WASHINGTON STATE
BAR ASSOCIATION

Board of Governors

Meeting Materials

November 22-23, 2019
WSBA Conference Center
Seattle, Washington

Board of Governors Meeting
WSBA Conference Center
Seattle, WA
November 22-23, 2019

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

PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE
ALL ITEMS ON THIS AGENDA ARE POTENTIAL ACTION ITEMS
To participate remotely: dial 1.866.577.9294, access code 52810#

FRIDAY, NOVEMBER 22, 2019

9:00 AM – CALL TO ORDER

BOARD TRAINING

☐ **ANTI-HARASSMENT TRAINING**, Julie Lucht, Perkins Coie LLP

CONSENT CALENDAR & STANDING REPORTS

☐ **WELCOME**

☐ **CONSENT CALENDAR**

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  - December 3, 2018
  - January 17-18, 2019
  - March 1, 2019
  - March 4, 2019
  - March 29, 2019

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- NOMINATIONS REVIEW COMMITTEE, Gov. Jean Kang & Pres-elect Kyle Sciuchetti, Co-Chairs
- DIVERSITY COMMITTEE, Gov. Jean Kang, Co-Chair
- LONG-RANGE PLANNING COMMITTEE, Gov. Paul Swegle, Chair
- MEMBER ENGAGEMENT WORK GROUP, Govs. Kim Hunter and Dan Clark, Co-Chairs

12:00PM – LUNCH WITH WLI FELLOWS, LIAISONS, AND GUESTS

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5:00PM – RECESS

SATURDAY, NOVEMBER 23, 2019

9:00 AM – RESUME MEETING

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12:00 PM – LUNCH

AGENDA ITEMS & UNFINISHED BUSINESS

☐ **GOVERNOR ROUNDTABLE** (Governors' issues of interest)

EXECUTIVE SESSION

☐ **ANNOUNCE BASIS FOR EXECUTIVE SESSION PURSUANT TO RCW 42.30.110(1)(i) (if needed)**

☐ **ACTION RELATED TO EXECUTIVE SESSION (if needed)**

3:00 PM - Adjourn

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2019-2020 Board of Governors Meeting Issues

NOVEMBER (Seattle)
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- WSBF Annual & Financial Reports
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- Washington Leadership Institute (WLI) Fellows Report (Information)
- FY2019 Fourth Quarter Management Report (ED Report)
- Office of Disciplinary Counsel Report (ED Report)

JANUARY (Seattle)
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- ABA Midyear Meeting Sneak Preview
- Client Protection Fund (CPF) Annual Report
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- Legislative Session Report
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- Financials (Information)
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MARCH (Olympia)
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- Financials (Information)
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- Office of Disciplinary Counsel Report (ED Report)

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- Legislative Report/Wrap-up
- Interview/Selection of WSBA At-Large Governor
- Interview/Selection of the WSBA President-elect
- WSBA APEX Awards Committee Recommendations
- Financials (Information)
- FY2020 Second Quarter Management Report (ED Report)
- Office of Disciplinary Counsel Report (ED Report)

JULY (Stevenson)

Standing Agenda Items:

- Draft WSBA FY2021 Budget
- WSBA Treasurer Election
- Court Rules and Procedures Committee Report and Recommendations
- WSBA Committee and Board Chair Appointments
- BOG Retreat
- Financials (Information)
- Office of Disciplinary Counsel Report (ED Report)

AUGUST (Spokane)

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- Financials (Information)
- Office of Disciplinary Counsel Report (ED Report)
- FY2020 Third Quarter Management Report (ED Report)

SEPTEMBER (Seattle)

Standing Agenda Items:

- Final FY2021 Budget
- 2021 Keller Deduction Schedule
- WSBF Annual Meeting and Trustee Election
- ABA Annual Meeting Report
- Legal Foundation of Washington Annual Report
- Washington Law School Deans
- Chief Hearing Officer Annual Report
- Professionalism Annual Report
- Report on Executive Director Evaluation
- Financials (Information)
- WSBA Annual Awards Dinner

Board of Governors – Action Timeline

Description of Matter/Issue	First Reading	Scheduled for Board Action
CPD Proposed Defender Resource Packet	Sept 26-27, 2020	Nov 22-23, 2020

WASHINGTON STATE
BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes
Seattle
September 26-27, 2019

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President William D. Pickett on Thursday, September 26, 2019 at 8:29AM, at the offices of the Washington State Bar Association, Seattle, Washington. Governors in attendance were:

Sunitha Anjivel
Dan W. Bridges
Daniel D. Clark
Peter J. Grabicki
Carla J. Higginson
Kim E Hunter
Jean Y. Kang
Russell Knight
Christina A. Meserve
Athan P. Papailiou
Kyle D. Sciuchetti
Alec Stephens
Paul Swegle
Judge Brian Tollefson (ret.)

Also in attendance were President-elect Rajeev D. Majumdar, Interim Executive Director Terra Nevitt, General Counsel Julie Shankland, Chief Disciplinary Counsel Doug Ende, Chief Regulatory Counsel Jean McElroy, Chief Financial Officer Jorge Perez, Director of Human Resources Felix Neals, Interim Director of Advancement Kevin Plachy, Chief Communications and Outreach Officer Sara Niegowski, Executive Assistant Margaret Shane, and Executive Administrator Shelly Bynum. Also present were Governors-elect Bryn Peterson, Hunter Abell, and Tom McBride.

<u>President's Report & Interim Executive Director's Report</u>

Interim Executive Director Nevitt gave her report. She introduced Director of Human Resources Felix Neals, Chief Financial Officer Jorge Perez, and Executive Administrator Shelly Bynum. Interim Executive Director Nevitt announced the retirement of Executive Assistant Margaret

Shane. Interim Executive Director Nevitt recapped the Listening Tour and said she would bring a report back to the Board for further discussion.

President William D. Pickett gave his report. President Pickett reiterated the value of the Listening Tour and referenced the guiding principles for communication at the front of the BOG Book. President Pickett announced that a Cambodian delegation is interested in coming to meet with the Washington State Bar Association. President Pickett also recapped the President's Reception.

Member & Public Comments

The Board heard public comment from Jean Cotton.

Budget & Audit Committee Proposals

Treasurer Dan W. Bridges re-introduced Chief Financial Officer Perez who walked through the final draft of the FY2020 Budget, with an emphasis on changes to the budget since a draft was presented at the July meeting.

Treasurer Bridges added four points:

1. The Client Protection Fund reserve is getting too large and the Board should examine it next year.
2. This is essentially a reprise of last year's budget; the committee decided to recommend a "status quo" budget based on questions about the future of the bar's structure.
3. Funding for the Washington Leadership Institute reflects an increase of [$40,000]. He noted that there is not necessarily an expectation that they will spend it all, but that it is available to them.
4. Following a long discussion, the Budget & Audit Committee approved the budget related to administering the Limited License Legal Technician (LLLT) license. He challenges the Budget & Audit Committee to keep talking to LLLT Board and to work together to set goals.

Discussion followed. Governor Daniel D. Clark moved to approve the budget. Motion passed 12-2. Governors Stephens, Papailiou, Meserve, Bridges, Clark, Kang, Hunter, Sciuchetti, Swegle, Grabicki, Knight and Anjivel voted in favor. Governors Tollefson and Higginson opposed.

Treasurer Bridges presented the proposed Fiscal Policy Revisions. Governor Peter J. Grabicki moved to approve the submitted materials with the modification that all references to Chief Operating Officer and Director of Finance be changed to Chief Financial Officer. Motion passed 12-0-1. Governors Stephens, Tollefson, Meserve, Bridges, Clark, Kang, Hunter, Sciuchetti,

Swegle, Grabicki, Knight and Anjivel voted in favor. Governor Higginson abstained. Governor Papailiou was not present for the vote.

Treasurer Bridges presented the request for a supplemental audit. Discussion followed. Governor Swegle moved that we approve the $50,000 budget option. It was confirmed that this $50,000 was already included in the budget the Board just passed. Motion passed 12-2. Governors Stephens, Tollefson, Higginson, Bridges, Clark, Kang, Hunter, Sciuchetti, Swegle, Grabicki, Knight and Anjivel voted in favor. Governors Papailiou and Meserve opposed.

2020 Keller Deduction Schedule

Interim Executive Director Nevitt presented a request to approve a $1.55 Keller Deduction for the upcoming licensing process. Discussion followed. Governor Grabicki moved to approve the Keller Deduction as submitted. Motion passed 11-1-1. Governors Stephens, Papailiou, Meserve, Bridges, Clark, Kang, Hunter, Sciuchetti, Swegle, Grabicki, Knight and Anjivel voted in favor. Governor Higginson opposed. Governor Tollefson abstained. Governor Hunter was not present for the vote.

Washington State Bar Foundation Annual Meeting

WSBF President Kristina Larry called the annual meeting of the Washington State Bar Foundation to order at 10:33 AM. President Larry announced that the WSBF Trustees have approved disbursement of $260,000 to WSBA for diversity and public service programing. She reported a 5% increase in fundraising and a third consecutive year of growth for the Foundation. President Larry anticipates the Foundation being able to approve an additional gift in FY20 once the fundraising totals are final. President Larry shared additional fundraising and programming highlights from FY2019.

WSBF President Larry presented a request to amend the WSBF Bylaws to elect officers at the last meeting of the fiscal year, rather than the first meeting of the fiscal year and to delete outdated language. Discussion followed. Governor Kim E. Hunter moved for approval. Motion passed 11-1-1. Governors Stephens, Papailiou, Meserve, Bridges, Clark, Kang, Hunter, Swegle, Grabicki, Knight and Anjivel voted in favor. Governor Higginson opposed. Governor Tollefson abstained. Governor Sciuchetti was not present for the vote.

WSBF President Larry presented the slate of WSBF trustees for approval. Governor Grabicki moved for approval. Motion passed unanimously. Governor Sciuchetti was not present for the vote.

Court Rules & Procedures Committee Proposals

Jefferson Coulter, Chair of the Court Rules & Procedures Committee presented the Committee's recommendations for proposed amendments to MAR 7.2 and CrR 8.2 and CrRLJ 8.2. Discussion followed. Treasurer Bridges moved for adoption. Motion passed 9-2-3. Governors Papailiou, Tollefson, Meserve, Bridges, Kang, Sciuchetti, Grabicki, Knight and Anjivel voted in favor. Governors Higginson and Clark opposed. Governors Stephens, Hunter, and Swegle abstained.

Pro Bono & Public Service Committee Proposed Letter RE Immigration Detention Centers

Pro Bono & Public Service Committee Co-Chair Paul Okner and Committee Member Althea Paulson presented the Committee's request to approve a letter requesting some administrative changes at the Northwest Detention Center, including their view that this would be an appropriate action under GR 12. WSBA Member Ian Munce also presented his personal experience with this issue. Discussion followed. Governor Grabicki moved for approval. Motion passed unanimously.

Update and Discussion RE Washington Supreme Court Bar Structure Work Group

Governors Paul Swegle and Kyle D. Sciuchetti provided an overview of the Structure Work Group process and recommendations. Governor-elect Abell, co-author of the minority report also offered comments. Director Niegowski noted that the Supreme Court's response to the report is posted on the WSBA Website. Discussion followed.

Update form Washington Young Lawyers Committee

Jordan Couch, Chair-elect of the Washington Young Lawyers Committee presented on the state of the new lawyer profession, raising four key points:

1. Student loan debt is a growing problem
2. New lawyers are highly service driven toward access to justice but are *structurally* blocked both financially and culturally.
3. With the improvement in the job market we see a *decline* in bar engagement. Outside of job opportunities new lawyers do not see the bar investing in them.
4. The new lawyer job market has stabilized in a decent place but is *unprepared* for a recession.

Discussion followed.

Annual Discussion with Deans of Washington State Law Schools

Deans Annette Clark, Seattle University School of Law; Jacob Rooksby, Gonzaga University School of Law; and Mario Barnes, University of Washington School of law, introduced themselves and then responded to questions from the Board.

Swearing-In of 2019-2020 WSBA President and 2019-2022 Governors

Washington State Supreme Court Justice González swore in President Rajeev D. Majumdar, President-elect Kyle D. Sciuchetti, and Governors Bryn Peterson, Hunter Abell, Carla Higginson and Tom McBride.

Review & Comments RE Mandatory Continuing Legal Education (MCLE) Board Suggested Amendments to APR 11 Ethics Requirement

Chair Todd Alberstone presented the MCLE Committee's suggested amendments. Discussion and dialogue followed. Governor Clark moved to consider each of the proposals separately. Discussion followed. Governor Grabicki moved that in lieu of the MCLE Board's proposal, the Board direct that WSBA provide three free credits annually on these topics, which was accepted as a friendly amendment by Governor Clark. Members of the Board clarified that the programming would include an in-person component and be free, on-demand. Motion passed 7-5-1. Governors Tollefson, Higginson, Bridges, Clark, Hunter, Swegle, and Grabicki voted in favor. Governors Stephens, Papailiou, Meserve, Kang, and Anjivel opposed. Governor Sciuchetti abstained. Governor Knight was not present for the vote.

Report from Personnel Committee RE Proposed WSBA BOG No Retaliation

Human Resources Director Felix Neals and Governor Christina A. Meserve provided an update on the proposed amendments to the BOG's No Retaliation Policy. Governor Meserve noted that the no-retaliation policy was approved by the Board at the direction of the Washington Supreme Court and that edits were brought back based on comments from employees. These edits addressed conflict of interest, anti-harassment, and anti-discrimination. Governor Meserve noted that WSBA has a conflict of interest policy and does not have an explicit anti-harassment or anti-discrimination policy. Governor Meserve noted that there is currently an investigation into WSBA's conduct with regard to a hostile or unsafe work environment, which may yield recommendations. The Committee will wait for the report to be complete and will then make recommendations to the Board.

Discussion RE Board Updates & Communications Proposals

Governor Grabicki and Chief Communications Officer Sara Niegowski presented the proposal regarding Board updates and communications. Governor Grabicki moved to adopt the protocol in the late materials at page 11 and to take up standards later. Motion passed 8-1-4. Governors Tollefson, Higginson, Bridges, Clark, Hunter, Swegle, Grabicki, and Anjivel voted in favor. Governor Papailiou opposed. Governors Stephens, Meserve, Kang, and Sciuchetti abstained. Governor Knight was not present for the vote.

Council on Public Defense Proposed Defender Resource Guide

Council on Public Defense Member Jaime Hawk presented the Council's proposal to approve the Defender Resource Guide. Governor Higginson moved to approve the proposed Defender Resource Guide contained in the materials. It was noted that the topic was not on for action and the motion was withdrawn.

Consent Calendar

Governor Meserve requested that the July 26-27 meeting minutes be removed from the Consent Calendar and requested that liaisons that wish to be noted as in attendance be reflected in the minutes. It was reported that staff will have a sign-in sheet for this purpose at the next meeting. Motion passed 11-0-2. Governors Stephens, Papailiou, Higginson, Meserve, Bridges, Clark, Kang, Hunter, Swegle, Grabicki, Knight and Anjivel voted in favor. Governors Tollefson and Sciuchetti abstained. Governor Knight was not present for the vote.

The remainder of the consent calendar was approved 11-0-2. Governors Stephens, Papailiou, Higginson, Meserve, Bridges, Clark, Kang, Hunter, Swegle, Grabicki, Knight and Anjivel voted in favor. Governors Tollefson and Sciuchetti abstained. Governor Knight was not present for the vote.

Public Comment

The Board heard public comment from John Scannell.

Suggestions RE Character & Fitness Process

WSBA Member Tarra Simmons described her experience with the Character and Fitness process as a formerly incarcerated individual and presented suggestions for the process. Discussion followed. Governor Grabicki suggested that staff bring back a proposal to the Board for studying the process.

First Year Class Election of FY2020 Executive Committee Member

President Pickett passed the gavel to President-elect Majumdar who presented the issue for action. Governor Hunter Abell nominated Governor Higginson to represent the first-year class on the Executive Committee. With only the first-year class voting, the motion passed unanimously. Governor-elect McBride was not present.

Proposed BOG Civil Litigation Rules Revision Work Group Charter

President Pickett passed the gavel to President-Elect-elect Sciuchetti. General Counsel Julie Shankland deferred to Treasurer Bridges who presented the Proposed BOG Civil Litigation Rules Revision Work Group Charter for approval. Governor Bridges moved for adoption. Motion passed 9-1-3. Governors Stephens, Tollefson, Bridges, Clark, Kang, Hunter, Swegle, Grabicki,

and Anjivel voted in favor. Governor Higginson opposed. Governors Papailiou, Meserve, and Sciuchetti abstained. Governor Knight was not present for the vote.

Committee on WSBA Mission Performance and Review Recommendations

President-elect Majumdar presented the report and recommendations from the Committee on Mission Performance and Review regarding WSBA entities. Discussion followed. President-elect Majumdar presented his recommendation to sunset the CMPR. Governor Grabicki moved to approve both recommendations. Motion passed 9-0-4. Governors Stephens, Bridges, Clark, Meserve, Kang, Swegle, Higginson, Grabicki, and Anjivel voted in favor. Governors Papailiou, Tollefson, Hunter, and Sciuchetti abstained. Governor Knight was not present for the vote.

Discussion RE District 3 Seat

President Pickett passed the gavel to President-Elect Majumdar. Discussion followed regarding the potential conflicts that may arise if a governor serves as simultaneously as President-elect. Governor Grabicki moved that it is the sense of the Board that if Governor Sciuchetti opts to remain seated as a governor he remains counted in the quorum and will vote as a governor unless he is chairing the meeting in the place of President. Motion passed 9-0-4. Governors Stephens, Tollefson, Higginson, Bridges, Clark, Kang, Hunter, Swegle, Grabicki, and voted in favor. Governor Papailiou, Meserve, Sciuchetti, and Anjivel abstained. Governor Knight was not present for the vote.

Proposal RE WSBA Magazine Name

Governor Higginson presented her proposal to change the name of the magazine to Washington State Bar News. Chief Communications Officer Niegowski presented the member feedback received on the topic. Discussion followed.

Governor Roundtable

During the Governor Roundtable there was discussion about use of first/second read, the rural placement project, and appreciation for outgoing President Pickett.

Announce Basis for Executive Session Pursuant to RCW 42.30.110(1)(i)

President Pickett announced that the Board will meet in Executive Session as permitted by RCW 42.30.110(i)-to discuss with legal counsel representing WSBA potential litigation to which WSBA is likely to become a party.

The Board recessed to executive session at 3:17 PM and resumed the meeting at 3:50 PM.

Governor Grabicki moved to accept the advice received from legal counsel on the matter discussed. Motion passed 10-2-1. Governors Stephens, Papailiou, Meserve, Bridges, Clark,

Kang, Sciuchetti, Swegle, Grabicki, Knight and Anjivel voted in favor. Governors Higginson and Hunter opposed. Governor Tollefson abstained. Governor Knight was not present for the vote.

Adjournment

There being no further business, the meeting was adjourned at 3:55 PM on Saturday, September 27, 2019.

Respectfully submitted,

Terra Nevitt
WSBA Interim Executive Director & Secretary

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Interim Executive Director Terra Nevitt

DATE: November 12, 2019

RE: Executive Director's Report

Restructuring & Reorganization

With new leadership in place and the opportunities presented by open positions, Human Resources Director Felix Neals and I have been working with a number of departments across the organization to restructure teams and reorganize our work. The Finance team has been reduced by one full time employee, while up-leveling the work of and promoting several members of the team. They have also replaced the role of Associate Director of Finance with a Budget and Finance Support position to better reflect the reapportionment of duties to the CFO position. We have aligned our access to justice, public service, and diversity and inclusion work across the organization into a single Equity and Justice Team. We have also aligned our member services and engagement work to a single team offering support to Sections and new members, as well as practice management assistance and discounts to all members. In the Office of Executive Director we realigned existing positions, consolidating the work of providing administrative support to the BOG and BOG-related event planning into the role of Executive Administrator and up-leveling the other position to Operations and Strategy Manager to manage the Office of the Executive Director and support projects and initiatives across the organization. We have and will continue to take a hard look at positions as they become open with the realization that our finite resources mean reprioritizing our work if we want to have the capacity for new opportunities and emerging needs. In addition to improving our ability to advance the mission, I expect these changes to result in some budget savings, which will be reflected in the reforecasted budget to be produced later this year.

Update on Governor List Serves to Communicate with Members

At your September 26-27 meeting, it was decided that interested governors will be able to request a WSBA-administered list serve to communicate directly with their district stakeholders. Since then, WSBA Communication and Information Technology leaders have been working together to iron out the logistics. Currently, the IT team is working with the Office of General Counsel to evaluate the terms and conditions for contracting with a preferred list-serve provider. When we are up and running with a list serve provider, governors who request a list will receive access to their list serve and training on how to use it. We anticipate that each list serve will be populated with the members of each district and that an initial message will be sent to explain that they have been subscribed to a Governor XX's distribution list for news and updates about the WSBA Board of Governors. It will include the disclaimer that the content of the emails will reflect the views of Governor XX and not necessarily the official view or position of the Washington State Bar Association. If will also explain to them how to manage their subscription. Following launch, we anticipate that the distribution lists will be auto-maintained. WSBA will advertise available governor list serves by: A link on the governors homepage, a link in each official meeting recap, sent to respective districts, and reminders in Take Note. Note that the diversity and new/young at-large governors already use WSBA list serves to communicate with their stakeholder groups (the Diversity Stakeholders and New Members list serves, respectively) and we anticipate that they will continue to do so.

WSBA-Provided Email Accounts for Governors

Throughout the past calendar year, some governors have expressed an interest in using WSBA-provided email accounts to conduct official board business. Reasons for this include the ability to clearly separate WSBA-related communications from personal and work-related communications, providing a more formal and recognizable email address, and an ability to more easily and fully comply with records and discovery requests. Note that public records ombudsmen highly recommend organization-administered email accounts as a best practice. Our IT team is currently researching the logistics.

Update on Request for Time Tracking for WSBA Staff for Innovative Licensing Cost Centers

At the October 28, 2019 Budget and Audit (B&A) Committee meeting, we discussed a request for WSBA employees to track their time related to work for the Innovative Licensing cost centers. Specifically, the Apr Rule 6 Program, the Limited Practice Officer Program, and the Limited Legal License Technician (LLLT) Program. During that meeting we discussed the challenges of tracking hours spent and were asked to provide an update to the Board at the November meeting regarding how we propose to proceed. Our recommendation is to track time by percentage in the following categories, which should capture the full complement of WSBA employee allocations across the entire portfolio of the Innovative Licensing Programs:

- General Administration and Management;
- Innovative Licensing & Programs – General;
- Admissions;
- Admissions – Character & Fitness;
- Licensing and Membership Records;
- MCLE;
- LLLT;
- LPO;
- Law Clerk;
- Rule 9;
- Coordinated Discipline; and
- GILDAnext.

Time spent in activities for coordinated outreach and development that relates to all of the innovative licensing types and program activities (which includes Rule 9 Legal Interns, LPOs, LLLTs, and Law Clerks), will be assigned to "Innovative Licensing Programs, general". In an effort to work towards our common goal, we have already begun keeping track of employee time, effective November 1st. Our plan is to track time for a period of three months. (November, December and January) We are currently working on a method for reporting out the information and anticipate having updates on this information available at each Budget and Audit Meeting. Please note this is a "best efforts" process and we intend to course-correct as needed once we start to aggregate information.

Board for Judicial Administration

As you may know, the WSBA President and Executive Director serve as non-voting members of the Board for Judicial Administration, which is administered by the Administrative Office of the Courts and whose mission is to provide leadership and develop policy to enhance the judiciary's ability to serve as an equal, independent, and responsible branch of government. The BJA has a number of task forces and committees that carry out its mission. I attended the BJA meetings on September 20 and October 18 where discussion topics included the BJA's strategic

initiatives, courthouse security, court system education funding, the Bar Structure Workgroup, and the model used to develop judicial needs estimates. If you would like more detail about any of these topics, please let me know.

