

**MEETING AGENDA**

**August 6, 2021**  
**10:00 A.M.**

**OPEN SESSION - 10:00am-12:30pm:**

- 10:00 – Review of Minutes
- 10:05 – 2021-2022 MCLE Board Meeting Schedule
- 10:10 – MCLE Vice-Chair Nomination
- 10:15 – Course Audits
- 10:20 – MCLE Updates
- 10:40 – TAXICAB Updates
- 11:10 – Discussion: Administering the New Ethics Requirement
- 11:30 – Discussion: New Ethics Credit Carryover
- 11:50 – Issue Summary: Decision Matrix and COVID-19

**CLOSED SESSION – 12:30pm-1:00pm**

- 12:00 – Activity Review
- End of Meeting

**Minutes**  
**May 21, 2021**

The meeting of the Mandatory Continuing Legal Education Board was called to order by Board Chair Ayanna Colman at 10:00 AM on Friday, May 21, 2021. This meeting was held via videoconference. Board members in attendance were:

Ayanna Colman, Chair  
Todd Alberstone, Vice Chair  
Merri Hartse  
Asia Wright  
Chris Bueter  
Robert Malae

Liaisons and Staff in attendance:

Adelaine Shay	MCLE Manager/MCLE Board Staff Liaison
Michael Tonkin	MCLE Analyst

**Review of Minutes for April 9, 2021**

The MCLE Board reviewed the minutes from the April 9, 2021 meeting. The Board approved without change.

**Course Audits**

MCLE Board member Asia Wright presented a course audit report of University of Washington School of Law's CLE, titled: "*Indian Law Symposium Webinar*".

**Discussion: MCLE Updates**

MCLE Board Staff Liaison presented general updates, including the status of the Suggested Amendment to the APR 11 ethics requirement, early certification of 2018-2021 and 2019-2021 MCLE reporting periods, and the development of a new MCLE online system. MCLE Board member Robert Malae gave an update on the TAXICAB workgroup.

**Discussion: MCLE Credit for Law Clerk Tutors**

The MCLE Board formed a workgroup—with members of the Law Clerk Board—to explore a rule change that would allow MCLE credit for Law Clerk tutors. Board Members Ayanna Colman and Chris Bueter volunteered to join this workgroup. MCLE staff to coordinate an initial meeting in the summer of 2021.

**Adjournment**

There being no further business at hand, the meeting was adjourned at 10:21 AM. The next regularly scheduled MCLE Board meeting will be held at 10:00 AM on Friday, August 6, 2021.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Adelaine Shay". The signature is fluid and cursive, with the first name being more prominent.

Adelaine Shay  
MCLE Board Staff Liaison

**I S S U E   S U M M A R Y :****Proposed 2021-2022 MCLE Board Meeting Schedule****ISSUE:**

- The 2021-2022 MCLE Board meeting schedule needs to be approved by the Board so that it can be posted on the WSBA website.

**Proposed MCLE Board Meeting Schedule for the 2021-2022 term:**

<b>Meeting #</b>	<b>MCLE Board Meeting Date</b>
<b>1</b>	October 8, 2021
<b>2</b>	January 7, 2022
<b>3</b>	April 8, 2022
<b>4</b>	May 13, 2022
<b>5</b>	August 5, 2022

**ISSUE SUMMARY:****Vice-Chair Selection**

**ISSUE:** The MCLE Board needs to select a Board member to be the Vice-Chair for the 2021-2022 term.

**BACKGROUND:** At the MCLE Board's July 15, 2005 meeting the MCLE Board created a new position of "Vice-Chair".

- **Vice-Chair Position** – The Board member to fill the "Vice-Chair" position will be selected by the MCLE Board members each year. During the term of the Vice-Chair, the Board member filling this position will train in the duties of the Board Chair, become familiar with the history of the Board, and step in as acting Chair during meetings when the Chair cannot be present for some or all of the Board meeting. The Vice-Chair may also be called on to represent the MCLE Board at a Board of Governors meeting, Court hearing, or other official function if the Chair is unable to attend. The intent of the Vice-Chair position is to be a likely successor to the current Chair, as a potential candidate to recommend to the Washington Supreme Court for the next term. Ultimately, the Supreme Court appoints the MCLE Board Chair, taking into account the recommendation of the MCLE Board nomination team and the Board of Governors.
- **Purpose** – The Board created the Vice-Chair position to give more continuity to the functioning of the Board. Because the Board has evolved into much more of a policy-making Board than previously, it is more critical now that a potential candidate for next term's Chair position have a good working knowledge of the history of the issues that have come before the Board. In addition, it is also critical that the candidate be fully cognizant of all the connections with outside groups that need to be made in order for effective policies to be developed and promulgated. These connections are also vital for developing high quality rules, regulations, and policies that best serve the members, sponsors, administrators, and citizens of the State of Washington.

<p style="text-align: center;"><b>DISCUSSION:</b> <b>MCLE Updates</b></p>
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The MCLE Staff Liaison will discuss general updates with MCLE, including the MCLE Board's Suggested Amendment to APR 11, MCLE Board recruitment, the annual meeting with the Washington Supreme Court, MCLE staffing, and the new MCLE online system.

**Discussion Topics:**

- **Suggested Amendment to APR 11**

The Washington Supreme Court entered an order on June 4, 2021, adopting the MCLE Board's amendment to APR 11. On July 1, 2021, the Court entered an amended order, updating the language to match to the MCLE Board's suggested amendment.

- **Annual Meeting with Washington Supreme Court**

As a reminder, the MCLE Board will meet with the Washington Supreme Court on September 1, 2021 from 11:00 a.m. to 12:00 p.m. At this time, all meetings with the Washington Supreme Court are virtual.

- **Early Certification**

Certification is open for Lawyers, LLLTs, and LPOs in the 2018-2021 and the 2019-2021 MCLE reporting periods. Certification opened on July 1, 2021. As of July 29, 2021: 1,091 lawyers have certified (19,248 remaining); 18 LPOs have certified (481 remaining); and 4 LLLTs have certified (12 remaining).

- **MCLE Staffing**

MCLE Staff Liaison received approval for a new full-time MCLE analyst. The position has been posted online, and applications are currently being reviewed. It is expected that the new full-time analyst will start in the summer of 2021.

- **New MCLE System**

The MCLE Staff Liaison will give an update on the new MCLE system.

<p style="text-align: center;"><b>DISCUSSION:</b> <b>TAXICAB</b></p>
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The MCLE Board will discuss the initial draft of a potential policy that the Task Force Administering Xenial Involvement with Court Appointed Boards (TAXICAB) has been working on. MCLE Board member Robert Malae is a member of this task force.

**Background:**

The TAXICAB workgroup met on July 9, 2021 to discuss a draft policy. The policy, tentatively titled “Policy for the Administration of Supreme Court Entities”, is intended to clarify General Rule (GR) 12.3, with respect to the administration of Court-appointed boards.

During this meeting, a request was made for feedback from each Court-appointed board regarding the language of the initial draft of the policy.

**Discussion and Potential Talking Points:**

The TAXICAB workgroup is soliciting feedback from the MCLE Board on the draft policy.

Specific questions from the TAXICAB group include:

- Regarding the application of WSBA Bylaws to Court-appointed boards, should all WSBA Bylaws apply to the MCLE Board, or only specific ones?
- Does the MCLE Board have any feedback for the TAXICAB workgroup regarding this policy?

Enclosed Documents:

- Policy for the Administration of Supreme Court Entities (Draft)
- WSBA Bylaws

This edition of the Bylaws of the Washington State Bar Association includes the comprehensive review of the Bylaws adopted by the Board of Governors on September 24, 2010, and all other amendments approved by the Board of Governors through April 29, 2021.

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## **I. FUNCTIONS**

### **A. PURPOSES: IN GENERAL**

In general, the Washington State Bar Association (Bar) strives to:

1. Promote independence of the judiciary and the legal profession;
2. Promote an effective legal system, accessible to all;
3. Provide services to its members and the public;
4. Foster and maintain high standards of competence, professionalism, and ethics among its members;
5. Foster collegiality among its members and goodwill between the legal profession and the public;
6. Promote diversity and equality in the courts and the legal profession;
7. Administer admissions, regulation, and discipline of lawyers, Limited License Legal Technicians (LLTs), and Limited Practice Officers (LPOs) in a manner that protects the public and respects the rights of the applicant or member;
8. Administer programs of legal education;
9. Promote understanding of and respect for our legal system and the law;
10. Operate a well-managed and financially sound organization, with a positive work environment for its employees;
11. Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the organization and the legal profession.

### **B. SPECIFIC ACTIVITIES AUTHORIZED**

In pursuit of these purposes, the Washington State Bar Association may:

1. Sponsor and maintain committees and sections whose activities further these purposes;
2. Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;
3. Provide periodic reviews and recommendations concerning court rules and procedures;
4. Administer examinations and review applicants' character and fitness to practice law;
5. Inform and advise its members regarding their ethical obligations;
6. Administer an effective system of discipline of lawyers, LLTs, and LPOs, including receiving and investigating complaints of misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;
7. Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;
8. Maintain a program for mediation of disputes between members and others;
9. Maintain a program for legal professional practice assistance;

**I. FUNCTIONS**  
**II. DEFINITIONS AND GENERAL PROVISIONS**

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10. Sponsor, conduct, and assist in producing programs and products of continuing legal education;
11. Maintain a system for accrediting programs of continuing legal education;
12. Conduct examinations of lawyer, LLLT, and LPO trust accounts;
13. Maintain a client protection fund in accordance with the Admission and Practice Rules;
14. Maintain a program for the aid and rehabilitation of impaired members;
15. Disseminate information about the organization's activities, interests, and positions;
16. Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession;
17. Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns;
18. Encourage public service by members and support programs providing legal services to those in need;
19. Maintain and foster programs of public information and education about the law and the legal system;
20. Provide, sponsor, and participate in services to its members;
21. Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the organization's discretion, authorizing collective bargaining;
22. Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Bar, and collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged. The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable;
23. Administer Supreme Court-created boards in accordance with General Rule 12.3.

**C. ACTIVITIES NOT AUTHORIZED**

The Washington State Bar Association will not:

1. Take positions on issues concerning the politics or social positions of foreign nations;
2. Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or
3. Support or oppose, in an election, candidates for public office.

**II. DEFINITIONS AND GENERAL PROVISIONS**

**A. HEADQUARTERS**

The office of the Bar will be maintained in the State of Washington.

## II. DEFINITIONS AND GENERAL PROVISIONS

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### B. SEAL

The Bar will have a Seal having the words and figures of “The Washington State Bar Association—June 7, 1933.” The Seal will remain in the control of the Executive Director at the office of the Bar.

### C. FILING PAPERS WITH THE BAR

Whenever these Bylaws require that petitions, notices, or other documents be filed with the Bar, or served upon the Board of Governors (BOG) or the Executive Director, they must be filed at the office of the Bar.

### D. COMPUTATION OF TIME

If any date specified in these Bylaws is a Saturday, Sunday, or legal holiday observed by the Bar, it refers to the next regular business day. Legal holidays observed by the Bar may differ from the legal holidays statutorily designated by the state Legislature.

### E. DEFINITIONS AND USE OF TERMS

Unless otherwise specifically stated herein,

1. “Days” means calendar days.
2. “Quorum” means the presence of a majority of the voting membership (i.e., more than half the voting members). A quorum must be present when votes are taken.
3. “Excused absence” means an absence excused by the President or presiding officer.
4. “Writing” includes email and fax.
5. “Electronic means” includes email, fax, video conferencing, and telephone; however, in the context of meetings, “electronic means” is limited to video conferencing and telephone.
6. “Bar records” and/or “Bar documents” means documents or records maintained by the Bar, whether in printed or electronic form.
7. When used in connection with a particular act or event, the terms “active membership” or “active members” refers to the Active membership at the time of the act or event.
8. “APR” refers to the Admission and Practice Rules.
9. “ELC” refers to the Rules for Enforcement of Lawyer Conduct.
10. “ELLLTC” refers to the Rules for Enforcement of LLLT Conduct.
11. “ELPOC” refers to the Rules for Enforcement of LPO Conduct.
12. “Member” means an individual in any of the groups of licensed legal professionals specified in Article III(A) of these Bylaws, unless otherwise specified.
13. “May” means “has discretion to,” “has a right to,” or “is permitted to.”
14. “Must” means “is required to.”

## III. MEMBERSHIP

### A. MEMBER LICENSE TYPES

1. Members of the Washington State Bar consist of these types of licensed legal professionals:
  - a. Lawyers admitted to the Bar and licensed to practice law pursuant to APR 3 and APR 5;
  - b. Limited License Legal Technicians; and
  - c. Limited Practice Officers.

Members of one type do not automatically qualify to be or become a member of another type, and in order to become a member of another type the member must comply with the requirements for admission as a member of that type.

2. Lawyers licensed to practice law in Washington pursuant to APR 8 and APR 14, or who are permitted to practice law pursuant to RPC 5.5 without being licensed in Washington are not members of the Bar.
3. Membership in the Bar ends when a member is disbarred or the equivalent, the member resigns or otherwise terminates his or her license, or when the member's license is revoked or terminated for any reason.

### B. STATUS CLASSIFICATIONS

Membership status classifications have the qualifications, privileges, and restrictions specified.

#### 1. Active

Any member who has been duly admitted by the Supreme Court to the practice of law in Washington State who complies with these Bylaws and the Supreme Court rules applicable to the member's license type, and who has not changed to another status classification or had his or her license suspended is an Active member.

- a. Active membership in the Bar grants the privilege to engage in the practice of law consistent with the rules governing the member's license type. Upon payment of the Active annual license fee and assessments required for the member's license type, compliance with these Bylaws and the applicable Supreme Court rules, and compliance with all other applicable licensing requirements, Active members are fully qualified to vote, hold office and otherwise participate in the affairs of the Bar as provided in these Bylaws.
- b. Active members may:
  - 1) Engage in the practice of law consistent with the rules governing their license type;
  - 2) Be appointed to serve on any committee, board, panel, council, task force, or other Bar entity;
  - 3) Vote in Bar matters and hold office therein, as provided in these Bylaws;
  - 4) Join Bar sections as voting members; and
  - 5) Receive member benefits available to Active members.
- c. All persons who become members of the Bar must first do so as an Active member.

### III. MEMBERSHIP

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#### 2. Inactive

Inactive members must not practice law in Washington, nor engage in employment or duties that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee or board.

- a. Inactive members may:
  - 1) Join Bar sections as non-voting members,
  - 2) Continue their affiliation with the Bar;
  - 3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;
  - 4) Request a free subscription to the Bar's official publication; and
  - 5) Receive member benefits available to Inactive members.
- b. Types of Inactive membership:
  - 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
  - 2) Disability: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
  - 3) Honorary: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, a Pro Bono member.

#### 3. Judicial

- a. A member may qualify to become a Judicial member if the member is one of the following:
  - 1) A current judge, commissioner, or magistrate judge of the courts of record in the State of Washington, or the courts of the United States, including Bankruptcy courts;
  - 2) A current judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;
  - 3) A current senior status or recall judge in the courts of the United States;
  - 4) An administrative law judge, which is defined as either:
    - (a) Current federal judges created under Article I and Article II of the United States Constitution, excluding Bankruptcy court judges, or created by the Code of Federal Regulations, who by virtue of their position are prohibited by the United States Code and/or the Code of Federal Regulations from practicing law; or
    - (b) Full-time Washington State administrative law judges in positions created by either the Revised Code of Washington or the Washington Administrative Code; or
  - 5) A current Tribal Court judge in the State of Washington.



### III. MEMBERSHIP

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- b. Members not otherwise qualified for Judicial membership under (1) through (5) above and who serve full-time, part-time or ad hoc as pro tempore judges, commissioners or magistrates are not eligible for Judicial membership.
- c. Judicial members, whether serving as a judicial officer full-time or part-time, must not engage in the practice of law and must not engage in mediation or arbitration for remuneration outside of their judicial duties.
- d. Judicial members:
  - 1) May practice law only where permitted by the then current Washington State Code of Judicial Conduct as applied to full-time judicial officers;
  - 2) May be appointed to serve on any task force, council or Institute of the Bar;
  - 3) May receive member benefits provided to Judicial members; and
  - 4) May be non-voting members in Bar sections, if allowed under the section's bylaws.
  - 5) Judicial members are not eligible to vote in Bar matters or to hold office therein.
- e. Nothing in these Bylaws will be deemed to prohibit Judicial members from carrying out their judicial duties.
- f. Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer:
  - 1) must provide the member registry information required of other members each year unless otherwise specified herein, and provide the Bar with any changes to such information within 10 days of any change; and
  - 2) must annually pay any required license fee that may be established by the Bar, subject to approval by the Supreme Court, for this membership status. Notices, deadlines, and late fees will be consistent with those established for Active members.
- g. Judicial members must inform the Bar within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership status or to resign.
  - 1) Failure to apply to change membership status or to resign within ten days of becoming ineligible for Judicial membership, when a Judicial member has annually maintained eligibility to transfer to another membership status, is cause for administrative suspension of the member.
  - 2) A Judicial member who has not annually complied with the requirements to maintain eligibility to transfer to another membership status and who is no longer eligible for Judicial membership who fails to change to another membership status will be deemed to have voluntarily resigned.
- h. Administrative law judges who are judicial members must continue to comply with APR 11 regarding MCLE. Either judicial continuing education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.
- i. Legal, legislative, and policy positions and resolutions taken by the BOG are not taken on behalf of Judicial members, are not considered to be those of Judicial members, and are not binding on Judicial members.

### III. MEMBERSHIP

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- j. The Bar's disciplinary authority over Judicial members is governed exclusively by ELC 1.2 and RPC 8.5.

#### 4. Pro Bono

A member may become a Pro Bono member by complying with the requirements of APR 3(g), including payment of any required license fee and passing a character and fitness review.

Pro Bono members must not engage in the practice of law except as permitted under APR 3(g), but may:

- a. Be appointed to serve on any task force, council, or Institute of the Bar. In addition, up to two Pro Bono members are permitted to serve on the Pro Bono and Public Service Committee (PBPSC) and may be appointed to serve as Chair, Co-Chair, or Vice-Chair of that committee;
- b. Join Bar sections;
- c. Request a free subscription to the Bar's official publication; and
- d. Receive member benefits available to Pro Bono members.

#### 5. Suspended

Members of any type and status can have their membership suspended by order of the Washington Supreme Court. Although suspended members remain members of the Bar, they lose all rights and privileges associated with that membership, including their authorization and license to practice law in Washington.

### C. REGISTER OF MEMBERS

- 1. All Bar members, including Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer, must furnish the information below to the Bar:
  - a. physical residence address;
  - b. physical street address for a resident agent if required to have one pursuant to these Bylaws or by court rule;
  - c. principal office address, telephone number, and email address;
  - d. such other data as the BOG or Washington Supreme Court may from time to time require of each member

and must promptly advise the Executive Director in writing of any change in this information within 10 days of such change. Judicial members are not required to provide a physical residence address.

- 2. The Executive Director will keep records of all members of the Washington State Bar Association, including, but not limited to:
  - a. physical residence address furnished by the member;
  - b. principal office address, telephone number, and email address furnished by the member;
  - c. physical street address of any resident agent for the member;
  - d. date of admittance;
  - e. type and status of membership;
  - f. date of transfer(s) from one status to another, if any;

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- g. date and period(s) of administrative suspensions, if any;
  - h. date and period of disciplinary actions or sanctions, if any, including suspension, disbarment, and revocation;
  - i. such other data as the BOG or Washington Supreme Court may from time to time require of each member.
- 3. Any Active member residing out-of-state must file with the Bar, in such form and manner as the Bar may prescribe, the name and physical street address of a designated resident agent within Washington State. The member must notify the Bar of any change in resident agent within 10 days of any such change.
- 4. Any member who fails to provide the Bar with the information required to be provided pursuant to these Bylaws, or to notify the Bar of any changes in such information within 10 days, will be subject to administrative suspension pursuant to these Bylaws and/or the Admission and Practice Rules. Judicial members are exempt from suspension pursuant to this provision while eligible for Judicial membership and serving as a judicial officer.

#### D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

- 1. Members may change membership status as provided below.
  - a. **Transfer from Inactive to Active.**
    - 1) An Inactive member or Honorary member may transfer to Active by:
      - (a) paying an application and/or investigation fee and completing and submitting an application form, all required licensing forms, and any other required information. The fee in this paragraph is not required from an LPO or LLLT who has been inactive for 90 days or less;
      - (b) earning, within the six years preceding the return to Active status, and reporting the total number of approved MCLE credits required for one reporting period for an Active member with the same license type, and paying any outstanding MCLE late fees that are owed. If the member has been Inactive or a combination of Suspended and Inactive for less than one year, and the member would have been required to report during the time the member was Inactive and/or Suspended, the member must establish that the member is compliant with the MCLE reporting requirements for that reporting period before the member can change to Active. This paragraph does not apply to members transferring back to Active during their first MCLE reporting period;
      - (c) passing a character and fitness review essentially equivalent to that required of all applicants for admission to the Bar, pursuant to APR 20-24.3; and
      - (d) paying the current Active license fee, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as an Inactive member for the same year.
    - 2) If a member was Inactive or any combination of Suspended and Inactive in Washington for more than six consecutive years, the member must earn MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the

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same license type, and these credits must be earned and reported within the three years preceding the return to Active status. In addition, the member must complete a reinstatement/readmission course sponsored by the Bar, which must consist of education on law office management and professional responsibility (including the applicable RPC for the member's license type, proper handling of client funds and trust accounts, and client communications), legal research and writing, and changes in the law that apply to the member's license type, as follows:

- (a) For lawyer members, a minimum of 15 live CLE credits, consisting of at least four credit hours on law office management and professional responsibility, at least three credit hours on legal research and writing, and the remaining credit hours on recent significant changes in the law;
- (b) For LLLT members, a minimum of seven live CLE credits, consisting of at least two credit hours on law office management and professional responsibility, at least one credit hour on legal research and writing, and the remaining credit hours on recent significant changes in the law in approved LLLT practice or core education areas;
- (c) For LPO members, a minimum of seven live CLE credits, consisting of at least two credit hours on professional responsibility, and the remaining credit hours on recent significant changes in the law covered by the approved LPO Study Topics.

