



WASHINGTON STATE BAR ASSOCIATION
Civil Rights Law Section

September 24, 2019

Supreme Court Workgroup on Washington State Bar Association Structure

Chief Justice Mary Fairhurst, Chair
Washington State Supreme Court
Supreme Court Representative

Andrea Jarmon
Jarmon Law Group PLLC
Supreme Court Appointed Board
Representative: Limited Legal License
Technician Board

Dan D. Clark
Yakima County Prosecuting Attorney's Office
BOG Representative: District 4 Governor

Mark Johnson
Johnson Flora Sprangers PLLC
WSBA Section Representative: Large Size

Esperanza Borboa
Eastside Legal Assistance Program Public
Member

Margaret Shane
Executive Assistant, WSBA staff support

Dory L. Nicpon
Associate Director Legislative Relations
Supreme Court staff support

Cindy Phillips
Judicial Administrative Assistant Chief Justice
Fairhurst staff support

Jane Smith
Confederated Tribes of the Colville Reservation
Tribal Member

Eileen Farley
Attorney at Law
WSBA Section Representative: Medium Size

Paul A. Swegle
General Counsel, Newyu, Inc.
BOG Representative: District 7-North
Governor

Judge Frederick P. Corbit
United States Bankruptcy Court
Supreme Court Appointed Board
Representative: Access to Justice Board

Kyle D. Sciuchetti
Miller Nash Graham & Dunn
BOG Representative: District 3 Governor

Andre L. Lang
Nunn Vhan & Lang PLLC
Supreme Court Appointed Board
Representative: Practice of Law Board

Hunter M. Abell
Williams Kastner & Gibbs PLLC
WSBA Section Representative: Small Size

September 24, 2019

Chief Justice Fairhurst
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: Integration of Equity, Inclusion and Diversity in WSBA State Bar structure

Dear Honorable Chief Justice Fairhurst and Workgroup on WSBA Structure,

The Civil Rights Law Section raise concerns regarding the foundation of legal practice: equity and access to justice. We propose that regardless of whether or how the Washington State Bar Association is restructured, the Diversity and Inclusion programming is protected, funded and incorporated into the WSBA. Furthermore, we advance the position that equity and justice is never an issue of political opinion or ideological belief but instead, a moral imperative and moral obligation for those who take the Oath of Attorney.

One of these oaths is to uphold the Rules of Professional Conduct, which includes specific language that prohibits bias based on military status, marital status, race, age, color, national origin, disability, sex, sexual orientation, and one's service as a veteran.¹

Another Oath is to uphold the United States Constitution. Accordingly, prohibition of discrimination is the founding principle of Equal Protection in the Fourteenth Amendment of the United States Constitution.

¹ RPC 8.4

2(g)

[It is professional misconduct for a lawyer to...]

commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, honorably discharged veteran or military status or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

2(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

At the federal level, the Department of Justice began in 2016 to train all of its law enforcement agents and prosecutors to recognize and address implicit bias.² At the State level, state agencies also have incorporated these trainings and founded departments to address equity, diversity and inclusion.³

In addition, the WSBA currently is a member of the Alliance of Equal Justice, a network of state organizations “committed to identifying and dismantling all barriers that deny justice and perpetuate poverty and racial inequities.” As a member of Alliance of Equal Justice, the WSBA supports the development of “legal skills to identify and eliminate systems—within our own community, the justice system, and greater society—that operate to deny justice to low-income members of racial, national, ethnic and social minorities and other low-income persons who experience barriers due to explicit or implicit bias and other marginalizing dynamics.” As a member of the Alliance of Equal Justice, the WSBA supports its vision: “Laws and legal systems [that] will be open and equally effective for all who need their protection, especially those who experience unfair and disproportionately unjust treatment due to personal or community characteristics that place them on the margins of society.”

However, a solemn commitment to uphold oaths and ethical responsibilities cannot be achieved by aspirations alone. For these reasons, we, the Civil Rights Law Section, have two requests. First, we propose the Structure Work Group draft specific language to protect these oaths and responsibilities - to identify and dismantle structural barriers to justice - and that such language identifies and clearly discerns this legal obligation as an ethical obligation for all lawyers and not as “political opinions or views.” Second, regardless of the WSBA’s future structure, professional training on equity, inclusion and diversity is prioritized and funded as an integral part of the legal profession and the WSBA.

Sincerely,

Sarah Derry, Chair,
Civil Rights Law Section

Anne Paxton, Secretary,
Civil Rights Law Section

Molly Matter, Chair-Elect,
Civil Rights Law Section

Jill Mullins, Treasurer,
Civil Rights Law Section

Jaime Hawk, Member At-Large,
Civil Rights Law Section

Fred Diamondstone, Member At-Large,
Civil Rights Law Section

Kathleen Kline, Member At-Large,
Civil Rights Law Section

Alec Stephens, BOG Liaison,
Civil Rights Law Section

Kristi Cruz, Member At-Large,
Civil Rights Law Section

² See <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>

³ i.e., Washington Department of Health’s *Diversity and Inclusion Council*, Department of Social and Health Services’ *Office of Diversity and Inclusion*, Office of Superintendent of Public Instruction’s *Office of Equity and Civil Rights*.