Litigation Update (attached)
Media Contacts Report (attached)
WSBA Demographics Report (attached)
Third Quarter Discipline Report (attached)
Correspondence and Other Informational Items (attached)

To: The President, President-elect, Immediate Past-President, and Board of Governors
From: Julie Shankland, General Counsel
Lisa Amatangel, Associate Director, OGC
Date: November 6, 2019
Re: Litigation Update

PENDING LITIGATION:

No.	Name	Brief Description	Status
1.	*Small v. WSBA,* No. 19-2-15762-3 (King Sup. Ct.)	Former employee alleges discrimination and failure to accommodate disability.	On 07/17/19, WSBA filed an answer. Discovery ongoing.
2.	*Beauregard v. WSBA*, No. 19-2-08028-1 (King Sup. Ct.)	Alleges violations of WSBA Bylaws (Section VII, B "Open Meetings Policy") and Open Public Meetings Act; challenges termination of former ED.	On 08/27/19, the Supreme Court granted direct discretionary review. On 09/26/19, WSBA filed a Designation of Clerk's Papers with the Superior Court, and a Statement of Arrangements with the Supreme Court. WSBA must file the report of proceedings with the Supreme Court on or before 11/25/19, and will have 45 days thereafter to file its opening brief.
3.	*O'Hagan v. Johnson et al.*, No. 18-2-00314-25 (Pacific Sup. Ct.)	Allegations regarding plaintiff's experiences with legal system.	Motion to Dismiss granted on 08/05/19; on 08/28/19 plaintiff circulated a Notice of Intent to Appeal.
4.	*Scannell v. WSBA et al.*, No. 18-cv-05654-BHS (W.D. Wash.)	Challenges bar membership, fees, and discipline system in the context of plaintiff's run for the Washington Supreme Court.	On 01/18/19, the court granted WSBA and state defendants' motions to dismiss; plaintiff appealed. WSBA responded to plaintiff's opening brief on 09/30/19.
5.	*Block v. WSBA et al.*, No. 18-cv-00907 (W.D. Wash.) ("*Block II*")	See *Block I* (below).	On 03/21/19, 9th Cir. stayed *Block II* pending further action by the district court in *Block I*.
6.	*Eugster v. Supreme Court of Washington, et al.*, No. 18-2-01360-34 (Thurston Sup. Ct.)	Challenges bar membership, fees, discipline system.	Case was stayed pending resolution of *Eastern District II*, now concluded. In September 2019, WSBA and the Justices filed a joint motion to dismiss;

			a hearing on the motion is scheduled for 11/08/19.
7.	*Eugster v. WSBA, et al.*, No 18201561-2, (Spokane Sup. Ct.)	Challenges dismissal of *Spokane County 1* (case no. 15-2-04614-9).	Motions to dismiss and for fees fully briefed; awaiting scheduling.
8.	*Block v. WSBA, et al.*, No. 15-cv-02018-RSM (W.D. Wash.) ("*Block I*")	Alleges conspiracy among WSBA and others to deprive plaintiff of law license and retaliate for exercising 1st Amendment rights.	On 02/11/19, 9th Cir. affirmed dismissal of claims against WSBA and individual WSBA defendants; the Court also vacated the pre-filing order and remanded this issue to the District Court. On 06/10/19, the District Court entered an order for plaintiff to show cause why the Court should not re-impose the vexatious litigant order; plaintiff had until 09/16/19 to respond. On 07/01/19, plaintiff filed a Petition of Writ of Certiorari with the United States Supreme Court; on 09/24/19 WSBA filed a waiver stating that it would respond if requested.
9.	*Eugster v. Littlewood, et al.*, No. 17204631-5 (Spokane Sup. Ct.)	Demand for member information in customized format.	Dismissed (GR 12.4 is exclusive remedy) and fees awarded; Eugster appealed. Merits appeal briefing completed; awaiting disposition. Briefing on the fee appeal is ongoing.
10.	*Eugster v. WSBA, et al*., No. 18200542-1 (Spokane Sup. Ct.)	Alleges defamation and related claims based on briefing in *Caruso v. Washington State Bar Association, et al.*, No. 2:17-cv-00003-RSM (W.D. Wash.)	Dismissed based on absolute immunity, collateral estoppel, failure to state a claim. Briefing complete on appeal and cross-appeal on fees. Case transferred to Division II. Oral argument heard 10/22/19.

CLOSED MATTER(S):

No.	Name	Brief Description	Status
1.	*Hankerson v. WSBA*, No. 18-2-57839-6 (King Sup. Ct.)	Plaintiff sought further review of the dismissal of his grievance.	Case dismissed without prejudice for failure to follow case schedule and for lack of prosecution.

WASHINGTON STATE BAR ASSOCIATION

MEMO

To: Board of Governors

From: Sara Niegowski, Chief Communications and Outreach Officer

Jennifer Olegario, Communication Strategies Manager

Date: November 5, 2019

Re: **Summary of Media Contacts**, September 11-November 5, 2019

	Date	Reporter and Media Outlet	Inquiry
1.	September 11	Daniel Walters, *Inlander (Spokane)*	Inquired whether WSBA could confirm that an attorney's information listed on a website was the same as one of our licensees in our legal directory.
2.	September 24	Pete O'Cain, *Wenatchee World*	Inquired about consequences for attorney charged with second-degree assault for domestic violence.
3.	September 27	Ruth Bayang, *NW Asian Weekly*	Re: Rajeev as new president of WSBA. Article published on Oct. 7: Rajeev Majumdar is the first state bar president of South Asian descent.
4.	September 30	Jami Makan, *The Northern Lights* (Blaine. WA)	Re: Rajeev as new president of WSBA. Article published on Oct. 9: Blaine Prosecuting Attorney Elected State Bar President
5.	October 1	*The American Bazaar*	Re: Rajeev as new president of WSBA. Article published on Oct. 1: Indian American Rajeev Majumdar Sworn in as Washington State Bar Association's New President.
6.	October 1	*The Post Register* (Idaho Falls, ID)	Re: Rajeev as new president of WSBA. People in Business: https://www.postregister.com/business/people/people-in-business/article_158e71de-b741-5112-8ff2-788e2b34f0b2.html
7.	October 1	Mathew Roland, *Bellingham Business Journal*	In-depth profile re: Rajeev as new president of WSBA. Article published Oct. 31: Whatcom County lawyer sworn in as president of Washington State Bar Association

8.	October 7	*India West*	Re: Rajeev as new president of WSBA. Article published: Washington State Bar Association Swears In Indian American Attorney Rajeev Majumdar as President
9.	October 7	College of Idaho News	Re: Rajeev as new president of WSBA. In the News: https://www.collegeofidaho.edu/news/news-72
10.	October 8	Lyle Moran, *Los Angeles Daily Journal*	Inquired about an updated number for Washington LLLTs.
11.	October 9	Connected to India	Re: Rajeev as new president of WSBA. Article published: Washington State Bar Association gets Indian-origin President
12.	October 15	Kathi Ethier, 790 KGMI-FM Radio	Re: Rajeev as new president of WSBA. Article published Oct. 15: Blaine Prosecuting Attorney New President of State Bar
13.	October 18	*The Indian Panorama*	Re: Rajeev as new president of WSBA. Article published: Indian American Rajeev D. Majumdar Sworn-in as President of Washington State Bar Association

WSBA Member* Licensing Counts 11/1/19 8:13:06 AM GMT-07:00

Member Type	In WA State	All
Attorney - Active	26,462	33,110
Attorney - Emeritus	102	109
Attorney - Honorary	365	411
Attorney - Inactive	2,402	5,508
Judicial	617	645
LLLT - Active	38	38
LLLT - Inactive	4	4
LPO - Active	813	826
LPO - Inactive	150	166
	30,953	40,817

Misc Counts	
All License Types **	41,153
All WSBA Members	40,817
Members in Washington	30,953
Members in western Washington	25,576
Members in King County	16,578
Members in eastern Washington	3,799
Active Attorneys in western Washington	21,870
Active Attorneys in King County	14,587
Active Attorneys in eastern Washington	3,168
New/Young Lawyers	7,099
MCLE Reporting Group 1	11,441
MCLE Reporting Group 2	10,743
MCLE Reporting Group 3	11,361
Foreign Law Consultant	19
House Counsel	307
Indigent Representative	10

By District	All	Active
0	3,635	2,798
1	2,923	2,432
2	2,126	1,713
3	2,101	1,787
4	1,397	1,183
5	3,227	2,631
6	3,346	2,822
7N	5,209	4,455
7S	6,746	5,619
8	2,250	1,897
9	4,891	4,146
10	2,966	2,491
	40,817	33,974

By Section ***	All	Previous Year
Administrative Law Section	246	274
Alternative Dispute Resolution Section	323	355
Animal Law Section	102	102
Antitrust, Consumer Protection and Unfair Business Practice	212	219
Business Law Section	1,271	1,280
Cannabis Law Section	106	64
Civil Rights Law Section	183	167
Construction Law Section	505	509
Corporate Counsel Section	1,123	1,112
Creditor Debtor Rights Section	471	499
Criminal Law Section	413	437
Elder Law Section	634	651
Environmental and Land Use Law Section	800	793
Family Law Section	1,041	1,141
Health Law Section	392	383
Indian Law Section	334	315
Intellectual Property Section	885	894
International Practice Section	235	240
Juvenile Law Section	172	185
Labor and Employment Law Section	1,006	999
Legal Assistance to Military Personnel Section	83	92
Lesbian, Gay, Bisexual, Transgender (LGBT) Law Section	108	109
Litigation Section	1,028	1,051
Low Bono Section	83	101
Real Property Probate and Trust Section	2,300	2,350
Senior Lawyers Section	249	249
Solo and Small Practice Section	913	980
Taxation Section	632	658
World Peace Through Law Section	117	98

*** Per WSBA Bylaws 'Members' include active attorney, emeritus pro-bono, honorary, inactive attorney, judicial, limited license legal technician (LLLT), and limited practice officer (LPO) license types.**

**** All license types include active attorney, emeritus pro-bono, foreign law consultant, honorary, house counsel, inactive attorney, indigent representative, judicial, LPO, and LLLT.**

***** The values in the All column are reset to zero at the beginning of the WSBA fiscal year (Oct 1). The Previous Year column is the total from the last day of the fiscal year (Sep 30). WSBA staff with complimentary membership are not included in the counts.**

By State and Province	
Alabama	29
Alaska	196
Alberta	9
Arizona	356
Arkansas	16
Armed Forces Americas	4
Armed Forces Europe, Middle East	24
Armed Forces Pacific	15
British Columbia	97
California	1,794
Colorado	237
Connecticut	49
Delaware	6
District of Columbia	343
Florida	247
Georgia	87
Guam	15
Hawaii	141
Idaho	442
Illinois	161
Indiana	34
Iowa	27
Kansas	28
Kentucky	23
Louisiana	53
Maine	16
Maryland	114
Massachusetts	88
Michigan	70
Minnesota	94
Mississippi	5
Missouri	64
Montana	166
Nebraska	18
Nevada	147
New Hampshire	11
New Jersey	64
New Mexico	69
New York	256
North Carolina	75
North Dakota	10
Northern Mariana Islands	5
Nova Scotia	1
Ohio	72
Oklahoma	28
Ontario	15
Oregon	2,706
Pennsylvania	77
Puerto Rico	4
Quebec	1
Rhode Island	13
Saskatchewan	1
South Carolina	29
South Dakota	6
Tennessee	55
Texas	364
Utah	183
Vermont	18
Virginia	269
Virgin Islands	1
Washington	30,953
Washington Limited License	1
West Virginia	7
Wisconsin	47
Wyoming	24

By WA County	
Adams	15
Asotin	25
Benton	390
Chelan	256
Clallam	165
Clark	869
Columbia	6
Cowlitz	143
Douglas	33
Ferry	13
Franklin	57
Garfield	2
Grant	124
Grays Harbor	113
Island	156
Jefferson	109
King	16,578
Kitsap	798
Kittitas	91
Klickitat	24
Lewis	108
Lincoln	13
Mason	97
Okanogan	95
Pacific	30
Pend Oreille	15
Pierce	2,283
San Juan	75
Skagit	297
Skamania	19
Snohomish	1,581
Spokane	1,942
Stevens	52
Thurston	1,563
Wahkiakum	10
Walla Walla	113
Whatcom	582
Whitman	77
Yakima	456

By Admit Yr	
1940	3
1941	1
1942	1
1944	1
1945	1
1946	2
1947	6
1948	7
1949	14
1950	14
1951	27
1952	26
1953	23
1954	27
1955	20
1956	40
1957	28
1958	36
1959	36
1960	30
1961	28
1962	34
1963	32
1964	36
1965	54
1966	60
1967	60
1968	89
1969	102
1970	102
1971	107
1972	173
1973	264
1974	253
1975	323
1976	390
1977	390
1978	434
1979	473
1980	487
1981	517
1982	505
1983	542
1984	621
1985	440
1986	682
1987	597
1988	567
1989	603
1990	735
1991	734
1992	732
1993	770
1994	795
1995	803
1996	750
1997	841
1998	802
1999	839
2000	847
2001	905
2002	981
2003	1,011
2004	1,029
2005	1,054
2006	1,089
2007	1,158
2008	1,073
2009	987
2010	1,078
2011	1,053
2012	1,088
2013	1,222
2014	1,346
2015	1,601
2016	1,296
2017	1,373
2018	1,294
2019	1,187

WSBA Member* Demographics Report 11/1/19 8:14:14 AM GMT-07:00

By Years Licensed	
Under 6	8,534
6 to 10	5,771
11 to 15	5,665
16 to 20	4,652
21 to 25	4,150
26 to 30	3,354
31 to 35	2,982
36 to 40	2,456
41 and Over	3,253
Total:	**40,817**

By Age	All	Active
21 to 30	1,915	1,845
31 to 40	9,259	8,331
41 to 50	9,826	8,145
51 to 60	8,783	6,942
61 to 70	7,769	5,896
71 to 80	2,682	1,818
Over 80	583	133
Total:	**40,817**	**33,110**

By Gender	
Female	12,333
Male	17,026
Non-Binary	9
Not Listed	13
Selected Mult Gender	10
Transgender	1
Two-spirit	1
Respondents	**29,393**
No Response	**11,424**
All Member Types	**40,817**

By Disability	
Yes	1,108
No	19,826
Respondents	**20,934**
No Response	**19,883**
All Member Types	**40,817**

By Sexual Orientation	
Asexual	17
Gay, Lesbian, Bisexual, Pansexual, or Queer	282
Heterosexual	3,160
Not Listed	48
Selected multiple orientations	15
Two-spirit	1
Respondents	**3,523**
No Response	**37,294**
All Member Types	**40,817**

By Ethnicity	
American Indian / Native American / Alaskan Native	240
Asian-Central Asian	21
Asian-East Asian	143
Asian-South Asian	33
Asian-Southeast Asian	40
Asian—unspecified	1,213
Black / African American / African Descent	638
Hispanic / Latinx	680
Middle Eastern Descent	10
Multi Racial / Bi Racial	935
Not Listed	192
Pacific Islander / Native Hawaiian	63
White / European Descent	23,865
Respondents	**28,073**
No Response	**12,744**
All Member Types	**40,817**

Members in Firm Type	
Bank	13
Escrow Company	47
Government/ Public Secto	5,019
House Counsel	2,940
Non-profit	212
Title Company	105
Solo	5,083
Solo In Shared Office Or	1,383
2-5 Members in Firm	4,222
6-10 Members in Firm	1,705
11-20 Members in Firm	1,290
21-35 Members in Firm	799
36-50 Members In Firm	543
51-100 Members in Firm	611
100+ Members in Firm	1,926
Not Actively Practicing	1,027
Respondents	**26,925**
No Response	**13,892**
All Member Types	**40,817**

By Practice Area	
Administrative-regulator	2,162
Agricultural	218
Animal Law	103
Antitrust	292
Appellate	1,594
Aviation	168
Banking	423
Bankruptcy	889
Business-commercial	5,082
Cannabis	65
Civil Litigation	1,114
Civil Rights	1,020
Collections	509
Communications	210
Constitutional	618
Construction	1,277
Consumer	735
Contracts	4,122
Corporate	3,440
Criminal	3,700
Debtor-creditor	907
Disability	606
Dispute Resolution	1,232
Education	482
Elder	851
Employment	2,767
Entertainment	298
Environmental	1,235
Estate Planning-probate	3,371
Family	2,641
Foreclosure	469
Forfeiture	97
General	2,605
Government	2,758
Guardianships	819
Health	907
Housing	287
Human Rights	286
Immigration-naturaliza	989
Indian	558
Insurance	1,636
Intellectual Property	2,213
International	884
Judicial Officer	393
Juvenile	775
Labor	1,106
Landlord-tenant	1,244
Land Use	821
Legal Ethics	276
Legal Research-writing	735
Legislation	408
Lgbtq	44
Litigation	4,489
Lobbying	167
Malpractice	733
Maritime	309
Military	364
Municipal	898
Non-profit-tax Exempt	601
Not Actively Practicing	2,001
Oil-gas-energy	216
Patent-trademark-copyr	1,263
Personal Injury	3,167
Privacy And Data Securit	151
Real Property	2,561
Real Property-land Use	2,085
Securities	756
Sports	155
Subrogation	109
Tax	1,275
Torts	2,005
Traffic Offenses	597
Workers Compensation	706

By Languages Spoken	
Afrikaans	6
Akan /twi	4
Albanian	2
American Sign Language	18
Amharic	18
Arabic	50
Armenian	7
Bengali	10
Bosnian	13
Bulgarian	12
Burmese	2
Cambodian	6
Cantonese	99
Cebuano	5
Chamorro	5
Chaozhou/chiu Chow	1
Chin	1
Croatian	21
Czech	6
Danish	20
Dari	4
Dutch	23
Egyptian	2
Farsi/persian	62
Fijian	1
Finnish	7
French	693
French Creole	1
Fukienese	3
Ga/kwa	2
German	414
Greek	31
Gujarati	14
Haitian Creole	2
Hebrew	34
Hindi	93
Hmong	1
Hungarian	15
Ibo	4
Icelandic	2
Ilocano	8
Indonesian	11
Italian	154
Japanese	203
Javanese	2
Kannada/canares	4
Kapampangan	1
Khmer	1
Kongo/kikongo	1
Korean	226
Lao	5
Latvian	6
Lithuanian	5
Malay	4
Malayalam	8
Mandarin	357
Marathi	6
Mongolian	2
Navajo	1
Nepali	4
Norwegian	36
Not_listed	39
Oromo	3
Other	1
Pashto	1
Persian	20
Polish	31
Portuguese	117
Portuguese Creole	2
Punjabi	60
Romanian	21
Russian	224
Samoan	7
Serbian	19
Serbo-croatian	12
Sign Language	20
Singhalese	2
Slovak	2
Somali	1
Spanish	1,782
Spanish Creole	3
Swahili	4
Swedish	53
Tagalog	67
Taishanese	4
Taiwanese	20
Tamil	11
Telugu	3
Thai	9
Tigrinya	3
Tongan	1
Turkish	13
Ukrainian	41
Urdu	39
Vietnamese	88
Yoruba	10
Yugoslavian	4

*** Includes active attorneys, emeritus pro-bono, honorary, inactive attorneys, judicial, limited license legal technician (LLLT), and limited practice officer (LPO).**

WASHINGTON STATE
BAR ASSOCIATION
Office of Disciplinary Counsel

MEMO

To:	Terra Nevitt, WSBA Interim Executive Director
From:	Douglas J. Ende, WSBA Chief Disciplinary Counsel & Director of the Office of Disciplinary Counsel
Date:	November 1, 2019
Re:	Quarterly Discipline Report, 3rd Quarter (July – September 2019)

A. Introduction

The Washington Supreme Court's exclusive responsibility to administer the lawyer discipline and disability system is delegated by court rule to WSBA. See GR 12.2(b)(6). The investigative and prosecutorial function is discharged by the employees in the Office of Disciplinary Counsel (ODC), which is responsible for investigating allegations and evidence of lawyer misconduct and disability and prosecuting violations of the Washington Supreme Court's Rules of Professional Conduct.

The Quarterly Discipline Report provides a periodic overview of the functioning of the Office of Disciplinary Counsel. The report graphically depicts key discipline-system indicators for 3rd Quarter 2019. Note that all numbers and statistics herein are considered tentative/approximate. Final figures will be issued in the 2019 Discipline System Annual Report.

B. Recent Supreme Court Opinions & Other Accomplishments

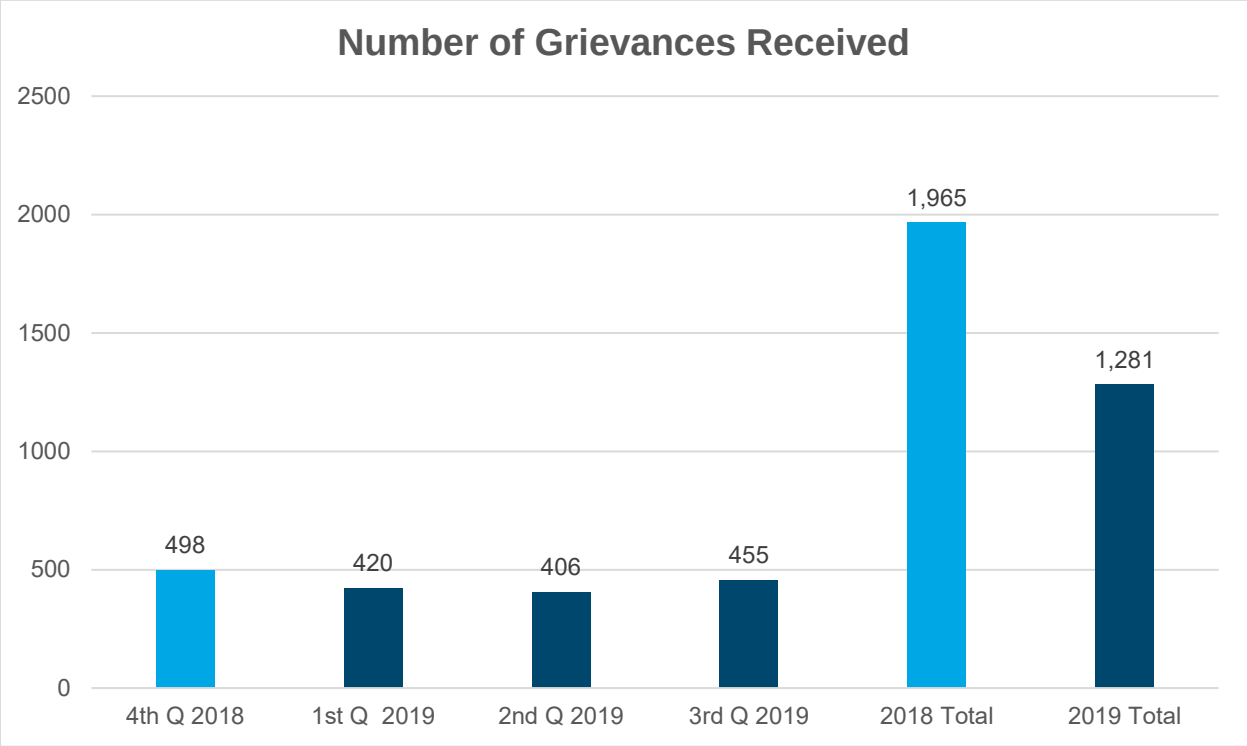
- **Background on Coordinated Discipline Workgroup.** In late 2015, the WSBA Executive Management Team and the WSBA BOG initiated discussions about coordinating all regulatory and disciplinary systems for all licenses to practice law (lawyer, LPO, LLLT) authorized by the Court and administered by the WSBA. Among the motivations for coordinating the systems was the realization that administering three separate systems for three license types was neither an efficient nor an effective use of license fees. Subsequently, workgroups of WSBA employees from ODC, OGC, and RSD convened to develop recommendations regarding the feasibility of a coordinated discipline system.

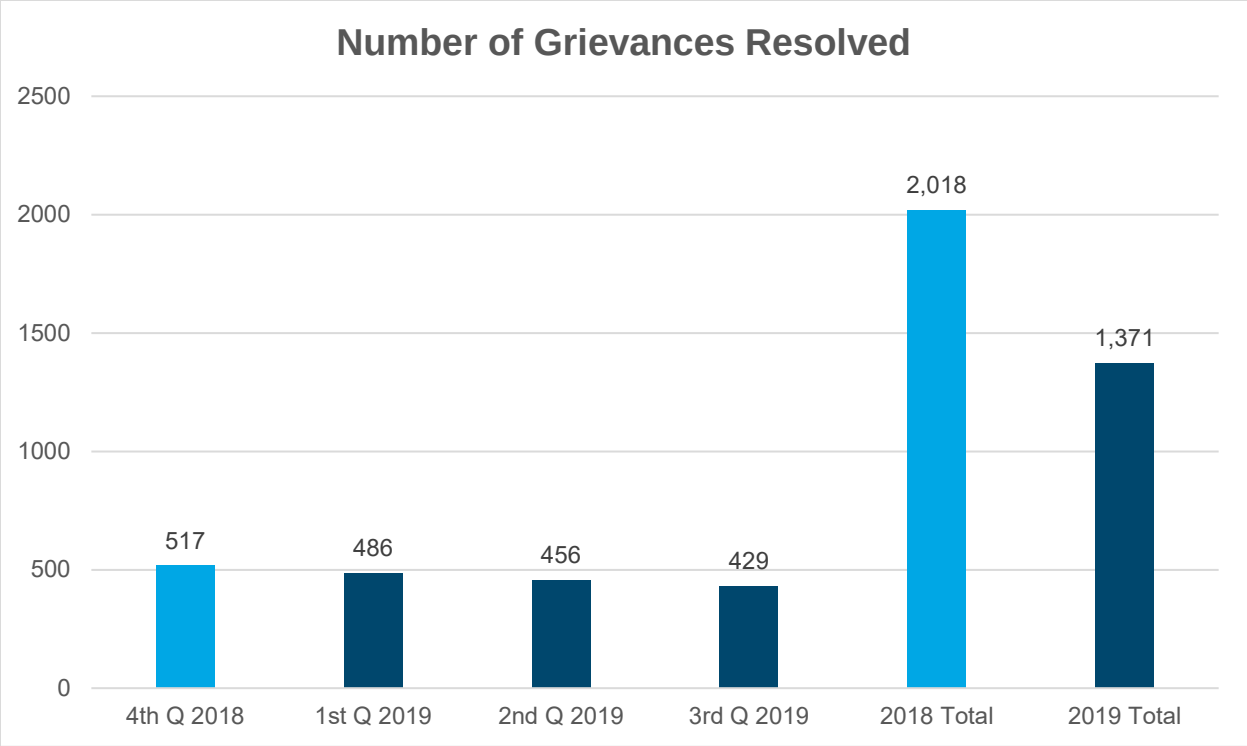
  In June 2017, after seeking and incorporating input from various stakeholders, WSBA employees prepared and submitted for the Court's initial consideration a proposed model for a coordinated disciplinary and regulatory proceedings system, along with the development of general improvements to the system. In addition to coordination of the three systems, a core concept of the initiative is the creation of a professionalized adjudicative system for all disciplinary and regulatory hearings. In July 2017, the Court approved in concept the proposed coordinated discipline system.