The member is required to pay the cost of the course. Any member completing such course will be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/readmission course is accredited. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive will be included when determining whether a member is required to take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

- 3) Any member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and does not have active legal experience as defined in APR 1(e) in any jurisdiction for more than ten consecutive years, is required to complete the requirements in Art. III. Sec.D.1.a.1)(a), (c) and (d), above, and is also required to take and pass the examinations required for admission to the Bar for the member's license type.
- 4) A Disability Inactive status member may be reinstated to Active pursuant to the disciplinary rules applicable to their license type. Before being transferred to Active, after establishing compliance with the disciplinary rules, the member also must comply with the requirements in these Bylaws for Inactive members transferring to Active status.

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- 5) A member of any type who has transferred to Inactive status during the pendency of a grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the ELC, ELPOC, or ELLTTC.

#### **b. Transfer from Judicial to Active.**

A Judicial member may request to transfer to any other status, including Active. Upon a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the Bar within 10 days, and any Judicial member desiring to continue his or her affiliation with the Bar must change to another membership status within the Bar.

- 1) A Judicial member who has complied with all requirements for maintaining eligibility to return to another membership status may transfer to Active by submitting an application for change to Active membership status and
  - (a) paying the then current Active license fee for the member's license type, including any mandatory assessments, less any license fee (not including late fees) and assessments paid as a Judicial member for the same licensing year; and
  - (b) complying with the MCLE requirements for members returning from Inactive to Active. Either judicial continuing education credits or lawyer continuing education credits may be applied to the credit requirement for Judicial members transferring to Active. If judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.
- 2) A Judicial member wishing to transfer to Active upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or pay the annual license fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Active, be required to pay the Active license fee for the member's license type any years the registry information was not provided or the Judicial fee was not paid, in addition to complying with the requirements of (a) above.

#### **c. Transfer from Pro Bono to Active**

A Pro Bono member may transfer to Active by complying with the requirements for members returning from Inactive to Active. There is no limit on how long a member may be Emeritus Pro Bono before returning to Active status.

#### **d. Referral to Character and Fitness Board**

All applications for readmission, reinstatement or transfer to Active status will be reviewed by Bar staff and handled consistent with the provisions of APR 20-24.3. In all cases reviewed by it, the Character and Fitness Board has broad authority to recommend withholding a transfer to Active status or imposing

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conditions on readmission to Active status, which may include retaking and passing the licensing examination applicable to the member's license type. The member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

#### **E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE**

1. Any member who is an Active, Judicial, or Pro Bono member and who is not Suspended will become an Inactive member when the member files a request for Inactive membership with the Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive member status upon leaving service as a judicial officer, who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Inactive, be required to pay the Active license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

2. Members are transferred to Disability Inactive pursuant to Title 8 of the ELC, ELPOC, or ELLLTC. Any member seeking to transfer from Disability Inactive to Inactive member status must first establish that the member has complied with the requirements of Title 8 of the ELC, ELPOC, or ELLLTC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive members.
3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may qualify for Honorary status. A qualified member may request to change to Honorary status by submitting a written request and any required application.
4. An Active member may apply to change from Active to Inactive status while grievances or disciplinary proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending grievance or proceeding against the member.

#### **F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL**

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and any required application, and complying with the provisions of these Bylaws.

#### **G. CHANGE OF MEMBERSHIP STATUS TO PRO BONO**

A member may become a Pro Bono member by complying with the requirements of APR 3(g), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Pro Bono, be required to pay the Active license fee for any years the registry information was not provided or the Judicial fee was not paid.

#### H. VOLUNTARY RESIGNATION

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar. A member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Bar in such form and manner as the Bar may require. If there is a disciplinary investigation or proceeding then pending against the member, or if at the time the member submits the written request the member has knowledge that the filing of a grievance of substance against such member is imminent, resignation is permitted only under the provisions of the ELC, ELPOC, or ELLTTC. A member who resigns from the Bar cannot practice law in Washington in any manner. A member seeking readmission after resignation must comply with these Bylaws.

#### I. ANNUAL LICENSE FEES AND ASSESSMENTS

##### 1. License Fees

Unless established otherwise by order of the Washington Supreme Court, the following provisions apply to member license fees.

##### a. Active Members

- 1) Effective 2010, and all subsequent years, the annual license fees for Active members will be as established by resolution of the BOG, subject to review by the Washington Supreme Court.
- 2) First time admittees who are not admitted or licensed to practice law elsewhere, who take and pass the required examination for admission to practice law in Washington and are admitted in the first six months of the calendar year in which they took the exam, will pay 50% of the applicable full Active license fee for that year.
- 3) First time admittees who are not admitted or licensed to practice law elsewhere, who take and pass the required examination for admission to practice law in Washington and are admitted in the last six months of the calendar year in which they took the exam, will pay 25% of the applicable full Active license fee for that year.
- 4) First time admittees who are not admitted elsewhere, who take and pass the required examination for admission to practice law in Washington in one year but are not admitted until a subsequent year, shall pay 50% of the applicable full Active license fee for their first two license years after admission.
- 5) First time admittees who are admitted as a lawyer in one calendar year in another state or territory of the United States or in the District of Columbia by taking and passing a bar examination for that state, territory, or district, who become admitted as a lawyer in Washington in the same calendar year in which they took and passed the examination, will pay 50% of the full Active lawyer license fee if admitted in Washington in the first six months of that calendar year and 25% of the full active license fee if admitted in Washington in the last six months of that calendar year.

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- 6) All members in their first two full licensing years after admission or licensure to practice law in any jurisdiction will pay 50% of the applicable full Active license fee.
- 7) An Active member of the Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States will be exempt from the payment of license fees and assessments for the Client Protection Fund upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

#### **b. Inactive Members**

- 1) The annual license fee for Inactive members will be as established by resolution of the BOG and as approved by the Washington Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members will apply to Inactive members.
- 2) Honorary and Disability Inactive status members will be exempt from license fees and assessments, unless otherwise provided by Supreme Court order.

#### **c. Judicial Members [Effective January 1, 2012]**

Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer must pay the annual license fee established by the Bar and as approved by the Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

#### **d. Pro Bono Members**

Pro Bono members must pay the annual license fee required of Inactive members with the same type of license unless the member qualifies for the license fee waiver as provided for in APR 3(g). Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Pro Bono members.

### **2. Assessments**

Members must pay any Client Protection Fund assessment, and any other assessments, as ordered by the Washington Supreme Court.



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#### **3. Deadline and Late Payment Fee**

License fees and mandatory assessments are due and payable on or before February 1st of each year, in such form and manner as required by the Bar, unless otherwise established by these Bylaws or the APR. Members who pay their license fees on or after February 2nd will be assessed a late payment fee of 30% of the total amount of the license fees required for that membership type and status. License fees for newly admitted members are due and payable at the time of admission and registration, and are not subject to the late payment fee.

#### **4. Rebates /Apportionments**

No part of the license fees will be apportioned to fractional parts of the year, except as provided for new admittees by the BOG. After February 1st of any year, no part of the license fees will be rebated for any reason, including but not limited to death, resignation, suspension, disbarment, license termination, cancellation or revocation, or change of membership status.

#### **5. License Fee and Assessment Exemptions Due to Hardship**

In case of proven extreme financial hardship, which must entail a current annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking to be exempted from license fees, the Executive Director may grant an exemption from payment of annual license fees and assessments by any Active member. Hardship exemptions are for one licensing period only, and a request must be submitted on or before February 1st of the year for which the exemption is requested. Denial of an exemption request is not appealable. A member may be granted a hardship exemption a maximum of two times, on the basis of separate exemption requests, and the exemptions may be granted for consecutive or non-consecutive calendar years.

#### **6. License Fee Referendum**

Once approved by the BOG, license fees shall be subject to the same referendum process as other BOG actions, but may not be modified or reduced as part of a referendum on the Bar's budget. The membership shall be timely notified of the BOG resolutions setting license fees both prior to and after the decision, by posting on the Bar's website, e-mail, and publication in the Bar's official publication.

### **J. SUSPENSION**

#### **1. Interim Suspension**

Interim suspensions may be ordered during the course of a disciplinary or disability investigation or proceeding, as provided in the ELC, ELPOC, or ELLLTC, and are not considered disciplinary sanctions.

#### **2. Disciplinary Suspension**

Suspensions ordered as a disciplinary sanction pursuant to the ELC, ELPOC, or ELLLTC are considered disciplinary suspensions.

#### 3. Administrative Suspension

- a. Administrative suspensions are neither interim nor disciplinary suspensions, nor are they disciplinary sanctions. Except as otherwise provided in the APR and these Bylaws, a member may be administratively suspended for the following reasons:
  - 1) Nonpayment of license fees or late-payment fees;
  - 2) Nonpayment of any mandatory assessment (including without limitation the assessment for the Client Protection Fund);
  - 3) Failure to file a trust account declaration;
  - 4) Failure of a lawyer to file a professional liability insurance disclosure;
  - 5) Failure of a LLLT or LPO to provide proof of financial responsibility;
  - 6) Failure to comply with mandatory continuing legal education requirements;
  - 7) Nonpayment of child support;
  - 8) Failure to designate a resident agent or notify the Bar of change in resident agent or the agent's address;
  - 9) Failure to provide current information required by APR 13 or to notify the Bar of a change of information required by APR 13 within 10 days after the change; and
  - 10) For such other reasons as may be approved by the BOG and the Washington Supreme Court.
- b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these Bylaws or the APR, ELC, ELPOC or ELLTLC, a member will be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:
  - 1) Written notice of non-compliance will be sent one time by the Bar to a member at the member's address of record with the Bar by registered or certified mail. Such written notice will inform the member that the Bar will recommend to the Washington Supreme Court that the member be suspended from membership and the practice of law if the member has not corrected the deficiency within 60 days of the date of the notice.
  - 2) In addition to the written notice described above, the Bar will make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and will speak to the member or leave a message, if possible. The Bar will also make one attempt to contact the member at the member's e-mail address of record with the Bar.
- c. Although not required to provide any additional notice beyond what is described above, the Bar may, in its sole discretion, make such other attempt(s) to contact delinquent members as it deems appropriate for that member's situation.
- d. A member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member will be suspended from membership in the Bar and from the practice of law in Washington. The list of

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suspended members may be provided to the relevant courts or otherwise published at the discretion of the BOG.

#### **4. Multiple Suspensions**

A member may be suspended from membership and from the practice of law for more than one reason at any given time.

#### **K. CHANGING STATUS AFTER SUSPENSION**

1. Upon the completion of an ordered disciplinary or interim suspension, or at any time after entry of an order for an administrative suspension, a suspended member may seek to change status from suspended to any other membership status for which the member qualifies at the time the change in status would occur.
2. Before changing from suspended status, a member who is suspended pursuant to an interim or disciplinary suspension must comply with all requirements imposed by the Washington Supreme Court and/or the applicable disciplinary rules in connection with the disciplinary or interim suspension. Additionally, such member must comply with all other requirements as stated in these Bylaws and in the applicable APR.
3. If a member was suspended from practice for more than one reason, all requirements associated with each type of suspension must be met before the change from suspended status can occur.
4. Unless otherwise provided in the applicable APR, a suspended member may seek to change status by:
  - a. paying the required license fee and any assessments for the licensing year in which the status change is sought, for the membership status to which the member is seeking to change. For members seeking to change to Active or any other status from suspension for nonpayment of license fees, the required license fee will be the current year's license fee and assessments, the assessments for the year of suspension, and double the amount of the delinquent license fee and late fees for the license year that resulted in the member's suspension;
  - b. completing and submitting to the Bar an application for change of status, any required or requested additional documentation, and any required application or investigation fee, and cooperating with any additional character and fitness investigation or hearing that may be required pursuant to APR 20-24.3; and
  - c. completing and submitting all licensing forms required for the license year for the membership status to which the member is seeking to change.
  - d. In addition to the above requirements:
    - 1) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for less than six consecutive years must establish that within the six years prior to the return to active status, the member has earned and reported approved MCLE in a manner consistent with the requirements for one reporting period for an Active member with the same license type. However, if the member has been Suspended and/or Inactive for one year or less and the member was required to report

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MCLE compliance during the time the member was Suspended and/or Inactive, the member must establish that the member is compliant with the MCLE credits the member would have been required to report that period.

- 2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for six or more consecutive years must establish that within the three years prior to the return to Active status, the member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member with the same license type. In addition, the member must have completed the applicable readmission/reinstatement course as set forth in Art. III. Sec.D.1.a)(2).

Any member completing such course will be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/readmission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

#### **L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION**

Applicants seeking reinstatement after disbarment or revocation must file a petition for reinstatement and otherwise comply with the requirements of the APR relating to reinstatement after disbarment or revocation. If the petition is granted and reinstatement is recommended, the petitioner must take and pass the required examination for admission and comply with all other admission and licensing requirements applicable to the member's license type for the year in which the petitioner is reinstated.

#### **M. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISCIPLINE, DISBARMENT, OR REVOCATION**

No former member will be allowed to be readmitted to membership of any type after entering into a resignation in lieu of discipline, disbarment, or revocation pursuant to the ELC, ELPOC, or ELLTLC. Persons who were allowed to resign with discipline pending under former provisions of these Bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the BOG determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

#### **N. READMISSION AFTER VOLUNTARY RESIGNATION**

Any former member who has resigned and who seeks readmission to membership must do so in one of two ways: by filing an application for readmission in the form and manner prescribed by the Bar, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking admission by motion pursuant to APR 3(c) (if the former member is

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licensed as a lawyer in another U.S. jurisdiction and would otherwise qualify for admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:
  - a. pay the application fee, together with such amount as the BOG may establish to defray the cost of processing the application and the cost of investigation; and
  - b. establish that such person is morally, ethically and professionally qualified to be licensed as the applicable member type and is of good moral character and has the requisite fitness to practice law consistent with the requirements for other applicants for admission to practice law as the applicable member type. An application for readmission will be subject to character and fitness investigation and review as described in APR 20-24.3, consistent with other applications for admission.
  - c. In addition to the above requirements, if an application for readmission is granted and:
    - 1) it has been less than four consecutive years since the voluntary resignation, the applicant must establish:
      - (a) that within the three years prior to readmission the former member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, without including the credits that might otherwise be available from the reinstatement/readmission course; and
      - (b) attend and complete the applicable Bar-sponsored reinstatement/readmission course as set forth in Art. III.Sec.D.1.a)(2).
    - 2) it has been four or more consecutive years since the voluntary resignation, the applicant must take and pass the applicable examination required for admission.
  - d. Upon successful completion of the above requirements, the former member must satisfy the preadmission requirements and be admitted by Supreme Court order as set forth in APR 5, except that:
    - 1) A lawyer who has been resigned for less than four years need not take and pass the Washington Law Component; and
    - 2) A LLLT applicant who has been resigned less than four consecutive years need not demonstrate completion of substantive law-related work experience.
2. A voluntarily resigned former member seeking readmission through admission by motion pursuant to APR 3(c) must comply with all requirements for filing such application and for admission upon approval of such application.

### O. EXAMINATION REQUIRED

All applications for reinstatement after disbarment or revocation will be subject to character and fitness review, and taking and passing the examination for admission for the applicable license type, pursuant to the provisions of APR 25-25.6. All applications for readmission after voluntary resignation will be subject to character and fitness review pursuant to the provisions of APR 20-24.3. All applications for reinstatement to Active status from Suspended status will be handled in a similar fashion to applications for a return to Active status from Inactive status. The Character and Fitness Board, and (on review) the

Washington Supreme Court, have broad authority to withhold a transfer to Active or to impose conditions on reinstatement or readmission to Active membership, which may include taking and passing the applicable examination for admission, in cases where the applicant fails to meet the burden of proof required by APR 20-24.3. The member/former member will be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

## IV. GOVERNANCE

### A. BOARD OF GOVERNORS

The Board of Governors (BOG) is the governing body of the Bar. It determines the policies of the Bar and approves its budget each year. Subject to the plenary authority and supervision of the Washington Supreme Court and limitations imposed by Statute, Court Rule, Court Order, or case law, the Board possesses all power and discretion on all matters concerning the WSBA. The Board may delegate the exercise of its authority but that does not constitute a transfer of it. The Board's authority is retained and may be exercised at any time upon a majority vote of the Board.

#### 1. Composition of the Board of Governors

The BOG will consist of (a) the President; (b) one Governor elected from each Congressional District, except in the Seventh Congressional District where members will be elected from separate geographic regions designated as North and South, and identified by postal zip codes as established by the Bar in accordance with these Bylaws and BOG policy; and (c) three Governors elected at-large pursuant to these Bylaws.

#### 2. Duties

- a. The BOG elects the President-elect of the Bar.
- b. The BOG selects the Bar's Executive Director and annually reviews the Executive Director's performance.
- c. Regardless of the method by which any person is selected to serve on the BOG, each Governor will act in the best interest of all members of the Bar and the public. Each Governor is primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.1, carries out the mission of the Bar, and operates in accordance with the Bar's Guiding Principles.
- d. Each Governor is expected to engage with members about BOG actions and issues, and to convey member viewpoints to the Board. In representing a Congressional District, a Governor will at a minimum: (1) bring to the BOG the perspective, values and circumstances of her or his district to be applied in the best interests of all members, the public and the Bar; and (2) bring information to the members in the district that promotes appreciation of actions and issues affecting the membership as a whole, the public and the organization.
- e. Each Governor appointed to serve as a BOG liaison to a committee, task force, council, section, board, or other entity has the responsibility to fulfill those liaison duties on behalf

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of the BOG. Governors appointed to serve as BOG liaisons are not voting members of those entities. BOG liaisons must not be excluded but will not participate in those entities' executive sessions or confidential deliberations except when requested to do so as a resource.

- f. Meetings of the BOG will be held as provided in these Bylaws. Each Governor must attend all board meetings except in cases of emergency or compelling circumstance that prevents participation.

### 3. Term

Governors will assume their duties at the close of the final regularly scheduled BOG meeting of the fiscal year in which they were elected. Governors serve a term of three years, except as may be otherwise provided by these Bylaws.

### 4. Vacancy

- a. A vacancy may arise due to resignation, death, removal by BOG, or recall by members.
  - 1) Removal by the Board of Governors. Any Governor may be removed from office for good cause by a 75% vote of the entire BOG exclusive of the Governor subject to removal, who will not vote. The vote will be by secret written ballot. Good cause for removal includes, without limitation, incapacity to serve, serious or repeated failures to meet the duties outlined in these Bylaws, or conduct or activities that bring discredit to the Bar.
  - 2) Recall by Members. Any Governor may be removed from the BOG by a recall by members, in accordance with the procedures set forth in these Bylaws.
- b. Response to a Vacancy
  - 1) If a vacancy occurs for any reason and 12 months or less remain in that Governor's term, in the BOG's sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor will be elected or appointed to the position.
  - 2) If a vacancy occurs due to resignation, death, or the removal of a Governor by the BOG, and more than 12 months remain in that Governor's term, the BOG must elect a candidate eligible for that position to serve as Governor until the next regularly scheduled election for that Governor position.
  - 3) If a Governor is removed due to recall and more than 12 months remain in that Governor's term, a special election will be conducted using the general procedures set forth in the "Election of Governors from Congressional Districts" provisions of these Bylaws. The application period for any special election held pursuant to this paragraph must be no less than 30 days and must, at a minimum, be prominently posted on the Bar's website and e-mailed to all members eligible to vote in the election.
  - 4) Regardless of whether a special election will be held to fill a Governor position that is vacant due to recall by the members, such position will not be filled by any interim governors selected by the BOG or appointed by the President.

### **B. OFFICERS OF THE BAR**

The officers of the Bar consist of a President, President-elect, Immediate Past-President, and Treasurer. The Executive Director of the Bar serves as secretary in an ex officio capacity. Except for the Executive Director, all officers must be Active lawyer members of the Bar.

#### **1. President**

The President is the chief spokesperson of the Bar, and presides at all meetings of the BOG. The President has the authority to: set the agenda however that authority is secondary to the authority of the Board of Governors at any Board meeting to take action on any issue raised by a duly seconded motion; take action to execute the policies established by the BOG; assign Governors as liaisons to Bar sections, committees, or task forces, specialty bar associations, and other law related organizations; and to appoint task forces, BOG committees, or other ad hoc entities to carry out policies established by the BOG. The President also performs any other duties typically performed by an organization's President. The President may vote only if the President's vote will affect the result. The President must present a report to the membership covering the principal activities of the Bar during the President's tenure.

#### **2. President-elect**

The President-elect performs the duties of the President at the request of the President, or in the absence, inability, recusal, or refusal of the President to perform those duties. The President-elect also performs such other duties as may be assigned by the President or the BOG. The President-elect is not a voting member of the BOG except when acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.

#### **3. Immediate Past President**

The Immediate Past President performs such duties as may be assigned by the President or the BOG. The Immediate Past President will perform the duties of the President in the absence, inability, recusal, or refusal of the President, President-elect, and Treasurer to perform those duties. Among the duties specifically assigned to the Immediate Past President is to work on behalf of the BOG and the officers to ensure appropriate training and education of new BOG members and officers during their term.

The Immediate Past President is not a voting member of the BOG except when acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.

#### **4. Treasurer**

The Treasurer chairs the Budget and Audit Committee and is responsible for ensuring that the BOG and officers are informed about the finances of the Bar. The Treasurer will perform the duties of the President in the absence, inability, recusal, or refusal of the President and the President-elect to perform those duties. The Treasurer also performs such other duties as are assigned by the President or the BOG.

#### **5. Executive Director**



## IV. GOVERNANCE

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The Executive Director is the principal administrative officer of the Bar. The Executive Director is responsible for the day-to-day operations of the Bar including, without limitation: (1) hiring, managing and terminating Bar personnel, (2) negotiating and executing contracts, (3) communicating with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters, (4) preparing an annual budget for the Budget and Audit Committee, (5) ensuring that the Bar's books are kept in proper order and are audited annually, (6) ensuring that the annual audited financial report is made available to all Active members, (7) collecting debts owed to the bar and assigning debts for collection as deemed appropriate, (8) acquiring, managing, and disposing of personal property related to the Bar's operations within the budget approved by the BOG, (9) attending all BOG meetings, (10) reporting to the BOG regarding Bar operations, (11) ensuring that minutes are made and kept of all BOG meetings, and (12) performing such other duties as the BOG may assign. The Executive Director serves in an ex officio capacity and is not a voting member of the BOG.

