

## **1501 Legislation and Rulemaking Comment Policy**

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Adopted: September 26, 2025.

### **Purpose**

The purpose of this policy is (1) to ensure WSBA adheres to germaneness principles as articulated in *Keller v. State Bar of California*, 496 U.S. 1 (1990), and subsequent caselaw, and Washington Court General Rule 12.2 when commenting on legislation and other rulemaking matters; and (2) to provide a process for granting authority for Bar entities to provide comments on legislative and rulemaking matters.

Bar entities are components of WSBA and, therefore, when members of Bar entities speak in their capacity as members of a Bar entity, they are bound by the same legal requirements as WSBA as a whole. In addition, WSBA typically strives to communicate about legislation or rulemaking with a unified voice. Consequently, WSBA's Bylaws provide that no Bar entity or member of a Bar entity may speak for or represent the Bar or any Bar entity before any legislative body, court, or other tribunal without prior authorization from the WSBA Board of Governors.<sup>1</sup> This policy sets forth the conditions and process under which the Board may grant authorization for Bar entities to comment on legislation or rulemaking.

### **Policy**

The Board of Governors may authorize Bar entities to comment on legislation or rulemaking if,

1. The subject of the legislation or rulemaking is within the scope of permissible Bar activities under GR 12.2 and other legal requirements applicable to Bar activities; and
2. A three-quarters supermajority of the total membership of the entity's governing body has voted to support the entity's proposed position on the legislation or rulemaking.

Authority to comment on legislation or rulemaking will not be granted to Bar entities seeking to communicate comments on legislation or rulemaking that are in conflict with prior decisions of the Board of Governors or Board Legislative Committee.

The Board of Governors delegates authority to the Board's Legislative Committee to consider Bar entity requests to comment on legislation and rulemaking.

When granting authority to comment, the Board or Legislative Committee may limit the content or manner of the comment.

Entities may not join or affiliate with or endorse positions of groups or associations whose legislative advocacy reaches beyond the areas allowable under GR 12 or other legal requirements applicable to Bar activities.

### **Entities Covered**

This policy applies to all Bar entities working under the authority of the Bar, no matter how named. Bar entities include, but are not necessarily limited to, WSBA sections, committees, councils, task forces,

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<sup>1</sup> See WSBA Bylaws, Art. IV.E

workgroups, and panels. Subcommittees or other subsets of Bar entities may not communicate comments on proposed legislation or court rules.

This policy does not apply to entities created by court rule.

As used in this policy, a Bar entity's governing body refers to section executive committees or, for entities without a membership separate from their decision-making body, to the members appointed to that decision-making body.

#### *Activities Covered*

This policy applies when Bar entities seek to comment on pending legislation or rulemaking in the Bar entities' own name. Legislation and rulemaking, as used in this policy, refers to Washington and federal legislation, court rule proposals, executive orders, and administrative rulemaking. Entities are not permitted to comment on local or municipal policies, legislation, or rulemaking.

Commenting refers to communicating a position, such as by supporting, opposing, or raising concerns, on existing legislation or rulemaking pending before a policymaking body. Commenting does not refer to the development of new legislative or rule proposals by Bar entities, sometimes referred to as "WSBA-request legislation."

This policy does not apply to:

1. Bar entity requests for the WSBA Board of Governors to adopt, sponsor, or communicate a position on legislation or rulemaking in WSBA's name.
2. Responses by members of a Bar entity to questions posed by lawmakers directly to the Bar entity in which the lawmaker seeks the advice of entity members as subject matter experts. When responding to such questions, Bar entity members must indicate that they are communicating in their individual capacities and are not speaking on behalf of WSBA.

#### *Annual Training*

Training on how to implement this policy will be provided annually by the WSBA staff to Bar entities. Any Section intending to participate in the legislative process must have a designee of the Section's Executive Committee attend the annual training. Other section executive committee members and members of other Bar entities are welcome and encouraged to attend. Such training should include how to accomplish Section goals and how to act responsibly in the legislative setting.

The Legislative Affairs Manager shall be made available to Section Executive Committees as a resource for any questions as a Section works on a matter in accordance with this Policy. Each Section and the Legislative Affairs Manager will work cooperatively to establish a process to assist each Section's Executive Committee in the development of and consideration of any comment. Similarly, Sections should be a resource to the WSBA on legislative matters within a Section's subject area.

#### **Procedure**

Entities are encouraged to identify legislative and rulemaking issues within their areas of expertise. The Legislative Affairs Manager will also identify legislation and rulemaking that may be within an entity's expertise and will keep the entity apprised of the progress of the proposed policies.

Entities must seek authorization from the Board of Governors' Legislative Committee prior to communicating comments on a legislative matter. An entity contemplating commenting on legislation or rulemaking should inform the Legislative Affairs Manager of their intention as soon as possible. However, entities must inform the Legislative Affairs Manager and the chair of the Board's Legislative Committee within three days of any vote taken in which three-quarters of the entity's governing body votes to approve comments on legislation or rulemaking.

The Legislative Affairs Manager will coordinate with the entity to present the entity proposal to the Board's Legislative Committee. The Legislative Committee will consider whether the subject of the legislation or rulemaking is within the scope of permissible Bar activities under GR 12.2 and other legal requirements applicable to Bar activities. If the subject matter of the legislation or rulemaking is not within the scope of permissible Bar activities, the Committee may nonetheless consider whether the comments the entity seeks to offer are nonetheless within the scope of Bar activities because the comments are limited solely to the technical nature of the legislation. Such technical advice may be permissible if the effect of the comments is to improve the quality of legal services by providing insight regarding how a law or rule will be used by legal practitioners in practice; identifying drafting issues, such as typographical errors, mis-citations of statutes or other rules, or ambiguities; or identifying possible conflicts with other laws or rules. If the Committee grants authority to offer technical comments on legislation or rulemaking, the entity may not take a position to either support or oppose the policy.

If an entity wishes to testify regarding legislation or rulemaking, the entity must notify the Legislative Affairs Manager at least 24 hours in advance of the public hearing on the proposed legislation or rule. The entity may do nothing more until the Legislative Affairs Manager gives permission to testify or to move forward with the position being taken by the entity; permission may be given either verbally or in writing. The Legislative Affairs Manager will bring the matter to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the entity's position, unless there is a good and articulable reason to deny the request, which shall be explained to the entity. The Legislative Affairs Manager will notify the Board's Legislative Committee of the decision as soon as possible thereafter.

Each entity is responsible for advising the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the entity regarding legislative matters. The entity shall advise the Legislative Affairs Manager of any proposed action intended to communicate its comments on legislation in advance of taking such action. Unless otherwise authorized by the Board of Governors or the Board of Governors Legislative Committee, the entity shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action.

In all cases, the entity representatives shall cease to publicly communicate the comments of the entity if requested to do so by the Executive Director, the Board of Governors, Board of Governors Legislative Committee, WSBA President, or Legislative Affairs Manager.