  Current Status of Rule Drafting Process. After Court approval of the concept, a workgroup of WSBA employees from ODC, OGC, and RSD began the process of drafting

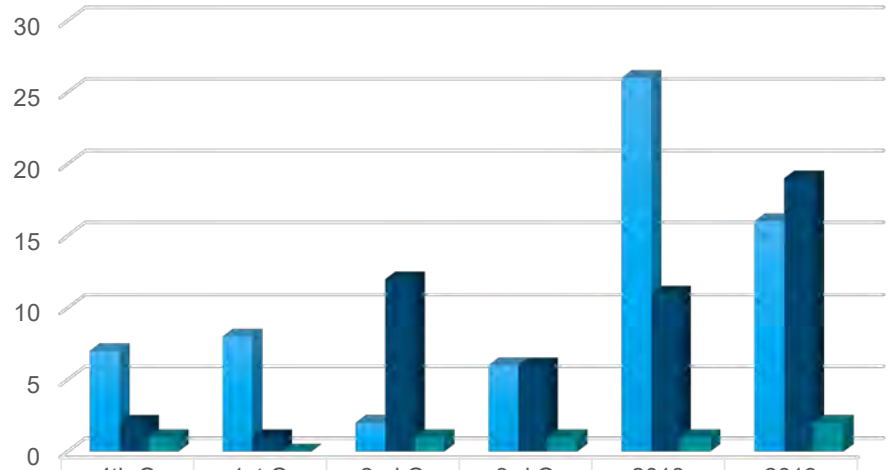
the coordinated disciplinary procedural rules. Beginning in September, the workgroup began its final review of a comprehensive set of draft procedural rules—a process that it expects to complete in the next few months. When the draft rules are finalized, WSBA employees will seek additional stakeholder feedback. Stakeholders will be selected from among actors in the disciplinary and regulatory proceedings systems and will be convened over a series of meetings to review the rules and provide substantive feedback. Once stakeholder review is complete, it is anticipated the rules will be presented to the BOG in Spring 2020, followed by eventual submission of a set of suggested coordinated-system rules to the Supreme Court under GR 9.

C. Grievances and Dispositions

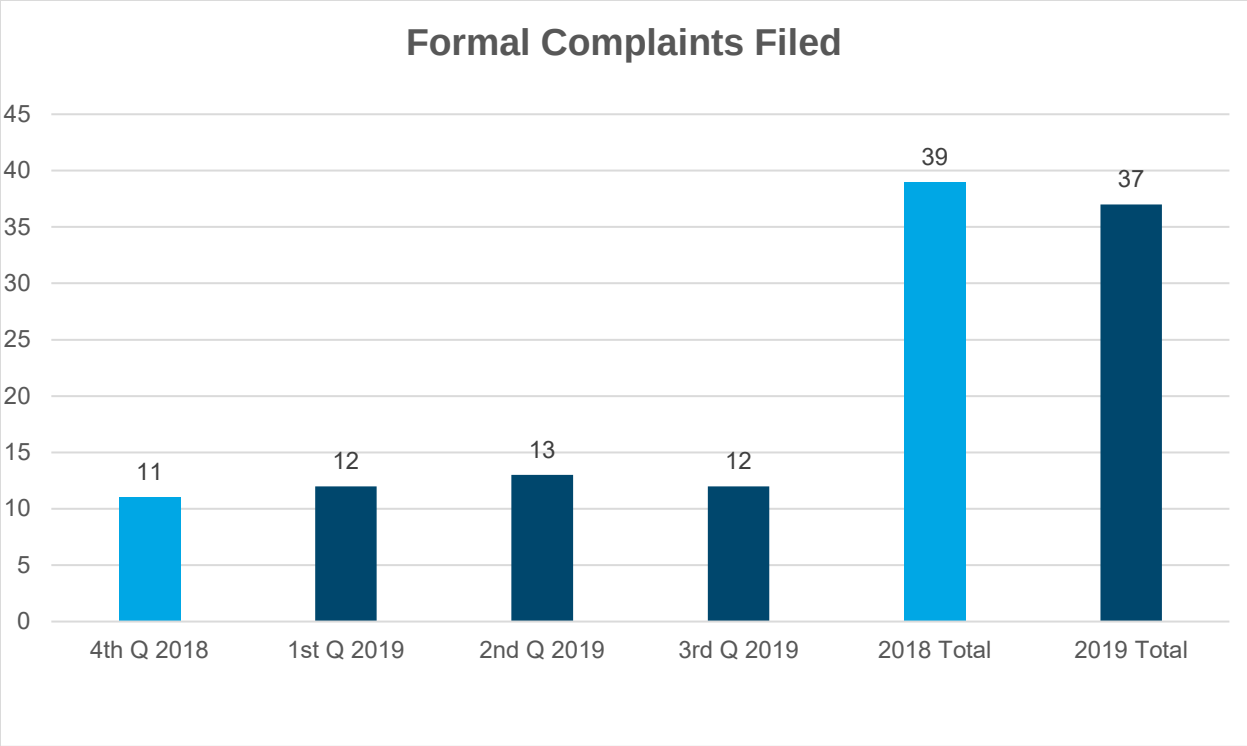


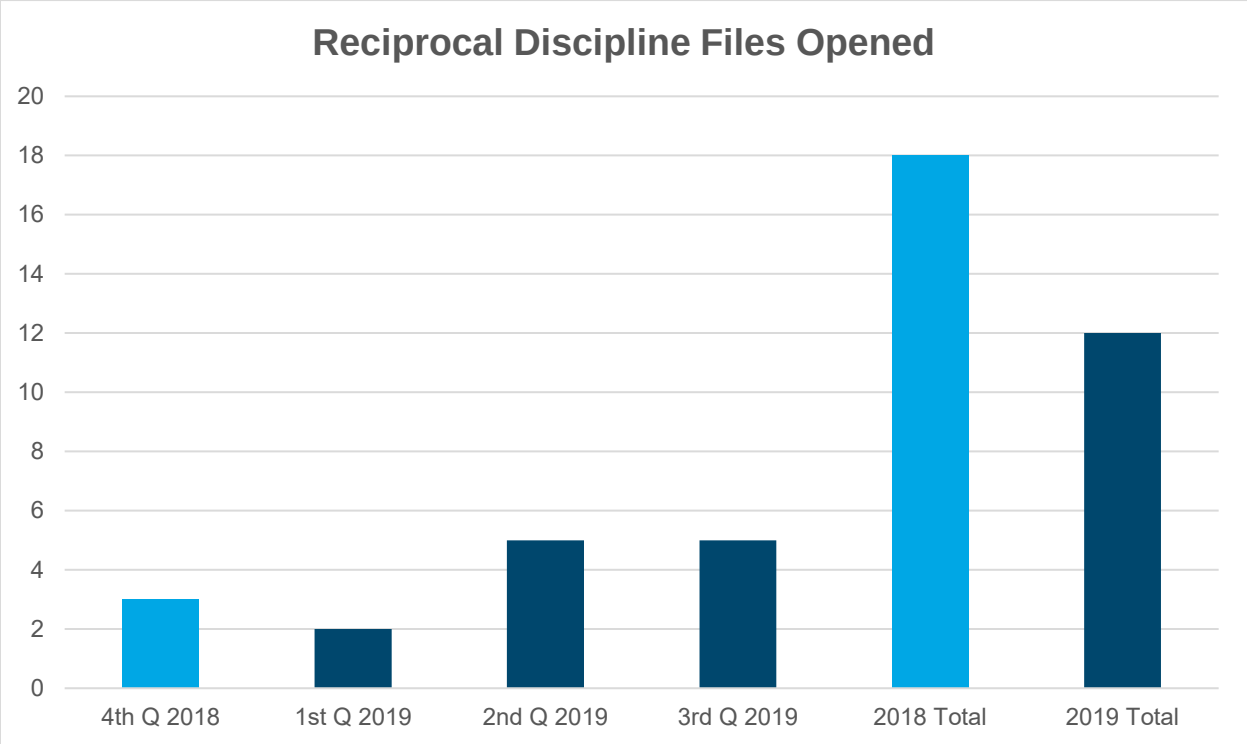


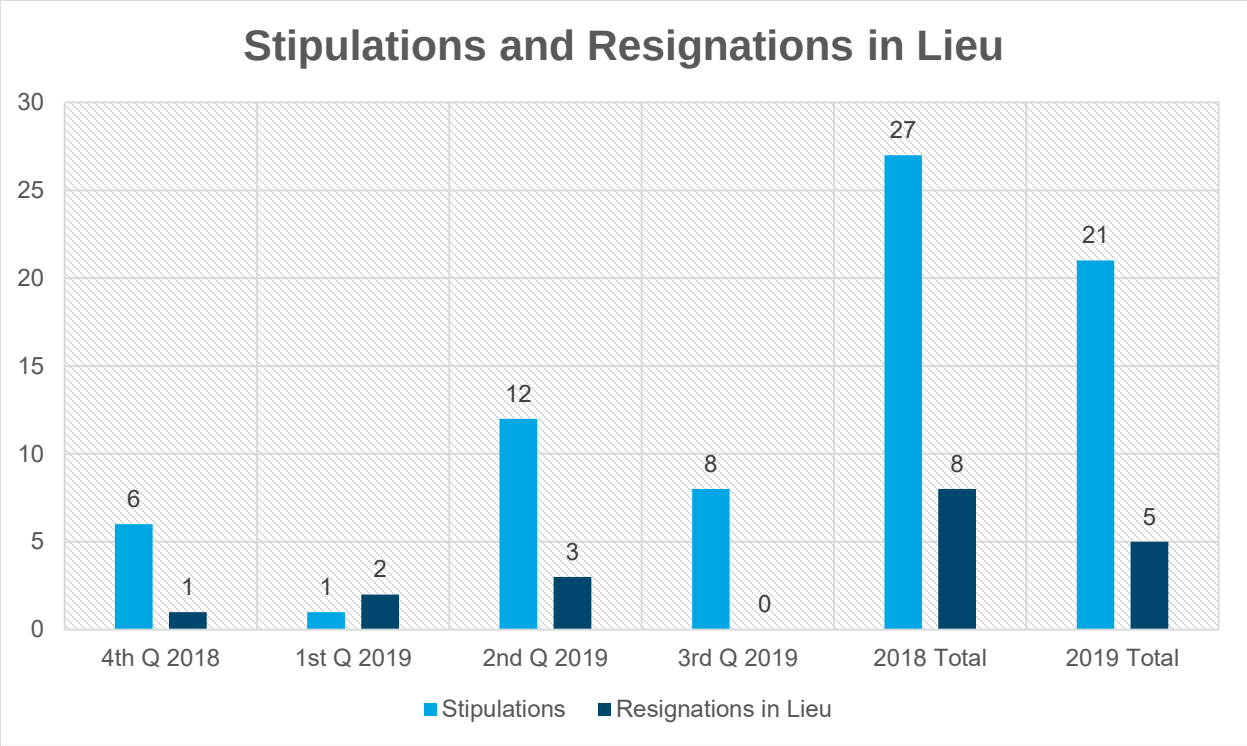
Diversion Statistics

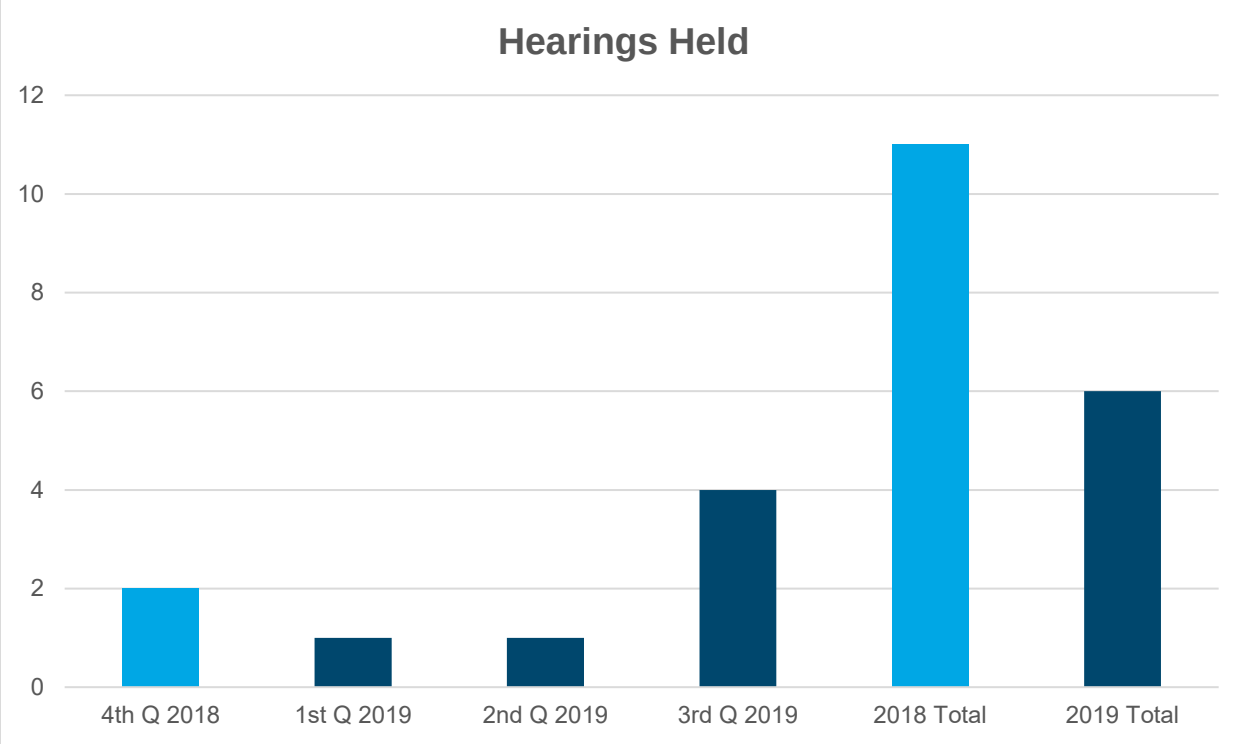


	4th Q 2018	1st Q 2019	2nd Q 2019	3rd Q 2019	2018 Total	2019 Total
New Diversion Files	7	8	2	6	26	16
Completed Diversion Files	2	1	12	6	11	19
Terminated Diversion Files	1	0	1	1	1	2

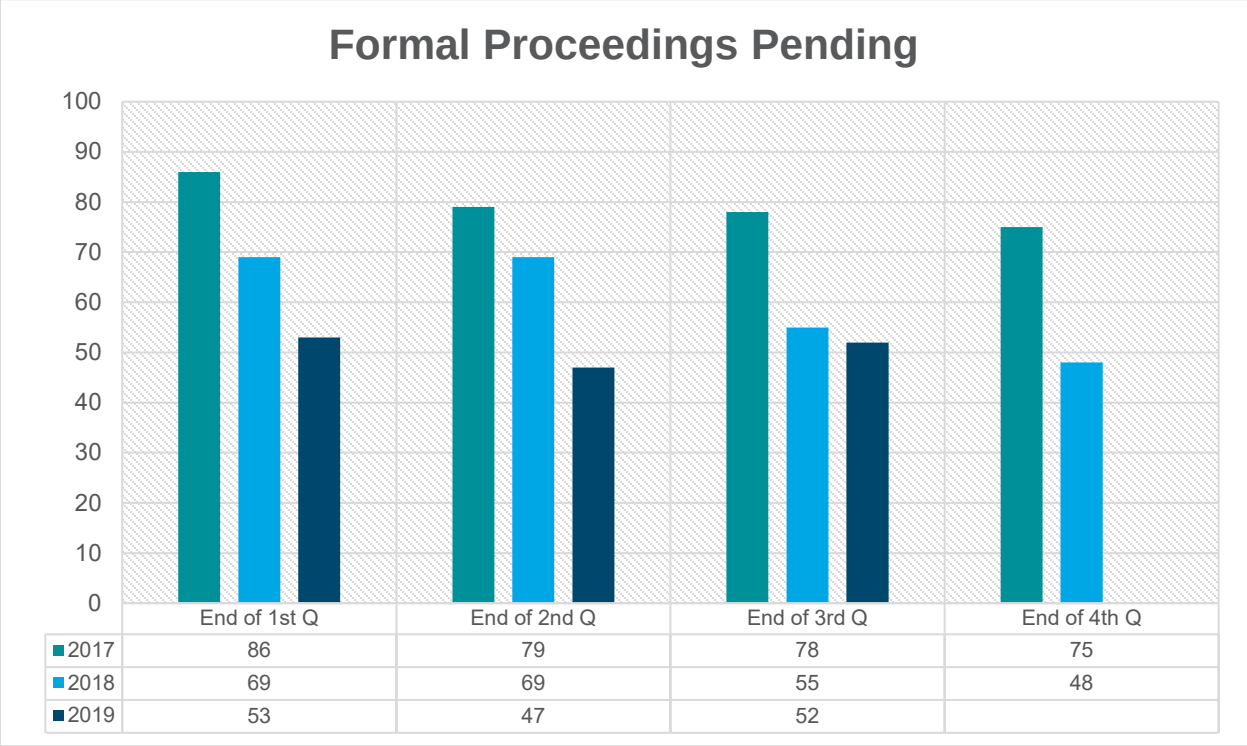

Formal Complaints Filed
45
40
35
30
25
20
15
10
5
0
11
12
13
12
39
37
4th Q 2018
1st Q 2019
2nd Q 2019
3rd Q 2019
2018 Total
2019 Total


Reciprocal Discipline Files Opened
20
18
16
14
12
10
8
6
4
2
0
4th Q 2018
1st Q 2019
2nd Q 2019
3rd Q 2019
2018 Total
2019 Total


Stipulations and Resignations in Lieu
30
25
20
15
10
5
0
6
1
1
2
12
3
8
0
27
8
21
5
4th Q 2018
1st Q 2019
2nd Q 2019
3rd Q 2019
2018 Total
2019 Total
Stipulations
Resignations in Lieu

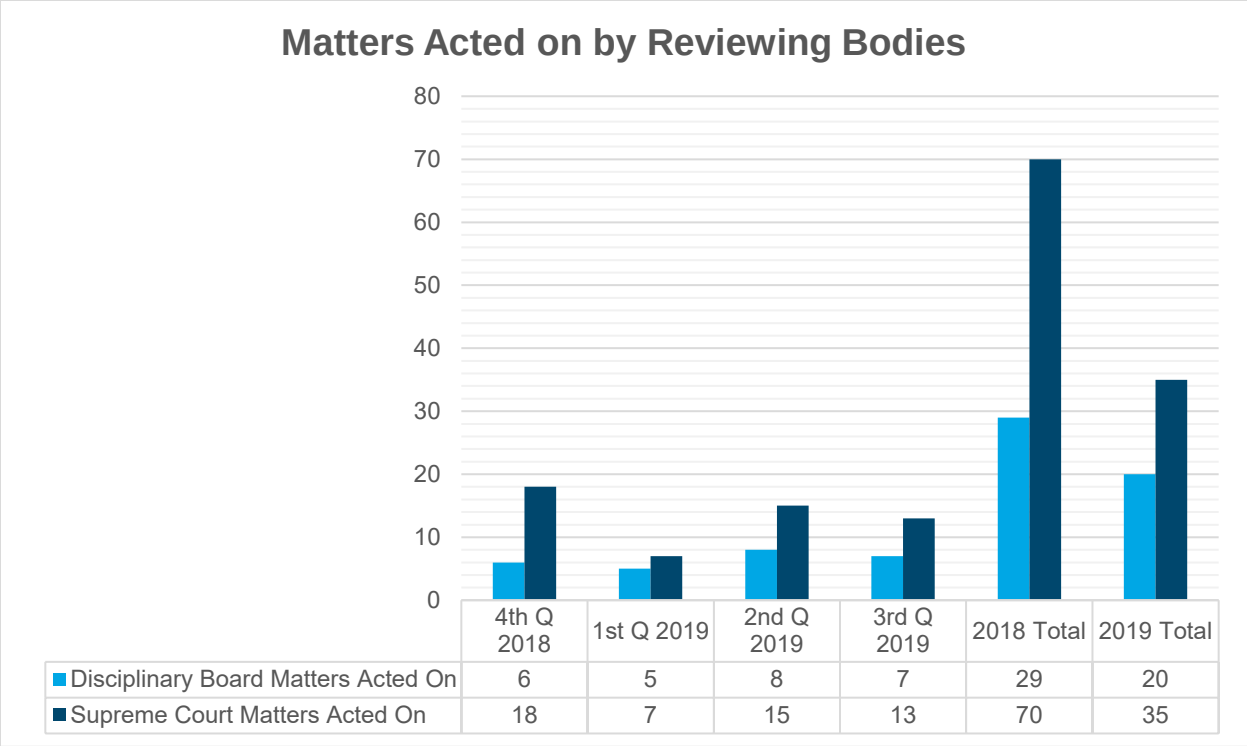

Hearings Held
12
10
8
6
4
2
0
4th Q 2018
1st Q 2019
2nd Q 2019
3rd Q 2019
2018 Total
2019 Total

D. Pending Proceedings[1]

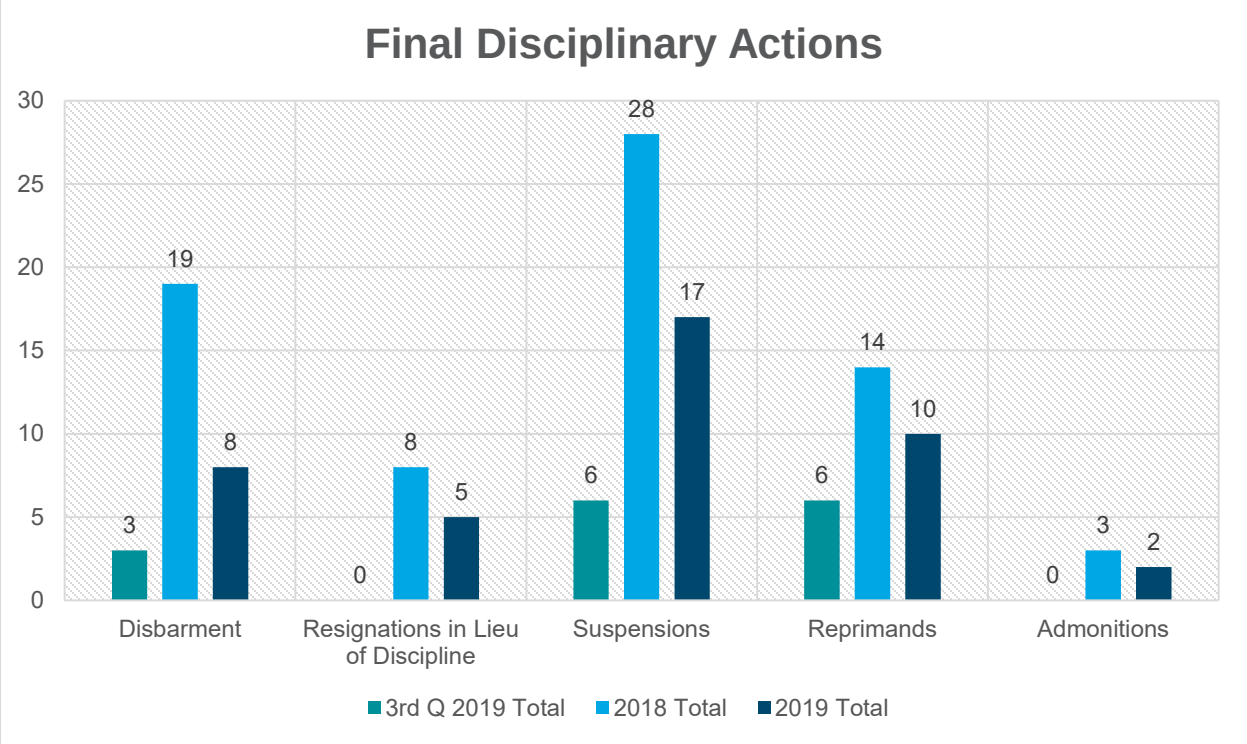


	End of 1st Q	End of 2nd Q	End of 3rd Q	End of 4th Q
2017	86	79	78	75
2018	69	69	55	48
2019	53	47	52	

[1] In the second table in this section, the Disciplinary Board numbers reflect Board orders on stipulations and following review after an appeal of a hearing officer's findings.



E. Final Disciplinary Actions



F. Disability Inactive Transfers

Disability Inactive Transfers	Quarter Total
4th Quarter 2018	2
1st Quarter 2019	0
2nd Quarter 2019	0
3rd Quarter 2019	5
2018 Total	8
2019 Total	5

G. Discipline Costs[2]

Quarterly Discipline Costs Collected	Total
4th Q 2018	$14,131.22
1st Q 2019	$17,386.49
2nd Q 2019	$22,401.04
3rd Q 2019	$18,364.76
2018 Total	**$75,784.40**
2019 Total	**$58,152.29**

[2] The cost figures may vary from amounts indicated in previous quarterly reports, statistical summaries, and annual reports, owing to discrepancies in the data available at the time of issuance of these quarterly reports and the final cost figures available after Accounting closes the monthly books.