### **6. Terms of Office**

- a. The President-elect is elected by the BOG, as set forth in these Bylaws. The President-elect succeeds the President unless removed from office pursuant to these Bylaws.
- b. The President-elect and Treasurer take office at the close of the final regularly scheduled BOG meeting of the fiscal year in which they were elected to those positions. The President takes office at the close of the final regularly scheduled BOG meeting of the fiscal year in which he or she served as President-elect. The Immediate Past President takes office at the close of the final regularly scheduled BOG meeting of the fiscal year in which he or she served as President.
- c. The term of office of each officer position is one year; however, the Executive Director serves at the direction of the BOG and has an annual performance review. No individual shall serve as Executive Director for more than ten years, except that the Board of Governors may extend the contract for the Executive Director past that period, in its discretion, by a 66% super-majority vote for terms of two year increments.

### **7. Vacancy**

- a. The President, President-Elect, Immediate Past President, and Treasurer may resign or be removed from office for good cause by an affirmative vote of 75% of the entire BOG. Good cause for removal includes, without limitation, incapacity to serve, serious or repeated failures to meet the duties outlined in these Bylaws, or conduct or activities that bring discredit to the Bar.
  - 1) Upon removal or resignation of the President, the President-elect will fill the unexpired term of the President and then serve the term for which he or she was elected President. If there is no President-elect, then the BOG will elect such other person as it may determine, with the Treasurer performing the duties of the President until the BOG elects a new President.
  - 2) Upon removal or resignation of the President-elect, or ascendancy of the President-elect to the Presidency pursuant to paragraph (1) above, the BOG will elect a new President-elect (from Eastern Washington if the President-elect is mandated to be from Eastern Washington per these Bylaws).

## IV. GOVERNANCE

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- 3) Upon disqualification, removal, or resignation of the Immediate Past President, the office will remain vacant until the close of the term of the then-current President. If the office of Immediate Past President would otherwise become vacant because the President was removed or resigned during his or her term, the most recent Immediate Past President will remain in office for another term. If the most recent Immediate Past President is unable or unwilling to serve another term, the President may appoint, subject to approval of the BOG, a person eligible to serve as an officer to act as Immediate Past President for the otherwise vacant term. This appointment may be done prior to the start of the otherwise vacant term, but the appointed Immediate Past President will not assume office until the close of the term of the then-current Immediate Past President. If the appointment is done after the otherwise vacant term begins, the appointed Immediate Past President will assume office immediately upon BOG approval.
- 4) Upon removal or resignation of the Treasurer, the BOG will elect a new Treasurer pursuant to the procedures set forth in these Bylaws.
- b. The Executive Director is appointed by the BOG, serves at the direction of the BOG, and may be dismissed at any time by the BOG without cause by a majority vote of the entire BOG. If dismissed by the BOG, the Executive Director may, within 14 days of receipt of a notice terminating employment, file with the Supreme Court and serve on the President, a written request for review of the dismissal. If the Supreme Court finds that the dismissal of the Executive Director is based on the Executive Director's refusal to accede to a BOG directive to disregard or violate a Court order or rule, the Court may veto the dismissal and the Executive Director will be retained.

### C. BOARD OF GOVERNORS COMMITTEES

1. The BOG may delegate work to BOG standing committees, special committees, work groups, or other subgroups however defined, the membership of which will be established by the President with due consideration given to Governors' membership requests. The BOG standing committees include, at a minimum, the following: Executive Committee; Awards Committee; Budget and Audit Committee; Legislative Committee; Personnel Committee; and Diversity Committee.
2. The purpose of BOG committees, regardless of what they are called, is to make recommendations and make the work of the BOG more efficient. Consensus should govern meetings of BOG committees whenever possible. If a BOG committee is unable to reach a consensus, the committee will vote. Only Governors may vote on standing Board committees. Voting members of ad hoc committees will be determined by the Board on a case-by-case basis.
3. Meetings of BOG committees are open to the public, unless provided otherwise in these Bylaws or by court rule. The ability to participate in and comment at BOG committee meetings is in the discretion of the Chair as provided in these Bylaws.
4. BOG Legislative Committee

## IV. GOVERNANCE

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- a. Purpose: The BOG Legislative Committee is authorized to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.
- b. Membership: The President appoints the Committee, which consists of the following voting members:
  - 1) Eight Governors, including the Treasurer;
  - 2) the President;
  - 3) the President-elect; and
  - 4) the Immediate Past President.

The President selects the Chair from among the Governors appointed to the Committee.

- c. Procedure: Consideration of legislation by the Committee proceeds in the following order:
  - 1) The Committee first determines, by a two-thirds majority vote of those voting, whether the legislation is within the scope of GR 12.1 and whether it is appropriate under the circumstances for the Committee to determine a position on the legislation on behalf of the BOG.
  - 2) If the determination in subsection (1) above is affirmative, then the Committee will determine by a two-thirds majority vote of those voting what position, if any, to adopt on the legislation on behalf of the BOG.
  - 3) The Committee may determine that major or novel legislative issues will be referred to the BOG for consideration.
  - 4) Any issues to be considered or actions taken by the Committee must be promptly communicated to the BOG by electronic delivery; and actions taken by the Committee must also be communicated at the next BOG meeting.
  - 5) Due to the Committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between meetings the Committee may discuss and vote on issues by e-mail; however, if any Committee member objects to using an e-mail process for any particular issue, the Committee will take up that issue at its next scheduled Committee meeting.
- d. Quorum: A quorum consists of a majority of the Committee's voting members.
- e. Committee Meetings: The Committee may meet in executive session, with no persons present except the members of the Committee, other members of the BOG, the Executive Director, the Legislative Liaison, and such others as the Committee may authorize. Committee meetings may be held electronically.

### D. POLITICAL ACTIVITY

#### 1. Board of Governors

- a. The BOG acting as a board must not publicly support or oppose, in any election, any candidate for public office.

## IV. GOVERNANCE

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- b. The BOG acting as a board must not take a side or position publicly or authorize any officer or the Executive Director to take a side or position publicly on any issue being submitted to the voters or pending before the legislature, unless the matter is considered in public session at a meeting of the BOG with advance notice to the Bar's membership, and the following requirements are met:
  - 1) The BOG first votes to determine whether the issue is within the scope of GR 12.1; and
  - 2) If the BOG determines that the matter is within the scope of GR 12.1, then the BOG will vote to determine what position, if any, to adopt on the issue.
- c. The restriction applies fully to prohibit:
  - 1) the use of the name or logo of the Bar;
  - 2) the contribution of funds, facility use, or Bar staff time;
  - 3) participation or support to any degree in the candidate's campaign, or the campaign on either side of the issue.
- d. The restriction does not apply to matters that are exclusively related to the administration of the Bar's functions or to any issue put to a vote of the Bar's membership.

Notice of any BOG position or authorization to the President or Executive Director to take a position must be published on the Bar's website as soon as possible after the meeting at which the final action is taken.

### **2. President and President-elect**

The President and President-elect must not publicly support or oppose, in an election, any candidate for public office. This restriction applies fully to prohibit:

- a. the use of the President's and President-elect's name,
- b. the contribution of funds, or
- c. participation or support to any degree in the candidate's campaign.

Further, the President and President-elect must not take a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain except when specifically authorized or instructed by the BOG to do so on a matter relating to the function or purposes of the Bar.

### **3. Governors, other Officers, and Executive Director**

Governors, other officers, and the Executive Director must not publicly support or oppose, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is a member of that person's immediate family. This restriction applies fully to prohibit:

- a. the use of the Governor's, officer's, or Executive Director's name,
- b. the contribution of funds, or
- c. participation or support to any degree in the candidate's campaign.

## IV. GOVERNANCE

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The term "immediate family" as used in this Article includes a sibling, parent, spouse, domestic partner, child and the child of a spouse or domestic partner.

### **4. Other**

If any officer, Governor, or the Executive Director supports or opposes any candidate or issue as permitted in this Article, then that person must not state or imply that he or she is acting in his or her capacity as officer, Governor or Executive Director of the Bar unless specifically authorized to do so by the BOG.

### **5. Letterhead**

Use of Bar letterhead is limited to official business of the Bar and specifically must not be used for personal or charitable purposes, or in connection with any political campaign or to support or oppose any political candidate. Bar letterhead must not be used to support or oppose any public issue unless the BOG has taken a position on the issue.

## **E. REPRESENTATION OF THE BAR**

Except as specifically set forth in these Bylaws, no committee, section, task force, or other Bar entity, or member thereof, member of the BOG, or officer or employee of the Bar is permitted to speak for or represent the Bar, or any committee, section, task force, or entity thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State, unless prior authorization to do so has been specifically granted by the BOG by policy adopted by the BOG or by specific BOG action.

1. As the chief spokesperson of the Bar, the President has the authority to take action to execute the policies established by the BOG, and to serve as the representative of the Bar in connection therewith.
2. The BOG Legislative Committee is specifically authorized, under the terms of these Bylaws, to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.
3. The Executive Director may communicate with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters and policies established by the BOG, and is not required to obtain prior approval from the BOG before doing so.
4. Bar employees whose job duties require them to do so, and independent counsel retained at the direction of the President or the BOG, are specifically authorized to represent the Bar, or any committee, section, or task force thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State as may be necessary to perform their job duties.

## **V. APPROPRIATIONS AND EXPENSES**

### **A. APPROPRIATIONS**

Appropriations of Bar funds and authorization for payment of expenses will be made by the BOG through the adoption of an annual budget or by special appropriation as required.

1. The President appoints a BOG Budget and Audit Committee, which consists of a minimum of two Governors from each class, not to exceed eight Governors, one of whom must be the Treasurer. The President, President-Elect, Executive Director and Chief Financial Officer serve as ex officio, non voting members, and the Treasurer serves as Chair of the Committee and has a vote on the committee.
2. The Treasurer, together with the Budget and Audit Committee, will present a proposed Annual Budget to the BOG for approval prior to each fiscal year.
3. Decisions regarding non-budgeted appropriations must be made in accordance with the BOG-approved fiscal policies and procedures.

### **B. EXPENSES; LIMITED LIABILITY**

1. Requests for payment must be in such form and supported by such documentation as the BOG prescribes.
2. The financial obligation of the Bar to any Bar entity is limited to the amount budgeted and ceases upon payment of that amount unless the BOG authorizes otherwise.
3. Any liability incurred by any Bar entity, or by its members, in excess of the funds budgeted, will be the personal liability of the person or persons responsible for incurring or authorizing the liability.
4. Any liability incurred by any Bar entity, or by its members, not in accordance with the policies of the BOG or in conflict with any part of these Bylaws, will be the personal liability of the person or persons responsible for incurring or authorizing the liability.

## **VI. ELECTIONS**

### **A. ELIGIBILITY FOR MEMBERSHIP ON BOARD OF GOVERNORS**

1. Governors from Congressional Districts: Any Active member of the Bar, except a person who has previously served as a Governor for more than 48 consecutive months, may be nominated or apply for election as Governor from the Congressional District, or geographic regions within the Seventh Congressional District, in which such person resides.

Members that have served as Governors for more than 48 consecutive months at time of filing or application, are not eligible to be nominated or apply for election or appointment as Governor from the Congressional District, At-Large Governor position, or geographic regions

## VI. ELECTIONS

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within the Seventh Congressional District, in which such person resides, for a period of 36 months after the conclusion of that term of service.

2. At Large Governors: There will be a total of three At Large Governor positions.
  - a. Two At Large (“Member At Large Governor”) Positions: Any Active member of the Bar, except a person who has previously served as a Governor for more than 48 months, may be nominated or apply.
  - b. One Young Lawyer (“Young Lawyer At Large Governor”) Position: Any Active lawyer member of the Bar who qualifies as a Young Lawyer may be nominated or apply for election as an At Large Governor.

Members that have served as an At Large Governor for more than 48 consecutive months at time of filing or application, are not eligible to be nominated or apply for election or appointment as Governor from the Congressional District, At-Large Governor position or geographic regions within the Seventh Congressional District, or in which such person resides, for a period of 36 months after the conclusion of that term of service.

3. Filing of nominations and applications must be in accordance with this Article.

### B. NOMINATIONS AND APPLICATIONS

1. Applications for Governors elected from Congressional Districts must be filed in the office of the Bar not later than 5:00 p.m., on the 15th day of February of the year in which the election is to be held.
2. Applications and nominations for At Large Governor positions must be filed in the office of the Bar not later than 5:00 p.m. on the 20th day of April of the year in which the election or nomination is to be held.
3. Applications for the position of President-elect must be filed by the deadline set forth in the notice published in the Bar’s official publication and posted on the Bar’s website; notice must be given not less than 30 days before the filing deadline.
4. In the event no application is made for a Congressional District seat, the position will be treated, advertised, and filled as an at-large position for that election cycle only.

### C. ELECTION OF GOVERNORS

1. Election of one Governor from each Congressional District and for the at-large positions will be held every three years as follows:
  - a. Third, Sixth, Eighth Congressional Districts and the North region of the Seventh Congressional District and one At Large Member Governor – 2014 and every three years thereafter.
  - b. First, Fourth, Fifth Congressional Districts and the South region of the Seventh Congressional District and one At Large Young Lawyer Governor – 2015 and every three years thereafter.
  - c. Second, Ninth and Tenth Congressional Districts and one At Large Member Governor – 2013 and every three years thereafter.

## VI. ELECTIONS

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2. Election of Governors from Congressional Districts
  - a. Eligibility to Vote. All Active members, as of March 1st of each year, are eligible to vote in the BOG election for their district, subject to the election schedule shown above. Active members residing in the State of Washington may only vote in the district in which they reside. Active members residing outside the State of Washington may only vote in the district of the address of the agent they have designated within the State of Washington for the purpose of receiving service of process as required by APR 13, or, if specifically designated to the Executive Director, within the district of their primary Washington practice.
  - b. Ballots. On March 15th of each election year, the Executive Director will deliver ballots containing the names of all candidates for Governor for each District in which an election is to be held to each Active member eligible to vote in that District. Elections will be conducted via a secure website ("electronic voting"). Active members who are eligible to vote in an election may request a paper ballot to be used in place of the electronic ballot. Electronic ballots will be sent to active members eligible to vote in an election, and will include information about how to vote by electronic voting. Should any Active member eligible to vote fail to receive a ballot, or receive a defective ballot, the member may obtain a replacement ballot by furnishing proof of eligibility to the Executive Director, and upon returning the defective ballot if the member received a paper ballot.
  - c. Voting Procedure. Each member eligible to vote in the election may vote in one of the following ways. Each member has only one vote. Only one vote will be counted from any member who inadvertently votes both by paper ballot and by electronic means:
    - 1) By paper ballot. The member must, after marking a ballot, place the ballot in the envelope marked "Ballot," place that envelope in the envelope directed to the Bar, print or type the member's name, sign the outside of the envelope, and cause the envelope containing the ballot to be delivered to the office of the Bar by no later than 5:00 p.m. (PDT) on April 1st of that election year. Alteration of or addition to the ballot, other than the marking of the member's choice, invalidates the ballot.
    - 2) By electronic voting. Voters will be sent links to their ballots via email. Voting must be completed by no later than 5:00 p.m. (PDT) on April 1st of that election year.
  - d. Voting System. In any election for membership on the BOG, if there is only one qualified candidate nominated, then that candidate will be declared elected. If there are only two candidates for a position, then the candidate receiving the highest number of votes will be declared elected. If there are more than two candidates, and if no candidate receives more than 50% of the total vote, the two candidates receiving the highest number of votes will participate in a run-off election. In the event of a tie for the second highest vote total, all candidates who are tied will participate in the run-off election along with the candidate who received the most votes.

If a run-off election is necessary, the Executive Director in consultation with the President will designate the date for delivering the ballots and the deadline for voting, which will be 5:00 p.m. (PDT), 10 days



## VI. ELECTIONS

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after the date the ballots are delivered. The candidate receiving the highest number of votes will be declared elected.

- e. Checking and Custody of Ballots. The Executive Director will deposit all satisfactorily identified and signed paper ballot envelopes in receptacles segregated as to Districts. The receptacles will remain in the custody of the Executive Director until the ballots are counted. Any paper ballots not enclosed in an envelope, satisfactorily identified and signed, will not be counted.
- f. Electronic votes must be verified and securely stored by the online voting vendor.
- g. Counting of Ballots. Paper ballots will be counted in the office of the Bar, and electronic ballots, if any, will be counted by the online voting vendor and certified. The election process will be supervised by an Election Board of not less than three Active members appointed by the President. At least two members of the Election Board must be present at any count of paper ballots. Any Active member of the Bar may be present at such count of paper ballots.

The Executive Director will establish and follow a procedure that will ensure that no member's vote is counted more than once.

Promptly upon determination of the election results, the Election Board will forward the results to the Executive Director, who will notify each candidate as promptly as reasonably possible of the result of the election and publicly announce the election of the successful candidates. Official written notice of the election results also will be emailed to each candidate.

- h. Retaining Ballots. All paper ballots and identifying return envelopes must be retained in the custody of the Executive Director. The elections vendor must retain the electronic voting data, and maintain an auditable trail of the election, for no less than 90 days after the close of the election.
- i. If no challenge to the ballot count has been made after 90 days, the ballots and identifying return envelopes may be destroyed, and the Executive Director will notify the vendor to destroy the data and auditable trail for that election.

### 3. 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 Committee shall forward at least three candidates who have the 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

## VI. ELECTIONS

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and types of practice, and years of membership, provided that no single factor will be determinative. The BOG shall then place all candidates forwarded by the Diversity Committee on the ballot to be elected by all eligible voting members. If the Diversity Committee forwards less than three candidates the BOG may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Diversity Committee on the ballot to be elected by all eligible voting members.

- b. Young Lawyer At Large Governor: The Washington Young Lawyers Committee shall forward at least three candidates to the BOG who qualify as Young Lawyers as defined by Article XII(B) of these Bylaws as of December 31 in the year of the election. The BOG shall then place all candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these bylaws. If the Washington Young Lawyers Committee forwards less than three candidates the BOG may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these bylaws.

### D. ELECTIONS BY BOARD OF GOVERNORS

#### 1. Office of President-Elect.

The BOG will elect an Active lawyer member of the Washington State Bar Association to serve as President-elect. The election shall take place during a BOG meeting not later than the 38th week of each fiscal year, and will be by secret written ballot. The President-elect will take office upon the incumbent President-elect becoming President or upon vacancy of the office of President-elect.

If at the time of election, no President-elect in the preceding three years was an individual whose primary place of business was located in Eastern Washington, the President-elect must be an individual whose primary place of business is located in Eastern Washington. For purposes of these Bylaws, "Eastern Washington" is defined as that area east of the Cascade mountain range generally known as Eastern Washington. In any year where the President-elect must be an individual from Eastern Washington and no qualifying application is received within the timeframe allowed, the President will advise the BOG, and the BOG, at any regular meeting or special meeting called for that purpose, will establish procedures to re-open and extend the application period or otherwise address the issue. Such action by the BOG may include waiver of any geographic limitation for the year in question.

#### 2. Treasurer

The Treasurer must be a current lawyer Governor and will be nominated and elected by the BOG at the second to the last regularly scheduled BOG meeting of the fiscal year. The Treasurer will be elected by simple majority of Governors voting. In the event there is more than one nomination, the vote will be by secret written ballot.

## VI. ELECTIONS

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### 3. Election Procedures

Elections of At Large Governors, President and President-elect elections, and any other elections held by the BOG under these Bylaws, except elections for the position of Treasurer, are conducted as follows:

- a. Notice of the position will be advertised in the Bar's official publication and on the Bar's website no less than 30 days before the filing deadline and must include the closing date and time for filing candidate applications.
- b. Following expiration of the closing date and time identified, all candidate names will be posted publicly.
- c. The BOG may appoint a committee to recommend candidates to the BOG from all who have submitted their applications for a position in a timely manner.
- d. All recommended candidates, or others as determined at the discretion of the BOG, will be interviewed in public session of the BOG's meeting. Candidates who are competing for the same position must not be present for each other's interviews.
- e. Discussion of the candidates will be in public session but candidates will be asked by the President not to be present.
- f. Election of candidates will be conducted by secret written ballot.
- g. If no candidate for a given position receives a majority of the votes cast, the two candidates receiving the highest number of votes will be voted on in a run-off election. In the event of a tie for the second highest vote total, all candidates who are tied will participate in the run-off election along with the candidate who received the most votes. The candidate with the most votes in the run-off will be deemed the winner.
- h. Ballots will be tallied by three persons designated by the President, one of whom will be the Executive Director.
- i. Proxy votes are not allowed; however, a Governor who participated in the interview and discussion process by electronic means may cast a vote telephonically via a confidential phone call with the Executive Director and the other persons designated by the President to count the ballots.
- j. The elected candidate will be announced publicly following the vote. However, the vote count will not be announced and all ballots will be immediately sealed to both the BOG and the public and remain in the custody of the Executive Director for 90 days, when they will be destroyed.

### E. NEW GOVERNOR ORIENTATION

Any newly elected Governor will undergo an orientation period commencing from the time of his or her election until being sworn in by the Supreme Court. This orientation must include attendance and participation in a New Governor Orientation to be held at a time and place specified by the Executive Director. In addition, the Governors-elect are expected to attend other meetings and/or activities as invited by or directed by the BOG. Governors-elect must also attend public meetings of the BOG as non-voting Governors. This attendance does not include executive sessions, unless authorized by the BOG.

## **VI. ELECTIONS; VII. MEETINGS**

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### **F. MEMBER RECALL OF GOVERNORS**

Any Governor may be removed from office by member recall. A recall vote is initiated by an Active member filing a petition for recall with the Executive Director. A petition for recall must identify the Governor, the Governor's congressional district or at-large status, and the Governor's term of office; set forth the basis for the recall; and contain the names and signatures of the Active members supporting the petition.

1. For congressional district Governors, the petition must be signed by five percent of the Active members of the Governor's congressional district at the time of filing. Only members of the Governor's district who are on Active status at the time of the vote are eligible to vote.
2. For the Young Lawyers At Large Governor, the petition must be signed by five percent of the Young Lawyers as defined in Article XII of these Bylaws at the time of filing. Only Young Lawyers who are on Active status at the time of the vote are eligible to vote. For all other At Large Governors, the petition must be signed by five percent of the Active members of the Bar at the time of filing, and only members on Active status at the time of the vote are eligible to vote.
3. The voting procedures set forth in the "Election of Governors from Congressional Districts" will be used as a procedural guideline for conducting a recall vote, and a majority vote is sufficient to pass a recall petition.

### **G. 2020 ELECTIONS**

In response to the Corona virus and public safety concerns, the 2020 elections conducted by the Board of Governors pursuant to these Bylaws may be scheduled anytime prior to 44th week of the fiscal year.

