: It ensures applicants have assessed their business model and the impact of the data-driven legal regulatory reform on that model, and therefore, are willing to invest in the process as a path to authorized practice under the regulatory reform they propose.

Applicants, in particular non-government organizations (NGOs), and other non-profits providing legal services, will be encouraged to apply for their own grants to fund their participation in data-driven legal regulatory reform.

However, to the extent that the board as a Supreme Court board is subject to GR 12.3, WSBA would remain responsible for budgeting for and paying such the costs of GR 12.3 administration.

IX. UNSUITABLE REFORMS FOR DATA-DRIVEN LEGAL REGULATORY REFORM

Not every rule or regulation is suitable for data-driven legal regulatory reform, not because of any problem inherent in the data-driven legal regulatory reform processes, but rather, because the rules are so central and core to the duties of legal professionals to their clients. This includes such rules and regulations as RPC 1.1 Competence, 1.3 Diligence, 1.4 Communications, 1.6 Confidentiality, 1.7 Conflicts, 1.8 Conflicts, 1.9 Duties to Former Clients, 1.10 Imputation of Conflicts of Interest, 1.15A Safeguarding Property, and 1.15B Required Trust Accounts.

The testing of these rules would not be strictly prohibited, but rather, applicants would be warned that these

areas would be subject to the highest levels of scrutiny to ensure there are measurable benefits, and with the highest suspicion that harm would both easily occur and be virtually impossible to mitigate.

It is important to consider the duty of Confidentiality and the collection of data in this model. RPC 1.6 prohibits disclosing “information relating to the representation of a client” unless an exception applies.³¹ Although foundational to the attorney client relationship and to the provision of justice, this rule may be being used as an to excuse any attempt to collect data about legal services. There are still significant amounts of data about legal services which can be collected without violating confidentiality, such as the start and end dates of the legal service. Data can also be anonymized, the remove references to a particular individual or event, while still having value for measuring the effectiveness and efficiency of a legal

³¹ WASHINGTON LEGAL ETHICS (Wash. St. Bar Assoc.) 2d ed. 2020, at 7.3.

service. In addition to anonymizing data, informed consent, where a prospective client or client has been given adequate information and explanation about the material risks and reasonable alternatives, consents to the collection of the data solely for the purposes of measuring the data-driven legal regulatory reform.³²

X. SUITABLE REFORMS FOR DATA-DRIVEN LEGAL REGULATORY REFORM

A large spectrum of reforms should be possible using data-driven legal regulatory reform. The Practice of Law Board anticipates that, as with Utah's Office of Innovation, most applications will likely look to change the RPCs that affect the business of offering legal services or alternative business structures, including but not limited to RPC 1.5 Fees, Title 5 Law Firms and Associations, and Title 7 Information About Legal Services.

³² *Id.* at 7.6

In addition, it would be the completely feasible to use data-driven legal regulatory reform to evaluate several other potential reforms such as whether the LSAT is a valid measure of a candidate's likelihood of success in law school, or whether the bar exam is a valid and equitable measure of competency in the law to be licensed as an attorney and counselor at law or other authorized legal professional designation.

XI. CONCLUSION

For these reasons, the Practice of Law Board asks this Court to authorize the Practice of Law Board to prepare the necessary court orders and changes to the court rules, to allow data-driven legal regulatory reform and to create a Supreme Court Regulatory Reform Board, tasked with the responsibility of working with the Practice of Law Board to begin implementing data-driven legal regulatory reform.