WASHINGTON STATE
BAR ASSOCIATION
Regulatory Services Department

LLLT Board
Established by Washington Supreme Court APR 28
Administered by the WSBA
Stephen Crossland, Chair

September 26, 2019

Justices of the Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504

Re: The Cost and Performance of the LLLT Program

Dear Justices:

I write on behalf of the Limited License Legal Technician Board (LLLT Board) in response to the letter sent to you on July 9, 2019 from Dan'l Bridges in his capacity as Treasurer of the Washington State Bar Association. It has been difficult to decide how to most appropriately respond in light of the numerous misstatements and innuendos. We believe that the best response is for us to tell you what we believe the program to be and then advise you of the ways in which Dan'l Bridges erroneously characterizes the Limited License Legal Technician license.

The license was created to provide qualified, competent, and regulated legal services to those who may not be able to afford the services of a lawyer, and who may not qualify for government funded legal services, but who may be able to afford to pay some money for the services of a legal professional. The market for those legal services, sadly enough, includes not only people with little or no money, but also those of moderate income who still can't afford the services of a lawyer.

APR 28 was passed with the intention that we would at sometime in the future have "qualified and regulated" professionals who could provide some limited legal services at a price the consumer can afford. The Rule was intended to provide legal services to consumers in a multiple areas of law where there is a significant unmet need, of which there are many. Obviously the first practice area was family law, but there are many other areas of the practice of law that would be very appropriate. Both "civil legal needs studies" commissioned by the Supreme Court demonstrate the many areas of the practice of law in which there is unmet need.

There was no template for any of us in undertaking this venture. However, we knew that if the service providers were going to be "qualified and regulated", this meant that there must accountability in the education and testing component of this license. It also meant there must be accountability to the consumers, which led to rules of professional conduct and discipline almost identical to those applying to lawyers. And it also led to requiring that LLLTs must have malpractice insurance, a requirement that is not imposed on lawyers.

In the early phases of the implementation of APR 28, the LLLT Board developed a mnemonic to help explain the implementation of APR 28, which became known as the "Three As". The LLLT Board wanted the license to be **affordable**, so it did not simply follow in the footsteps of the legal profession for lawyers, with a very expensive education, that in many cases results in the reality for a lot of young

lawyers that they can't afford to serve the unmet needs of low and moderate income people because of their large student debt load. The LLLT Board also wanted the license to be **accessible.** We believe that making the core education component of this license available at the Community College level and working with the guidance of the Washington law schools to develop a 15 credit family law curriculum which could be earned through synchronistic distance learning (i.e., the classes are taught live and are received by the class, which is on line and around the state), allows LLLTs to be highly qualified while continuing to reside in their communities. We believe that this increases the likelihood that LLLTs will stay and serve their communities. The third and final "A" was **academically rigorous**. We relied upon professionals and academics to help us construct the training that would very well prepare the students to acquire the knowledge and skills that have been identified as important. The education is proving to be sufficient to the task.

The future is bright, but we recognize there are challenges that may require some changes in order to energize and grow the license. First is to fill the pipeline with LLLT students. We are in the process of implementing a distance learning relationship between community colleges so that we can reach more students without the need to increase overhead significantly. We hope that will be actually happening in a few months and would then pave the way for us to offer the same opportunity to all of the other community colleges. We are also looking at the possibility of having the synchronistic learning practice area curriculum taught through the Community Colleges, using the curriculum that has been fully developed and originally implemented with the assistance of law school faculty and teachers; this move would help to make the license more accessible and affordable, but no decision has been made on this point yet. And we will continue to grow our outreach efforts to increase public knowledge about both the career opportunity and the availability of affordable legal help.

The next thing that could tremendously assist in growing the license is adding new practice areas. There are an abundance of practice areas that have significant unmet need. Not all potential LLLTs want to do family law, just like not all lawyers want to do family law. By offering more practice areas, not only will the consumers benefit, but it will also increase interest and participation in the LLLT license.

We know that some have criticized the LLLT program because, so far, primarily women have become licensed to practice as LLLTs. Although gender diversity in any profession is important, the LLLT Board recognizes that part of what is happening is that it has become possible for many women to now enter into the practice of law, when previously they may have felt that they could not afford to spend the time and money to become a lawyer. The LLLT Board believes that empowering women in this way is a good thing. Additionally, of course, there is the recognition that many of the early entrants into the LLLT profession were already working as paralegals, and that the majority of paralegals are women; again, giving these knowledgeable participants in the legal field a way to actually be able to practice law is a good thing. The LLLT Board expects that gender diversity in the profession will increase as the profession grows.

The National Center for State Courts will begin a review of the license in October. We are thrilled that such a prominent group would offer to review what we are doing here in the State of Washington. As you may recall, the Public Welfare Foundation from Washington, D.C., completed a similar review in the early years of the implementation of APR 28, and the conclusion was that the program is viable and

replicable. In fact, it is so replicable that Utah already has implemented a similar license. Minnesota, New Mexico, Oregon, and California, among others, are in various stages of consideration or implementation of a rule similar to Washington's APR 28.

We think we can all agree upon the belief that access to justice is a primary goal, and that the WSBA and the Court play critical roles in making that become reality. The WSBA not only funds and administers the LLLT Board, but also the ATJ Board, the Practice of Law Board, and the Limited Practice Board (for LPOs). These are and continue to be ways in which the profession can help to make legal services more available to more people. We think spending less than $200,000 per year to find a solution to at least some part of the access to justice problem is not unreasonable. Unlike all of the other Supreme Court Boards, except the Limited Practice Board and the MCLE Board, we are the only board that even has any ability to repay the funds.

As Chair of the LLLT Board, I think the focus needs to be further into the future. During President Mark Johnson's term as WSBA President, $1,000,000 was transferred from WSBA to legal services. At the time I thought it was a good gesture, but unfortunately it wasn't an investment in something that could create a long term benefit; it was intended to, and did, simply meet a need at that moment. The LLLT license is an investment in the future. And others agree that it is a viable and reasonable way to assist in meeting the ever growing access to justice problem.

Indeed, the access to justice problem will soon explode in degrees not even imagined in the past. The number of people needing legal services is increasing as society becomes more complex. With the rising and significant cost of law school, the number of students graduating is not growing quickly enough to meet the need. Half of the lawyers in Washington are 50 years of age or older. They will likely not be replaced in the same numbers by those now entering the profession. If we can't meet the access to justice problem with the number of lawyers we now have, we will be even less able to meet the need in the future. Further, the access to justice problem will become even more dire in rural areas of our state. Graduates from law school are not likely to move to a small remote town with the expectation of starting a practice, raising a family and paying off large student debt. Therefore, we expect that we will have an ever increasing lack of lawyers for vast geographical portions of our state.

Admittedly, this crisis may be five years or more away, but the time to act to alleviate the crisis is now because it takes time for any program to be implemented to have any hope of meeting the present and future unmet need. The LLLT Board is striving to work on alleviating that crisis as quickly as possible.

Below is a compilation of facts and general information in response to specific statements made by the WSBA Treasurer.

Topic	Statement	Facts/Information
Cost of program	Total: over $2 million Per year: $250,000 (Page 1)	The LLLT program has operated at an average loss of less than $200,000/year, and a total deficit of around $1,300,000 since 2013. Please note: The first LLLT was licensed in 2015 so no revenue until then.

Topic	Statement	Facts/Information
Number of LLLTs	35 active LLLTs 4 let their licenses go inactive (Page 2)	38 active LLLTs as of September 23, 2019 A WSBA member does not "let" their license go inactive. They must request to change their status. Members of the bar can choose to go inactive for various reasons. They are still members and pay a license fee. 1 LLLT administratively suspended
LLLT business model	The program's stated intention was to have LLLTs practice independently from law firms (Page 2)	Stand-alone LLLTs was not the only model foreseen. No explicit prohibition or restrictions were put in place limiting LLLTs to working independently only. In fact, the opposite is true - original LLLT RPC adopted by the Court in 2015, were written to permit different practice models including within a law firm. E.g., under LLLT RPC 5.9, LLLTs can share fees with a lawyer in the same firm as the LLLT and form a partnership with a lawyer where activities of the partnership consist of the practice of law.
Sustainability of business model	"The notion LLLTs can charge materially less than lawyers when their operating costs are the same as lawyers, is novel." (Page 2)	Anecdotally, LLLTs *are* charging less than lawyers. Some report having thriving practices. Compared to lawyers, LLLTs do not have high law school debt and are therefore in a better position to offer low cost services.
Scope of Practice	"LLLTs' practice as originally proposed and ordered was very limited; they could, independent of a law firm, help fill out pre-approved divorce forms." (Page 2)	Scope not originally limited to filling out pre-approved divorce forms. Original Court Rule, adopted by the Court in 2012 sets forth the original scope of practice. Original APR 28(F) lists nine services LLLTs can provide. "Select and complete forms" is one of them. Others services include but are not limited to: - Obtain relevant facts, and explain the relevancy of such information to the client; - Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding; - Inform the client of applicable procedures for proper service of process and filing of legal documents; - Advise a client as to other documents that may be necessary to the client's case, and

Topic	Statement	Facts/Information
		explain how such additional documents or pleadings may affect the client's case.
Experimental program	The Court implicitly acknowledged it was an experiment that may not work (Page 2)	The statement in the original Court Order refers to whether it would be economically sustainable for LLLTs to charge rates lower than lawyer rates: "Opponents argue that it will be economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner." *See* 2012 Order No. 25700-A-1005 at 8. The Court then continued, "No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it." *Id* at 8-9.
Self-sufficiency	Program promised to be self-sufficient in 5 years (Page 4)	At the time the Court adopted the LLLT rule, there was no program, and therefore the program didn't promise anything. The Order stated: "The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership." Id at 11. No timeline was provided, and the LLLT Board and WSBA are currently working to achieve this. Although the program has not provided an actual plan for self-sufficiency, the LLLT Board and WSBA staff are working on efforts to increase exposure, education participation, and licensing, other revenue generating ideas, and additional cost savings.

Topic	Statement	Facts/Information
Non-profit sector	Not a single LLLT is employed by a non-profit or social service organization (Page 2)	WSBA does not play a role in the hiring processes of non-profits and legal aid programs. At least one LLLT works part-time for a non-profit. We only know that because she volunteered this information. It is not listed on her public profile. Also, LLLTs perform significant pro bono work. They are also very involved in their local legal communities. LLLT Dianne Loepker for example is serving as president of the Cowlitz-Wahkiakum bar association. WSBA staff and the LLLT Board are working to increase awareness of LLLTs among non-profits and social service organizations.
Core Education	Provided a candidate has a paralegal certificate and meets the other requirements they are granted a license. AA will be required in 2023. (Page 3)	AA is required now, including 45 paralegal/legal credits and an additional 15 credits in family law. The Limited Time Waiver waives the AA requirement and 45 credits, but not the family law requirement. In order to qualify for a waiver one must have at least 10 years of active paralegal experience and advanced paralegal certification through national testing. See APR 28, Regulation 4.A. & B. Please note: There are no education requirements for LPOs.
Enhancement	"accompany and confer" & "respond…to direct question from the court" (Page 3)	The rule states, "LLLTs, when accompanying their clients, may assist and confer with their pro se clients and respond to direct questions from the court or tribunal regarding factual and procedural issues at the hearings listed below:" LLLTs can only respond to factual and procedural questions and only at certain hearings. LLLTs are not permitted to make legal arguments. Citation is wrong; should be App. APR 28 Reg. 2.B.2
Low income services	LLLTs are not providing low income services (Page 4)	The LLLT Board recently shared with the Court information from a voluntary survey of LLLTs. Collectively, the 11 LLLTs who responded to the survey served over 500 clients with the majority in the 0-300% of the Federal Poverty Level. According to WSBA's pro bono hours reporting records, a significantly higher percentage of LLLTs

Topic	Statement	Facts/Information
		(34%) report performing pro bono work than the percentage of lawyers (8%) who report doing so. LLLTs are very involved in their communities and are also being recognized for their efforts. LLLT Jennifer Petersen, for example, was awarded the annual "Outstanding Supporter" award by Law Advocates of Whatcom County for 2018. Several LLLTs are also very involved in volunteering their time to help develop the LLLT license and program.
Moderate income services	The LLLT program acknowledges it has failed to assist low-income families by pivoting to now argue LLLTs are really for people of "moderate means." (Page 4)	There was no pivoting. The original intent of the LLLT license included serving moderate means individuals. "Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well." *See* 2012 Order No. 25700-A-1005 at 4.
Law firms are profiting	"WSBA did not spend $2 million to provide a few firms the ability to bill more." "9 LLLTs work at law firms already had staff selecting and filling out divorce forms but now can charge for a LLLT." (Page 4)	As stated above, the overall deficit is approximately $1.3 million. Unlicensed paralegal staff simply cannot provide the same level of assistance, including providing legal advice, without committing UPL. LLLTs who work with firms, and lawyers who work in those firms, state that they have been able to help many more clients at lower cost than the firm could have otherwise. At first, LLLT critics complained that LLLTs were taking away lawyer business – now they are complaining that LLLTs are helping lawyer businesses. Having a vibrant LLLT practice may help lawyers cases are referred to, and also provide lower cost services to pro se clients – the two aren't necessarily mutually exclusive.
LLLT Board Retreat	The LLLT program shifted $10,000 in fees approved for two in-house meetings at the WSBA office to spend on a day and half retreat in Wenatchee (Page 4)	$6,650 of funds budgeted for LLLT Board meetings were used for a board retreat in Wenatchee. There is no mandate that meetings must be held in Seattle. Most reimbursements were in the $250-$300 range, including attendees' hotel and transportation, for the entire retreat. Rooms in Wenatchee were rented at $123.08/night, well below Seattle rate.

Topic	Statement	Facts/Information
		There is only one expense account for meetings of the LLLT Board—the money was not shifted, instead the board cancelled three board meetings at the WSBA in order to be able to have a longer time together to accomplish the work of the board. All the expenses remained in the same expense GL account (LLLT Board Meetings).
Cost to administer the program	It would require approximately 1,250 LLLTs for the program to be self-sustaining. It will cost more to administer the program if we have more LLLTs. (Page 4)	It would not cost more to have 1,000 LLLTs than it does the 43 because of the regulatory coordination which has taken place over the last couple of years.
Gender bias	"To date, all LLLTs are women." (Page 6)	There is at least one male LLLT. Demographic reporting is voluntary, so there may be more, and there may be more males who are completing the requirements to become a LLLT. Also, see the body of the letter for a more in-depth response to this "criticism".
Comparison with LPO license	The program should return to original form and be "folded into the LPO program which is another license limited to selection and completion of pre-printed forms." (Page 6)	LPOs can only select and prepare forms based on written agreement of the parties. They cannot provide any legal advice. Despite the fact that LPOs also have a limited license to practice law, comparison to the LPO license and program is not really apt. There were hundreds of people who essentially performed LPO services at the time the LPO license was established, and no additional education was required for those people to become licensed as LPOs; therefore, there were hundreds of people who could become licensed as LPOs within the first couple of years the license existed.
New practice areas	"Further, before it is expanded into other substantive areas, it needs to prove it is fiscally viable in the area it is operating now." (Page 7)	Adopting new practice areas is critical for the program's viability. Not every person who wants to become a LLLT wants to practice family law, just as not every lawyer wants to practice family law. In fact, according to recent WSBA member demographics, out of 32,633 currently Active status lawyers, only 2,579 list family law as one of their practice areas.

Topic	Statement	Facts/Information
		In addition, there is a significant unmet need in other areas of law, including unlawful detainer and consumer issues – areas that Utah's limited legal practitioners are allowed to engage in.

Respectfully,

Stephen R. Crossland
Chair, Limited License Legal Technician Board

cc: Terra Nevitt, Interim WSBA Executive Director
William D. Pickett, WSBA President
Dan'L W. Bridges, WSBA Treasurer

The Supreme Court
State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
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October 8, 2019

Julie Anderson
4604 N. 38th St.
Tacoma, WA 98407-4807

Re: Appointment to Character and Fitness Board

Dear Ms. Anderson:

The Washington State Bar Association (WSBA) Board of Governors nominated you for appointment as a public member to the Character and Fitness Board. The Supreme Court's Administrative Committee has confirmed your appointment. Your new term starts October 1, 2019 and ends on September 30, 2022.

You will soon be contacted by the WSBA's staff liaison to the Board. If you need any accommodations in order to participate in meetings, please notify them.

On behalf of the justices of the Supreme Court, I wish to thank you for your willingness to serve on the Character and Fitness Board. I am confident that this important board will benefit from your experience and expertise.

Very truly yours,

Mary E Fairhurst

MARY E. FAIRHURST
Chief Justice

cc: Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Pam Inglesby, WSBA Bar Services Manager
Jean McElroy, WSBA Staff Liaison, Character & Fitness Board

The Supreme Court
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October 8, 2019

David T. Bastian
1016 N. 6th St., Unit A
Tacoma, WA 98403-1613

Re: Appointment as Chair of the Limited Practice Board

Dear Mr. Bastian:

The Limited Practice (LP) Board and Washington State Bar Association Board of Governors have nominated you for appointment as chair of the LP Board. The Supreme Court's Administrative Committee has confirmed your appointment. Your term as chair begins October 1, 2019 and expires on September 30, 2020.

On behalf of the justices of the Supreme Court, I wish to thank you for your willingness to serve as chair of the LP Board. I am confident that this important board will continue to benefit from the expertise and experience you have to offer.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

cc: Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Pam Inglesby, WSBA Bar Services Manager
Renata Garcia, WSBA Staff Liaison

The Supreme Court
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October 8, 2019

Lisa A. Malpass
Attorney at Law
PO Box 48704
Spokane, WA 99228

Re: Appointment to the Certified Professional Guardianship Board

Dear Ms. Malpass:

The Washington State Bar Association (WSBA) has nominated you for appointment as a WSBA representative on the Certified Professional Guardianship Board (CPGB). The Supreme Court's Administrative Committee has confirmed your appointment. Your term starts October 1, 2019 and expires September 30, 2022.

On behalf of the justices of the Supreme Court, I wish to thank you for your willingness to serve on the CPGB. I am confident that this important board will benefit from your expertise and experience.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

cc: Honorable Rachelle Anderson, Chair CPGB
Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Pam Inglesby, WSBA Bar Services Manager
Stacey Johnson, AOC Manager Office of
Guardianship & Elder Services

The Supreme Court
State of Washington

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October 8, 2019

Francis Adewale
824 North Monroe
Spokane, WA 99201

Re: Reappointment to the Access to Justice Board

Dear Mr. Adewale:

The Access to Justice (ATJ) Board recommended and the Washington State Bar Association Board of Governors nominated you for reappointment as a member of the ATJ Board. The Supreme Court's Administrative Committee has confirmed your reappointment. Your new term begins October 1, 2019 and ends September 30, 2022.

On behalf of the justices of the Supreme Court, I wish to thank you for your continued willingness to serve on the ATJ Board. I am confident that this important board will continue to benefit from the expertise and experience you have to offer.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

Cc: Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Diana Singleton, WSBA staff liaison to ATJ Board
Bonnie Sterken, WSBA staff liaison to ATJ Board
Pam Inglesby, WSBA Bar Services Manager

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October 8, 2019

Salvador A. Mungia
Gordon Thomas Honeywell, LLP
1201 Pacific Avenue, Ste. 2100
PO Box 1157
Tacoma, WA 98401-1157

Re: Reappointment to the Access to Justice Board

Dear Mr. Mungia:

The Access to Justice (ATJ) Board recommended and the Washington State Bar Association Board of Governors nominated you for reappointment as a member of the ATJ Board. The Supreme Court's Administrative Committee has confirmed your reappointment. Your new term begins October 1, 2019 and ends September 30, 2022.

On behalf of the justices of the Supreme Court, I wish to thank you for your continued willingness to serve on the ATJ Board. I am confident that this important board will continue to benefit from the expertise and experience you have to offer.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

Cc: Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Diana Singleton, WSBA staff liaison to ATJ Board
Bonnie Sterken, WSBA staff liaison to ATJ Board
Pam Inglesby, WSBA Bar Services Manager

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October 8, 2019

Mirya Munoz-Roach, M.A.
5950 Fourth Ave. South
Seattle, WA 98108

Re: Reappointment to the Access to Justice Board

Dear Ms. Munoz-Roach:

The Access to Justice (ATJ) Board recommended and the Washington State Bar Association Board of Governors nominated you for reappointment as a member of the ATJ Board. The Supreme Court's Administrative Committee has confirmed your reappointment. Your new term begins October 1, 2019 and ends September 30, 2022.

On behalf of the justices of the Supreme Court, I wish to thank you for your continued willingness to serve on the ATJ Board. I am confident that this important board will continue to benefit from the expertise and experience you have to offer.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

Cc: Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Diana Singleton, WSBA staff liaison to ATJ Board
Bonnie Sterken, WSBA staff liaison to ATJ Board
Pam Inglesby, WSBA Bar Services Manager

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October 8, 2019

Asia N. Wright
5450 Leary Ave. NW #348
Seattle, WA 98107

Re: Appointment as chair of the Mandatory Continuing Legal Education Board

Dear Asia:

The Mandatory Continuing Legal Education (MCLE) Board and Washington State Bar Association Board of Governors have nominated you for appointment as chair of the MCLE Board. The Supreme Court's Administrative Committee has confirmed your appointment. Your term as chair starts October 1, 2019 and ends September 30, 2020.

On behalf of the justices of the Supreme Court, I wish to thank you for your commitment to the MCLE Board. I am confident that this important board will continue to benefit from the expertise and experience you have to offer.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

cc: Rajeev Majumdar, WSBA President
Terra Nevitt, WSBA Interim Executive Director
Pam Inglesby, WSBA Bar Services Manager
Adelaine Shay, WSBA Staff Liaison MCLE Board

The Supreme Court
State of Washington

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October 24, 2019

Mr. Douglas Walsh, Interim Chair
Practice of Law Board
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear Mr. Walsh:

The Supreme Court Rules Committee received Practice of Law Board Immediate Past Chair Paul Bastine's letter of July 18, 2019 requesting withdrawal of the proposed amendment to GR 24. The Rules Committee has agreed to the POLB's request, and the item will be removed from the committee's agenda.

Very truly yours,

Charles W. Johnson, Chair
Supreme Court Rules Committee

cc: Terra Nevitt, WSBA Interim Executive Director

The Supreme Court
State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929

(360) 357-2053
E-MAIL MARY.FAIRHURST@COURTS.WA.GOV

September 25, 2019

Via electronic mail

Ms. Terra Nevitt
Interim Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101-2539

WSBA Board of Governors
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101-2539

Dear Ms. Nevitt and Washington State Bar Board of Governors:

The Supreme Court received and reviewed the *Report and Recommendations* dated September 2019 from the Supreme Court Work Group on Bar Structure and the minority report dated August 28, 2019. The Court also reviewed comments to the report received from individuals and organizations.

By a majority vote, the Court acted on the recommendations as follows:

Work Group Recommendation	**Court Decision**
Retain an integrated bar structure.	Retain an integrated bar structure for now (5-4, Johnson, Madsen, Stephens, Wiggins, JJ., dissenting).
Make no fundamental changes to the six Court appointed boards administered and funded by the WSBA: the Access to Justice Board; the Disciplinary Board; the Limited License Legal Technician Board; the Limited Practice Board; the Mandatory Continuing Legal Education Board; and the Practice of Law Board.	Make no fundamental changes, as recommended (5-4, Johnson, Madsen, Stephens, Wiggins, JJ., dissenting).
Consider amending court rules to specify that the prohibitions of General Rule (GR) 12.2(c) apply to Court appointed boards.	Review whether the prohibitions in GR 12.2(c) apply to Court appointed boards and seek additional input, especially from the affected entities (6-3, Madsen, Stephens, Wiggins, JJ., dissenting).
Consider ordering the WSBA Board of Governors and staff to adopt and execute a	Request, but do not order, that the WSBA Board of Governors and staff do a thorough

thorough *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228 (1990) interpretation when calculating all future *Keller* deductions.	*Keller v. State Bar of California* calculation for the Court's review (6-3, Madsen, Stephens, Wiggins, JJ., dissenting).
Reexamine the *Report and Recommendations* from the WSBA Governance Task Force dated June 2014.	Review and reexamine recommendations from the 2014 Governance Task Force report (5-4, Johnson, Madsen, Stephens, Wiggins, JJ., dissenting).
Consider adding public member(s) to the WSBA BOG.	Reevaluate the composition of the BOG membership including adding public member(s) to the WSBA BOG (5-4, Johnson, Madsen, Stephens, Wiggins, JJ., dissenting).

The Court appreciates the efforts of the Work Group to analyze issues and develop recommendations. We are sharing with you the Court's actions to date on these recommendations and look forward to working with the WSBA and the Board of Governors as we consider further decisions regarding the recommendations.

Very truly yours,

Mary E. Fairhurst

MARY E. FAIRHURST
Chief Justice

cc: Justices

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Dan Clark, WSBA Treasurer

DATE: November 22, 2019

RE: November FY20 Treasurer Update

The following is meant to provide an update on the activity of the WSBA Treasurer and WSBA Financial Department for the November 2019 BOG meeting.