## **VII. MEETINGS**

### **A. GENERAL PROVISIONS; DEFINITIONS**

#### **1. Definitions**

As used in this Article unless the context indicates otherwise:

- a. "Meeting" means any regular or special meeting of the BOG or other Bar entity at which action is contemplated. A "special meeting" is a meeting limited to specific agenda topics.
- b. When these Bylaws refer to a "Bar entity" or "other Bar entity," this means any body, no matter how named, working under the authority of, or administered by, the Bar, pursuant to these Bylaws or court rule. The activities of such Bar entities subject to the Open Meetings Policy of this Article VII may include, but are not limited to, conducting meetings, taking actions, conducting hearings, or gathering information or member comment.
- c. "Action" means the transaction of the official business of the Bar by the BOG or other Bar entity including but not limited to receipt of member information, deliberations, discussions, considerations, reviews, evaluations, and final actions.

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“Final action” means a collective positive or negative consensus, or an actual vote of the voting members present, whether in person or by electronic means, at the time of the vote, upon a motion, proposal, resolution, or order.

- d. “Minutes” means, at a minimum, recording the members of the Bar entity in attendance, the date and time of the meeting, the agenda of the meeting, the subject and results of any final action taken, and a reasonable summary of the issues and points raised during discussion.

### 2. Order of Business

The President or Chair of the meeting determines the order of the business of any meeting.

## B. OPEN MEETINGS POLICY

1. All meetings of the BOG or other Bar entity must be open and public and all persons will be permitted to attend any meeting, except as otherwise provided in these Bylaws or under court rules. A meeting may be held in person or by videoconference and/or teleconference. Meeting schedules and contact information will be made reasonably available by the Bar.
2. This Open Meetings Policy does not apply to duly designated executive sessions, meetings otherwise excluded under the terms of these Bylaws, meetings of the BOG Personnel and Awards Committees, the Judicial Recommendation Committee, or to matters regulated by the Rules for Enforcement of Lawyer Conduct, the Admission and Practice Rules, or the Rules for Enforcement of Conduct of Limited Practice Officers.
3. Minutes of all meetings, except for executive sessions, must be recorded and approved minutes will be open to public inspection upon request. Minutes from every BOG public session will be posted on the Bar’s website once approved by the BOG. Sub-entities (for example, subcommittees) need not record minutes, unless they are specifically delegated the authority to take final action on behalf of the entity.
4. A member of the public will not be required, as a condition of attendance at a meeting, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.
5. In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting not feasible, and order cannot be restored by the removal of individuals who are interrupting the meeting, the persons presiding over the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members of the Bar entity. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, will be allowed to attend any session held pursuant to this paragraph. Nothing in this paragraph prohibits the Bar entity from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.
6. At any meeting required to be open to the public, no Bar entity is permitted to vote by secret ballot, except for elections for At Large Governors and the President-elect, as required by Article VI(D) for purposes of elections, or as otherwise provided by these Bylaws. A vote taken by email

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will not be deemed a secret ballot so long as the vote, including the question voted on, the identity of each person voting, and vote cast by each person, is recorded and published with the minutes. Votes taken on matters in a duly designated executive session need not be recorded or published, unless otherwise required by these Bylaws or court rule.

### 7. Executive Session

- a. The BOG may meet in Executive Session at the discretion of the President subject to a majority vote of the Board of Governors that an issue is not properly raised in Executive Session, or as specifically provided by court rule:
  - 1) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price, or to consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price;
  - 2) To discuss an individual disciplinary matter, character and fitness matter, Client Protection Fund claim, or other matter made confidential by court rule or these Bylaws;
  - 3) To evaluate the qualifications of an applicant for employment as Executive Director or General Counsel, or for appointment to a position with the Bar or on a Bar entity; to review the performance of the Executive Director; or to receive or evaluate complaints regarding Officers, Governors, Bar staff, or appointees to other Bar entities;
  - 4) To discuss with legal counsel representing the Bar in litigation or potential litigation to which the Bar, the Bar entity, or an employee or officer of the Bar or member of the Bar entity is or is likely to become a party, or to have other privileged or confidential communications with legal counsel representing the Bar;
  - 5) To discuss legislative strategy; or
  - 6) To discuss any other topic in which the President in his or her discretion believes the preservation of confidentiality is necessary or where public discussion might result in violation of individual rights or in unwarranted or unjustified private or personal harm. This subsection 6 shall be narrowly and strictly construed; mere embarrassment or criticism is insufficient standing alone to address an issue in Executive Session.

Executive session of the BOG may proceed with no persons present except the President, President-elect, Immediate Past President, Governors, Executive Director, General Counsel, and such other persons as the BOG may authorize on a case by case basis. Any others shall be presumptively excluded, but may be admitted upon approval of a majority of the Board. An individual may be recused from executive session for conflict of interest or other reasons at the person's request or by a majority vote of the BOG. The President will publicly announce the purpose for meeting in executive session and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the President.

- b. A BOG committee may meet in Executive Session subject to the same terms and conditions as the Board may meet in Executive Session as identified in the preceding section.

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- c. Other Bar entities may meet in Executive Session on matters within the scope of their work at the discretion of the Chair or as specifically provided by court rule:
  - 1) To discuss an individual disciplinary matter, character and fitness matter, Client Protection Fund claim, or other matter made confidential by court rule or these Bylaws;
  - 2) To evaluate the qualifications of an applicant for appointment to a Bar entity;
  - 3) To discuss with legal counsel representing the Bar in litigation or potential litigation to which the Bar, the Bar entity, or an employee or officer of the Bar or member of the Bar entity is or is likely to become a party, or to have other privileged or confidential communications with legal counsel representing the Bar; or
  - 4) To discuss legislative strategy.

Executive sessions of other Bar entities may proceed with no persons present except members of the entity and such other persons as the Chair may authorize, provided, however, that Bar staff and the BOG liaison may not be excluded from executive session. An individual may be recused from executive session for conflict of interest or other reasons at the person's request. The Chair will publicly announce the purpose for meeting in executive session and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the Chair.

- 8. Each Bar entity will set regular and special meetings as needed. It will not be a violation of these Bylaws for a majority of the members of a Bar entity to travel together or gather for purposes other than a meeting or special meeting as these terms are used in these Bylaws, provided that they take no final action as defined in these Bylaws.
- 9. A Bar entity may adjourn any meeting to a time and place specified in the order of adjournment. A quorum is not required to adjourn. If all members are absent from any meeting the Chair of the Bar entity may declare the meeting adjourned to a stated time and place. He or she will cause written or electronic notice of the adjournment to be given to all members of the Bar entity within 48 hours of the adjournment.
- 10. Any member may timely petition the BOG to declare any BOG final action voidable for failing to comply with the provisions of these Bylaws. Any member may petition the BOG to stop violations or prevent threatened violations of these Bylaws.

### C. MEETINGS OF THE BOARD OF GOVERNORS

#### 1. Regular Meetings

Regular meetings of the BOG will be held at such times and locations as the President may designate. Notice of the date, time, and location of each regular meeting must be posted on the Bar's website no later than 45 days prior to the date of the meeting. The agenda for the meeting will be posted on the Bar's website once finalized. Late materials related to agenda items may be accepted. Any changes to the agenda will be posted as soon as practicable given the circumstances of the change.

#### 2. Special Meetings

- a. Special meetings of the BOG may be called by the President at his or her discretion, by the Executive Director, at the written request of five members of the BOG, or at the written

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request of three members of the BOG's Executive Committee. Special meetings will customarily be held at the Bar's offices. All reasonable efforts will be made to schedule special meetings so the maximum number of Governors may attend, and Governors who are unable to attend in person may attend by electronic means.

- b. Notice of a special meeting must be in writing and must set forth the time, place and purpose thereof, and must be given to all members of the BOG, the officers, the Executive Director, and the General Counsel, and posted on the Bar's website, at least five days prior to the meeting. The five days' notice requirement may be waived by unanimous consent of the BOG. The special meeting will only consider such matters as set forth in the notice of the meeting. A special meeting may be canceled by the written consent of eight Governors, directed to the Executive Director, who in turn will transmit the cancellation notice and supporting documentation to all persons who were sent notice of the meeting.

### 3. Emergency Meetings

An emergency meeting may be called, with 24-hour electronic notice to all members of the BOG and the General Counsel:

- a. When the President determines that an extraordinary matter requires immediate attention of the BOG; or
- b. By the Executive Director when there has been a natural disaster or catastrophic event that significantly impacts the Bar's ability to function.

The emergency meeting will be held at a location designated by the President or Executive Director, and Governors who are unable to attend in person may attend by electronic means. Notice of the meeting must indicate the subject matter to be considered, and the meeting must only consider such noted subject matter.

### 4. Agenda

For every BOG meeting, the President will establish the agenda and order of business. Upon request to the President, a Governor may add an item to the upcoming regular meeting's agenda. If in the President's good faith estimation the upcoming agenda is full, the requested item will be placed on the next regularly scheduled meeting's agenda, unless otherwise agreed by the President and the requesting Governor. However, nothing in this section shall prohibit the Board of Governors upon a duly seconded motion from addressing any issue or taking any action a majority of the Board determines to take if otherwise permitted by these Bylaws.

### 5. Parliamentary Procedure

Proceedings at BOG meetings shall be governed by the most current edition of Robert's Rules of Order.

## D. EXECUTIVE COMMITTEE OF THE BOG

1. The BOG recognizes the need for an Executive Committee to address emergent but non-policy making matters that need timely attention in between BOG meetings. The Executive Committee's authority derives solely from the authority of the BOG, and is limited by the



**VII. MEETINGS;**  
**VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP**

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authority granted by the BOG. The BOG may establish a Charter specifically delineating the duties and functions of the Executive Committee.

2. The Executive Committee members shall include the President, the President-elect, the Immediate Past President, the Treasurer, the Chair of the BOG Personnel Committee, the Executive Director, and one member of each Governor class as elected by that class at or before the first Board meeting of the fiscal year unless that class is already represented. For any particular meeting, a governor class representative may designate an alternate from their class who is authorized to attend as the class representative for that particular meeting. Only the President, President-elect, and Governors may vote on the Executive Committee.
3. An Executive Committee meeting may be called by any member of the Executive Committee, provided that at least five days' notice is given to the Board of Governors and Executive Committee members. If an emergency situation requires less than five days' notice, the notice period may be waived by unanimous consent of the Executive Committee members but the full Board must be given notice at the same time of both the intent to consider an emergency meeting and the day and time of the meeting itself.
4. The Executive Committee may meet as necessary to develop the BOG meeting agenda or for discussion and action on matters within its scope. All agenda setting meetings will be set in advance and notice provided in writing to all Governors with the day, time, place, and agenda or purpose of the Executive Committee's meeting, and any Governor may attend the meeting. Although emergent issues may make it difficult to provide advanced notice of Executive Committee meetings not related to meeting and agenda setting, the Executive Committee must provide advance notice to all Governors to permit them to attend whenever feasible to do so.

**E. FINAL APPROVAL OF ACTION BY THE BOARD OF GOVERNORS**

Reports, recommendations, or proposals do not represent the view or action of the Bar, unless approved by a vote of the BOG.

**VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP**

**A. MEMBER REFERENDA**

1. The Board of Governors sets the policy for the Bar. The membership, through a referendum, has the opportunity to affect policy set by the BOG. Membership referenda may accomplish the following:
  - a. Reverse a final action taken by the Board of Governors;
  - b. Modify a final action taken by the Board of Governors;
  - c. Enact a resolution; or
  - d. Amend these bylaws.
2. Any Active member may file a petition for a referendum. All petitions must meet the following requirements:

## VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

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- a. The petition must set forth the exact language of the proposed resolution, bylaw amendment, or modification/reversal of the BOG action.
  - b. The petition must be signed by at least five percent of the Active membership of the Bar at the time the petition is filed.
  - c. The petition must comply with GR 12. The BOG will determine, within 30 days of the filing of a petition for a referendum, if the subject of the petition falls within the requirements of GR 12.
  - d. If the subject of the petition seeks to reverse or modify final action taken by the Board of Governors, then the petition must be filed with the Executive Director within 90 days of that final action.
  - e. All petitions for a referendum must be filed with the WSBA Executive Director.
3. All qualifying petitions will be put to a vote of the active membership within 90 days of the date that the petition was filed.

### **B. BOG REFFERALS TO MEMBERSHIP**

The Board of Governors may also refer a proposed resolution, bylaw amendment, or other proposal to a vote of the Active membership in accordance with the procedures set forth in these bylaws.

### **C. BALLOT PREPARATION**

The Executive Director shall prepare ballots as directed by the BOG. The proponents of the action may submit, for inclusion with the ballot a “statement for” not to exceed 750 words and a “rebuttal of statement against” not to exceed 250 words. The opponents of the action may submit, for inclusion with the ballot, a “statement against” not to exceed 750 words and a “rebuttal of statement for” not to exceed 250 words. The Executive Director will determine the deadlines for filing all such statements with the Bar and provide notice of those deadlines. If more than one opponent statement is submitted, the WSBA President will determine which statement(s) will be submitted with the ballot.

### **D. VOTING PROCEDURES**

The procedures set forth in the “Election of Governors from Congressional Districts” section of these bylaws shall be used as a procedural guideline. The ballot, petition, and accompanying statements shall be posted on the WSBA website, distributed electronically to Active members with e-mail addresses on record with the Bar, and mailed to all other Active members. The deadline for return of ballots shall be not less than 30 days from the date of distribution.

### **E. EFFECT OF VOTE**

1. All member referenda and BOG referrals only require a majority of those Active members voting to pass. No unsuccessful member referenda may be resubmitted to the membership until two years have passed from the date of the voting results.
2. The BOG may not alter the effects of a member referenda that passed sooner than two years from the date of the voting results.

**IX. COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES**

**A. GENERALLY**

1. The work of the Bar shall be accomplished by the BOG, the officers, and the Bar staff. To facilitate the work of the Bar in accordance with its purposes as provided in Article I, the BOG may delegate such work to an appropriate Bar entity, such as sections, committees, councils, task forces, or other Bar entity, however that may be designated by the BOG.
2. The work of any Bar entity established by the BOG must:
  - a. have a defined scope that requires the active and continuing attention of the BOG;
  - b. further the Bar's Guiding Principles and/or the purposes of the Bar outlined in General Rules promulgated by the Supreme Court; and
  - c. enhance consideration of a topic that is beyond the time and expertise of the BOG and staff by incorporating expertise and additional viewpoints from the broader community.
3. A list of the current committees, councils, and task forces, and their functions, will be maintained by the Executive Director. The BOG may terminate any recurring committee whenever in its opinion such committee is no longer necessary. Any nonrecurring Bar entity shall automatically terminate pursuant to the terms of its charter or originating document.
4. Governors appointed to serve as BOG liaisons to any Bar entity are not voting members. However, if a Governor is appointed as a member of any Bar entity, then he or she may vote in accordance with the terms of the charter or originating document for that entity.

**B. COMMITTEES AND OTHER BAR ENTITIES**

**1. Committees**

Committees are created and authorized by the BOG to study matters relating to the general purposes and business of the Bar which are of a continuous and recurring character. The number, size, and functions of each committee will be determined from time to time by the BOG.

- a. Committee members, Chairs, and Vice Chairs must be Active members of the Bar. Exceptions: (a) up to two Pro Bono members are permitted to serve on the Pro Bono and Public Service Committee (PBPS) and may be appointed to serve as the Chair, Co-Chair, or Vice-Chair of that committee; and (b) faculty of Washington state law schools who are not Active members of the Bar are permitted to serve on the Committee on Professional Ethics (CPE).
- b. Committee members are appointed by the BOG. Appointments to committees are for a two-year term unless the BOG determines otherwise. A committee member's service on any committee is limited to two consecutive terms, after which the member cannot be reappointed to that committee for three years, subject to individual exceptions for cause as approved by the BOG. Appointments to the Legislative Committee will be made pursuant to the written BOG policy for that committee.

## IX. COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES

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- c. The President-elect will annually select the Chair or Vice Chair of each committee, with the BOG having the authority to accept or reject that selection.
- d. In the event of the resignation, death, or removal of the Chair or any committee member, the BOG may appoint a successor to serve for the unexpired term.

### 2. Other Bar Entities

The BOG may from time to time establish other Bar entities to study matters relating to specific purposes and business of the Bar which are of an immediate and/or non-recurring character. These other Bar entities may be titled as task forces, workgroups, or any other label the BOG may designate.

- a. The President will select the persons to be appointed to such other Bar entities, with the BOG having the authority to accept or reject those appointments. The term of appointments will be until the work of the entity has been concluded or until such committee member's successor is appointed.
- b. The Chair(s) of any other Bar entity shall be appointed by the President at the time of creation of the entity, with the BOG having the authority to accept or reject that selection, and will serve for the duration established by the BOG or until replaced.
- c. In the event of the resignation, death or removal of the Chair or any other member of the Bar entity, the President may appoint a successor to serve for the unexpired term.

### 3. General Duties and Responsibilities for Committees and Other Bar Entities

- a. Each committee or other Bar entity will carry out various tasks and assignments as requested by the BOG or as the entity may determine to be consistent with its function or its charter or originating document.
- b. Each Bar entity must submit an annual report to the Executive Director and submit such other reports as requested by the BOG or Executive Director.
- c. These Bar entities are not permitted to issue any report, take a side publicly on any issue being submitted to the voters, pending before the legislature, or otherwise in the public domain, or otherwise communicate in a manner that may be construed as speaking on behalf of the Bar or the BOG without the specific authorization to do so by the BOG. Reports, recommendations, or proposals do not represent the view or action of the Bar unless approved by a vote of the BOG.
- d. Bar staff will work with each committee or other Bar entity to prepare and submit an annual budget request as part of the Bar's budget development process. Each committee and other Bar entity must confine its expenditures to the budget and appropriation as approved by the BOG as generally set forth in these Bylaws.
- e. Each committee and other Bar entity must prepare and distribute minutes of each meeting if required under Article VII of these Bylaws. The minutes will be distributed to its members and posted on the Bar's website, as soon as is reasonably possible after a meeting. The form of the minutes must comply with Article VII of these Bylaws.

## **IX. COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES;**

### **X. REGULATORY BOARDS;**

#### **XI. SECTIONS**

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- f. The success of any committee or other Bar entity is dependent upon the active participation of its members.
  - 1) Chairs and committee members serve at the pleasure of, and may be removed by, the Board. Neither malfeasance nor misfeasance is required for removal.
  - 2) Any committee member who fails to attend two consecutive regularly called meetings may be removed by the BOG, in the absence of an excuse approved by the Chair.

#### **C. COUNCILS**

- 1. Councils are created and authorized by the BOG to serve as advisory committees to the BOG on matters and issues of particular import to the Bar.
- 2. Nominations to councils are made as set forth in the council's charter or originating document, and are confirmed by the BOG. Except as may be specifically required under the council's charter or originating document, council members are not required to be members of the Bar.
- 3. Terms of appointments to councils will be as set forth in the council's charter or originating document.
- 4. Each council will carry out the duties and tasks set forth in its charter or originating document.
- 5. Each council must submit an annual report, and such other reports as may be requested, to the BOG or Executive Director.
- 6. Bar staff will work with each council to prepare and submit an annual budget request as part of the Bar's budget development process.

## **X. REGULATORY BOARDS**

The Bar administers regulatory boards created by court rules and has any powers necessary to administer those boards. Appointment to regulatory boards is as provided in the promulgating rule or as otherwise directed by the Supreme Court. A list of the current regulatory boards and their functions will be maintained by the Executive Director. Governors and Bar staff appointed as liaisons to regulatory boards are not voting members of those boards. Liaisons may not be excluded but will not participate in executive session or confidential deliberations except as a resource.

## **XI. SECTIONS**

### **A. DESIGNATION AND CONTINUATION**

Sections are entities of the Bar created and tasked to carry on the work of the Bar and further their purposes as defined in individual section bylaws. A list of all current sections will be maintained by the Executive Director. Once established, a section will continue until discontinued as provided in these Bylaws or in the section bylaws.

### B. ESTABLISHING SECTIONS

1. The BOG will consider the establishment of a new section on a petition and report endorsed by at least 150 Active members of the Bar. Any such petition must be filed with the Executive Director at least one BOG meeting prior to the meeting at which action on the proposal is contemplated and must substantially set forth:
  - a. The contemplated purpose of the section, which will be within the purposes of the Bar and not in substantial conflict with the purpose of any existing section or committee, the continuance of which is contemplated after the section is established;
  - b. Proposed bylaws of the section, which must contain a definition of its purpose;
  - c. The names of any proposed committees of the section;
  - d. A proposed budget of the section for the first two years of its operation;
  - e. A list of members of the Bar who have signed statements that they intend to apply for membership in the section;
  - f. A statement of the need for the proposed section.
2. The BOG may create a new section by combining sections as set forth in these Bylaws.

### C. MEMBERSHIP

1. Any Active member of the Bar may be a voting member of a section and eligible for election to office in the section upon paying the annual dues established by the section. Inactive members may not be voting members of sections.
2. If provided for in the section bylaws, any Pro Bono member pursuant to APR 3(g), Judicial member, House Counsel under APR 8(f), professor at a Washington law school (whether licensed in Washington or not), or any lawyer who is a full time lawyer in a branch of the military who is stationed in Washington but not licensed in Washington, may be a voting member of the section and eligible for election to office in the section.
3. Law students will be allowed to be nonvoting members of any section at a standard annual dues amount set by the BOG.
4. Sections may adopt bylaw provisions authorizing inactive members, and others not eligible for section membership as voting members, to be nonvoting members or “subscribers” of the section.

### D. DUES

Dues will be paid annually in the amount determined by the section executive committee and approved by the BOG. Any person who fails to pay the annual dues will cease to be a member of the section.

### E. BYLAWS AND POLICIES

Sections are subject to all Bar Bylaws, policies, and procedures. Each section must have bylaws consistent with the Bar Bylaws. Amendments to section bylaws may be made by a majority vote of the voting executive committee members or by a majority vote of section members present at a section meeting. Section bylaws or amendments thereof will become effective when approved by the BOG.