New Fiscal Year:

October 1st started our new BOG and FY 2020 Fiscal Year.

New WSBA CFO Jorge Perez:

New WSBA CFO Jorge Perez and I met all day October 2, 2019 and had a very productive meeting. Jorge and I are going to be doing a comprehensive review of most of the WSBA cost centers, and we and the WSBA financial team will be conducting a reforecast of FY 2020 revenue and expenses to attempt to find areas that we may be able to look to reduce expenditures moving forward.

I believe Jorge will bring new ideas, and an open mind in regard to looking at how and why WSBA does things and look for improvements and increased efficiencies. I'm very excited to work with him and his financial team this year! So far we have worked very well collaboratively together in working towards the goals of the Board of Governors as identified at the 2019 BOG retreat.

Reforecast Process:

The reforecast process is where the WSBA Treasurer and WSBA finance and operations team will perform the "deep dive" related to expense and revenue management. It's in this process where the team will examine the drivers, assumptions and potential savings and/or revenue opportunities available to be implemented either for the second half of the 2020 budget or for the 2021 budget.

Jorge and I have already discussed preliminary discussion items with various cost centers, but the actual process will start after completion of the regular yearly financial statement audit, and is currently scheduled to start the week of February 17th and end with a final reforecast recommendation to the Budget and Audit committee meeting of March 30th.

Increased Communication & Transparency:

One of my individual goals as Treasurer for 2019-20 is to increase transparency and communication to WSBA members and the Board of Governors regarding WSBA financial matters. To that end, Jorge and I worked with Chief Communications Officer Sara Niegowski to draft an article for the November issue of NWLawyer. The hope and plan is to continue to use this channel to keep members informed of pertinent financial information.

WSBA Audits:

Jorge & I met with representatives from Clark Nuber, the accounting firm that will be conducting both our annual financial statement audit, and also the special project external audit also known as Process and Execution Audit of WSBA expenses, also known as the "deep dive audit". They will be starting with data mining in a couple of weeks of the 2018 expenses and will be working on this project the next few months.

Some of the testing that will be done as part of this audit will be to have review of the Payroll Testing, Expense Report Testing, Fraudulent Disbursements Procedures, Payroll Database, Credit Card Database, A/P Database, Vendor File Database, WSBA Travel for Fiscal Year 2018, and use of WSBA funds by Board Committees.

We hope to have both audits completed by the end of March 2020.

FY 2021 License Fee Recommendation:

The Budget and Audit committee voted by a very slim margin to recommend no changes for 2021. The vote was 4 to 3 with one member that was absent indicating that they support lowering fees for active attorney members. The minority of the committee wanted to recommend lowering active attorney fees and to increase LLLT fees.

The BOG will vote to set what rates they do at the November 2019 BOG meeting.

2020 Budget Modification $5,000 for lobbyist:

The Budget and Audit committee voted 7 to 0 to recommend an increase to the FY 2020 Budget of $5,000 dollars for a total of $10,000 to the line item for a contract lobbyist. The BOG will vote on this budget modification request at the November 2019 meeting. Such request was recommended by President Majumdar, President-elect Sciuchetti and myself.

2020 Budget Modification for $10,000 for Communications Project:

The Budget and Audit committee approved a 7 to 0 vote to recommend approval to the BOG of a $10,000 FY 2020 budget modification request from President Majumdar and Chief Communications Officer Sara Niegowski. The request is for strategic training and plan to support a public outreach and confidence campaign.

The BOG will vote on this recommendation for an additional $10,000 expenditure for the FY 2020 budget at the November BOG meeting.

Western States Bar Travel:

The FY 2020 budget contains sufficient funding to send Governors and Officers to the 2020 Western States Bar Conference. The current travel policy restricts such travel to governors in their second year, and to the President and President Elect. For the FY 2019 budget, then WSBA President Bill Pickett made a special request that the entire BOG go and a corresponding budget increase was approved by the 2018-19 BOG. This funding level was carried over to the FY 2020 budget less $5,000.

This issue will be on for a potential discussion item at the November BOG agenda. It likely will require either a vote for an exception to the current WSBA travel policy, or a revision to the current travel expense reimbursement

policy. At a minimum, I would recommend that we define and clarify what a second year Governor term is intended to cover.

Ongoing Discussions of LLLT, Sections and other cost centers:

The Budget and Audit committee will be continuing to look at various cost centers and engage in discussions and recommendations in setting the FY 2021 budget and for potential modifications to the FY 2020 budget later in the year.

In any event, I hope that this update has been helpful. If you have any questions regarding this update and/or anything related to WSBA finances, please let me know and I will do my best to get you a prompt answer to your question(s).

Respectfully,

Dan Clark
WSBA Treasurer/District 4 Governor
DanClarkBog@yahoo.com
(509) 574-1207
(509) 969-4731 (cell)

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

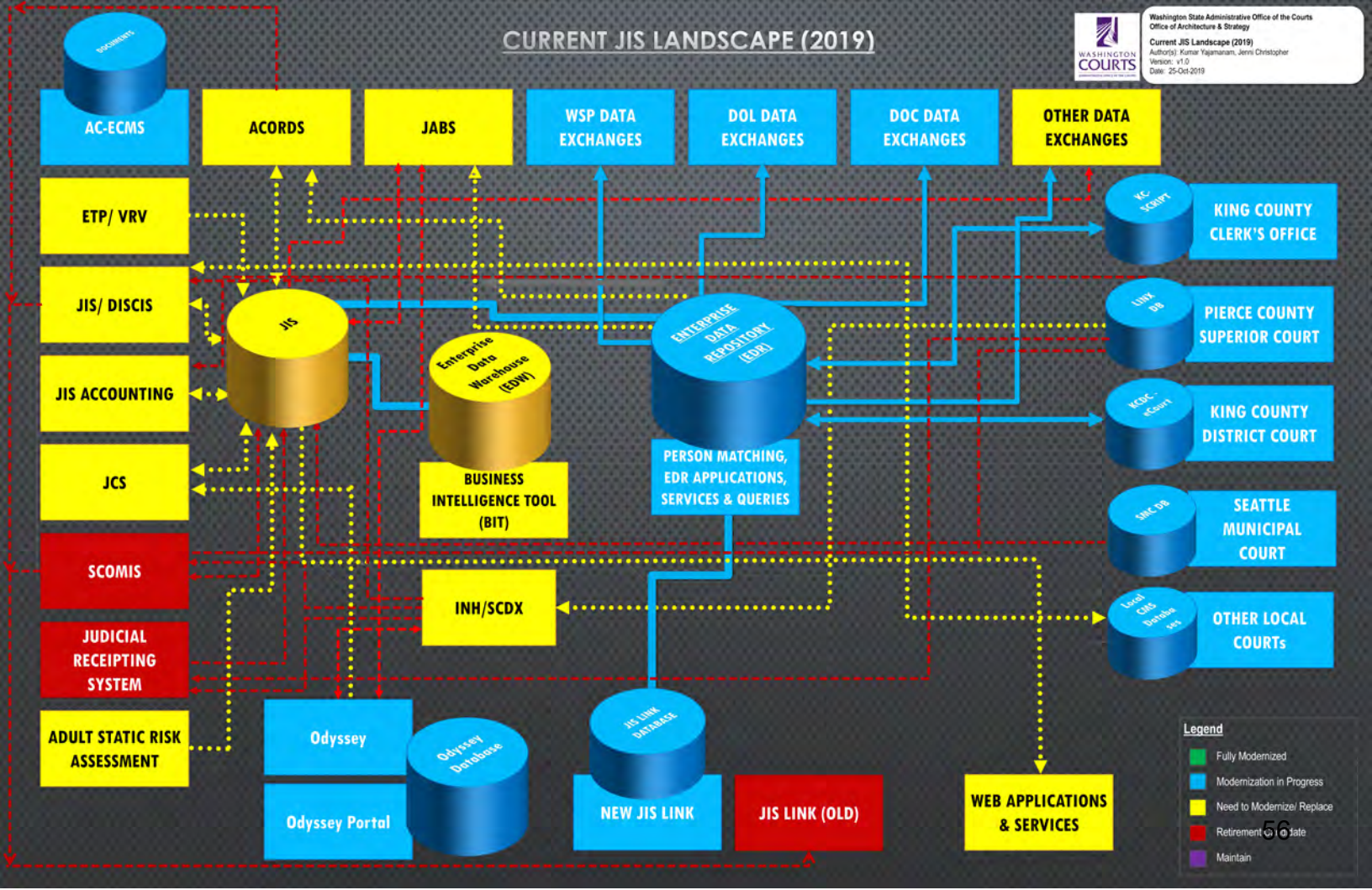
FROM: Shelly Bynum, Executive Administrator

DATE: November 22, 2019

RE: Judicial Information Systems Committee Update

Attached please information provided by Robert Taylor, WSBA representative to the Judicial Information Systems Committee. The Judicial Information Systems Committee is responsible for determining all matters pertaining to the delivery of services available from the judicial information system and is administered by the Administrative Office of the Courts. Additional information about the committee, including a roster, is available at: https://www.courts.wa.gov/committee/?fa=committee.home&committee_id=74.

Name	Representing / Terms
Chief Justice Mary Fairhurst Chair	Supreme Court Open
Judge J. Robert Leach Court of Appeals Div. I Vice Chair	Appellate Courts 08-01-2019 to 7-31-2022
Judge Scott K. Ahlf Olympia Municipal Court	Courts of Limited Jurisdiction 08-01-2018 to 7-31-2021
Mindy Breiner Probation Officer Tukwila Municipal Court	Misdemeanant Probation Association 08-01-2019 to 7-31-2022
Judge Jeanette Dalton Kitsap County Superior Court	Superior Courts 08-01-2017 to 7-31-2020
Judge John Hart Whitman County District Court	Court of Limited Jurisdiction 08-01-2018 to 7-31-2021
Richard D. Johnson Clerk/Administrator - COA Div. I	Appellate Courts 08-01-2019 to 7-31-2022
Frank Maiocco Administrator Kitsap County Superior Court	Superior Court 08-01-2019 to 7-31-2022
Barb Miner King County Clerk	Superior Court 08-01-2017 to 7-31-2020
Brad Moericke Sumner Police Department	Washington Association of Sherriff's and Police Chiefs 08-01-2018 to 7-31-2021
Paulette Revoir Administrator Lynnwood Municipal Court	Courts of Limited Jurisdiction 08-01-2019 to 7-31-2022
David L. Reynolds Juvenile Court Administrator Whatcom County Superior Court	Superior Courts 10-01-2019 to 7-31-2020
Dawn Marie Rubio Administrator for the Courts	Administrative Office of the Courts Open
Judge David Svaren Skagit County Superior Court	Superior Court 08-01-2017 to 7-31-2020
Robert Taylor Attorney at Law	Washington State Bar Association 08-01-2018 to 7-31-2021
Jon Tunheim Thurston County Prosecutor	Washington State Association of Prosecuting Attorneys 08-01-2017 to 7-31-2020
Margaret Yetter Administrator Kent Municipal Court	Courts of Limited Jurisdiction 03-03-2019 to 7-31-2021


CURRENT JIS LANDSCAPE (2019)
Washington State Administrative Office of the Courts
Office of Architecture & Strategy
Current JIS Landscape (2019)
Author(s): Kumar Yajamanam, Jenni Christopher
Version: v1.0
Date: 25-Oct-2019
WASHINGTON COURTS
DOCUMENTS
AC-ECMS
ACORDS
JABS
WSP DATA EXCHANGES
DOL DATA EXCHANGES
DOC DATA EXCHANGES
OTHER DATA EXCHANGES
ETP/ VRV
JIS/ DISCIS
JIS ACCOUNTING
JCS
SCOMIS
JUDICIAL RECEIPTING SYSTEM
ADULT STATIC RISK ASSESSMENT
JIS
Enterprise Data Warehouse (EDW)
BUSINESS INTELLIGENCE TOOL (BIT)
ENTERPRISE DATA REPOSITORY (EDR)
PERSON MATCHING, EDR APPLICATIONS, SERVICES & QUERIES
INH/SCDX
Odyssey
Odyssey Portal
Odyssey Database
JIS LINK DATABASE
NEW JIS LINK
JIS LINK (OLD)
WEB APPLICATIONS & SERVICES
KC SCRIPT
KING COUNTY CLERK'S OFFICE
LINK DB
PIERCE COUNTY SUPERIOR COURT
KCSC - eCourt
KING COUNTY DISTRICT COURT
SMC DB
SEATTLE MUNICIPAL COURT
Local CMS Databases
OTHER LOCAL COURTs
Legend
Fully Modernized
Modernization in Progress
Need to Modernize/ Replace
Retirement Candidate
Maintain

WASHINGTON STATE BAR FOUNDATION

To: WSBA Board of Governors

From: Kristina Larry, President

Date: November 7, 2019

Re: Foundation Annual Report of Activities for FY19

The Washington State Bar Foundation mission is to provide financial support for the programs of the Washington State Bar Association that promote diversity within the legal profession and enhance the public's access to, and understanding of, the justice system. The Foundation is separately incorporated as a Washington state nonprofit, and is recognized as a public charity under section 501(c)(3) of the Internal Revenue Service Code.

The Foundation is a membership organization comprised of the sitting members of the Board of Governors. The Foundation Bylaws require the Foundation President to present an annual report to the Members within ninety (90) days after the close of the fiscal year, which ends September 30th. This report is an opportunity for the members to learn about its activities, priorities and direction.

Foundation Highlights

- In FY19, the Foundation continued to develop relationships with donors and prospective donors, and strengthened its connection to the WSBA programs it supports. This was accomplished by staff and Trustees working together to meet with and connect to current and prospective donors, ensuring that the Foundation was recognized consistently on relevant program materials, and by increasing awareness of the Foundation through printed materials and social media presence.
- Foundation Trustees, after consultation with original donors to the fund, voted to award remaining funds in the Presidents' & Governors' Diversity Scholarship Fund as scholarships to law students at Washington's three law schools, as well as the University of Idaho College of Law. As a result, each of the four schools received $7,500 in March, 2019, to be awarded to students from diverse backgrounds who demonstrate academic success and financial need.

Fundraising Highlights

- **4,584** Washington legal professionals (more than 11%) made a voluntary contribution to the Foundation on their license forms, indicating their support for WSBA's justice and diversity efforts. This represents a third consecutive year of increased support over the previous year.
- Foundation staff worked closely with the Fundraising Subcommittee of the **ATJ Conference** Planning Committee to secure over **$28,000 in sponsorships**, a significant increase over the previous conference's sponsorship totals.

- Donations, sponsorships and pledges to the Foundation for the FY19 APEX Awards campaign totaled **$32,856**, including a challenge campaign that raised over $10,000 from top donors and past trustees prior to the event.

Program Highlights

The following program achievements were made possible in part with support from the Foundation. The Foundation has so far allocated $260,000 to WSBA for FY20 to support WSBA's public service and diversity & inclusion programs, with additional funds planned. (This does not include $28,072 already disbursed to WSBA for the ATJ Conference sponsorships.)

- The **Powerful Communities Project** was launched, and provided grants totaling $29,400 to fourteen organizations statewide, to help ensure that low income members of underserved and underrepresented communities are able to get legal assistance.
- The **Moderate Means Program** continues to refer family, housing and consumer law cases to attorneys who voluntarily participate in the program, with client intake provided by law students at Washington's three law schools.
- WSBA reached over 300 people through five **Community Networking Events** held across the state. These Diversity & Inclusion events are designed to foster connections among WSBA staff, volunteers, members and local communities. Of particular note was the event in Tacoma, which brought together numerous community partners and Minority Bar Associations (MBAs), and was sponsored by Gordon Thomas Honeywell.
- **Diversity & Inclusion** staff provided over 31 diversity trainings across the state, including sessions for staff of the Attorney General's office.
- The Foundation administered scholarship fundraising and distribution for three WSBA sections:
    - **$2,500** was awarded through the **WSBA Elder Law Section's Peter Greenfield Internship Fund**, which placed University of Gonzaga University law student Lauren Eldridge at Columbia Legal Services for the summer to support advocacy on behalf of low income seniors.
    - **$429** scholarships were awarded to Albert Chang and Annie Szvetecz to attend the annual **WSBA Environmental and Land Use Law Section 2019 Midyear Meeting and Conference.**
    - A **$5,000** scholarship was awarded by the **Taxation Section** to Joshua Reinertson, a LLM candidate at the University of Washington School of Law.

Conclusion and Look Ahead

The Foundation enters FY20 with an energized Board of Trustees, representing a broad cross-section of the profession, and who possess a deep understanding of their fundraising responsibilities. We have a strong base of supporters who are excited about the WSBA's efforts to expand justice, public service and diversity. Continuing outreach to both our loyal donors and prospects and enhancing our communications to link the achievements of WSBA programs with the importance of Foundation gifts will continue to grow the Foundation's financial support of WSBA's public service and diversity goals.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Jorge Perez, Chief Financial Officer

DATE: November 21, 2019

RE: Bank Resolution

ACTION/DISCUSSION : Approval of Bank Resolution as Per Policy for Change of Treasurer

As per Fiscal Policy a new bank resolution is required when there is a new Executive Director or Treasurer. This resolution is being put forward to include our new Treasurer Dan Clark.

WASHINGTON STATE
BAR ASSOCIATION

RESOLUTION

AUTHORIZING BANKING RELATIONSHIPS

WHEREAS, it is necessary and prudent for the Washington State Bar Association to establish and maintain a number of banking relationships for the purposes of depositing, managing and investing WSBA funds; and

WHEREAS, it is necessary and prudent for the Washington State Bar Association to establish and maintain certain credit relationships for the purposes of purchasing goods and services;

NOW, THEREFORE, BE IT RESOLVED:

That the Treasurer or Interim Executive Director, Terra Nevitt, of the Washington State Bar Association, or any one thereof, are hereby authorized to establish both deposit relationships and credit relationships necessary to conduct WSBA business; and

That the Treasurer, Interim Executive Director, Terra Nevitt, and Daniel Clark are authorized as signers on any deposit relationship in order to withdraw funds of the WSBA; and

That the Interim Executive Director; Terra Nevitt, and Chief Financial Officer, and their designees are authorized to invest excess balances, in accordance with the Investment Policy; and

That the Executive Director, Chief Financial Officer, Controller and their designees, are authorized to make deposits and transfers in established accounts.

Approved by resolution of the Board of Governors on the day of _, .

_____

Rajeev D. Majumdar, President

ATTEST:

_____

Terra Nevitt, Interim Executive Director, and

Secretary to the Board of Governors

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Dan Clark, WSBA Treasurer

DATE: November 22, 2019

RE: Budget and Audit Committee 2021 License Fee Recommendations

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ACTION: Approve the recommendation of the Budget & Audit Committee to maintain the same license fees for 2021 as were established for 2020.

On October 28, 2019, the Budget and Audit Committee voted recommend to the full Board of Governors that the 2021 License fees for Attorneys, LPO, LLLT, APR Rule 6 Law Clerk, and Judicial Officers remain the same as the amounts set for 2020. This recommendation was approved by a vote of 4 to 3.

The three Budget & Audit Committee members in the minority expressed a desire to recommend slightly lowering the active attorney license fees for 2021 and to increase the LLLT fee.

Budget & Audit Committee Recommendation:

By majority vote, it is the recommendation of the Budget & Audit Committee to maintain the same license fees for 2021 as were established for 2020.

Additional Comments & Recommendation from WSBA Treasurer:

It is my personal belief that this Board of Governors should strongly consider recommending to the Supreme Court a reasonable increase to the LLLT license fee for FY 2021. I base this belief and recommendation on wanting to comply with the Washington Supreme Court order that established the LLLT license. The 2012 Supreme Court order that established the LLLT program indicated it was intended to be cost revenue neutral to the WSBA budget. The 2012 Court order stated in pertinent part:

> Another concern that has been raised is that attorneys will be called upon to underwrite the costs of regulating non-attorney limited license legal technicians against whom they are now in competition for market share. This will not happen. GR 25 requires that any recommendation to authorize the limited practice of law by non-attorneys demonstrate that "the costs of regulation if any, can be effectively underwritten within the context of the proposed regulatory regime" **The Practice of Law Board's rule expressly provides that the ongoing cost of regulation will be borne by the limited license legal technicians themselves and will be collected through licensing and examination fees.** Experience with the Limited Practice Board demonstrates that a self-sustaining system of regulation can be created and sustained. **The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee based system**

that ensures that the licensing and ongoing regulation of limited license technicians will be cost-neutral to the WSBA and its membership.

Emphasis Added

Based on review of WSBA's FY 2013 to FY 2020 budget and actual expenditures, it is clear that the 2012 Supreme Court order requiring a self-sustaining system of regulation and licensing for LLLT members that is cost-neutral to the WSBA and its members has not been met. For FY 2019 through eleven (11) months, the program has a negative net income of $194,702.00. FY 2020's budget is for negative $194,024.50.

With the language of the 2012 Supreme Court order and requirements of GR 25 in mind, I strongly believe that the Board of Governors should raise the current LLLT fee in an attempt to work towards developing a fee based system that the Court indicated above. I believe the LLLT fee should be increased a reasonable increase of $29 dollars from $200 to $229.00 for FY 2021. While this modest increase will not by itself achieve the goal of a self-sustaining fee based system that is cost-neutral, it will be a positive step towards meeting this goal. This view would be half that of a regular active attorney license fee for FY 2021, and the amount of increase and reasons for the increase to attempt to develop a self-sustaining fee based system that is cost-neutral to the WSBA and its membership seem reasonable.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Dan Clark, WSBA Treasurer

DATE: November 22, 2019

RE: PROPOSED RECOMMENDATION TO WASHINGTON STATE SUPREME COURT TO LOWER ANNUAL CLIENT PROTECTION ASSESSMENT FROM $30 DOLLARS TO $25 DOLLARS BEGINNING IN 2021

ACTION: Adopt a recommendation to the Supreme Court to lower the annual client protection assessment from $30 to $25 beginning in 2021

The following information is meant to support the recommendation of the Budget & Audit Committee to reduce the Client Protection assessment from $30 to $25 and show that such a reduction is reasonable and will still result in a robust fund balance for the fund. This recommendation was unanimously approved by the Budget & Audit Committee at its October 28, 2019 meeting.

Client Protect Fund Assessment Information:

The following are true and correct fund balances for the Client Protection Fund over the last few years:

FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Aug 2019
$791,399	$1,213,602	$1,746,010	$2,144,289	$2,646,222	$3,242,299	$3,582,278	$4,039,921

The chart above illustrates how the Client Protection Fund has continued to grow at a rate of about $450k annually. The fund has ranged from a balance of $184,640 in FY 2009 to a high of more than $4 million this year. Over a period of 11 years, the fund has grown by approximately $3.8 million.

For FY 2019, through August 2019, the Client Protection Fund performed as follows:

Actual Revenue	Budgeted Revenue	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
$1,105,364	$992,500	$135,792	$164,210	$157,639	$504,000	$293,431	$668,210	$811,933	$324,290

Taking the projected number of active members for 2020 (32,116) and multiplying that by the reduced $25 fee would yield an additional $802,900 for the CPF. This is $160,580 less than what would be generated using the current assessment of $30, which would be $963,480.

2020 Active Members	Fee rate	Total Proposed Revenue
32,116	$25	$802,900
32,116	$30	$963,480

Historically the fund has gifted an average of $670K annually, with a peak total gift amount of $1 million in FY 2011.

Based on the information available, it appears that the Client Protect Fund Assessment can be reduced from $30 to $25 dollars per member without a significant reduction to the fund, and/or without causing the fund to be in any danger of being depleted. As the true and correct historical information provided above shows the fund has been growing at a significant rate on an annual basis with the current $30 a year assessment. With reserves over $4 million, we are quite confident in the long-term sustainability of the fund and ability to protect the public.

Taking all of the above information into consideration, the Budget and Audit Committee, myself as WSBA Treasurer unanimously voted to recommend to the Board of Governors for approval to send to the Supreme Court for adoption:

- That the Client Protection Fund Annual Assessment be reduced from $30 to $25 per member.