### F. SECTION EXECUTIVE COMMITTEE

1. Each section will have a section executive committee consisting of, at minimum, the following Officer positions: Chair, Secretary and Treasurer (or Secretary/Treasurer); and may have At-Large members. Unless otherwise permitted by a section's bylaws, voting members of a section executive committee must be Active members of the Bar and a member of the section for their entire term of office on the executive committee. Additionally, a section executive committee may have non-voting members. The section executive committee is empowered to act on behalf of the section unless it chooses to take a vote of the section membership.
2. Due to the section executive committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between executive committee meetings during a legislative session, upon notice to all section executive committee members, the section executive committee may discuss and vote on issues relating to the section's position on pending or proposed legislation by email. However, if any section executive committee member objects to using an email process for any particular issues, the section executive committee instead will take up that issue at its next section executive committee meeting.
3. Officers. Unless otherwise permitted by a section's bylaws, officers of a section executive committee must be Active members of the Bar and elected by the section membership to complete the one-year term of office.
  - a. Chair. The chair of the section presides at all meetings of the section and section executive committee, and will have such other executive powers and perform such other duties as are consistent with the Bar and section bylaws.
  - b. Secretary. The Secretary will take minutes at each meeting of the section and section executive committee, and provide approved minutes to the Bar for publication and record retention.
  - c. Treasurer. The Treasurer will work with the Bar to ensure that the section complies with Bar fiscal policies and procedures, work with the Bar to prepare the section's annual budget, and review the section's monthly financial statements for accuracy and comparison to budget.
  - d. A section may have additional officer positions as defined in its sections bylaws.
4. At-Large Members. At-large members of the section executive committee will be voting members. At-large members will be elected by the section membership for terms of up to three-years. A section executive committee may appoint its Young Lawyer Liaison (if any) as a voting member of the section's executive committee.
5. Non-voting Members. Voting members of the section executive committee may appoint non-voting members from among the current members of the section to further the work of the Bar and section. Non-voting members serve at the discretion of the section executive committee.
6. Executive committee members are not subject to a limit on the number of the consecutive terms they may serve unless stated in a section's bylaws.
7. All section executive committee positions will begin October 1 each year.

### G. NOMINATIONS AND ELECTIONS

1. Nominations
  - a. Nominating Committee. Each section will have a nominating committee consisting of no less than three section members appointed annually by the Chair or executive committee. At least one member of the nominating committee should not be a current member of the section executive committee.
  - b. The executive committee should reflect diverse perspectives. To assist this, all applicants will apply through an electronic application process administered by the Bar. The application form will, on a voluntary basis, solicit information including, but not limited to, the person's ethnicity, gender, sexual orientation, disability status, area of practice, years of practice, employer, number of lawyers in law firm, previous involvement in section activities, and skills or knowledge relevant to the position. The nominating committee should actively take factors of diversity into account when making recommendations.
  - c. Alternate Nomination Process. The executive committee will also have an alternative process to allow for nominations to occur outside of the nominating committee process.
  - d. Executive Committee Approval. The executive committee will approve a list of nominees for each open position. Persons nominated through an alternative nomination process will be included on the final list of approved nominees.
2. Elections
  - a. Only voting members of the section may participate in section elections.
  - b. The Bar will administer the elections by electronic means and certify results, unless the section develops its own equivalent electronic election process. For sections that administer elections through an alternate equivalent electronic election process, the section must provide the Bar with the total number of votes cast and the number of votes received for each candidate immediately following the close of the election.
  - c. In the event of a tie, the section executive committee will implement a random tie-breaker of its choice, such as a coin toss or a drawing of lots, to determine the winner.
  - d. All election processes must comply with the Bar record retention policies.
3. Timing. Nominations and elections for open section executive committee positions will be held no later than June 30th of each year.

### H. VACANCIES AND REMOVAL

1. The section executive committee will appoint, by a majority vote, members to fill vacancies on the section executive committee. When a member is appointed to fill a vacancy in an unexpired term, the member will do so until the next annual election when an individual will be elected to serve the remainder of the vacated term.
2. Any member of the executive committee may be removed by a two-thirds majority vote of the section executive committee. Grounds for removal include, but are not limited to, regular absence from section executive committee meetings and events, failure to perform duties, unprofessional or discourteous conduct or whenever, in the executive committee's judgment, the executive committee member is not acting in the best interest of the section membership.



### I. OTHER COMMITTEES

The section executive committee may create other committees as necessary to further the purposes of the section. Section committees, section committee chairs, and section committee members serve at the discretion of the section executive committee.

### J. BUDGET

Each section executive committee must submit an annual budget request for each fiscal year to the BOG for review. The BOG will approve final section budgets as part of the Bar's annual budget. The section executive committee expenditures must be consistent with the approved section budget and consistent with the Bar fiscal policies and procedures.

### K. SECTION REPORTS

Each section must submit an annual report to the Executive Director and such other reports as requested by the BOG.

### L. TERMINATING SECTIONS

1. The BOG may consider terminating a section when it appears the section is no longer carrying on the work of the Bar as defined in these Bylaws. The issue will be raised (a) on motion, (b) on petition, or (c) at a "viability review" as defined in these Bylaws.
2. A section that has less than 75 voting members for two consecutive years will be automatically placed on the BOG agenda for a "viability review." The BOG has the discretion to retain a section despite what might otherwise be considered to be a lack of viability when in the BOG's opinion the section is carrying on the work of the Bar as defined in these Bylaws, and the work is of value to the legal profession.
3. Any section subject to a motion, petition, or viability review pursuant to paragraph (1) above will be given notice and an opportunity to be heard by the BOG. Notice must be sent by the Bar to the current section officers and/or executive committee and posted on the Bar website at least one BOG meeting prior to the meeting at which the Board plans to vote on the proposal.
4. A section subject to potential termination may petition the BOG to be combined with another section, with that section's written approval, and will be given reasonable opportunity to present that petition to the BOG before the BOG votes on the section's termination.
5. If a section is terminated pursuant to these Bylaws, section members will be allowed to transfer to another section of their choosing, without payment of additional fees, for that remainder of the section dues year.
6. A section terminated pursuant to these Bylaws may apply for reactivation if they meet qualifications for establishing a new section.
7. Any funds remaining in the treasury of a section at the time of termination will be transferred to the Bar's general operating fund unless otherwise designated by the BOG. Funds in the treasury of combined sections will be combined.

## **XII. YOUNG LAWYERS**

### **A. PURPOSE**

There will be a member segment within the Bar identified as “Young Lawyers” for the purposes of encouraging the interest and participation of (i) new and young lawyers and law students in the activities of the Bar; and (ii) developing and conducting programs of interest and value to new and young lawyers consistent with the focus areas of public service and pro bono programs, transition to practice, and member outreach and leadership; and (iii) upholding and supporting the Guiding Principles of the Bar.

### **B. DEFINITION**

Active lawyer members of the Bar will be considered Young Lawyers until the last day of December of the year in which the member attains the age of 36 years or until the last day of December of the fifth year after the year in which such member first was admitted to practice as a lawyer in any state, whichever is later.

## **XIII. RECORDS DISCLOSURE & PRESERVATION**

- A. These Bylaws apply to Bar records created before July 1, 2014. Access to Bar records created on or after July 1, 2014, is governed by GR 12.4.
- B. The Bar, in accordance with published rules, shall make available for its members and/or public inspection and copying all Bar records, unless the record falls within the specific exemptions of these bylaws or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission and Practice Rules, the Rules for Enforcement of Limited Practice Officer Conduct, GR 25, or any other applicable statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by these bylaws or the above-referenced rules or statutes, the Bar shall delete identifying details in a manner consistent with those rules when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained fully in writing.
  - 1. The Bar shall establish, maintain, and make available for its members and/or public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of Bar records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.
  - 2. No fee shall be charged for the inspection of Bar records. No fee shall be charged for locating Bar records or documents and making them available for copying unless the request entails a substantial use of staff time to locate and gather the documents. In no event may the Bar charge a per page cost greater than an actual per page cost established by the Bar.
  - 3. The Bar shall not distinguish among persons requesting records and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate a statute, court order, or rule which exempts

### XIII. RECORDS DISCLOSURE & PRESERVATION

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or prohibits disclosure of specific information or records to certain persons. Bar facilities shall be made available to any person for the copying of Bar records except when and to the extent that this would unreasonably disrupt the operations of the Bar. The Bar shall honor requests received by mail for identifiable Bar records unless exempted by provisions of these bylaws or other rules.

4. Bar records shall be available for inspection and copying during the customary office hours of the Bar.
5. The following are exempt from public inspection and copying:
  - a. Personal information in files maintained for employees, appointees, or elected officials of the Bar to the extent that disclosure would violate their right to privacy.
  - b. Specific information, records, or documents relating to lawyer or Limited Practice Officer discipline that is not expressly classified as public information or confidential information by court rule.
  - c. Information revealing the identity of persons who have assisted a Bar investigation or filed grievances or complaints with the Bar, if disclosure would endanger any person's life, physical safety, or property.
  - d. Test questions, scoring keys, and other examination data used by the Bar to administer a license, employment, or academic examination.
  - e. The contents of real estate appraisals made by the Bar relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.
  - f. Valuable formulae, designs, drawings, and research data obtained by the Bar within five years of the request for disclosure when disclosure would produce private gain and loss to the Bar.
  - g. Preliminary or intra-Bar memoranda, notes, and e-mails, and other documents in which recommendations or opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when referenced during an open meeting or cited by the Bar in connection with any of its actions.
  - h. Manuals, policies, and procedures, developed by Bar staff, that are directly related to the performance of investigatory, disciplinary, or regulatory functions, except as may be specifically made public by court rule;
  - i. Applications for employment with the Bar, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.
  - j. The residential addresses and residential telephone numbers of Bar employees or volunteers which are held by the Bar in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.
  - k. Information that identifies a person who, while a Bar employee:
    - 1) Seeks advice, under an informal process established by the Bar, in order to ascertain his or her rights in connection with a potentially discriminatory or unfair employment practice; and

### XIII. RECORDS DISCLOSURE & PRESERVATION

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- 2) requests his or her identity or any identifying information not be disclosed.
- l. Membership information; however
  - 1) status, business addresses, business telephones, facsimile numbers, electronic mail addresses (unless the member has requested that it not be made public), bar number, and dates of admission, shall not be exempt, provided that, for reasons of personal security or other compelling reason, the Executive Director may, on an annual basis, approve the confidentiality of any such information; and
  - 2) age information may be used as a criterion for eligibility for membership in a WSBA committee or section, but only when used in conjunction with year of admission.
- m. Applications for admission to the Bar and related records;
- n. Information which would identify bar examiners responsible for writing and/or grading specific bar exam questions;
- o. Proceedings and records of the Board of Bar Examiners;
- p. Proceedings and records of the Law Clerk Board, including information, records, or documents received or compiled that relate to any application for admission to the Law Clerk program, or to the retention of any current participant in the Law Clerk program;
- q. Proceedings and records of the Practice of Law Board, including information, records, or documents received or compiled regarding the investigation, or potential investigation, of any incident or alleged incident of the unauthorized practice of law;
- r. Proceedings and records of the Character and Fitness Board, including information, records, or documents received or compiled that relate to any application for admission, special admission, special licensing, or change of membership status or class, except where those proceedings are specifically made public by court rule;
- s. Records relating to requests by members for ethics opinions to the extent that they contain information identifying the member or a party to the inquiry,
- t. Proceedings and records of the Judicial Recommendation Committee,
- u. Records and proceedings of any Fee Arbitration Program, Mediation Program, or other alternative dispute resolution program which may be administered by the Bar,
- v. Records and proceedings of the Personnel and Awards Committees,
- w. Records and proceedings of the Hearing Officer Selection Panel, except as made public by the Panel;
- x. Personnel records of Bar employees, whether permanent, temporary, or contract, except for information relating to compensation for job classifications, verifying periods of employment or, when specifically requested, the Executive Director's current annual compensation; and
- y. Any other documents or records made confidential by statute, court rule, or court order.

The above exempted information will be redacted from the specific records sought. Statistical information not descriptive of any readily identifiable person or persons will be disclosed.

### **XIII. RECORDS DISCLOSURE & PRESERVATION;**

### **XIV. INDEMNIFICATION**

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6. Responses to requests for Bar records shall be made promptly by the Bar. In acknowledging receipt of a records request that is unclear, the Bar may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Bar need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor.
  7. Whenever the Executive Director concludes that a Bar record is exempt from disclosure and denies a person opportunity to inspect or copy such record for that reason, the person may appeal that decision to the Board of Governors. The Board of Governors shall provide the person with its written opinion on whether the record is exempt.
  8. The disclosure of information under this section should not violate an individual's right to privacy by amounting to a disclosure of information about that person that 1) would be highly offensive to a reasonable person, or 2) is not of legitimate concern to the public.
  9. Nothing in this section shall be construed to require publication in the Washington Administrative Code or the maintenance of indexes of records.

## **XIV. INDEMNIFICATION**

### **A. GENERALLY**

1. The Bar shall provide indemnification to qualified indemnitees for liabilities arising out of qualified actions.
  - a. A qualified indemnitee is a person who is or was an officer, member of the Board of Governors, member of the staff of the Bar, or is serving at the request or appointment of the Bar as a member of any board, committee, task force, or other WSBA entity.
  - b. A qualified action is an action in good faith within the course and scope of the authority expressly or impliedly delegated by applicable Supreme Court Rule, policy adopted by the Board of Governors, or by the Executive Director within his or her authority.
2. Each qualified indemnitee who is a party to, or is threatened to be made a party to, or is involved in any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the indemnitee, or a person of whom the indemnitee is a legal representative, is, or was, an officer or member of the Board of Governors, member of the staff of the Bar, or a member of a board, committee, task force, or other WSBA entity formed by the Board of Governors, shall be defended, indemnified, and held harmless by the Bar against all expenses, liability, and losses (including, but not limited to, attorneys' fees, judgments, fines, and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith. The Board of Governors shall have the right, as a condition of granting indemnification, to approve in advance the choice of counsel as well as any settlement by the person requesting indemnification. The Board shall not unreasonably withhold its approval.

**B. CUMULATIVE, NON-EXCLUSIVE RIGHT**

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under law or under any bylaw, agreement, vote of the Board of Governors or members of the Bar, or otherwise.

**XV. KELLER DEDUCTION**

As a mandatory bar association, the Bar may not use compulsory license fees of any member who objects to that use for political or ideological activities that are not germane, or reasonably related, to regulating the legal profession or improving the quality of legal services. *Keller v. State Bar of California*, 496 U.S. 1 (1990). These activities are considered “nonchargeable.” The Bar may use compulsory license fees for all other activities.

- A. Under Keller, the Bar is required to identify that portion of mandatory license fees that go to “nonchargeable” activities and establish a system whereby objecting members may either deduct that portion of their fees or receive a refund. The Bar will calculate the Keller deduction prospectively for each fiscal year, using that fiscal year’s budget and the actual activities of the Bar during the prior fiscal year. The process to be followed in calculating the Keller deduction will be as set forth in the Keller Deduction Policy. When calculating the Keller deduction, the Bar shall use a conservative test for determining whether an individual activity is chargeable or nonchargeable. When in doubt, the Bar will err in favor of the membership by considering activities to be nonchargeable even when a reasonable argument could be made that such activities were chargeable.
- B. Notice of the amount of the Keller deduction will be included with the annual licensing information provided to members, and detailed information regarding the calculation of the deduction will be posted on the Bar’s website. Members admitted to the Bar during the course of a year will be advised of this notice with their initial fee statements. Such members may demand arbitration within 45 days following receipt of the notification. If arbitration is pending at the date of delivery of a demand for arbitration submitted pursuant to this paragraph, the newly admitted member's demand will be consolidated with the pending arbitration. All of the provisions of this Article shall otherwise apply to demands for arbitration filed by newly admitted members.
- C. Except for requests for arbitration submitted by newly admitted members pursuant to Paragraph (B) above, any member requesting arbitration of the calculation of the amount of the Keller deduction for a licensing year must deliver a written request for arbitration to the Executive Director on or before February 1 of the licensing year in which the deduction is being challenged. Delivery may be made in person or by first-class mail, and mailed demands will be deemed delivered upon mailing. Demands shall include the name and address of the member or members demanding arbitration, a brief statement of the claim or objection, identifying each challenged activity with such specificity as to allow the Bar to respond, and the signature of each objecting member.

## XV. KELLER DEDUCTION

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1. Within 14 days of receipt of a timely demand for arbitration, the Bar will submit the matter to the Chief Justice of the Washington Supreme Court for appointment of an impartial arbitrator.
2. All timely demands for arbitration, including any timely demands received after submission of one earlier received, will be consolidated.
3. A member demanding arbitration is required to pay his or her license fee and assessments, excepting the amount in dispute, on a timely basis as otherwise required by these Bylaws. Failure to pay the fees and assessments, other than the amount in dispute, by the requisite date may result in suspension as provided by these Bylaws or applicable court rules.
4. Unless the parties agree to a different schedule, a hearing will be held within 30 days of the appointment of the arbitrator. The arbitrator will determine the date, time, and location of the arbitration hearing(s) and will so notify the parties at least 15 days prior to the hearing(s).
5. The burden is on the member(s), as a condition of arbitration, to identify each challenged activity with such specificity as to allow the Bar to respond. The burden is on the Bar to establish the accuracy of the determination of the Keller calculation. Members demanding arbitration will have access to the financial records upon which the Bar based the determination of the amount of fee that can be withheld. These records will be available for inspection and copying during normal business hours. Copying will be at the member's expense.
6. At the hearing(s), the parties will be permitted to participate personally or through counsel admitted to practice in the state of Washington. All parties will be given the opportunity to present evidence and to present arguments in support of their positions. The following rules will apply to the arbitration proceedings:
  - a. There will be no transcripts or post-hearing briefs; except, however, post-arbitration motions for reconsideration or clarification are permitted.
  - b. The arbitrator will issue a written opinion, stating the reasons for the decision, within 14 days of the close of the hearing. The opinion will be brief and will be based on the evidence and arguments presented.
  - c. The arbitrator will be compensated at an hourly rate established pursuant to BOG policy for the hearing, preparation, and study time, and will be reimbursed for all necessary expenses of the arbitration. The Bar will pay for the arbitrator's services.
  - d. The arbitration is not a judicial proceeding but is sui generis. Except for production of documents as set forth in Paragraph 5 above, or as may be stipulated to by the parties, there is no discovery, and the civil rules, arbitration rules, rules of evidence, and other court rules will not apply.
7. The arbitrator will have no authority to add, subtract, set aside, or delete from any court rule or these Bylaws.
8. The scope of the arbitration is limited to reviewing the challenged activities specified for the purpose of determining whether the Bar has correctly calculated the Keller deduction, and the sole relief potentially available through arbitration is a change in the amount of the named parties' Keller deduction for that licensing year.

**XV. KELLER DEDUCTION;**

**XVI. AMENDMENTS;**

**XVII. EMERGENCY AMENDMENT; PRESIDENTIAL AUTHORITY DURING COVID-19 EMERGENCY**

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9. The arbitration will be binding and the decision of the arbitrator final, with no right of trial de novo or appeal.

**XVI. AMENDMENTS**

- A. These Bylaws may be amended by the BOG at any regular meeting of the BOG, or at any special meeting of the BOG called for that purpose under the terms of these Bylaws.
- B. All proposed bylaw amendments must be posted on the Bar's website and presented for "first reading" at least one BOG meeting prior to the meeting at which the BOG votes on the proposed amendment, and the BOG will not vote on any proposed bylaw amendment at the meeting at which the amendment is originally proposed, except as may be allowed below.
- C. For good cause shown under exceptional circumstances these Bylaws may be amended on an emergency basis, without the prior notice required above, by an affirmative vote of two-thirds of the BOG; however, any such amendment will be effective only until notice is given and a vote taken pursuant to the procedures set forth above.
- D. Notice of all bylaw amendments adopted by the BOG must be prominently posted on the Bar's website within 14 days of the BOG's vote on the amendment.

**XVII. EMERGENCY AMENDMENT; PRESIDENTIAL AUTHORITY DURING COVID-19 EMERGENCY (EXPIRES APRIL 24, 2020)**

- A. During the COVID-19 emergency, the WSBA President is granted discretion to reasonably modify, extend, or make exceptions to the dates, deadlines, or communication procedures in the current Admissions Policies, and exam administration guidelines and policies, when necessary to comply with court, state, health department, or other authorized Coronavirus responses, on the condition that all actions must comply with court rules, court orders, and with the NCBE's requirements for secure administration of the bar exam.
- B. During the COVID-19 emergency, the WSBA President is granted limited authority to temporarily substitute electronic documents and processes for in-person or paper documents and processes outlined in the WSBA Bylaws. This specifically includes the authority to conduct elections electronically and permit the Election Board to be present electronically during the counting of any paper ballots received.
- C. During the COVID-19 emergency, the WSBA President is granted limited authority to temporarily substitute remote attendance at meetings when in person attendance is outlined in the WSBA Bylaws. This specifically include the authority to authorized Governors and Officers to attend Board meetings remotely.
- D. Provisions of this amendment shall be rescinded on April 24, 2020.



<p style="text-align: center;"><b>Discussion:</b></p> <p style="text-align: center;"><b>Policy for Administering the New Ethics Requirement</b></p>
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The MCLE Board will discuss creating a policy for the implementation of tracking the new MCLE ethics requirement specified in the recent amendments to Admission and Practice Rule (APR) 11 (c)(1)(ii) and APR 11(f)(2)—which once effective will require licensed legal professionals to earn one MCLE credit in the subject credit of equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law (hereinafter referred to as “equity credit”).

**Background:**

On July 1, 2021, the Washington Supreme Court entered order NO. 25700-A-1349 approving the MCLE Board’s suggested amendments to APR 11(c)(1)(ii) and APR 11(f)(2). Per the MCLE Board’s GR-9 Coversheet:

“The MCLE Board recommends that this suggested amendment become effective on September 1, 2022, and that the first group of licensed legal professionals who will be required to report this one ethics credit on this subject be those who are in the 2023-2025 MCLE reporting period. This will allow time for WSBA staff to develop tracking mechanisms in the MCLE database and to notify both licensed legal professionals and CLE sponsors of the new requirement. In addition, an effective date of September prior to the start of the 2023-2025 reporting period allows the Bar’s MCLE staff to accredit courses taking place in 2023 according to the new requirements.”

The order announces an effective date of September 1, 2022, but does not address a specific tracking date or clarify which MCLE reporting period will be the first required to report the new credit. In order facilitate implementation of tracking of the new equity credit, it is suggested that the MCLE Board adopt a policy regarding the date the WSBA will begin tracking the new ethics requirement.

**Policy Discussion:**

MCLE staff recommends that the MCLE Board consider adopting a policy to clarify which MCLE reporting period will be the first that report this new ethics requirement. In accordance with the original MCLE Board proposal, MCLE staff recommend a policy that sets the 2023-2025 reporting period as the first that will be tracked in its requirement to report equity credit.

- Should the MCLE Board adopt a policy stating the first group due to report this new requirement be those in the 2023-2025 reporting period?