CPF FEE REDUCTION ANALYSIS

Statistical Analysis

Fiscal Year	Low End	Predictive Value	High End
2019	$ 3,727,858	$ 4,634,620	$ 5,541,381
2020	$ 3,231,957	$ 4,138,718	$ 5,045,480
2021	$ 3,345,099	$ 4,251,860	$ 5,158,622
2022	$ 3,417,867	$ 4,324,629	$ 5,231,391
2023	$ 3,444,796	$ 4,351,557	$ 5,258,319
2024	$ 3,433,515	$ 4,340,277	$ 5,247,039
2025	$ 3,374,647	$ 4,281,409	$ 5,188,170
2026	$ 3,403,185	$ 4,309,947	$ 5,216,708
2027	$ 3,414,802	$ 4,321,564	$ 5,228,326
2028	$ 3,414,189	$ 4,320,951	$ 5,227,712

Regression Statistics	
Multiple R	86%
R Square	74%
Adjusted R Square	72%
Standard Error	$ 906,762
Observations	23

P-value
1.68585E-06
1.72675E-07

Financial Analysis

Fee	Active Professionals	Gifts	Contribution to Fund	CPF Balance	Gain and Loss
30	32,801	$ 800,000	$ 984,030	$ 3,412,018	$ 184,030
30	32,116	$ 582,831	$ 963,486	$ 3,792,673	$ 380,655
25	32,272	$ 600,353	$ 806,811	$ 3,999,131	$ 206,458
25	32,373	$ 669,778	$ 809,323	$ 4,138,676	$ 139,545
25	32,410	$ 715,879	$ 810,253	$ 4,233,050	$ 94,374
25	32,395	$ 673,768	$ 809,863	$ 4,369,145	$ 136,095
25	32,313	$ 648,522	$ 807,831	$ 4,528,454	$ 159,309
25	32,353	$ 661,660	$ 808,816	$ 4,675,611	$ 147,156
25	32,369	$ 673,921	$ 809,217	$ 4,810,907	$ 135,296
25	32,368	$ 674,750	$ 809,196	$ 4,945,353	$ 134,446

5 Year Moving Average Payout $670K

Average Payout of $825K Will Keep balance at $3.2M

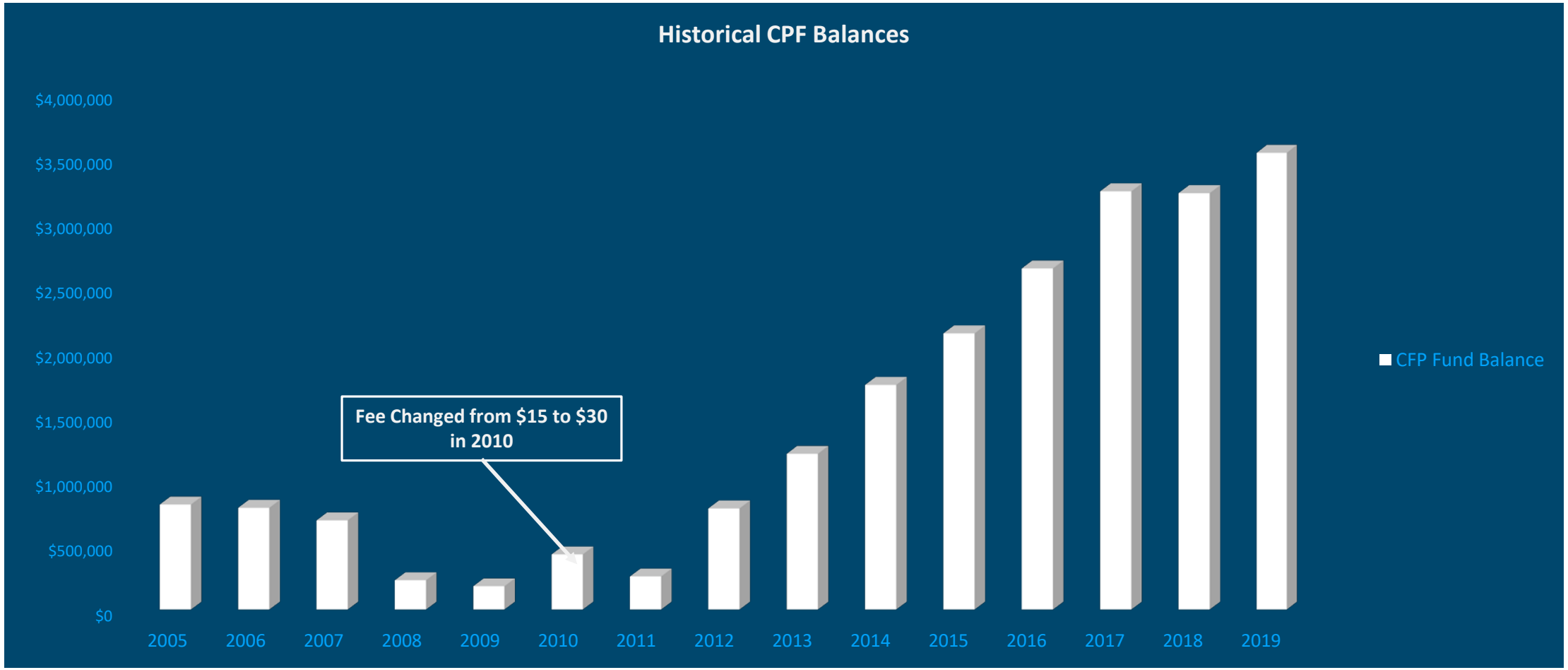
CPF ELASTICITY MODEL

CPF Assumed Fees

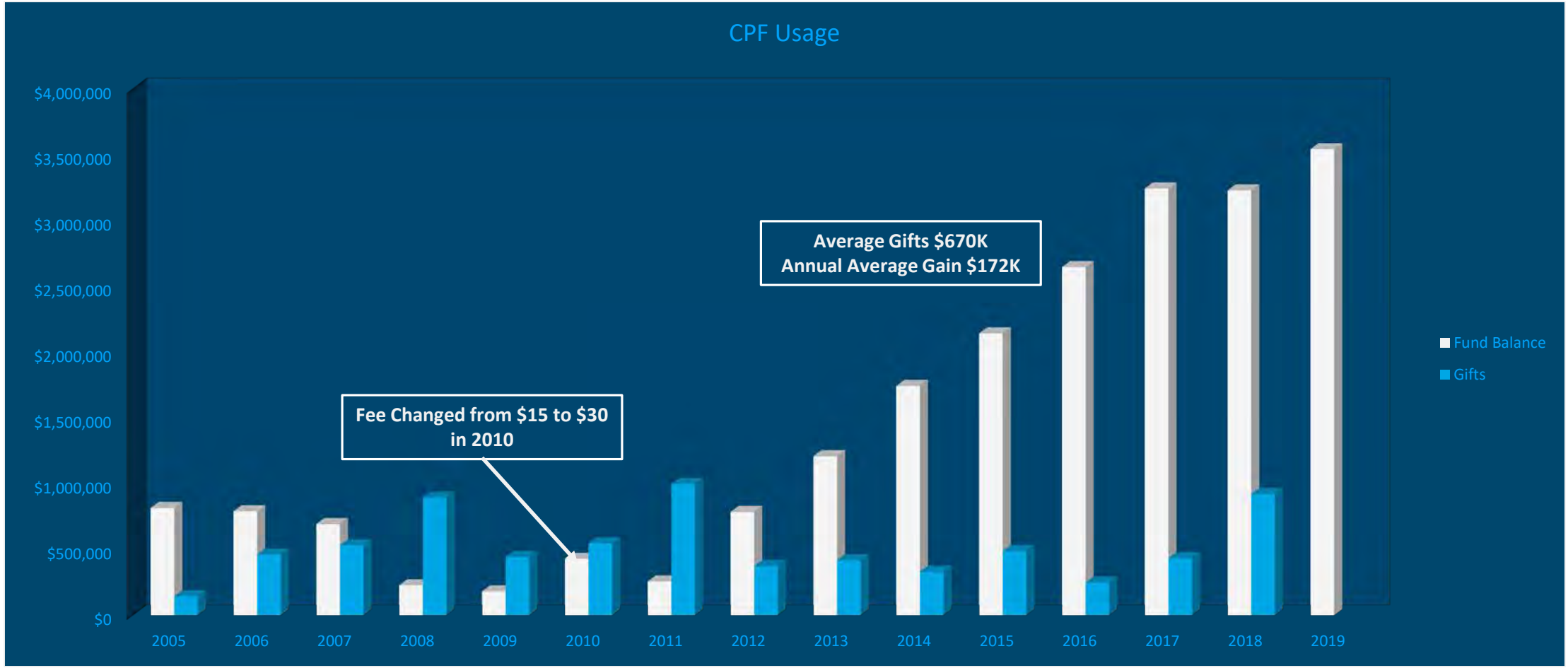
YEAR	$25	$20	$15	$10
2019	$ 3,412,018	$ 3,412,018	$ 3,412,018	$ 3,412,018
2020	$ 3,792,673	$ 3,792,673	$ 3,792,673	$ 3,792,673
2021	$ 3,999,131	$ 3,837,769	$ 3,676,407	$ 3,515,045
2022	$ 4,138,676	$ 3,815,449	$ 3,492,223	$ 3,168,996
2023	$ 4,233,050	$ 3,747,773	$ 3,262,495	$ 2,777,218
2024	$ 4,369,145	$ 3,721,895	$ 3,074,645	$ 2,427,395
2025	$ 4,528,454	$ 3,719,638	$ 2,910,822	$ 2,102,006
2026	$ 4,675,611	$ 3,705,031	$ 2,734,452	$ 1,763,872
2027	$ 4,810,907	$ 3,678,483	$ 2,546,060	$ 1,413,637
2028	$ 4,945,353	$ 3,651,090	$ 2,356,828	$ 1,062,566

Assumed Average Annual Gift Run Rate is $670K

CPF HISTORICAL BALANCES 2005 - 2019



CPF HISTORICAL BALANCES & GIFTS
2005 - 2019



WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Dan Clark, WSBA Treasurer

DATE: November 22, 2019

RE: Request for $5,000 Budget Amendment for FY 2020 for Professional Lobbyist

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ACTION: Approve a $5,000 Budget Amendment for FY 2020 for Professional Lobbyist

At its meeting on October 28, 2019 the Budget and Audit Committee unanimously approved a proposed increase of $5,000 to the current WSBA budget for professional lobbyist services to increase the total to $10,000. Such a recommendation was made by President Majumdar, Vice-President Sciuchetti, and Treasurer Clark.

The request is for additional funding to help pay for professional lobbying services for various WSBA matters which likely will be needed for the 2020 legislative session.

Recommendation: For the BOG to approve $5,000 in additional funds to the FY 2020 for the Executive Director to hire and contract with a professional lobbyist for the 2020 legislative session.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Dan Clark, WSBA Treasurer

DATE: November 22, 2019

RE: $10K Budget Request for Strategic Training and Planning for Public Outreach Campaign

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ACTION: $10,000 budget increase for FY 2020 to fund a Strategic Training and Planning for Public Outreach Campaign.

The Budget and Audit Committee at the October 28, 2019 meeting voted 7 to O to recommend to the Board of Governors a FY 2020 amendment to fund a request from President Majumdar for $10,000 budget increase for FY 2020 to fund a Strategic Training and Planning for Public Outreach Campaign.

Attached is a true and correct copy of the Budget Request submitted by President Rajeev Majumdar and Chief Communication & Outreach Officer Sara Niegowski dated October 24, 2019.

Thus, the recommendation of Budget and Audit is for the Board of Governors to Approve Funding of $10,000.00 for the FY 2020 Budget to allow for the Communications and Outreach Officer to facilitate the goals identified in the attached memorandum. This $10,000 allocation would be in addition to $5,000 which would be used out of the Departments existing budget for FY 2020.

Attachment A is the request from President Majumdar and Sara Niegowski.

WASHINGTON STATE
BAR ASSOCIATION

MEMO

To: Treasurer Dan Clark and the Budget and Audit Committee

From: President Rajeev Majumdar and Chief Communication and Outreach Officer Sara Niegowski

Date: Oct. 24, 2019

Re: Budget allocation for strategic training and plan to support WSBA's public outreach and confidence campaign

---

The Washington State Bar Association has identified as a high priority the need for a public outreach focus from the Communications and Outreach Department to accomplish several mission-critical goals, including connecting more Washingtonians to needed legal services by inspiring confidence in the integrity of the legal system (somewhat of a lawyer/legal-services reputation management campaign). The Communications and Outreach Department has likewise been eager to pivot to better engage the public for several years, while still maintaining and improving communication and outreach to members.

At a retreat in July 2019, the Board of Governors and staff identified a two-prong plan for launching this work with significant impact. First, we want to train our Communications Strategies and Outreach teams to strategically identify key audiences, media, practices, and messages to incorporate into our regular course of work. One immediate benefit we foresee is in "earned media"—our ability to create and share stories widely throughout the state about the legal system at work for the wide diversity of Washington residents. We have an abundance of positive legal professionals and practices to spotlight. One example of what we would hope to do with a continuously cultivated group of media partners is to widely air our APEX videos.

The second prong of the plan builds upon this robust platform of public engagement. It involves the implementation and launch of a much-expanded legal directory (Washington Legal Link) that matches clients with legal professionals based on their problem and location. Akin to a "LinkedIn for Lawyers." The public campaign would, ideally, include a statewide effort with strategically placed advertisements and events. We would also rely on our base of media and influencer connections. The overall message would be one of trust in the legal system ("the legal system is open to you") with the overall call to action of more Washington residents actually identifying legal problems and getting appropriate help.

After the retreat, Chief Communications and Outreach Officer Sara Niegowski began putting together logistics for potentially embarking on both phases of the plan. While phase two (Washington Legal Link) will require resources best considered as part of the budget reforecast and allocation sometime in the new calendar year, the sooner phase one is complete the better, in terms of making headway.

For phase one, Sara worked simultaneously to secure a sound scope of work from a renowned public-engagement firm while examining the remaining budget for communication and outreach. She and her team were very pleased to consult with Edelman's Senior Vice President of Public Affairs to put together a statement of work that covers a thorough review of all WSBA's current media channels along with deliverables of training, analysis, and a strategic plan to move forward with best practices for earned media and public engagement. Taking into account many waived fees and discounts, the Edelman contract is $15,000.

Sara and the Communications and Outreach team came up with a plan to rejigger several department budget lines and cut back on planned expenditures to pay for the contract out of remaining FY2018-19 funds. However, as both parties reviewed the contract and developed a work plan throughout August and September, it became clear that we would not be able to start/execute the work within the fiscal year. To summarize: We had the $15,000 budgeted last fiscal year, and we did not spend those funds because of timing. Those funds cannot roll over into FY20.

Because budget funds do not carry forward from one fiscal year to the next, **we are asking Budget and Audit to consider allocating $10,000 to the Communications Outreach budget line to account allow WSBA to execute the contract with Edelman.** While not ideal, the Communications and Outreach Team has been able to identify several subscriptions and services to do without in FY20 to contribute the remaining $5,000 necessary for the contract (we feel the strategic plan should be a higher priority).

With approval of the $10,000 allocation, the Communications and Outreach Department will begin its work with Edelman's Public Affairs Team as soon as possible.

Rajeev D. Majumdar
WSBA President

Sara Niegowski
Chief Communication and Outreach Officer

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Dan Clark, Treasurer

DATE: November 22, 2019

RE: BOG Governor and Office National Conference Travel Reimbursement

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ACTION: Address conflict between FY20 Budget and WSBA Fiscal Policy RE: Officer and Governor Travel to Attendance at National/Regional Events.

The current fiscal policy as it relates to officer and governor travel reimbursement for regional and national conferences is as follows:

C. Officer and Governor Travel to and Attendance at National/Regional Events (Section C.1 updated and approved by the Board of Governors on January 18, 2019).

Educational, training, or networking events for officers and/or governors are approved as part of the budget process based on the educational/networking value. Examples include the Bar Leadership Conference, Western States Bar Conference, American Bar Association annual or mid-year meetings, or meetings of the National Council of Bar Presidents.

The following policy has been adopted by the Board of Governors:

1. Officer Conferences: The President and President-elect are each budgeted to attend one National Conference of Bar Presidents meeting, the Bar Leadership Institute in Chicago, and the Western States Bar Conference.
2. Governor Conferences Governors may attend one conference in their second year on the Board of Governors.

FY19 and FY20 WSBA Budgets

In 2018, then WSBA President, Bill Pickett made a specific request to allocate additional funding for all officers and governors to attend the 2019 Western States Bar Conference. Excerpted Minutes from first reading of the FY19 Budget at the July 2018 BOG meeting in Vancouver, Washington read as follows:

> President Pickett advised that the FY2019 draft budget includes additional funding for conference attendance, in particular, for all Board members and Officers to attend the Western States Bar Conference (WSBC). He noted that the current policy limits attendance. He stated that the Board rarely has time together outside of Board meetings in order to build relationships discuss thoughts and ideas, and brainstorm about the practice of law and how the Board is functioning, and the WSBC is very valuable for gathering information, sharing information and collaborating with other Bars. He expressed the belief that WSBC would be good for the Board and for the members and would be money well spent. Chief Operations Officer Holmes advised that $23,000 had been allocated in the proposed budget for President Pickett's request. Discussion ensued regarding the costs and benefits of sending the entire Board to WSBC; the option of some attendees paying their own costs rather than being reimbursed by WSBA; not using license fees to fund attendance at the

> Conference; increased Board travel around Washington state; the President attending the Conference when it is in Hawaii and the Board attending when it is on the mainland; and the importance of looking at the entire Budget rather than focusing only on parts of it. Governor Stephens suggested that the FY 2019 Capital Budget should include unassigned funds that may be used to address capital issues that arise during the year. Chief Operations Officer Holmes recommended that the Capital Budget include an additional $40,000 more for this purpose. Questions were raised regarding the adequacy of Section Legislation support and the budget increase for the administration of the LLLT license. Treasurer Risenmay asked the Board to let the Budget and Audit Committee know of any other questions or concerns regarding the FY 2019 draft budget by August 10, 2018.

Excerpted Minutes from Approval of the FY19 Budget at the September 2018 meeting:

> …(2) in addition to the $23,000 increase presented in July for all Officers and the Board members to attend the Western States Bar Conference, further increasing the Board budget by $5,000 so that the President and President-elect may attend the same out-of-state conferences together.

Ultimately, 6 out of the 14 eligible officers and governors attended the 2019 Western States Bar Conference.

The increased funding for officer and governor travel was carried over the FY20 budget, less $5,000 for a total of $44,000.

Conflicts between FY20 Budget and Fiscal Policy:

The current expense policy currently states on page 9 in pertinent part that

“Governors may attend one conference in their second year on the Board of Governors.” (emphasis added).

The current travel policy as written does seems to exclude from reimbursement for travel to the Western States and/or any other National Conference to all 1L Governors, all 3L Governors, and also the WSBA President-Elect, WSBA Treasurer, and WSBA Immediate Past President. The only exception to this is if the WSBA President-Elect and/or Treasurer were considered in their second year as a Governor.

The current language does not define what the term “in their second year” means. This lack of a definition appears to create several potential problems with consistency in interpretation. Typically the policy seems to be applicable to situations that a Governor is a “2L” Governor, or having completed 12 months of consecutive service, then they are eligible for travel reimbursement. Most Governors historically tend to go to the Western States Bar Conference, but the policy as written doesn’t limit them to going to Western States. A Governor in their 2nd year could go to the BLI, or the other National Conference. The policy as written doesn’t limit it to Western States.

Several questions and potential issues have come up with what the term “in their second year on the Board of Governors.” Really means? There is no definition of that.

Does a second year governor mean a Governor that has completed 12 previous months of service on the Board of Governors? Does it include only 2nd year Governors in their second year of elected or appointed service on the BOG?

Example. Governor Higginson is in her “second year” on the BOG in terms of she’s served on the BOG for more than 12 calendar months in consecutive service since June 2018. By contrast Governor Anjilvel, only has been in service on the BOG since May 18th 2019, but after assuming Governor Cherry’s position as District 1 Governor, she’s in her 2L year on the BOG as far as serving out the term of District 1. As a result, are both in their second year? Is only Governor Anjivel?

Additionally, Governors Kang and Clark are both in the second year of their terms as Governors for District 7S and District 4, but both have served twelve to fourteen months of consecutive BOG service prior finishing out terms of prior Governors. So are they Governors in their second year, even though they both are really in their third year on the BOG?

There has also been requests and questions of other Governors such as 3L Governors that didn't get to go to Western States last year if they can go this year since they didn't get to go last year. Also, the current expense policy doesn't seem to allow the President-Elect and/or the Immediate Past-President to be allowed to go.

Last year President Pickett specifically requested that all of the BOG be allowed to go to Western States. President Pickett believed that it would build team building. The BOG passed for the FY 2019 Budget a line item to allow all to go.

In the end, out of 14 Governors, only 6 attended. Five of the 6 would normally not have been able to go.

There appears to be sufficient funding in the FY 2020 budget to send additional Governors from that of governors in their second year to Western States. However, the current travel policy does not allow for any Governors to attend except those in their second year. The policy doesn't define what that term means. The BOG will need to vote to decide if they want to not make any changes to the existing policy, or to provide for a 1 time exception to the existing travel policy for 2020 Western States travel, or to amend the current travel policy moving forward.

Options we could consider as to Governor travel:

A. Not making a change but clarify what a Governor in their 2nd year means in the existing policy.

B. Not amending the policy, but making a 2020 exception to the policy and allowing all Governors to get to go to Western States.

C. Making a change to the policy to allow for more than just Governors in their second year to go.

D. Making a Change and allowing all Governors and all BOG officers to get to go to Western States.

E. Making a Change and having all 2L and 3L Governors go, as well as any 1L Governor that served at least 12 consecutive months on the BOG to go.

F. Removing the limiting language and letting Budget and Audit and the Board of Governors in future BOG years to decide by drafting of the budget what process they wanted to determine for who and how many Governors are allowed to attend national conference trainings.

G. Some other alternative that the BOG comes up with during discussion.

Budget Impact: There has been budgeted $44,000 for FY 2020, a reduction of $5,000 from the specific request of President Pickett. This reduced funding from FY 2019 is likely because the conference moved from Kauai, in 2019 to Arizona for 2020. There appears to be potential sufficient funding currently allocated for the entire Board of Governors to go to Western States.

Budget & Audit Committee: The Budget & Audit Committee will consider a recommendation to the Board of Governors at its meeting on November 21, 2019. That recommendation will be provided in late materials.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Alec Stephens, Chair Personnel Committee

DATE: November 6, 2019

RE: Personnel Committee Proposed Bylaw Amendment to set a 10-year term limit on an individual serving as WSBA Executive Director

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Action (First Read): Amend the WSBA Bylaws[1] to limit any individual serving as WSBA Executive Director to 10 years.

At the October 21, 2019 meeting of the Personnel Committee, an Amendment to the WSBA Bylaws was considered and approved to set a 10-year term limit on any individual who serves as WSBA Executive Director. The committee action considered a proposal to revise the Vacancy Section of the Article IV, Section B.7, under Vacancy. The committee chair believes this would work better under the preceding Section B.6 under Terms of Office.

This matter is on the agenda for "First Read" during the November 22-23 BOG meetings. Barring other actions, this matter will be on the agenda for "Action" during the January 16-17 BOG meetings.

[1] The WSBA Bylaws may be amended at any regular meeting of the Board of Governors or at any special meeting called for that purpose. All proposed bylaw amendments must be posted to the WSBA website and presented for "first reading" at least one meeting prior to the meeting at which the Board will vote on the amendment except as otherwise provided in the WSBA Bylaws. WSBA Bylaws Art. XVI (Amended May 17, 2018).

Proposed Bylaw Amendment –Governance (Art. IV)

This change affects Art. IV and identifies a ten-year term limit on the position of the Executive Director.

REDLINE PROPOSED BYLAW AMENDMENTS re: Governance

IV. GOVERNANCE

B. OFFICERS OF THE BAR

7. Vacancy

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. No individual shall serve as Executive Director for more than ten years.

Proposed Substitute by the Personnel Committee Chair:

Place the proposed By-Law Amendment under the By-Laws Section regarding terms of office, Article IV. Section B. 6, Terms of Office as follows:

6.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.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Alec Stephens, Chair Personnel Committee

DATE: November 6, 2019

RE: Recommendation for 1-year Extension of the Interim Executive Director Contract

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Action: Approve a 1-year Extension of the Interim Executive Director Contract.

The Personnel Committee held its first meeting of this new term on Monday, October 21. During that meeting we spent considerable time discussing issues pertaining to the process to hire the Permanent Executive Director including duties, salary range to be advertised, and fixing a term limit for the position. We came to no conclusions but identified issues that needed to be resolved before we recommended a search process.

During the course of our discussions, impending changes to the composition of Supreme Court and the identification of various issues yet to be resolved were identified. I want to expand that narrative a bit by drawing attention to some other considerations.

As we know, the Supreme Court also requested that a thorough analysis to establish the accuracy of the determination of the Keller calculation be undertaken. Given the complexity of this effort and the far-reaching implications they have for the WSBA, it seems prudent to consider whether this is the appropriate time to undertake a full recruitment. The fluidity of this situation creates variables that we may be hard-pressed to explain to prospective candidates for this position.

Given this, the Personnel Committee recommends that the designation of Terra Nevitt as Interim Executive Director be extended for a period of one year (from the date of Board approval). We are of the opinion that this provides the most flexibility and signals the recognition of the great work that Terra is doing to effectively manage the work of WSBA in service of our members and to meet the responsibilities we have to the Supreme Court during these challenging times.

As a final note, there is also due consideration for the certainty and organizational stability that this conveys to WSBA staff, as Terra continues her work in concert with them to create the best possible WSBA.

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Rajeev Majumdar

DATE: November 6, 2019

RE: Proposed amendments to the Board of Governors Executive Committee Charter

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ACTION: Adopt amendments to the Board of Governors Executive Committee Charter as proposed by the Executive Committee.

Attached please proposed amendments to the Board of Governors Executive Committee Charter. These were recommended for adoption by the Executive Committee at its meeting on October 28, 2019. The proposed amendments clarify the Committee's scope of responsibilities and notification duties, consistent with the WSBA Bylaws, and adds responsibility for reviewing and monitoring WSBA entities following the sunset by this Board of the Committee on Mission and Performance Review (CMPR) at its meeting on September 26-27, 2019.

WSBA

BOARD OF GOVERNORS

BOG EXECUTIVE COMMITTEE

Overall Roles and Responsibilities

The Board of Governors recognizes the need for an Executive Committee to be able to address emergent but non-policy making matters that need timely attention in between Board meetings. The Executive Committee's authority derives solely from the authority of the Board, and is limited by the authority granted by the Board of Governors. The composition of the Executive Committee is set forth in the WSBA Bylaws.

The Executive Committee's specific responsibilities include:

1. To exercise limited powers of the Board between regularly scheduled meetings of the Board because it is generally impractical to convene a Board meeting to respond to a time sensitive decision or action. The Executive Committee may not take any action to establish, change, or alter prior Board decisions or policies; may not take final action to amend bylaws; may not remove a board member or officer from office; can make no decisions to hire or remove the Executive Director; and may not make any changes to the WSBA budget approved by the Board or alter the fiscal matrix.

2. To develop the Board meeting agenda.

3. To serve as a sounding board for executive management and officers on emerging issues, problems, and initiatives.

4. To review, monitor, and support the work of WSBA entities to:

    a. Ensure WSBA's committees continue to do the work of the Board of Governors, as directed by the Board, consistent with our mission, guiding principles, and strategic goals;
    b. Make sure WSBA's regulatory boards are fulfilling their Supreme Court mandates and any other issues the Board of Governors may have asked them to explore; and
    c. Monitor the ongoing activities of the Supreme Court-created boards administered by WSBA, consistent with their charges from the Court.

    To accomplish these goals, the Executive Committee will review annual reports

submitted by these entities with their liaison from the Board of Governors and forward recommendations to the Board for review and action as appropriate.

5. To take such other actions that are not specifically prohibited above, are expedient and necessary, and are consistent with the prior policies and decisions of the Board.

Action Taken by the Executive Committee

Action of the Executive Committee shall be made by majority/consensus decision of the Executive Committee. The Executive Committee shall notify the full Board of any decisions as authorized by paragraphs 1 and 5 (above) taken within 24 hours.

Approved by the Board of Governors on [DATE].

WSBA
BOARD OF GOVERNORS

BOG EXECUTIVE COMMITTEE

Overall Roles and Responsibilities

The Board of Governors recognizes the need for an Executive Committee to be able to address emergent but non-policy making matters that need timely attention in between Board meetings. The Executive Committee's authority derives solely from the authority of the Board, and is limited by the authority granted by the Board of Governors. The composition of the Executive Committee is set forth in the WSBA Bylaws.

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   a. Ensure WSBA's committees continue to do the work of the Board of Governors, as directed by the Board, consistent with our mission, guiding principles, and strategic goals;
   b. Make sure WSBA's regulatory boards are fulfilling their Supreme Court mandates and any other issues the Board of Governors may have asked them to explore; and
   c. Monitor the ongoing activities of the Supreme Court-created boards administered by WSBA, consistent with their charges from the Court.

To accomplish these goals, the Executive Committee will review annual reports

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submitted by these entities with their liaison from the Board of Governors and forward recommendations to the Board for review and action as appropriate.

5. ~~•~~ To take such other actions that are not specifically prohibited above, are expedient and necessary, and are consistent with the prior policies and decisions of the Board.

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~~**Composition of the Executive Committee**~~

~~The Executive Committee shall include the President, President Elect, Immediate Past President, the Treasurer, the Chair of the BOG Personnel Committee, and the Executive Director.~~

Action Taken by the Executive Committee

Action of the Executive Committee shall be made by majority/consensus decision of the Executive Committee. The Executive Committee shall notify the full Board of any decisions as authorized by paragraphs 1 and 5 (above) taken within 24 hours.

Approved by the Board of Governors on [DATE].

WASHINGTON STATE
BAR ASSOCIATION

MEMO

To: WSBA Board of Governors

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

Date: November 22, 2019

Re: 2020 WSBA Legislative Priorities

ACTION: Approve the 2020 Legislative Priorities for the upcoming legislative session.

Overview:
The WSBA Legislative Affairs team is pleased to propose the 2020 WSBA Legislative Priorities for consideration and approval by the Board of Governors (BOG).

Background:
The WSBA and its entities are allowed to engage in the legislative process if issues are related to the practice of law and/or the administration of justice (GR 12). The 2020 WSBA Legislative Priorities seek to make improvements to the practice of law and administration of justice that ultimately benefit both members of the public as well as legal professionals across the state. The genesis of these priorities is tied directly to the WSBA Guiding Principles. These include supporting access to justice, increasing public understanding of Washington's justice system, and supporting a fair and impartial judiciary. These legislative priorities remain unchanged from years past.

Recommended Action:
Approve the 2020 WSBA Legislative Priorities as recommended by the BOG Legislative Committee Chair and WSBA Legislative Affairs Manager.

2020 WSBA Legislative Priorities

- Solicit and receive input from the members, sections and committees of the WSBA regarding setting the legislative priorities of the WSBA.

- Support Bar-request legislative proposals initiated by WSBA Sections that are approved by the Board.

- Support non-Bar request legislative proposals approved by the Board under GR 12, that seek to:
  - Create and promote access to justice for all Washington residents;
  - Enhance statewide civics education;
  - Provide funding for the state's court system; and
  - Provide funding for civil legal aid services through general-fund state dollars.

- Monitor and take appropriate action on legislative proposals that would:
  - Increase existing court user fees;
  - Alter court rules and/or the structure of the state's judicial branch; and
  - Other items of significance to the practice of law and administration of justice.

WASHINGTON STATE BAR ASSOCIATION

MEMO

To: WSBA Board of Governors

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

Date: November 22, 2019

Re: 2020 WSBA Legislative Review Committee Recommendations

ACTION: Sponsor two proposals for 2020 Bar-request legislation as recommended by the WSBA Legislative Review Committee.

Background:
The WSBA Legislative Committee serves as the vetting ground for legislative proposals that are presented to the Board of Governors each November. The Committee is composed of 10 members of the WSBA which includes representation of members' practice areas, and diversity in, among other things, age, gender, race, and geography. The Committee represents the interests of the broader bar membership, not any one perspective or practice area within the bar. Appointments to the Committee are made in June. The WSBA Legislative Review Committee does not propose legislation of its own; rather, these proposals typically come from a WSBA entity, mainly Sections. The Committee's primary task is to determine that a proposal (1) meets the requirements of GR 12.2 and (2) has been appropriately vetted both internally and externally of the WSBA.

The Committee met on October 3 and October 29, 2019 to discuss legislative proposals. The Committee voted unanimously that the proposed amendments to RCW 23B.02 and 23B.07 and other changes intended to harmonize with the 2016 Revised Model Business Corporation Act met the requirements of GR 12.2. By a vote of 7-1, the Committee determined that the proposed amendments to the Washington Business Corporation ACT (WBCA) to add a board gender diversity provision met the requirements of GR 12.2.

The Committee voted unanimously to recommend sponsorship of both proposals to the Board of Governors.

Overview:
The WSBA Legislative Review Committee (Committee) recommends the Board of Governors (BOG) sponsor the following proposals for Bar-request legislation during the 2019 session.

Returning and new legislation - Action Requested

- Proposed amendments the Washington Business Corporation Act (WBCA) regarding making certain non-substantive changes to RCW 23B.02 and 23B.07 and other changes intended to harmonize with the 2016 Revised Model Business Corporation Act (2016 Model Act). (Committee approved unanimously)
- Proposed amendments to the Washington Business Corporation ACT (WBCA) to add a board gender diversity provision. (Committee approved unanimously contingent on no opposition from women's stakeholder groups)

Miscellaneous - No Action Requested

- Proposed implementation of the Uniform Family Law Arbitration Act. (Committee voted unanimously to table proposal until further stakeholder feedback on the proposal can be sought)

Proposed amendments to the Washington Business Corporation Act (WBCA) provisions regarding preemptive rights, cumulative voting, and approval of asset sales to align with Model Business Corporation Act.

Section draft development:

- The proposed amendments to the WBCA were drafted by CARC. CARC is a committee of the WSBA's Business Law Section with approximately 15 members consisting of corporate attorneys practicing at large and smaller local law firms in the state, in-house counsel at Washington corporations, professors of law at both local law schools, and representatives of the Washington Secretary of State's office. CARC was instrumental in the development of the WBCA adopted in 1989. CARC is primarily responsible for ensuring that the WBCA remains up to date, and continuously considers the need for changes to the WBCA in light of developments in corporate and securities laws and practices, judicial decisions and regulatory actions.
- The vote of CARC to approve the proposed amendments was unanimous.
- The vote of the Business Law Section's Executive Committee to approve CARC's proposed amendments and recommend that the WLRC approve the proposed amendments as WSBA-request legislation was unanimous.

Summary:

The proposed changes include the following:

1. Amendments to RCW 23B.02 related to removing lists of optional provisions that may be included in articles of incorporation or bylaws and other changes to harmonize with the 2016 Model Act;
2. Amendments to RCW 23B.07 related to clarifying that a corporation cannot vote its own shares of stock and other changes to harmonize with the 2016 Model Act; and
3. Amendments to RCW 23B.07 related to removing a prohibition on shareholders of public companies utilizing less-than-unanimous consent to approve corporate action and other changes to harmonize with the 2016 Model Act.

These proposed changes are generally consistent with the approach taken in the ABA's 2016 revised version of the Model Act, upon which the WBCA is based. The adoption and enactment of the proposed amendments to the WBCA is not expected to impose any costs on businesses or individuals to comply with the provisions.

Background from CARC:

- The proposed RCW 23B.02.020 will be simpler, shorter and more consistent with the 2016 Model Act. It will retain the mandatory minimum requirements, but have a shorter list of optional provisions.
- RCW 23B.07 does not include an explicit provision stating that shares of a corporation are not entitled to vote if they are owned or otherwise belong to the corporation itself. The proposed RCW 23B.07.210 will clarify that a corporation cannot vote its shares, whether they are owned by or otherwise belong to the corporation or by a controlled subsidiary, and will be more consistent with the 2016 Model Act.
- RCW 23B.07.040 permits shareholders of all Washington corporations to approve corporate action by unanimous written consent. In addition, shareholders of a privately held corporation may approve corporate action by less-than-unanimous written consent if a provision permitting that approval is included in the corporation's articles of incorporation. The proposed RCW 23B.07.040 would allow shareholders of all Washington corporations – whether privately held or publicly traded – to approve corporate action by less-than-unanimous written consent if a provision permitting that approval is included in the corporation's articles of incorporation. This is consistent with the 2016 Model Act.

Stakeholder response

Washington Associate for Justice (WSAJ) – trial lawyers – Ongoing
Business Law Section LLC/Partnership Committee – Ongoing
Secretary of State's office – Support
Association of Washington Business (AWB) – Ongoing
WSBA Litigation Section – Ongoing

Proposed amendments to the Washington Business Corporation Act (WBCA) to add a board gender diversity provision.

Section draft development:

- The proposed amendments to the WBCA were drafted by CARC. CARC is a committee of the WSBA's Business Law Section with approximately 15 members consisting of corporate attorneys practicing at large and smaller local law firms in the state, in-house counsel at Washington corporations, professors of law at both local law schools, and representatives of the Washington Secretary of State's office. CARC was instrumental in the development of the WBCA adopted in 1989. CARC is primarily responsible for ensuring that the WBCA remains up to date, and continuously considers the need for

changes to the WBCA in light of developments in corporate and securities laws and practices, judicial decisions and regulatory actions.

- The vote of CARC to approve the proposed amendments was unanimous.
- The vote of the Business Law Section's Executive Committee to approve CARC's proposed amendments and recommend that the WLRC approve the proposed amendments as WSBA-request legislation was unanimous.

Summary:
The proposed changes include the following:

1. Beginning no later than January 1, 2022, at least 25% of the directors on certain Washington public company boards of directors must be women.

2. If a public company does not have a gender-diverse board of directors, then it must provide (on its corporate website or in proxy materials distributed to shareholders) a "board diversity discussion and analysis" describing its approach to developing and maintaining diversity on its board of directors;

3. Private companies and certain public companies are excluded from these requirements, including public companies not listed on a national securities exchange, "emerging growth companies" and "smaller reporting companies," majority controlled companies and others with different board appointment provisions;

4. The failure of a public company to comply with these requirements does not affect the validity of any corporate action; and

5. Nothing in this provision alters the general standards for any director of a public company.

Background from CARC:
On September 30, 2018, California became the first US state to set quotas for women directors on corporate boards. The California law requires minimum numbers of women on the boards of public companies headquartered in California. For public companies with six or more board members, at least three must be women. For public companies with five directors, two must be women, and for public companies with four or fewer, one must be a woman. The law purports to cover both public companies incorporated in California and public companies incorporated in other jurisdictions but headquartered in California. The law also imposes substantial monetary fines for noncompliance. Many legal pundits and even the Governor of California predicted that the law would attract lawsuits due to concerns about its constitutionality. In August 2019, a group filed a lawsuit challenging the law.

In August 2019, Illinois trekked down a similar path as California. The Illinois law "urges" public companies to have, depending on size, one to three women members within three years. The adopted version of the law was a compromise to the originally introduced legislation, which would have mandated that boards include women and imposed monetary fines, similar to those adopted in California.

Other states, including Massachusetts, Pennsylvania, and Colorado, have passed non-binding resolutions encouraging increased board diversity. There is also currently a bill in the New Jersey legislature that would require at least three women on the boards of certain companies.

In January 2019, a group of Washington state senators proposed legislation substantially mirroring the California statue; except that, unlike the California law, the Washington version (1) would not apply to foreign corporations, and (2) would apply to all Washington corporations (i.e., public companies and private companies).

It seems clear that there is strong support for increasing diversity on the boards of directors of public companies in the United States. However, the Corporate Act Revision Committee ("CARC") of the Business Law Section of the Washington State Bar Association believes that amending the Washington Business Corporation Act ("WBCA") to include a provision similar to the proposed legislation, which is based on the California law, would be counter to the enabling nature of the WBCA, could cause impacted Washington corporations to migrate to another state for incorporation, and could diminish the ability of Washington legal practitioners to practice high standards of competence and to promote an understanding of Washington corporate law.

For example, the proposed legislation could make it more difficult for Washington corporate lawyers to advise Washington corporations, boards of directors and shareholders regarding the standards of conduct for directors, clearly articulated elsewhere in the WBCA, and whether this provision changed those standards under some circumstances. Similarly, the proposed legislation would render it difficult for Washington corporate lawyers to advise boards of directors and shareholders of private, closely-held Washington corporations unable to comply with the quotas. Just as troubling, the proposed provision would render it difficult for Washington corporate lawyers to be certain in advising Washington corporations regarding the validity of any corporate action taken by a board of directors that failed to meet the quota requirements.

For these and other reasons, members of CARC believe that, if it is a *fait accompli* that a board gender diversity provision will be added to the WBCA, the provision should be consistent with the enabling nature of the WBCA and should foster high standards of competence among Washington legal practitioners and promote understanding of Washington corporate law.

Stakeholder response

Secretary of State's office – Support
Washington State Women's Commission – Ongoing
2020 Women on Boards – Ongoing

WASHINGTON STATE
BAR ASSOCIATION

MEMO

To: Board of Governors

From: Daryl Rodrigues, Chair, Council on Public Defense
Travis Stearns, Vice-Chair, Council on Public Defense

Date: November 5, 2019

Re: Adoption of the *Washington State Guidelines for Appointed Counsel in Indigent Appeals* by the Washington State Supreme Court

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ACTION: Recommend to the Supreme Court that the Court add the *Washington State Guidelines for Appointed Counsel in Indigent Appeals* to the *Revised Code of Washington*, the *Washington Rules of Appellate Procedure*, the *Washington Rules of Professional Conduct*, and *Washington Rules for Appeal of Decisions of Courts of Limited Jurisdiction*, and the *Washington Supreme Court Standards for Indigent Defense*.

On May 31, 2019, Travis Steans, Council on Public Defense Vice-Chair and Attorney with the Washington Appellate Project, and Gideon Newmark, Attorney with the Office of Public Defense, presented the proposed *Washington State Guidelines for Appointed Counsel in Indigent Appeals* to the Council on Public Defense. This document is the first comprehensive set of practice guidelines for appointed appellate counsel in Washington. Like other guidelines the Supreme Court has adopted for criminal defense attorneys, these guidelines establish practice standards for attorneys working on any appeal that is constitutionally required. The guidelines were drafted by a workgroup of experienced appellate practitioners, including Washington Appellate Project attorneys, solo appellate public defenders, private appellate counsel, and the Federal Public Defender.

Following discussion and deliberation, the Council on Public Defense again reviewed the *Guidelines* at their July 19, 2019, meeting. At that meeting the Council voted by a supermajority to affirm that the Guidelines fall within the parameters of GR 12. The Council also voted by a supermajority to approve the *Guidelines* for the Board of Governor's consideration to submit to the Court.

The Council's request was on the Board's agenda for a first reading at the July 2019 meeting. It is now on the Board's agenda for action at the November 2019 meeting. Since July, the Council has received feedback on the Guidelines and have incorporated a small edit to the previous version. A redlined version showing the edit and an updated clean version are attached. A member of the Council will attend to present the Guidelines and address questions.

We look forward to presenting the proposed *Guidelines* on the agenda at the Board meeting.

Washington State Guidelines for Appointed Counsel in Indigent Appeals

Preface

These guidelines apply to appointed counsel handling appeals for indigent clients. These guidelines are intended to be used as a guide to professional conduct and performance. Because appellate practice is a specialized area of practice requiring distinct expertise, particularized standards apply. These guidelines are to be read in conjunction with the Revised Code of Washington (RCW), the Washington Rules of Appellate Procedure (RAP), the Washington Rules of Professional Conduct (RPC), the Washington Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), the Washington Supreme Court Standards for Indigent Defense, and the Washington State Bar Association Standards for Indigent Defense Services.

The object of these guidelines is to alert the attorney to the courses of action that may be necessary, advisable, or appropriate, and thereby to assist the attorney in deciding upon the particular actions that must be taken in a case to ensure that the client receives the best possible representation.

All of the steps covered in these guidelines are not meant to be undertaken automatically in every case. Instead, the steps actually taken should be tailored to the requirements of a particular case. The guidelines recognize that representation in indigent appellate cases is a difficult and complex responsibility. Attorneys must have the flexibility to choose a strategy and course of action that ethically "fits" the case, the client, and the court proceeding.

These guidelines may or may not be relevant in judicial evaluation about alleged misconduct of defense counsel to determine the validity of a conviction. They may be considered with other evidence concerning the effective assistance of counsel.

1. **Role of Appointed Counsel**
    a. **Client Representation -** The paramount obligation of appointed counsel is to provide conscientious, zealous, and quality representation to their clients at all stages of the legal process. Attorneys also have an obligation to abide by ethical requirements and act in accordance with the rules of the court, including having a system in place to check for conflicts of interest.
        i. The basic duty appointed counsel owes to the administration of justice and as an officer of the court is to serve as the accused's counselor and advocate with courage and devotion and to render effective, quality representation.

ii. Counsel has no duty to execute any directive of the accused that does not comport with law or such standards.

b. **Other Related Issues -** Appellate counsel should provide comprehensive representation that also includes determining whether the client needs assistance with areas such as parole advocacy, re-entry, or unacceptable prison conditions and making appropriate referrals. Special consideration should be given to the client's immigration status, and if the client is not a U.S. citizen, counsel should determine if any immigration proceedings have occurred and the potential impact that an appeal may have on the client's immigration status.

c. **Role & Standards -** It is the duty of counsel to know and be guided by the standards of professional conduct as defined in the codes of the legal profession applicable in Washington. Once representation has been undertaken, the functions and duties of counsel are the same whether counsel is assigned, privately retained, or serving in a legal aid or defender program.

2. Education, Training and Experience of Appellate Counsel

a. **Familiarity with Law -** To provide quality representation, counsel must be familiar with substantive law and procedure and its application in the particular jurisdiction. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Counsel should also be informed of the practices of the court before which a case is pending.

b. **Experience -** Prior to handling an appointed appeal, counsel should have sufficient experience or training to provide quality representation. Less experienced counsel should only represent clients in less complex cases and only with adequate supervision and review. More complex cases should only be assigned to more experienced counsel and with adequate resources and time afforded to provide quality representation.

c. **Training -** Appointed appellate counsel must engage in regular training focused on appellate advocacy, both written and oral, as well as on substantive issues and other pertinent areas. Counsel should seek training on issues of racial and gender bias, especially as they pertain to appellate practice.

3. Appellate Counsel Caseload - Appointed appellate counsel's caseload must not exceed the standards adopted by the Washington Supreme Court and must permit counsel to provide representation consistent with the representation afforded by counsel in non-

appointed cases. Counsel's caseload should be such as to permit the filing of an opening brief in the majority of cases without numerous extensions.

4. Duties of Appointed Counsel

a. **Standard of Representation -** Counsel in an appointed appeal must be expected to provide representation consistent with that afforded to clients who retain counsel. Appellate procedure, as outlined below, includes responsibilities unique to appellate counsel, including the submission of an appellate brief, presentation of oral argument, and the possibility of pursuing further avenues for relief where appropriate.

b. **Withdrawal Exception -** Appointed counsel should not withdraw as counsel until the appeal is final except with the consent of the client, upon motion establishing good cause, or pursuant to *State v. Theobald*[1] and *Anders v. California*.[2] Counsel should file a motion to withdraw pursuant to *Anders* only after a thorough review of the record and review of the facts and relevant law with other defenders, and after meaningful attempts to consult with the client.

c. **Substitution of Counsel -** Counsel shall request that substitute counsel be appointed to represent the client when counsel's continued representation might violate the codes of professional responsibility or when counsel in good faith believes counsel cannot provide the client with zealous representation.

d. **Refusal of Appointment -** Counsel shall refuse an appointment to represent a client when the appointment will violate the Washington Supreme Court Standards for Indigent Defense.

e. **Other Proceedings -** Appointed counsel should assist trial counsel where appropriate in seeking any relief in an assigned matter short of relief on appeal.

5. Relationship with Client

a. **Establishment of the Relationship -** Defense counsel should seek to establish a relationship of trust and confidence with the client.

b. **Barriers to Communication -** Counsel should ensure that communication with the client accounts for differences in language, literacy or other barriers to communication. Counsel should use the means of communication best suited to meet the client's needs and best suited to an attorney's obligations to consult, counsel, and advise the client. Such means include written communication, personal visits,

[1] *State v. Theobald*, 78 Wn.2d 184 (1970).
[2] *Anders v. California*, 386 U.S. 738 (1967).

telephone, and electronic communication. Counsel should use interpreter, translation, or other services necessary to overcome any language barriers.

c. **Consultation with the Client -** Counsel must make reasonable efforts to consult with the client to determine potential issues and identify the client's objectives on appeal. An initial consultation should occur prior to preparation of the initial substantive pleading in any review.

d. **Client Notification -** Counsel shall keep the client apprised of the status of the appeal. Counsel shall promptly notify the client of all substantive filings and rulings in the course of the appeal.

6. Appellate Procedure – Preparation of the Record

a. **Duty of Appellate Counsel -** Counsel should promptly review the record to determine which portions are necessary for review. Counsel should make reasonable efforts to consult with the client and trial attorney to determine which portions of the record are necessary for review. All missing documents should be obtained as expeditiously as possible, filed with the trial court, and designated as clerk's papers if relevant.

b. **Record Documents -** The record may consist of more than the documents that are regularly provided, such as jury questionnaires, power point presentations, or transcripts of exhibits presented to the jury.

7. Appellate Procedure – Issue Selection

a. **Issue Selection – Review of Record -** Counsel should review the entire record in order to determine the viable issues that could be raised on review.

b. **Issue Selection – Communication with Client -** The client, not the attorney decides whether to proceed with the appeal. Strategic decisions regarding the issues to be pursued on appeal should be made only after reasonable efforts to consult with the client. Counsel should raise those issues which diligent counsel would raise based upon current research. Counsel should seek and consider the advice of the client on those issues which should be presented. Counsel should advise the client of issues that are proper for review in collateral review proceedings and pursue those avenues where appropriate.

c. **Issue Selection – Communication with Trial Counsel -** Counsel should make reasonable efforts to consult with trial counsel to determine the issues to be presented.

d. **Issue Selection – Additional Considerations**

i. To promote the goal of finality in judgments, counsel is encouraged to raise those claims that have arguable potential for success on the direct appeal.
ii. The determination of which issues will be presented on appeal should be made only after reasonable efforts to engage in consultation with other defenders aware of the facts of the case and potential legal claims. Counsel should also be aware of issues already pending in State and Federal Court.
iii. Prior to filing, all substantive pleadings should be peer-reviewed by a defender equally qualified to represent the client and familiar with the relevant law.
iv. It is very important that counsel understand federal habeas corpus law and procedure in order to anticipate the possibility that the client may need to pursue federal court remedies to obtain relief for a serious constitutional error.
v. Counsel should be aware of the client's racial and gender identity and should review the record for any potential instances of bias or prejudice. Counsel should raise issues related to racial or gender bias when appropriate.

8. Appellate Procedure – Drafting of Brief & Other Pleadings

a. **Drafting of Document -** All pleadings and other materials submitted to the court should be clear, concise, and well organized in order to provide the court with the facts and law necessary to make a well-reasoned decision. They should be professional in appearance, free of errors, consistent with court rules and citation requirements and accurate in citation to appellate record and legal authority. The brief should also be well reasoned and persuasive.

b. **Reply Brief -** Unless it is unnecessary to advance the goals of representation, appellate counsel should file a reply brief that responds to arguments in the respondent's brief by pointing out misstatements, weaknesses, and new issues raised.

c. **Other Pleadings -** Counsel should file any additional motions or pleadings if it is in the interest of the client or furthers the interest of litigation. This can include additional motions, objections or supplemental briefs.