**Policymaking Procedure:**

Should the MCLE Board adopt a policy regarding subcategory carryover credit, the Board will need to follow the policymaking procedure as defined in APR 11(2)(ii). The MCLE Board must notify the Board of Governors and the Washington Supreme Court of the policy. The policy will become effective 60 days after promulgation by the MCLE Board.

**Relevant Rules:**

**APR 11(2)(ii):** Policies. The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.

**Ethics Requirement Effective September 1, 2022:**

**APR 11(c)(1)(ii):** at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2)., with at least one credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law.

**APR 11(f)(2):** Ethics and professional responsibility, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

**Enclosed Documents:**

- Potential Policy Document
- Amended Court Order NO. 25700-A-1349
- GR 9 Coversheet

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED  
AMENDMENT TO APR 11—MANDATORY  
CONTINUING LEGAL EDUCATION

**AMENDED  
ORDER**

NO. 25700-A-1349

The Mandatory Continuing Legal Education Board, having recommended the adoption of the suggested amendment to APR 11—Mandatory Continuing Legal Education, and the Court having considered the suggested amendment, and having determined that the suggested amendment will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

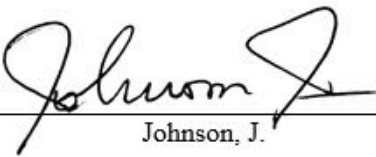
ORDERED:

- (a) That the suggested amendment as attached hereto is adopted.
- (b) That pursuant to the emergency provisions of GR 9(j)(1), the suggested amendment will be published in the Washington Reports and will become effective September 1, 2022.

AMENDED ORDER

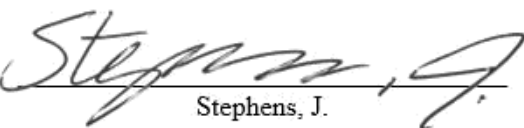
IN THE MATTER OF THE SUGGESTED AMENDMENT TO APR 11—MANDATORY  
CONTINUING LEGAL EDUCATION

DATED at Olympia, Washington this 1st day of July, 2021.

  
\_\_\_\_\_  
Johnson, J.

  
\_\_\_\_\_  
Madsen, J.

  
\_\_\_\_\_  
Owens, J.

  
\_\_\_\_\_  
Stephens, J.

  
\_\_\_\_\_  
González, C.J.

  
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Gordon McCloud, J.

  
\_\_\_\_\_  
Yu, J.

  
\_\_\_\_\_  
Montoya-Lewis, J.

  
\_\_\_\_\_  
Whitener, J.

**APR 11**  
**MANDATORY CONTINUING LEGAL EDUCATION (MCLE)**

**(a)–(b)** [Unchanged.]

**(c) Education Requirements.**

(1) *Minimum Requirement.* Each lawyer must complete 45 credits and each LLLT and LPO must complete 30 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:

(i) [Unchanged.]

(ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2), with at least one credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law.

(2)–(7) [Unchanged.]

**(d)–(e)** [Unchanged.]

**(f) Approved Course Subjects.** Only the following subjects for courses will be approved:

(1) [Unchanged.]

(2) *Ethics and professional responsibility*, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including ~~diversity and antibias with respect to the practice of law or the legal system~~ equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

(3)–(7) [Unchanged.]

**(g)–(k)** [Unchanged.]

**BOARD POLICY : Implementation of the New Ethics Credit**

The Supreme Court adopted Order No. 25700-A-1349, which amended APR 11(c)(1)(ii) and APR 11(f)(2), to require licensed legal professionals to earn one credit in the category of equity, inclusion, and the mitigation of both implicit and explicit bias (hereinafter referred to as “equity credit”). The MCLE Board issues the following policy to clarify which MCLE reporting period will be the first required to report the new equity credit.

1. The MCLE Board will track the new equity credit—as outlined in APR 11(c)(1)(ii) and APR 11(f)(2)—starting with the 2023-2025 MCLE reporting period. As such, licensed legal professionals in the 2023-2025 and subsequent MCLE reporting periods will be required to comply with the new requirement.

**Discussion:**

**Impact of the New Ethics Requirement on Carryover**

The MCLE Board will discuss how the newly required ethics credit—equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law (hereinafter referred to as “equity credit”)—affects the application of the carryover rule outlined in APR 11(c)(7).

### **Background**

Presently, WSBA licensed legal professionals can carry 15 excess credits, two (2) of which may be ethics and professional responsibility credits, to their next reporting period. With the recently adopted amendments to APR 11(c)(1)(ii) and APR 11(f)(2), it should be determined if the new equity credit is eligible for carryover as part of the broader ethics credit, or as the equity credit. The former would require a licensed legal professional to earn the credit every three years as a part of their regular MCLE reporting period, while the latter would allow a licensed legal professional to carryover this equity credit to their next reporting period—thereby meeting that next reporting period’s requirement for the equity credit under APR 11(c)(1)(ii).

### **Discussion – Policy and Staff Recommendation**

It is suggested that the MCLE Board adopt a policy to clarify how the equity credit will carry over into future reporting periods. As stated above, this equity credit can be carried over as either ethics credit, or as the equity credit itself. MCLE staff recommends adopting a policy that allows equity credit earned in excess of the reporting period requirement to be carried over as ethics credit in accordance with APR 11(c)(7), which requires the equity credit to be earned in each reporting period.

Under per APR 11(f)(2), the equity credit is a part of the definition of ethics credit, rather than a standalone credit category. Consistent with the current administration of ethics carryover, any credit eligible for MCLE ethics credit, over the required amount of credits, would carryover as ethics in its broader, general definition. (e.g. activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system, etc... all carryover as “ethics” credit.)

- The carryover procedure will mirror that of the “Other” credit category, wherein carryover is not specific to a specific credit category within the definition—Office Management, Nexus, etc.—but as general “Other” credits.

Potential policy language:

“equity credit earned in excess of the reporting period requirement may be carried over as ethics credit in accordance with APR 11(c)(7), but a new equity credit must be earned in each reporting period.”

Each WSBA licensed legal professional will be required to earn at least one (1) equity credit each three-year MCLE reporting period—rather than potentially every six years or more. This is consistent with the purpose of the amended rule as articulated by the MCLE Board in their GR 9 coversheet.

MCLE staff examined neighboring jurisdictions with standalone requirements, such as Idaho, Oregon and Utah: Utah does not allow carryover credit, and Idaho does not currently have a standalone credit requirement. This policy, however, would be similar to Oregon State Bar’s carryover allowance regarding specific credit requirements, as per Regulation 6.100 (see enclosed materials).

MCLE staff and WSBA IT are currently working on a new MCLE online system, and it would be prudent to implement this policy before the system design is completed.

### **Potential Talking Points**

- Should the MCLE Board adopt a policy 1) allowing carryover credit as only the ethics category, or 2) allowing carryover credit as the equity credit?

**Policymaking Procedure:**

Should the MCLE Board adopt a policy regarding carryover credit, the Board will need to follow the policymaking procedure as defined in APR 11(2)(ii), which includes notifying the Board of Governors and the Washington Supreme Court, before the policy will become effective (60 days after promulgation by the MCLE Board).

**Relevant Rules:**

APR 11(2)(ii): Policies. The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.

APR 11(c)(1) Minimum Requirement. Each lawyer must complete 45 credits and each LLLT and LPO must complete 30 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:

- (i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in subsection (f)(1); and
- (ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2), with at least one credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law.

APR 11(c)(7) Carryover Credits. If a lawyer, LLLT, or LPO completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, 2 of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.

APR 11(f)(2) Ethics and professional responsibility, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

**Enclosed Documents:**

- Potential Policy Document
- Oregon State Bar MCLE Rule 6



**Rule Six**  
**Credit Limitations per Category**

**6.1 In General.**

- (a) Category I Activities. Credits in this category are unlimited. Credit shall be allowed only for CLE activities that are accredited as provided in these Rules, and substantial participation by the active member is required. The MCLE Program Manager may allow partial credit for completion of designated portions of a CLE activity.
- (b) Category II Activities. Credits in this category are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. No accreditation application is required.
- (c) Category III Activities. Credits in this category are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. No accreditation application is required.
- (d) An active member may carry forward 15 or fewer unused credit hours from the reporting period during which the credit hours were earned to the next reporting period.
- (e) Except as provided in Regulation 5.100(c) and Rule 6.1(d), credit for a particular reporting period shall be allowed only for activities participated in during that reporting period.
- (f) Credits for service as a mentor in the NLMP are limited as set forth in Regulation 5.100(b).

**Regulations to MCLE Rule 6**  
**Credit Limitations**

**6.100 Carry Over Credit.** No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

**6.200 Credits Earned in Excess of Credit Limitations.** Any credits earned in excess of the credit limitations set forth in MCLE Rule Six may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

**Rule Seven**  
**Compliance**

**7.1 Reports.** Every active member shall electronically certify and submit their completed compliance report on or before 5:00 p.m. on May 31 of the year the active member's reporting period ends.

**7.2 Recordkeeping.**

- (a) Every active member shall maintain records of participation in CLE activities for use in completing a compliance report and shall retain these records for a period of twelve months after the end of the member's reporting period.
- (b) The MCLE Program Manager may maintain records of active members' participation in CLE activities as necessary to verify compliance with the MCLE requirement.

**7.3 Audits of Bar Members.**

**BOARD POLICY: Ethics Credit Carryover**

The Supreme Court adopted order NO. 25700-A-1349, which amended APR 11(c)(1)(ii) and APR 11(f)(2), to require licensed legal professionals to earn one credit in the category of equity, inclusion, and the mitigation of both implicit and explicit bias (hereinafter referred to as “equity credit”). The MCLE Board issues the following policy to clarify ethics carryover credit. The MCLE Board has determined the following:

1. Equity credit earned in excess of the reporting period requirement may be carried over as ethics credit in accordance with APR 11(c)(7), but a new equity credit must be earned in each reporting period.

**ISSUE SUMMARY:****COVID-19 Hardships and the Petition Decision Matrix**

Last year, the MCLE Board directed staff to bring all petitions referencing COVID-19 to the Board for review. Should staff continue to operate under this directive? If not, how should the MCLE Staff Liaison process petition requests for petitions referencing COVID-19 and associated hardships moving forward?

**Background:**

On April 3, 2020, the MCLE Board approved by motion a directive that the MCLE Staff Liaison stay the suspension for any petition related to COVID-19 until the next board meeting, so that the MCLE Board may review the petition. In total, nine (9) petitions received by members in the 2017-2019 reporting period cited COVID-19 as a hardship.

On June 5, 2020 the Washington Supreme Court ordered a one-year extension of MCLE reporting for licensed legal professionals in the 2018–2020 reporting period (now the 2018-2021 reporting period). This order included an increased credit carryover limit, with licensed legal professionals able to carryover an additional 15 credits (for a total of 30 carryover credits) towards their next reporting period.

On April 9, 2021 the MCLE Board discussed a potential influx in petitions of undue hardship, due to the simultaneous certification of the extended 2018-2021 reporting period and the 2019-2021 reporting period. The MCLE Board directed staff to add the current petition decision matrix to the August 6, 2021 meeting agenda, and to explore ways to improve petition review in the case of high request volume.

As of July 26, 2021, MCLE staff have not received any petitions referencing COVID-19 for the 2018-2021 and 2019-2021 reporting periods. Given the potential volume of petitions that may be received referencing COVID-19, the MCLE Board may want to consider removing their directive to bring all COVID-19 related petitions to the Board for individual review. If the MCLE Board removes its directive, should petitions be handled under the current decision matrix, or should the current decision matrix be revised?

**Discussion:**

- Should all petitions referencing COVID-19 and associated hardships be handled through the current decision matrix?
- Are there situations outside of the current decision matrix that the MCLE Board would like to consider as part of a temporary or permanent decision matrix? Possible situations to consider:
  - Issues of mental health and well-being, such as feelings of isolation, anxiety and depression;<sup>1</sup>

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<sup>1</sup> Kaiser Family Foundation discusses in greater detail the myriad repercussions of mental health throughout the COVID-19 pandemic in a Feb 10, 2021 article. See: Panchal, Nirmita, et al. "The Implications of COVID-19 for Mental Health and Substance Abuse." 10 Feb 2021, <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>

- Recent job loss and/or reduced working hours, which may not be reflected in the licensed legal professional's most recent tax return.<sup>2</sup>
- Loss of childcare, and the added responsibilities of working from home while taking care of children.
- A lack of resources for completing MCLE requirements remotely due to the COVID-19 pandemic, such as access to internet.

**Additional Considerations:**

- Does the Court-ordered extension of the 2018-2021 reporting period need to be taken into account?
  - Members in this reporting period have already received a one-year extension, due to a Washington Supreme Court order issued on June 4, 2020. Should extension petitions be considered in this temporary procedure?
- If the MCLE Board adopts a new decision matrix, the Board should consider which revisions should be made to each section of the matrices (late fee waiver, modification, extension, and waiver of reporting period requirement).

**Supplemental Information:**

APR 11(i)(5) *Petition for Extension, Modification, or Waiver*. ...In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's, LLLT's, or LPO's ability to meet the education or reporting requirements...

**Enclosed Documents:**

- **Extension Decision Matrix**
- **Late Fee Waiver Decision Matrix**
- **The Implications of COVID-19 for Mental Health and Substance Abuse – PDF**

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<sup>2</sup> The current late fee waiver decision procedure determines the financial hardship on gross income between 200-400% of the Federal Poverty Guidelines. The petition of undue hardship identifies total gross annual household income based on line 22 of the most recent IRS 1040 for all household tax filers (as an individual or couple)—or line 15 on 1040A, or line 4 on 1040 EZ.



SUPPORT OUR WORK

# The Implications of COVID-19 for Mental Health and Substance Use

Nirmita Panchal , Rabah Kamal , Cynthia Cox  , and Rachel Garfield 

Published: Feb 10, 2021

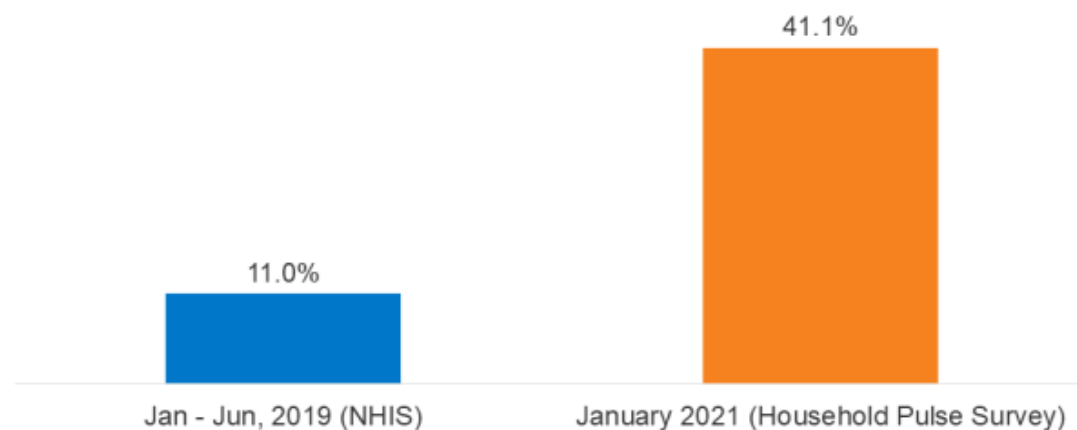


ISSUE BRIEF | [ENDNOTES](#)

The COVID-19 pandemic and the resulting economic recession have negatively affected many people’s mental health and created new barriers for people already suffering from mental illness and substance use disorders. During the pandemic, about [4 in 10](#) adults in the U.S. have reported symptoms of anxiety or depressive disorder, a share that has been largely consistent, up from [one in ten](#) adults who reported these symptoms from January to June 2019 (Figure 1). A [KFF Health Tracking Poll](#) from July 2020 also found that many adults are reporting specific negative impacts on their mental health and well-being, such as difficulty sleeping (36%) or eating (32%), increases in alcohol consumption or substance use (12%), and worsening chronic conditions (12%), due to worry and stress over the coronavirus. As the pandemic wears on, ongoing and necessary public health measures expose many people to experiencing situations linked to poor mental health outcomes, such as [isolation](#) and [job loss](#).

Figure 1

## Average Share of Adults Reporting Symptoms of Anxiety Disorder and/or Depressive Disorder, January-June 2019 vs. January 2021



NOTES: Percentages are based on responses to the GAD-2 and PHQ-2 scales. Pulse findings (shown here for January 6 – 18, 2021) have been stable overall since data collection began in April 2020.

SOURCE: NHIS Early Release Program and U.S. Census Bureau Household Pulse Survey. For more detail on methods, see: <https://www.cdc.gov/nchs/data/nhis/earlyrelease/ERmentalhealth-508.pdf>

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**Figure 1: Average Share of Adults Reporting Symptoms of Anxiety Disorder and/or Depressive Disorder, January-June 2019 vs. January 2021**

This brief explores mental health and substance use during, and prior to, the COVID-19 pandemic. It focuses on populations that were particularly at risk for experiencing negative mental health or substance abuse consequences during the pandemic, including young adults, people experiencing job loss, parents and children, communities of color, and essential workers. We draw on KFF analysis of data from the Census Bureau's [Household Pulse Survey](#) (an ongoing survey created to capture data on health and economic impacts of the pandemic), KFF Health Tracking Poll data, and data on mental health prior to the COVID-19 pandemic. Key takeaways include:

- Young adults have experienced a number of pandemic-related consequences, such as closures of universities and loss of income, that may contribute to poor mental health. During the pandemic, a larger than average share of young adults (ages 18-24) report symptoms of anxiety and/or depressive disorder (56%). Compared to all adults, young adults are more likely to report substance use (25% vs. 13%) and suicidal thoughts (26% vs. 11%). Prior to the pandemic, young adults were already at high risk of poor mental health and substance use disorder, though many did not receive treatment.
- Research from prior economic downturns shows that job loss is associated with increased depression, anxiety, distress, and low self-esteem and may lead to higher rates of substance use disorder and suicide. During the pandemic, adults in households with job loss or lower incomes report higher rates of symptoms of mental illness than those without job or income loss (53% vs. 32%).
- Research during the pandemic points to concerns around poor mental health and well-being for children and their parents, particularly mothers, as many are experiencing challenges with school closures and lack of

childcare. Women with children are more likely to report symptoms of anxiety and/or depressive disorder than men with children (49% vs. 40%). In general, both prior to, and during, the pandemic, women have reported higher rates of anxiety and depression compared to men.

- The pandemic has disproportionately affected the health of communities of color. Non-Hispanic Black adults (48%) and Hispanic or Latino adults (46%) are more likely to report symptoms of anxiety and/or depressive disorder than Non-Hispanic White adults (41%). Historically, these communities of color have faced challenges accessing mental health care.
- Many essential workers continue to face a number of challenges, including greater risk of contracting the coronavirus than other workers. Compared to nonessential workers, essential workers are more likely to report symptoms of anxiety or depressive disorder (42% vs. 30%), starting or increasing substance use (25% vs. 11%), and suicidal thoughts (22% vs. 8%) during the pandemic.

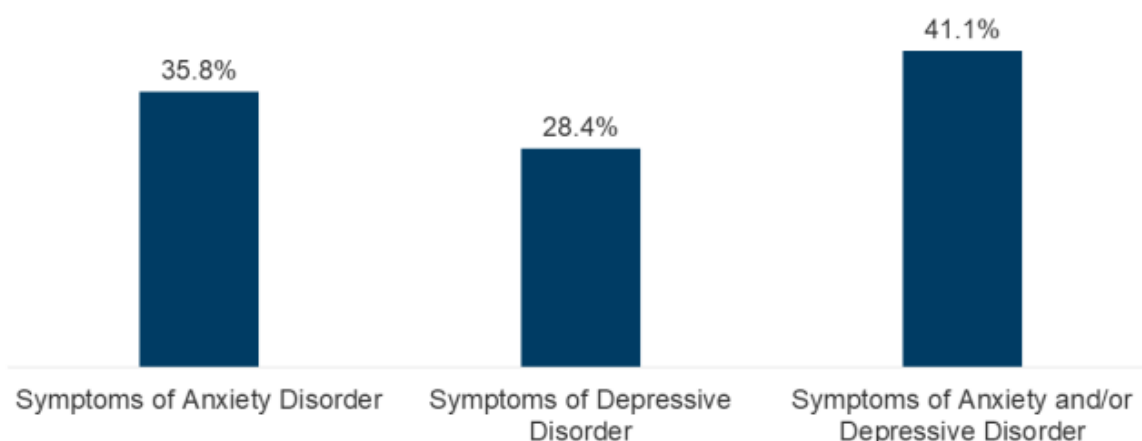
Both those newly experiencing mental health or substance abuse disorders and those already diagnosed before the pandemic may require mental health and substance use services but could face additional barriers because of the pandemic.

## Prevalence of Mental Illness and Substance Use Disorder During the Pandemic

During the COVID-19 pandemic, concerns about mental health and substance use have grown, including concerns about suicidal ideation. In January 2021, 41% of adults reported symptoms of anxiety and/or depressive disorder (Figure 2), a share that has been largely stable since spring 2020. In a [survey](#) from June 2020, 13% of adults reported new or increased substance use due to coronavirus-related stress, and 11% of adults reported thoughts of suicide in the past 30 days. [Suicide rates](#) have long been on the rise and may worsen due to the pandemic. Early 2020 data show that drug overdose deaths were particularly [pronounced](#) from March to May 2020, coinciding with the start of pandemic-related lockdowns.

Figure 2

# Share of Adults Reporting Symptoms of Anxiety or Depressive Disorder During the COVID-19 Pandemic



NOTES: These adults, ages 18+, have symptoms of anxiety or depressive disorder that generally occur more than half the days or nearly every day. Data shown is for January 6 – 18, 2021.  
SOURCE: U.S. Census Bureau, Household Pulse Survey, 2020 - 2021.

KFF

**Figure 2: Share of Adults Reporting Symptoms of Anxiety or Depressive Disorder During the COVID-19 Pandemic**

As was the case prior to the pandemic, adults in poor general health (which may reflect both physical and mental health) continue to report higher rates of anxiety and/or depression than adults in good general health.<sup>1,2</sup> For people with chronic illness in particular, the already high likelihood of having a concurrent [mental health disorder](#) may be exacerbated by their vulnerability to severe illness from COVID-19. Recently, a [study](#) also found that 18% of individuals (including people with and without a past psychiatric diagnosis) who received a COVID-19 diagnosis were later diagnosed with a mental health disorder, such as anxiety or mood disorders. Older adults are also more vulnerable to severe illness from coronavirus and have experienced [increased](#) levels of anxiety and depression during the pandemic.

Mental distress during the pandemic is occurring against a backdrop of high rates of mental illness and substance use that existed prior to the current crisis. Prior to the pandemic, [one in ten](#) adults reported symptoms of anxiety and/or depressive disorder. Nearly one in five U.S. adults ([47 million](#)) reported having any mental illness. In 2018, over 48,000 Americans died by suicide,<sup>3</sup> and on average across 2017 and 2018, nearly eleven million adults reported having serious thoughts of [suicide](#) in the past year. Additionally, deaths due to [drug overdose](#) were four times higher in 2018 than in 1999, driven by the opioid crisis.

There are a variety of ways the pandemic has likely affected mental health, particularly with widespread social isolation resulting from necessary safety measures. A broad body of [research](#) links social isolation and loneliness to both poor mental and physical health. The widespread experience of loneliness became a public health concern even before the pandemic, given its [association](#) with reduced lifespan and greater risk of both mental and physical illnesses. A [KFF Health Tracking Poll](#) conducted in late March 2020, shortly after many stay-at-home

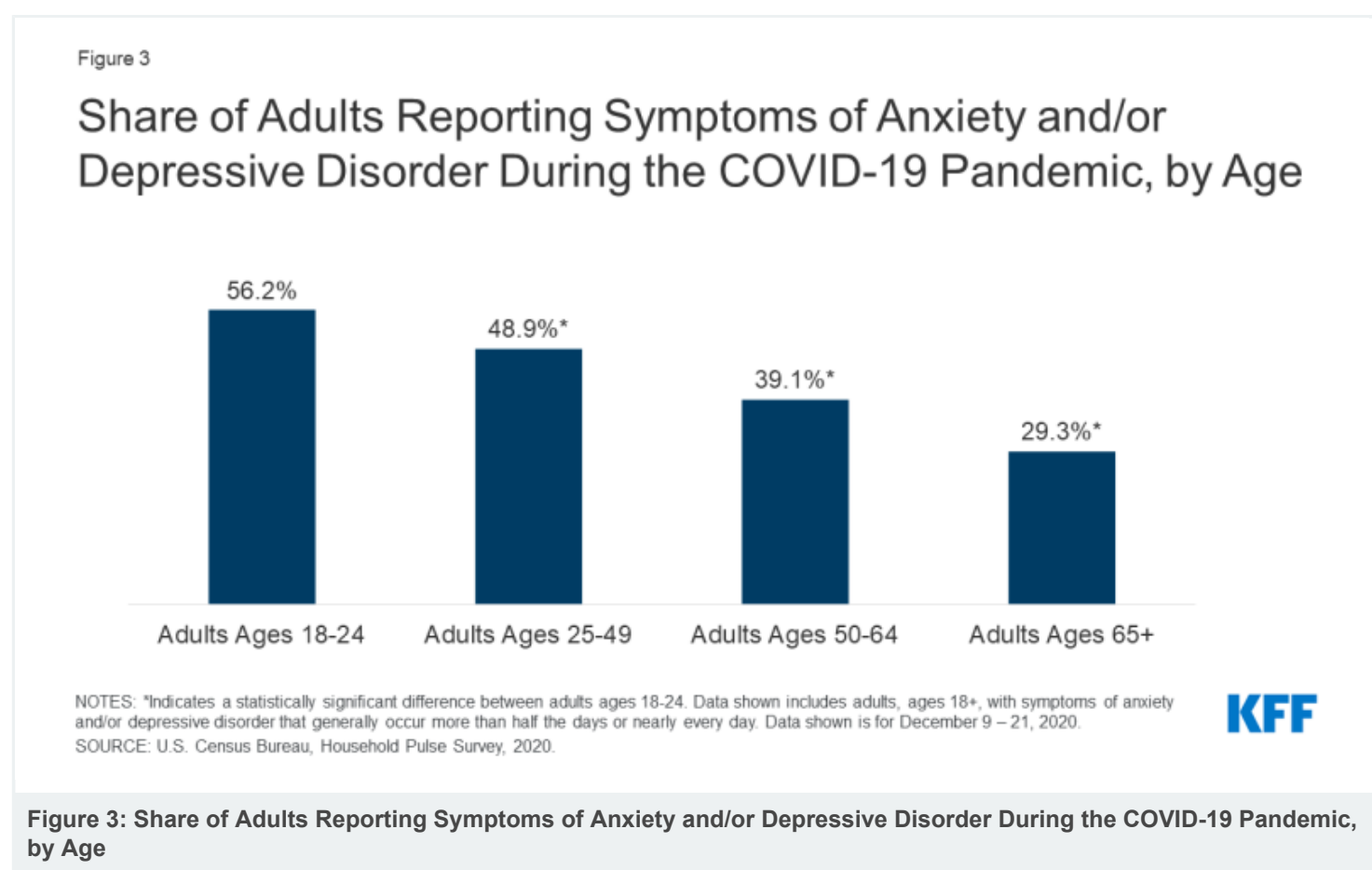


orders were issued, found those sheltering-in-place were more likely to report negative mental health effects resulting from worry or stress related to coronavirus compared to those not sheltering-in-place.

Some prior epidemics have induced [general stress](#) and led to new mental health and substance use issues. As the COVID-19 pandemic continues, different populations are at increased risk to experience poor mental health and may face challenges accessing needed care.

## Young Adults

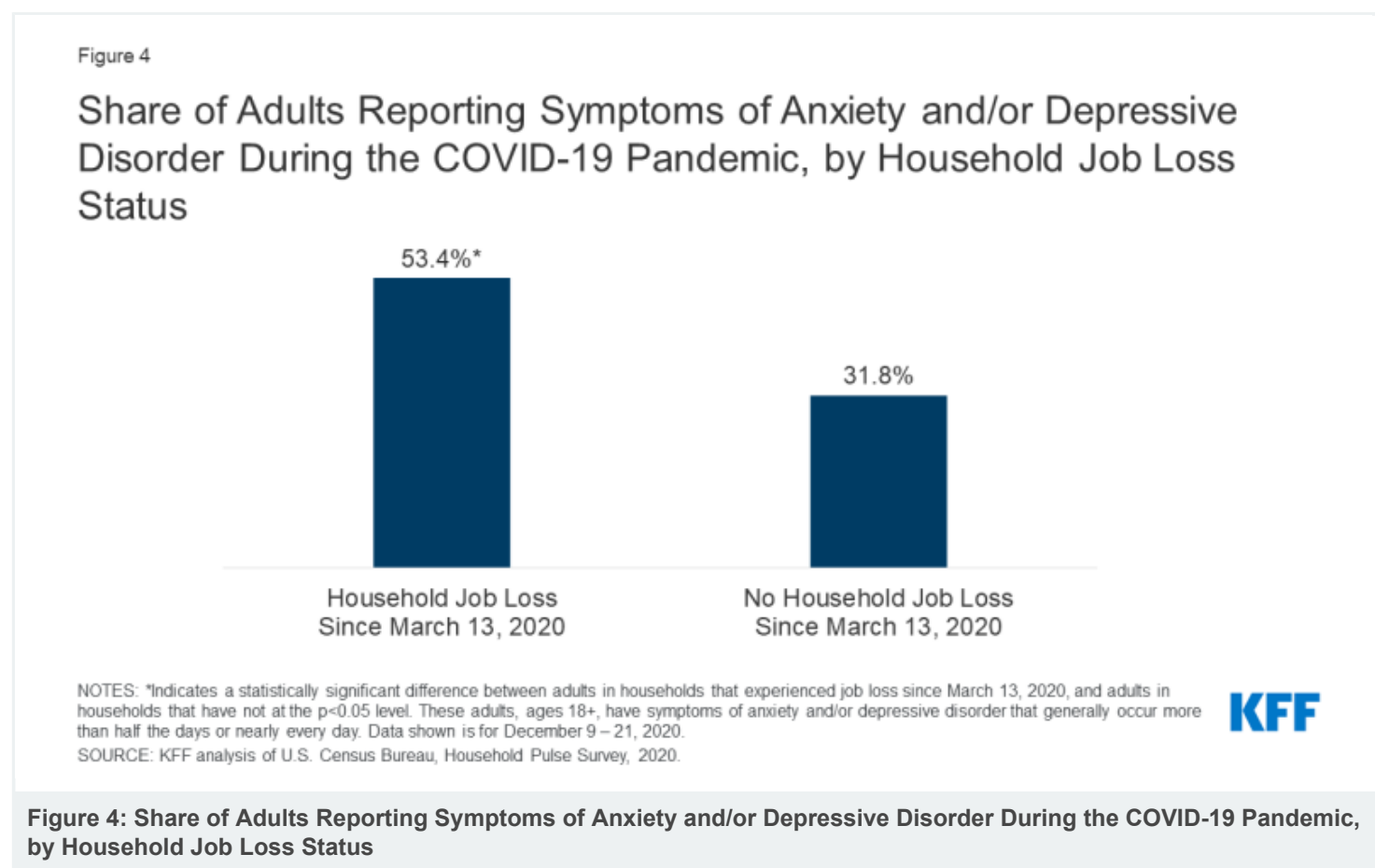
Throughout the pandemic, anxiety, depression, sleep disruptions, and thoughts of suicide have [increased](#) for many young adults. They have also experienced a number of pandemic-related consequences – such as closures of universities, transitioning to remote work, and loss of income or employment – that may contribute to poor mental health. KFF analysis of the Household Pulse Survey finds that throughout the pandemic, a large share of young adults (ages 18-24) have reported symptoms of anxiety and/or depressive disorder – 56% as of December 2020 – compared to older adults (Figure 3).



An earlier [survey](#) from June 2020 showed similar findings for young adults relative to all adults. The survey also found that substance use and suicidal ideation are particularly pronounced for young adults, with 25% reporting they started or increased substance use during the pandemic (compared to 13% of all adults), and 26% reporting serious thoughts of suicide (compared to 11% of all adults). Prior to the coronavirus outbreak, young adults were already at high risk of poor mental health and substance use disorder, yet many did not receive [treatment](#).

# Adults Experiencing Job Loss or Income Insecurity

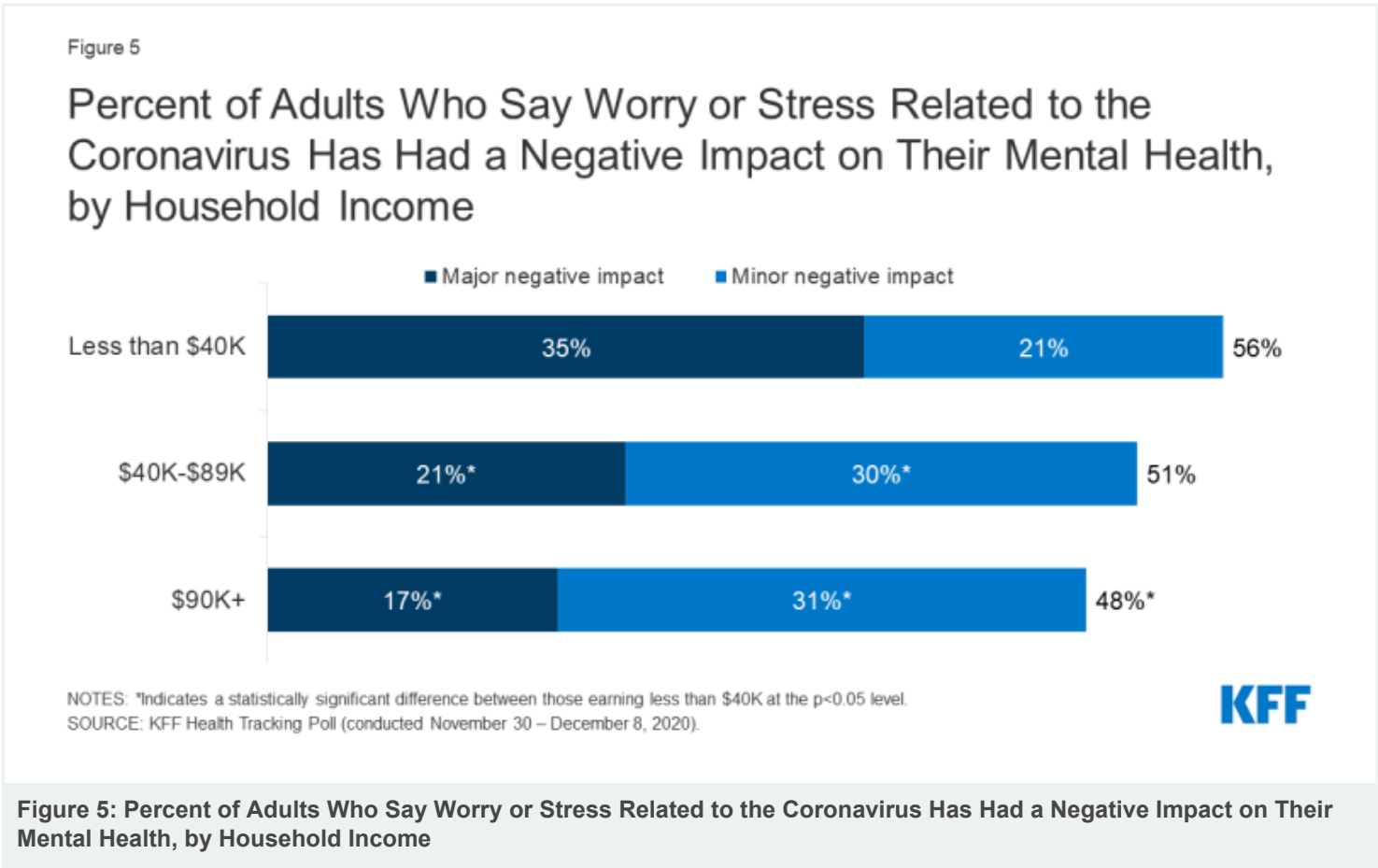
Throughout the pandemic, many people across the country have experienced job or income loss, which has generally affected their mental health. Adults experiencing household job loss during the pandemic have consistently [reported](#) higher rates of symptoms of anxiety and/or depressive disorder compared to adults not experiencing household job loss (53% vs. 32%, respectively; Figure 4). Similarly, findings from the December [KFF Health Tracking Poll](#) show that households experiencing income or job loss are significantly more likely to report that worry or stress over the coronavirus outbreak has negatively impacted their mental health.



In addition to increased [anxiety and depression](#), job loss may lead to other adverse mental health outcomes, such as [substance use disorder](#). During the previous recession, the high unemployment rate was also [associated](#) with increases in suicides. A KFF Health Tracking Poll conducted in mid-July 2020 found that, compared to households with no lost income or employment, a higher share of households experiencing income or job loss reported that pandemic-related worry or stress caused them to experience at least one adverse effect on their mental health and well-being, such as difficulty sleeping or eating, increases in alcohol consumption or substance use, and worsening chronic conditions (46% vs. 59%, respectively).<sup>4</sup>

KFF Health Tracking Polls conducted during the pandemic have also found that people with lower incomes are generally more likely to report major negative mental health impacts from worry or stress over the coronavirus. In December 2020, 35% of those earning less than \$40,000 reported experiencing a major negative mental health impact, compared to 21% of those with incomes between \$40,000 to \$89,999 and 17% of those making \$90,000

or more (Figure 5).



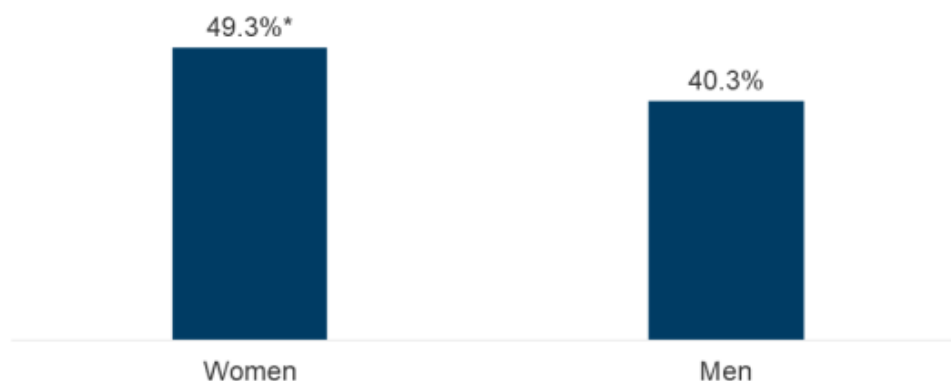
## Parents and Children

To help slow the spread of coronavirus, [many](#) schools and childcare centers across the U.S. have [closed](#) and [transitioned](#) to virtual instruction for at least some time. With these closures, children and their parents are experiencing ongoing disruption and changes to their daily routines. Research during the pandemic highlights concerns around poor mental health and well-being for children and their parents. For example, many parents with school-aged children are now more concerned about their children’s [emotional well-being](#) than prior to the pandemic. Both parents and their children have [experienced](#) worsening mental health since the start of the pandemic, and women with children are more likely than their male counterparts to report worsening mental health.

Throughout the pandemic, we find that adults in households with children under the age of 18, compared to adults in households without, are slightly more likely to report symptoms of anxiety and/or depressive disorder (45% vs. 41%, respectively, as of December 2020).<sup>5</sup> Specifically, among households with children under the age of 18, women have been more likely than men to report symptoms of anxiety and/or depressive disorder throughout the pandemic (as of December 2020, 49% vs. 40%, respectively; Figure 6). Similarly, KFF Health Tracking Polls conducted during the pandemic have generally found that among parents, women are more likely than men to report negative mental health impacts.<sup>6</sup>

Figure 6

## Share of Adults in Households with Children Under the Age of 18 Who Report Symptoms of Anxiety and/or Depressive Disorder During the COVID-19 Pandemic, by Gender



NOTES: \*Indicates a statistically significant difference between women in households with children under the age of 18, and men in households with children under the age of 18, at the  $p < 0.05$  level. These women and men, ages 18+, have symptoms of anxiety and/or depressive disorder that generally occur more than half the days or nearly every day. Data shown is for December 9 – 21, 2020.

SOURCE: KFF analysis of U.S. Census Bureau, Household Pulse Survey, 2020.

**KFF**

**Figure 6: Share of Adults in Households with Children Under the Age of 18 Who Report Symptoms of Anxiety and/or Depressive Disorder During the COVID-19 Pandemic, by Gender**

Throughout the pandemic, women have been more likely to report poor mental health compared to men. For example, 47% of women [reported](#) symptoms of anxiety and/or depressive disorder compared to 38% of men in December 2020. Among [women](#) in the workplace, more than one in four are considering leaving their jobs or reducing their hours, with many citing burnout and household responsibilities as the primary reason. Even before the pandemic, women were [more likely](#) than men to report mental health disorders, including serious mental illness.

Existing mental illness among adolescents may be exacerbated by the pandemic, and with many school closures, they do not have the same [access](#) to key mental health services. Prior to the pandemic, more than one in ten (16%) adolescents ages 12 to 17 had anxiety and/or depression.<sup>7</sup> Children may experience mental distress during the pandemic due to disruption in routines, loss of social contact, or stress in the household. Additionally, child abuse may be [increasing](#) during the pandemic. Child abuse-related emergency department (ED) visits [dropped](#) during the COVID-19 outbreak; however, the severity of injuries among child abuse-related ED visits has increased and resulted in more hospitalizations. [Child abuse](#) can lead to immediate emotional and psychological problems and is also an adverse childhood experience (ACE) linked to possible mental illness and substance misuse later in life. [Educators](#) play a critical role in the identification and reporting of child abuse. However, with school closures and stay-at-home orders, it is likely that many cases are going undetected, and that at-risk children have increased exposure at home to their abusers.

Substance use is also a concern among adolescents. Prior to the pandemic, 15% of high school students [reported](#) using an illicit drug, and 14% reported misusing prescription opioids. Solitary substance use (as opposed to social

use) has [increased](#) among adolescents during the pandemic, which is associated with poorer mental health. Suicidal ideation is yet another major concern for adolescents during the pandemic. While suicide was the tenth leading cause of deaths overall in the U.S. before the pandemic, it was the second leading cause of deaths among adolescents ages 12 to 17.<sup>8</sup> Prior to the pandemic, [suicide rates](#) were particularly pronounced among Black and LGBTQ youth.

## Communities of Color

The pandemic’s mental health impact has been pronounced among the communities of color also experiencing disproportionately high rates of COVID-19 cases and deaths. Black and Hispanic adults have been more likely than White adults to report symptoms of anxiety and/or depressive disorder during the pandemic (Figure 7). This disparate mental health impact comes in addition to Black and Hispanic communities experiencing disproportionately high rates of coronavirus cases and deaths (overall as well as among [health care workers](#) and in [nursing homes](#)), and negative [financial](#) impacts. Additionally, Black parents more often than White parents have reported [negative impacts](#) of the pandemic on their children’s education, their ability to care for their children, and their relationships with family members. Prior to the pandemic, Black and Hispanic people were [less likely](#) to receive needed behavioral health services compared to the general population. Additionally, deaths by suicide – which may increase due to the pandemic – have [historically](#) been much higher than average among Native American communities.

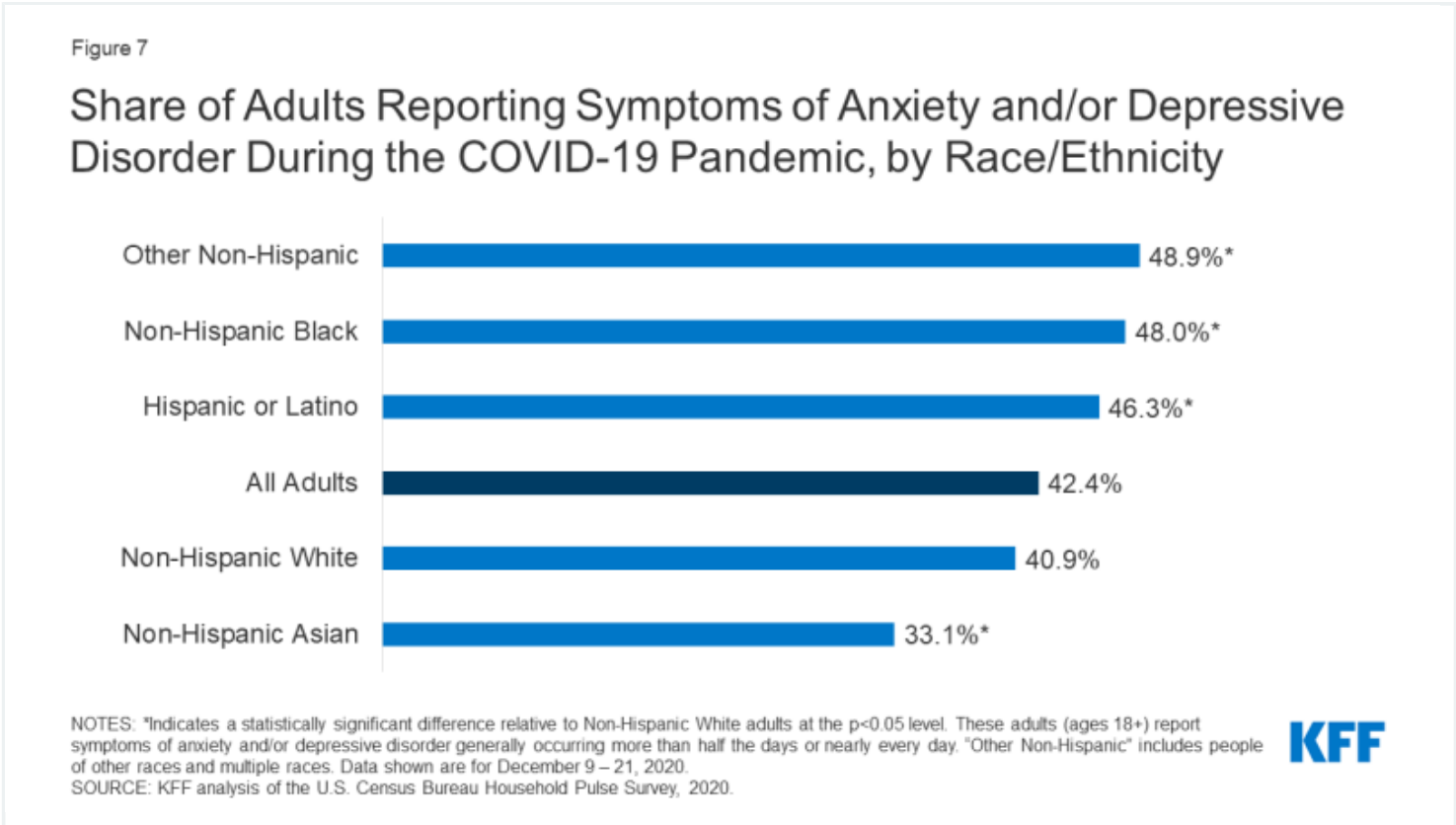
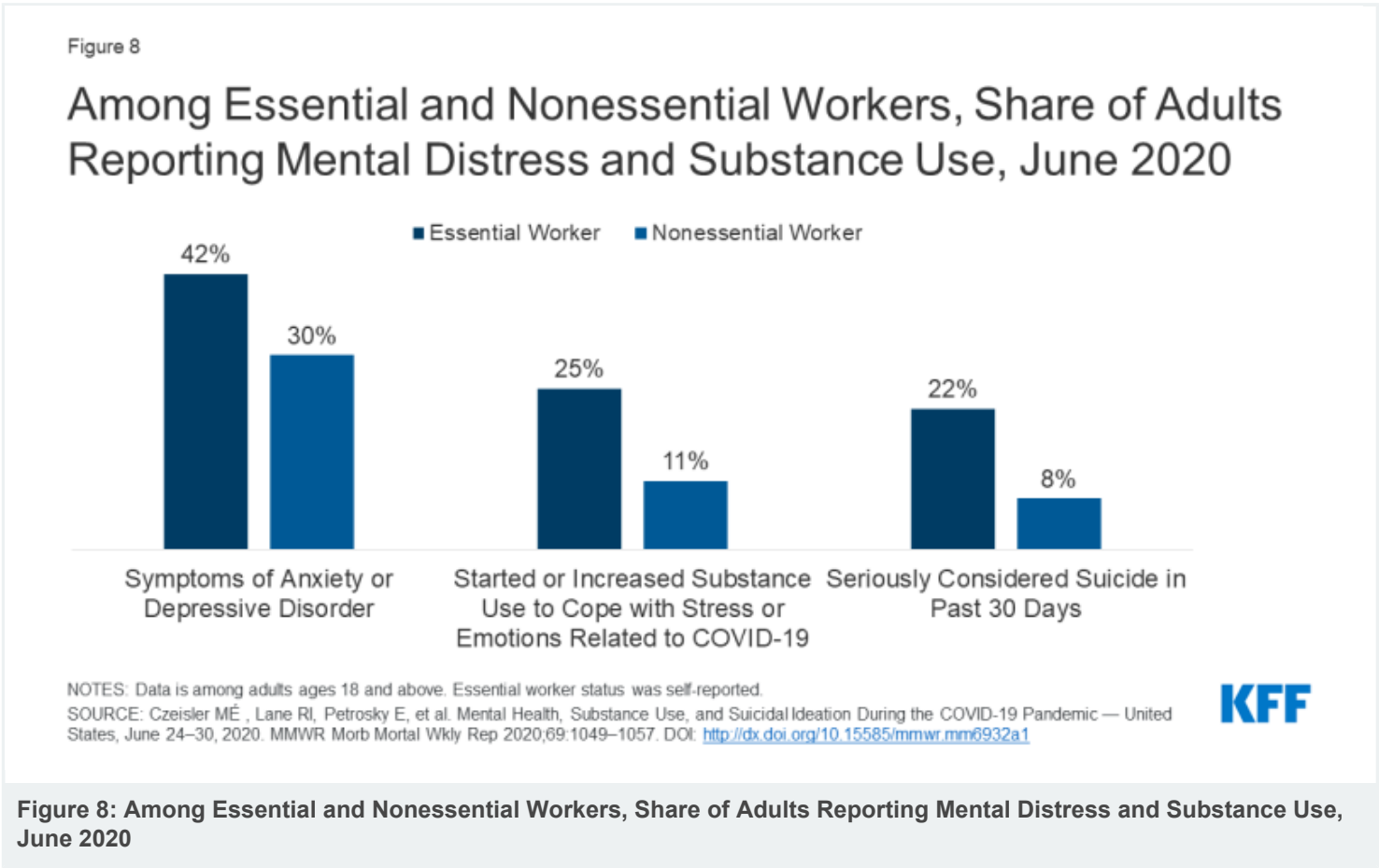


Figure 7: Share of Adults Reporting Symptoms of Anxiety and/or Depressive Disorder During the COVID-19 Pandemic, by Race/Ethnicity

## Essential Workers

Essential workers during the COVID-19 pandemic, such as health care providers, grocery store employees, and mail and package delivery personnel, have shown high rates of [poor mental health outcomes](#). These workers are generally required to work outside of their home and may be unable to practice social distancing. Consequently, they are at increased risk of contracting coronavirus and exposing other members of their household. A [KFF analysis](#) found that essential workers face additional challenges, including difficulties affording basic necessities as a result of the pandemic. These factors may contribute to poor mental health outcomes for these workers. As shown in Figure 8, essential workers are more likely than nonessential workers to report symptoms of anxiety or depressive disorder (42% vs. 30%, respectively), starting or increasing substance use (25% vs. 11%), or considering suicide in the past 30 days (22% vs. 8%).



During the pandemic, frontline health care workers have [reported](#) feelings of anxiety and depression and thoughts of [suicide](#). The [KFF Health Tracking Poll](#) conducted in mid-April 2020 found that 64% of households with a health care worker said worry and stress over the coronavirus caused them to experience at least one adverse impact on their mental health and well-being, such as difficulty sleeping or eating, increases in alcohol consumption or substance use, and worsening chronic conditions, compared to 56% of all households. Prior to the pandemic, [nurses](#) and [physicians](#) were already prone to experiencing burnout, with physicians also having an elevated [risk](#) of suicide.

### Policy Responses and Considerations

Throughout the pandemic, leading public health organizations — including the [CDC](#), [SAMHSA](#), the [World Health Organization](#), and the [United Nations](#) — have released general considerations and resources addressing the



mental health and well-being of both general populations and specific, high-risk groups during the pandemic. In the U.S., some steps have been taken at both the federal and state levels to address the pandemic's impact on mental health, but with mental health problems on the rise, key issues are likely to persist.

Congress has addressed some of the acute need for mental health and substance use services through two stimulus bills enacted during the pandemic. The Consolidated Appropriations Act, which was signed into law in December 2020, includes about [\\$4.25 billion](#) in funding for mental health and substance use services. It also builds on existing legislative efforts to boost insurer compliance with federal [mental health parity rules](#). The Coronavirus Aid, Relief, and Economic Security Act ([CARES Act](#)), a stimulus bill passed in March 2020, also allocated funding for mental health and substance use services, [including](#) a \$425 million appropriation for use by SAMHSA, in addition to several provisions aimed at expanding coverage for, and availability of, telehealth and other remote care for those covered by Medicare, private insurance, and other federally-funded programs. It also allowed for the Department of Veterans Affairs to arrange expansion of mental health services to isolated veterans via telehealth or other remote care services. Other efforts to address mental health needs include substantial increases in the use of telehealth for mental health services, aided early on by the federal government and many states expanding coverage and relaxing regulations for [telehealth services](#). Looking ahead, the Biden administration and Congress could take additional steps to address mental health and substance use issues, including [administrative actions](#) addressing suicide among LGBTQ youth, mental health parity, the opioid crisis, veteran mental health services, and school-based mental health services.

Given the pandemic's implications for both people with new or pre-pandemic mental health conditions, the crisis spotlights new and existing barriers to accessing mental health and substance use disorder services. Among adults reporting symptoms of anxiety and/or depressive disorder, more than [20%](#) report needing but not receiving counseling or therapy in the past month during the pandemic. Limited access to mental health care and substance use treatment is in part due to a current shortage of mental health professionals, which has been [exacerbated](#) by the pandemic. The pre-pandemic shortage of psychiatric hospital beds has also [worsened](#) with the surge of COVID-19 patients needing beds at hospitals across the nation.

Access to mental health and substance use care was a concern prior to the pandemic. In 2018, among the 6.5 million nonelderly adults experiencing serious psychological distress, 44% reported seeing a mental health professional in the past year. Compared to adults without serious psychological distress, adults with serious psychological distress were more likely to be uninsured (20% vs 13%) and be unable to afford mental health care or counseling (21% vs 3%).<sup>9</sup> For people with insurance coverage, an increasingly common barrier to accessing mental health care is a lack of [in-network options](#) for mental health and substance use care. Those who are uninsured already face paying full price for these and other health services. As unemployment continues to affect millions of people, who in turn may lose job-based coverage, some may regain coverage through options such as Medicaid, COBRA, or the ACA Marketplace, but others may remain uninsured. With an unprecedented share of people reporting symptoms of anxiety or depressive disorder, the potential outcome of *California v. Texas* (a case challenging the constitutionality of the entire ACA) is important to consider. Prior to the ACA, people with a [preexisting condition](#) like depression might have been denied health coverage or charged higher premiums, and many individual market plans did not cover any mental health or substance use services.

## Looking Ahead

The pandemic has both short- and long-term implications for mental health and substance use, particularly for groups at risk of new or exacerbated mental health disorders and those facing barriers to accessing care. Phased COVID-19 vaccinations are taking place across the country, perhaps signaling that the end of the pandemic is on the horizon. However, many of the stressful conditions employed to mitigate the spread of the coronavirus are likely to persist for the near future, given the slow and troubled rollout of [vaccinations](#) across the country, instances of people refusing the vaccine due to fear or uncertainty, and the need for vaccinated people to continue taking existing [precautions](#) to mitigate the outbreak.

History has shown that the mental health impact of disasters [outlasts](#) the physical impact, suggesting today's elevated mental health need will continue well beyond the coronavirus outbreak itself. For example, an [analysis](#) of the psychological toll on health care providers during outbreaks found that psychological distress can last up to three years after an outbreak. Due to the financial crisis accompanying the pandemic, there are also significant implications for mortality due to “deaths of despair.” A May 2020 [analysis](#) projects that, based on the economic downturn and social isolation, additional deaths due to suicide and alcohol or drug misuse may occur by 2029.

As policymakers continue to discuss further actions to alleviate the burdens of the COVID-19 pandemic, it will be important to consider how the increased need for mental health and substance use services will likely persist long term, even if new cases and deaths due to the novel coronavirus subside.

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TOPICS [Coronavirus \(COVID-19\)](#), [Health Reform](#) TAGS [Mental Health](#), [Polling](#), [Access to Care](#), [Adolescents](#), [Low income](#), [Tracking Poll](#)

### NEWS RELEASE

**Feb 2021**

□ [How the COVID-19 Pandemic is Affecting People's Mental Health and Substance Use](#)



ALSO OF INTEREST

- Mental Health and Substance Use State Fact Sheets
- Mental Health Impact of the COVID-19 Pandemic: An Update
- Both Remote and On-Site Workers are Grappling with Serious Mental Health Consequences of COVID-19
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**CREDIT MODIFICATION (MOD) DECISION MATRIX**

<b>Reason No.</b>	<b>SITUATION</b> <i>Applies to first period of non-compliance, and multiple consecutive periods of non-compliance.</i>	<b>DECISION</b>
MOD 1	Significant medical hardship of self or immediate family member for whom lawyer is primary support.	Grant as appropriate
MOD 2	Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling).	Grant as appropriate
MOD 3	Financial hardship (as defined by the "First Time Late Fee Waiver Requests Decision Criteria" table)	Grant as appropriate
MOD 4	All other reasons	Deny

## EXEMPTION (EXM) DECISION MATRIX

Reason No.	SITUATION <i>Applies to first period of non-compliance, and multiple consecutive periods of non-compliance <u>for EXM 3 only. For EXM 1&amp;2, for multiple consecutive periods of non-compliance, bring to board.-</u></i>	DECISION Note: If a waiver is approved and some credits have already been completed, grant the waiver only for the number of credits still needed for compliance. There should be no carry-over as a result of this waiver.
EXM 1	(1) Significant medical hardship of self or immediate family member for whom member is primary support; and (2) Petition is filed by certification deadline; and (3) <u>Less</u> than 15 credits due of which no more than 2 are ethics.	Grant.
EXM 2	(1) Significant medical hardship of self or immediate family member for whom member is primary support; and (2) Petition is filed by certification deadline; and (3) 15 or <u>more</u> credits still due and/or more than 2 ethics credits due.	Grant request if medical hardship is for lawyer and: (a) is life-threatening; or (b) is of long duration (in years); or (c) lawyer is 75 or older.  All others: Deny request and grant extension instead
EXM 3	On active military assignment in remote location or on a domestic base where it is difficult to access CLE courses.	Grant.
EXM 4	All other requests.	Deny.

## EXTENSION (EXT) REQUESTS MATRIX

Reason No.	<b>SITUATION</b> <i>Applies to first period of non-compliance, and multiple consecutive periods of non-compliance.</i>	<b>DECISION</b>
EXT 1	(1) Significant medical hardship of self or immediate family member for whom member is primary support; and  (2) Requested extension deadline is in the same calendar year in which the lawyer is due to report.	* First request -- grant extension with reasonable deadline * Second request -- refer to the MCLE Board
EXT 2	(1) Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling); and (2) Requested extension deadline is in the same calendar year in which the lawyer is due to report.	* First request -- grant extension with reasonable deadline * Second request -- refer to the MCLE Board
EXT 3	(1) Financial hardship -- due to (a) being unemployed or employed with poverty-level wages; (b) major medical expense for self or family member; or (c) bankruptcy; and (2) Requested extension deadline is in the same calendar year in which the lawyer is due to report.	* First request -- grant extension with reasonable deadline * Second request -- refer to MCLE Board
EXT 4	On an active military assignment in a location where it is possible to access CLE courses but military obligations do not allow enough time to complete credits by the deadline.	* First request -- grant extension with reasonable deadline * Second request -- refer to MCLE Board
EXT 5	All other requests	Deny

## LATE FEE WAIVER DECISION CRITERIA

Note: If "Credits by 12/31" is "Y," then late fee was assessed because certification was submitted after the February 1 deadline.

Y\* = Complete at time petition considered

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non- Comp RP	>1 Con- secutive Non- Comp RP	DECISION
<b>MEDICAL HARDSHIP/DEATH</b> <ul style="list-style-type: none"> <li>• "Immediate family member" as defined by RPC 1.8(l) subpart 1 as: parent, child, sibling, or spouse</li> <li>• Death must have occurred within six months of end of reporting period</li> <li>• Refer petition requests on basis of death liberally to the Board if any doubt exists</li> </ul>							
<b>A1</b>	Significant medical hardship of self or immediate family member for whom licensed legal professional is primary support, or Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling)	Y/N	Y*	Y/N	X		Waive if certification submitted or once it is submitted.
<b>A2</b>	Significant medical hardship of self or immediate family member for whom licensed legal professional is primary support, or Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling)	Y/N	Y*	Y/N		X	Reduce or waive [depending on the circumstance] if certification submitted or once it is submitted.
<b>A3</b>	Significant medical hardship of self or immediate family member for whom licensed legal professional is primary support, or Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling)	N	N	Y/N	X	X	<15 credits remaining = Reduce or waive [depending on the circumstance] if Certification submitted by the deadline (with all credits needed for compliance completed). >15 credit remaining = Refer to the Board

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non- Comp RP	>1 Con- secutive Non- Comp RP	DECISION
	<b>FINANCIAL HARDSHIP</b> as defined by 200% of Federal Poverty Guidelines based on <u>gross household</u> annual income due to (1) being unemployed or employed with poverty-level wages; (2) major medical expense for self or family member; or (3) bankruptcy. The guidelines are the same ones approved by the BOG in 2010 for determining a one-time waiver of the annual license fee based on financial hardship. (See attached "WSBA License Fee Exemption Request Form".) Offer a payment extension if necessary, taking the following guidelines into consideration: <ul style="list-style-type: none"> <li>Petition received for financial hardship waiver of late fee;</li> <li>Waiver was denied or late fee was reduced;</li> <li>Gross household income between 200-400% of the Federal Poverty Guidelines;</li> <li>Credit requirements have been met and certified;</li> <li>The late fee amount owed is equal to or more than \$450;</li> <li>The fee is paid in full within 3-5 months depending on the amount.</li> </ul>						
B1	FINANCIAL HARDSHIP	Y		Y	X		Waive
B2	FINANCIAL HARDSHIP		Y*	Y*	X		Reduce to \$50 [ <u>waive</u> \$100] if paid by the deadline.
B3	FINANCIAL HARDSHIP	Y		N	X		Reduce to \$50 [waive \$100] if paid and certified by the deadline.
B4	FINANCIAL HARDSHIP		Y*/N	Y/N	X		Reduce to \$75 [ <u>waive</u> \$75] if paid and certified by the deadline.
B5	FINANCIAL HARDSHIP	Y		Y*		X	Waive \$300 if paid by the deadline.
B6	FINANCIAL HARDSHIP		Y*	Y*		X	Waive \$200 if paid by the deadline.
B7	FINANCIAL HARDSHIP	Y		N		X	Waive \$250 if paid and certified by the deadline.
B8	FINANCIAL HARDSHIP		Y*/N	Y/N		X	Waive \$150 if paid and certified by the deadline.
B9	FINANCIAL HARDSHIP qualifying criteria not met		Y*/N	Y/N	X	X	Deny - Include payment extension language in denial letter.
	<b>MILITARY -- On active military assignment in remote non-U.S. location where mail is slow and unreliable and/or in active combat area.</b> No deadline for payment due to mail unreliability (but will not be compliant until it is paid).						
D1	MILITARY -- See header criteria	Y/N	Y*/N	Y*/N	X		Waive late fee.
D6	MILITARY -- See header criteria	Y/N	Y*/N	Y/N		X	Refer to the Board
	<b>MAIL DELIVERY PROBLEM</b>						



No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non- Comp RP	>1 Con- secutive Non- Comp RP	DECISION
E1	Claims certified by 2/1.	Y	Y*	Y*	X	X	Grant if licensed legal professional establishes timely certification or if administrative error; otherwise deny.
<b>MIS-INFORMATION FROM WSBA / LICENSED LEGAL PROFESSIONAL'S FAILURE TO LEARN MCLE REQUIREMENTS</b>							
F1	Reports that certification completed online by 2/1 and it was the <u>first time</u> licensed legal professional certified online. Certification was not submitted correctly, therefore 2/1 deadline not met.	Y		Y*	X	X	Waive the late fee once certification has been completed successfully. (This policy was passed by the Board on 3/19/10.)
F2	Reports being told by WSBA staff certification not needed	Y/N	Y*	Y*/N	X	X	Deny
F3	Licensed legal professional reports receiving other errant information from the WSBA [and it was reasonable for the licensed legal professional to be dependent on the information] or other WSBA administrative error occurred causing the late fee.	Y	Y*	Y*	X	X	Reduce or waive the late fee depending on the circumstances.
F4	Licensed legal professional reports receiving the previous petition decision letter after the deadline that had to be met for a fee reduction.	Y	Y*	Y*	X	X	Reduce or waive the late fee depending on the circumstances.
	<b>SPONSOR MIS-ADVERTISEMENT</b>						
G1	Short credits due to sponsor error or mis-advertisement of CLE credits ( <b>if &lt; or = 2 credits</b> )	See note	See note	Y	X	X	Grant if * At least 43 credits are in reporting period * Shortfall made up in timely manner after notification of misaccreditation * All credits needed for compliance are complete * Certification is complete

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non- Comp RP	>1 Con- secutive Non- Comp RP	DECISION
	<b>MISC. REASONS FOR NON-COMPLIANCE</b>						
<b>K1</b>	Certified reporting period roster with a duplicate course; deletion of the course causes credit non-compliance after 12/31. * All other credits were taken within the RP * < or = 4 credits need to be taken to make up credit deficiency. * Credits made up and certified in a timely manner. * Never late before.	Y		Y	X		Reduce late fee to \$75 <u>/waive</u> \$75]. if payment postmarked/delivered to the WSBA by the deadline.
<b>K2</b>	Busy practice / Oversight / Other non-medical or non-financial hardship reason [See "Misc." list below]						Deny
	<b>MISC. REASONS FOR NON-COMPLIANCE</b>						
	Claims mailed certification to WSBA but not received by WSBA.						
	Class that licensed legal professional planning to take cancelled at last minute and licensed legal professional still has time in reporting period to take needed credits.						
	Did not know certification had to be submitted since all credits are on the MCLE web site (even though instructions about requirement for certification is in APR 11, and in the July 1st letter, in the NW Lawyer FYI column Sept.-April each year, on the certification forms in the annual license packet and in all email reminders about license renewal).						