9. Appellate Procedure – Oral Argument

a. **Obligation -** Where counsel is afforded oral argument by the court it should not be waived except upon reasonable efforts to secure consultation with the client and with colleagues made familiar with the facts and claims of the case. After efforts to

consult, waiver should only occur upon the conclusion that the client's rights will be more fully advanced by submission of the appeal on the briefs alone. Where a matter is set without argument, argument should be requested where counsel believes it is likely to advance the client's interest and the goals of representation.

b. **Preparation -** Oral argument can be a critical opportunity to advocate for the client and thorough preparation is essential. This should include development of an outline or notes that set forth key points, cites to key record pages and appellate decisions, and answers to anticipated questions. Counsel should prepare with and consult with other attorneys.
c. **Knowledge of Rules -** Counsel should be familiar with the relevant appellate court's rules regarding cases in which argument is permitted, how to make requests for argument, how notification of argument is provided, and whether rebuttal and post-argument submissions are permitted.

10. Appellate Procedure – Actions Upon Decision of the Court

a. **Communication with Client -** Counsel should timely inform the client of the decision of the court and shall advise the client of any further proceedings in which the client may seek further relief.
b. **Remand -** If the client's case has been remanded to a lower court where counsel will no longer represent the client, counsel should ensure new counsel is appointed to the matter.
c. **Further Proceedings -** Counsel shall seek further review, including motions to modify, motion for reconsideration, or discretionary review of any decision where appropriate and necessary. In determining whether further review is appropriate and necessary, counsel must consider: whether the client, having been timely advised, so requests; whether doing so will advance the client's interests; whether further review is necessary to preserve issues for collateral attack; and whether issues then pending in state or federal court may affect the client's case. Counsel should seek additional review in state or federal court where appropriate.
d. **Case File Maintenance -** Although the case file is maintained by counsel, it belongs to the client. Counsel should retain the file in reasonably secure conditions for a period of time consistent with appropriate professional guidelines. Counsel should advise the client of counsel's retention policy and should inform the client that the client is entitled to receive the file on request after conclusion of the representation. Counsel should promptly furnish a client's file to successor counsel

if requested. However, counsel may not disclose confidential information to successor counsel unless the client gives permission.

WASHINGTON STATE
BAR ASSOCIATION

MEMO

To: Board of Governors

From: Daryl Rodrigues, Chair, Council on Public Defense

Date: November 5, 2019

Re: Adoption of the Council on Public Defense's *Defender Resource Packet: Defender Advocacy for Pretrial Release*

ACTION: Approve the Council on Public Defense's *Defender Resource Packet: Defender Advocacy for Pretrial Release* for broad distribution to Washington State public defenders.

The Council on Public Defense's Pretrial Reform Committee (Committee) is working to support best practices in Washington. The Committee drafted the attached *Defender Resource Packet* as a tool for public defenders to use when representing a client during an initial appearance and detention hearings. The packet includes: 1) a client interview form to prepare for the First Appearance hearing; 2) a CrR(LJ) 3.2 defender advocacy sheet; 3) a sample CrR(LJ) 3.2 release order to request the judge to issue in every case; 4) a list of structural barriers identified by defenders in some jurisdictions around the state; 5) a recent CrR(LJ) 3.2 bench card that was distributed to judges statewide; and 6) a summary of possible effects of pleading guilty. The *Defender Resource Packet* is a guide and resource for attorneys that reiterates existing court rules and best practices.

The Committee drafted the *Defender Resource Packet* over two years, gathering feedback from public defense attorneys, prosecutors and Council members. On May 31, 2019, the Council on Public Defense voted unanimously to submit the *Defense Resource Packet* to the Board of Governors for approval. If approved, the Council will work collaboratively with public defense agencies to disseminate the packet to all public defenders across the state.

The Council's request was on the Board's agenda for a "first reading" at the September 2019 meeting. The request is again on the Board's agenda for consideration in November. Council member Jaime Hawk will attend the meeting to present the *Defender Resource Packet* and answer questions.

We look forward to presenting the proposed *Defender Resource Packet* at the November Board meeting.

DEFENDER RESOURCE PACKET

Defender Advocacy for Pretrial Release

August 2019 | Contact: CPD@wsba.org

WASHINGTON STATE
BAR ASSOCIATION
Council on Public Defense

WASHINGTON STATE
BAR ASSOCIATION

Council on Public Defense

August 30, 2019

Defenders,

The Pretrial Reform Committee of the WSBA Council on Public Defense ("committee") is working to support bail reform in Washington. The committee has drafted the attached client interview form and compiled packet as a resource for defenders preparing for initial appearance and detention hearings. The form identifies categories of relevant client information pursuant to CrR 3.2 to be presented to the court in support of arguments for a client's release. A comprehensive knowledge of the client and her background is the most important tool a lawyer possesses when litigating for release.

The pretrial detention population is approximately **60-70%** of the jail population in counties across Washington. Thousands of clients who have not been convicted of a crime are locked in jail because they cannot afford to pay the bail set by the judge. Racial disparities are significant and clients of color are disproportionately in jail before trial at a higher rate, and often assigned higher bail amounts, than white clients.

A movement for pretrial and bail reform has been building across Washington. Significant work is underway to reform bail practices, significantly reduce pretrial detention rates and the use of money bail, and to improve case outcomes for clients. Defenders have a critical role in these reforms and the necessary culture changes. The Council on Public Defense is working to support defenders in these efforts.

As defenders know best, the pretrial detention decision is one of the most important made in a case. When a client is detained pretrial, they are pressured to plead guilty to get out of jail and avoid losing their jobs, housing, child custody, medications, among other consequences. Many clients detained pretrial are also more likely to be sentenced to jail and to face longer sentences. Lawyers make a significant difference at bail hearings. Litigating pretrial release is important because it affects both short-term and long-term outcomes for the client.

We have a strong court rule in Washington that generally *mandates the release of people accused of crimes before trial without financial conditions*, but it is routinely not followed or implemented consistently in courts around the state. CrR 3.2 and CrR(LJ) 3.2 start with a **presumption of release** for all clients and require that money bail only be imposed as a last resort *after* a court finds no less restrictive conditions can be imposed to assure court appearance, prevent the likely commission of a violent crime, and/or noninterference with justice. The rule also requires the court to consider a client's financial resources and ability to pay when setting any bail amount. The use of money bail is supposed to be the last resort, not the first and only resort, as is common practice in many courts. Statewide advocacy efforts are underway to enforce the rule and change court practices to guarantee a meaningful presumption of release.

1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-WSBA | 206-443-WSBA | questions@wsba.org | **www.wsba.org**

The committee is also working to support defenders' efforts to tackle the structural barriers that often prevent defenders from meeting with clients and being prepared for court before the docket begins. These barriers such as having sufficient access to clients and case information, as well as adequate time to meet with clients and prepare structured release plans are widespread throughout the state.

This defender resource packet includes the following documents: 1) client interview form to prepare for the First Appearance hearing; 2) CrR(LJ) 3.2 defender advocacy sheet; 3) sample CrR(LJ) 3.2 release order to request the judge to issue in every case; 4) list of structural barriers identified by defenders in some jurisdictions around the state; and 5) a recent CrR(LJ) 3.2 bench card that was distributed to judges statewide.

If you have feedback or suggestions to improve these resources or would like to be involved in this pretrial reform work, please contact the committee at CPD@wsba.org. We would love to hear from you.

Onward!

DEFENDER RESOURCE PACKET

Defender Advocacy for Pretrial Release

> "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."
>
> **United States v. Salerno**
> 481 U.S. 739, 755 (1987)

CONTENTS

August 2019 | Contact: CPD@wsba.org

ATTACHMENT A

Client Interview Form

Client Name: _____ Alternate person: _____

Address: _____ Address: _____

Phone #: _____ Phone: _____

Cause #: _____ **PC for:** _____

_____ **CW:** _____

CrR 3.2 & CrRLJ 3.2 PRESUMPTION OF RELEASE without conditions

1 – CLIENT IS NOT A FLIGHT RISK – court required to impose least restrictive (3.2(b))

RELEVANT FACTORS INCLUDE:	
Community Ties (family, people who support you, how long in this community)?	
Alternate housing options for DV or violent crime?	
Work, school, volunteer? Student: athletics, clubs, other extracurricular?	
Financial situation & inability to pay bail (TANF/SNAP, food assistance, cash assistance, SSI/SSD)?	
Health and social welfare issues (community support services)?	
Medical/dental/psych appointments, treatment or medications? Diagnoses (physical/mental)?	
Family responsibilities (minor children, special needs child, care for elderly)?	
Transportation plan? Community/Social engagement?	
Who can help you with release conditions/appearances? (get address and phone number)	
Court Appearance history? Current PC relevant to flight risk? Minimal conviction history, *de minimus*?	
Other holds? (probation, DOC, other courts/jurisdictions, extradition, etc.)	
FTA/Warrant Explanation? (summons – not receive/mail returned; i/c somewhere else; in-patient; not just LFOs)	

Client: _____ **Cause #:** _____

2 – No *substantial* danger client will interfere with witnesses or commit violent crime

State argues "COMMUNITY SAFETY"	*Consider offering/agreeing to conditions of release:*
State argues violent criminal history: ☐ Class A ☐ Assault ☐ Manslaughter ☐ Extortion ☐ Indecent w/forcible ☐ Robbery ☐ Kidnapping ☐ Drive-by ☐ Arson ☐ Veh. Hom/Asslt.	Client agrees to report regularly and remain under supervision of: ☐ officer of the court (PTS); ☐ other person (family member or employer [#7]); or ☐ agency (private EHM/GPS company); AND/OR ☐ Client agrees not to possess dangerous weapons/firearms
State argues lengthy criminal history	Is the conviction history relevant? (i.e., similar) Is the conviction history OLD?
State argues past and present *threats to* and/or *interference with* CW/Witnesses	Client agrees to: ☐ Stay at least 1,000 feet away from person/location; ☐ Not contact (person/business); ☐ Not possess dangerous weapons/firearms
State argues client will commit new crimes while on PTR/probation/DOC?	Client agrees to: ☐ Maintain law abiding behavior ☐ Report to PTS/probation/DOC w/in 48 business hrs. of release ☐ Update her contact information with PTS/probation/DOC w/in 48 business hours of release
State argues past and/or present use *or* threat to use deadly weapon/firearm?	Client agrees not to possess dangerous weapons and/or firearms. • How *old* is the past use/threat? •
State argues client is on Probation or DOC at the time of alleged offense – already supervised and cannot follow the rules.	Client agrees to: ☐ Not consume alcohol or non-Rx drugs; ☐ Report within 48 business hours of release; ☐ Update her contact information with probation/DOC w/in 48 business hours of release

Client: _____ **Cause #:** _____

3.2 (b) FTA – Least Restrictive Conditions	3.2 (d) Substantial Danger – Least Restrictive Conditions
1. Δ in 'custody' of person/org who will supervise	1. Prohibit Δ from approaching/communicating w/specific persons or classes of persons
2. Restrict Δ's travel, association, residence	2. Prohibit Δ from certain areas (i.e., w/in 1,000 feet of CW's house, workplace, school …)
6. Δ i/c at night or on GPS/SCRAM	3. Prohibit Δ from possession dangerous weapons/firearms; no alcohol or drugs not Rx
7. Any other condition deemed reasonably necessary to assure appearance	4. Require Δ to report regularly to and remain under supervision of an officer of the court (PTS) or other person or agency
	5. Prohibit Δ from committing violation of criminal law
	7. Δ in 'custody' of person/org who will supervise
	8. Restrict Δ's travel, association, residence
	9. Δ i/c at night or on GPS/SCRAM
	10. Any other condition deemed reasonably necessary to assure appearance

Notes For Trial Counsel:

ATTACHMENT B

Using CrR(LJ) 3.2 in Practice

Using CrR(LJ) 3.2 in Practice

The Presumption of Innocence means a Presumption of Pretrial Release

CrR(LJ) 3.2 provides that "[a]ny person, other than a person charged with a capital offense, ***shall... be ordered released*** on the accused's personal recognizance pending trial..."

This presumption can only be defeated if the Court finds either

(1) the accused's personal recognizance will not "reasonably assure" their appearance at future court dates,

or

(2) "there is shown" by the Prosecutor "a likely danger* that the accused

(a) will commit a **violent** crime+, or
(b) will seek to intimidate witnesses, or... unlawfully interfere with the administration of justice."

While the Prosecutor bears the burden of presenting evidence to overcome the presumption of pretrial release, CrRLJ 3.2 *requires the Court to consider all relevant factors,* most of which are mitigating:

Mitigating Factors for Future Appearance:

- History of response to legal process, particularly court orders to appear;
- Community ties, especially:
  - Length of residence;
  - Family ties and relationships;
  - Employment status and history;
  - Enrollment in school or job training;
  - Participation in counseling program;
  - Participation in cultural activities;
  - Receipt of government assistance;
- Reputation, character, and mental condition;
- Willingness of responsible community members to vouch for the accused's reliability and assist the accused in complying with any conditions of release;
- Any other factors indicating the accused's ties to the community.

Other Factors for Future Appearance:

- Criminal record, if any;
- Nature of the charge, if relevant to the risk of nonappearance.

Mitigating Factors for Showing of Substantial Danger:

- Reputation, character, and mental condition;
- Willingness of responsible community members to vouch for the accused's reliability and assist the accused in complying with any conditions of release;
- History of compliance with pretrial conditions, probation, or parole;
- Nature of the charge (if nonviolent);
- Nonviolent criminal record.

Other Factors for Showing of Substantial Danger:

- History of committing offenses while on pretrial release, probation, or parole;
- Nature of the charge (if violent);
- Violent criminal record;
- Any evidence of threats to victims or witnesses, either past or present;
- Record of using deadly weapons or firearms, especially to victims or witnesses.

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*A likely danger means the accused is more likely than not to commit a violent crime or interfere with the administration of justice. The mere possibility they will do so is not enough for the judge to impose conditions on pretrial release.

+Any likelihood the accused will commit a nonviolent crime—other than witness intimidation—is irrelevant.

Using CrR(LJ) 3.2 in Practice

Defense attorneys can and should use every mitigating factor to demonstrate their client does not pose either a risk or nonappearance or a risk of committing a violent crime, intimidating witnesses, or otherwise interfering with the administration of justice. The Court should consider each of these factors on the record before setting any conditions of pretrial release.

If the Court—upon full consideration of all relevant factors—finds that pretrial release on the accused's personal recognizance will be insufficient, the Court may impose conditions on pretrial release.

If the accused poses a flight risk, the Court **must impose the least restrictive** of the following conditions (or combination of conditions) necessary to reasonably assure their future appearance:

- Place the accused in the custody of a designated person or organization agreeing to supervise the accused pretrial;
- Place restrictions on the travel, association, or living arrangements of the accused pretrial;
- Require the accused to return to custody during specified hours (day release);
- Require the accused to be placed on electronic monitoring, if available;
- Impose any condition other than detention deemed reasonably necessary to assure appearance as required.

If the accused poses a likely danger of committing violent crime or interfering with the administration of justice, the **Court may impose any or all** of the following conditions necessary to mitigate that risk:

- Place the accused in the custody of a designated person or organization agreeing to supervise the accused pretrial;
- Place restrictions on the travel, association, or living arrangements of the accused pretrial;
- Require the accused to return to custody during specified hours (day release);
- Require the accused to be placed on electronic monitoring, if available;
- Prohibit the accused from:
  - approaching or communicating with particular persons or classes of persons (no contact);
  - going to certain geographical areas or premises (no entry);
  - possessing any dangerous weapons or firearms, or engaging in certain described activities (no weapons);
  - possessing or consuming any intoxicating liquors or drugs not prescribed to the accused (no drugs/alcohol);
  - committing any violations of criminal law;
- Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;
- Impose any condition other than detention deemed reasonably necessary to assure noninterference with the administration of justice and reduce danger to others or the community.

MONEY BAIL IS A CONDITION OF LAST RESORT.

The Court may impose bail **ONLY IF** the Court finds no less restrictive condition or combination of conditions are sufficient to reasonably assure the accused's appearance or mitigate the likelihood the accused will commit a violent crime or otherwise interfere with the administration of justice.

Bail should be determined by the accused's ability to pay, not by the nature of the charge.

The Court **MUST consider the accused's financial resources** for the purposes of setting a bail amount that will reasonably assure future appearance and the safety of the community. No one is supposed to be held on bail they cannot afford. For indigent defendants, this may mean any amount of bail is inappropriate.

Bail is not a punishment and is not meant to keep the accused detained pretrial.

The purpose of bail is to guarantee the accused will comply with all other conditions of their pretrial release and ensure their future appearance when required by the Court. **The accused remain innocent until proven guilty.**

ATTACHMENT C

Model Pretrial Release Order

IN THE MUNICIPAL COURT OF THE CITY OF _____

CITY OF _____, PLAINTIFF)
)
v.)
)
_____ , DEFENDANT)

Case # _____

ORDER ON RELEASE

Under CrRLJ 3.2(a), any person, other than a person charged with a capital offense, shall... be ordered released on the accused's personal recognizance pending trial unless the court makes at least one of three findings: a) personal recognizance will not reasonably assure the accused's appearance when required, b) there is a likely danger the accused will commit a violent crime, or c) there is a likely danger the accused will seek to intimidate witnesses or will unlawfully interfere with the administration of justice.

1. Will recognizance reasonably assure the accused's appearance when required? ☐ Yes ☐ No
   - Does the accused have ties to the community? ☐ Yes ☐ No
   - Is the accused connected with social services, treatment, or counseling? ☐ Yes ☐ No
   - Is the accused employed, enrolled in school, or engaged in treatment or social services? ☐ Yes ☐ No
   - Is there someone who will assist the accused in complying with conditions? ☐ Yes ☐ No
   - Other: _____

2. Has there been shown a likely danger the accused will commit a *violent* crime, will seek to intimidate witnesses, or will unlawfully interfere with the administration of justice? ☐ Yes ☐ No
   - Does the accused have a record of threats to victims or witnesses? ☐ Yes ☐ No
   - Does the accused have a record of interference with the administration of justice? ☐ Yes ☐ No
   - Is there evidence of present threats to or intimidation of witnesses? ☐ Yes ☐ No
   - Other: _____

The accused is to be released: ☐ without conditions upon promise to appear ☐ with conditions.
Under CrRLJ 3.2(b), if conditions are to be imposed, the "least restrictive" conditions shall be imposed.

Are financial conditions more restrictive for this accused than non-financial conditions?
☐ Yes – The Court will impose non-financial conditions. ☐ No – The Court will impose financial conditions.

Non-Financial Conditions (listed in order of restrictiveness)

☐ No criminal law violations
☐ Possess of no weapons
☐ Surrender of weapons
☐ Restrictions on travel, association, or place of abode
☐ Placement of accused in the custody of a person or organization
☐ No driving without a valid operator license and insurance
☐ No blood or BAC refusal if requested by a law enforcement officer
☐ Abstain from alcohol
☐ Abstain from marijuana
☐ Abstain from non-prescribed drugs
☐ Day reporting:
☐ telephone – 1, 3, or 5 times/week
☐ in person – 1, 3, or 5 times/week
☐ Detention by electronic home monitoring
☐ Random breathalyzers or urinalysis
☐ Scram or BA/RT
☐ Other conditions reasonably necessary: _____

Financial Conditions (listed in order of restrictiveness)

☐ $500 bail for a misdemeanor: ☐ unsecured bond ☐ appearance bond ☐ secured bond
☐ $1000 bail for a gross misdemeanor: ☐ unsecured bond ☐ appearance bond ☐ secured bond
☐ $ _____ bail: ☐ unsecured bond ☐ appearance bond ☐ secured bond

Good cause for amount exceeding $500/$1000: _____

Date: _____ _____
Judge

ATTACHMENT D

List of Structural Barriers

Structural Barriers

1) Lack of defense counsel present at initial appearance hearings

2) Inadequate access to clients and insufficient time for defenders to prepare for hearings

3) Inconsistent implementation and enforcement of CrR(LJ) 3.2 statewide

4) No access to police reports or pre-trial services reports

5) Early morning scheduling of initial appearance dockets (schedule hearings in the afternoon to allow for more preparation and time to meet with clients)

6) Defender offices not being promptly notified of new arrests and provided client names so defenders can meet clients in custody and prepare for court sooner

7) Lack of least restrictive and money bail alternatives offered

8) Failure of court to make ability to pay determination to post bail or to impose unsecured or appearance bonds that don't require collateral or the loss of money to bail agents

9) Lack of pre-trial and community-based services offered

10) Limited resources and staff support for defenders to interview clients and gather relevant information to support release arguments to the court

11) Assigning new and less experienced attorneys to initial appearance dockets (best practice is having skilled/highly trained attorneys handling these hearings)

12) Lack of automated text messaging systems that remind clients of their court dates and reduce FTAs and warrants

13) Use of pretrial risk assessment tools

ATTACHMENT E

CrR(LJ) 3.2 Bench Card Distributed to Judges

Washington Bail Law

Washington is a right to bail state. Article I, section 20: criminal defendants "shall be bailable by sufficient sureties." Except if:

- **charge is a capital crime ("when the proof is evident or the presumption great") OR:**
- **crime punishable by possibility of life (if "clear and convincing evidence of a propensity for violence")**

Criminal Rule (CrR) 3.2 and Criminal Rule for Limited Jurisdictions (CrRLJ) 3.2 were amended in 2002, due to concerns that the prior court rule had disparate racial and economic impacts.

PRESUMPTION OF RELEASE under CrR 3.2(a) and CrRLJ 3.2(a) unless:

- **Likelihood of court nonappearance(FTA); OR**
- **Likely interference with witnesses, administration of justice; OR**
- **Likely commission of a violent crime**
  - **"violent crime" not limited to SRA definition, RCW 9.94A.030**
  - **but see Blomstrom v. Tripp, 189 Wn.2d 379 (2017) – DUI is not a "violent crime"**

Showing of likely failure to appear (FTA)

Relevant factors under CrR 3.2(c) and CrRLJ 3.2(c) for assessing likely FTA:

- **Prior bench warrants**

NOTE: The number could include warrants unrelated to court FTA, i.e., DOC warrants for noncompliance, warrants issued to ensure transport from another jurisdiction, arrest warrants for new charge when defendant is already in custody

- **Employment, family/community ties**
- **Enrollment in school, counseling, treatment, or volunteer activities**
- **Reputation, character, mental condition**
- **Length of residency**
- **Criminal record**
- **Willingness of responsible community member to vouch for reliability and assist in compliance with release conditions**
- **Nature of the charge if relevant to risk of nonappearance**

If FTA risk found, CrR 3.2(b) and CrRLJ 3.2(b) require least restrictive conditions:

- **Placement with designated person or organization agreeing to supervise accused**
- **No contact orders with persons, places, geographical areas**
- **Restrictions on travel or place of abode**
- **Pretrial supervision- e.g., day reporting, work release, electronic monitoring, etc.**
- **Any condition other than detention to reasonably assure appearance**
- **Bond with sufficient solvent sureties or cash in lieu thereof**
  - **But no "cash only" bail – State v. Barton, 181 Wn.2d 148 (2014)**
  - **NOTE: Bond can be forfeited only for FTA - State v. Darwin, 70 Wn. App. 875 (1993)**
  - **Bonding company keeps fee**
- **Appearance bond - bond in specified amount, and deposit in the court registry in cash or other security. Deposit:**
  - **not to exceed 10% of bond amount**
  - **can be forfeited for noncompliance with any condition, i.e., a new crime**
  - **returned upon performance of conditions**
- **Unsecured bond - basically a written promise to appear, without any security**

NOTE ON MONEY BAIL: Court must consider accused's financial resources in setting a bond that will reasonably assure appearance. CrR 3.2(b)(6), CrRLJ 3.2(b)(6)

Showing of substantial danger

Relevant factors under CrR 3.2(e), CrRLJ 3.2(e) for assessing substantial risk of violent reoffense or interference with administration of justice:

- **Nature of charge**
- **Criminal record**
- **Past or present threats or interference with witnesses, victims, administration of justice**
- **Past or present use or threatened use of deadly weapon, firearms**
- **Record of committing offenses while on pre-trial release, probation or parole**
- **Reputation, character and mental condition**
- **Willingness of responsible community member to vouch for reliability and will assist in compliance with conditions**

WASHINGTON COURTS

This Benchcard was created by Washington's Pretrial Reform Task Force, a group led by the Minority and Justice Commission, the Superior Court Judges' Association, and the District and Municipal Court Judges' Association. May 2018.

Accord RCW 10.21.050

If court finds substantial risk of violent re-offense or interference with justice, CrR 3.2(d), CrRLJ 3.2(d) allow:

- Placement with designated person or organization agreeing to supervise accused
- No contact order with persons, places, geographical areas
- Restrictions on travel or place of abode
- No weapons or firearms, abstain from alcohol or non-prescribed drugs
- Pretrial supervision- e.g., day reporting work release, electronic monitoring, etc.
- No criminal law violations
- Any condition other than detention that will assure justice noninterference, reduce danger
- Unsecured bond – basically a written promise to appear, without security
- Bond with sufficient solvent sureties or cash in lieu thereof
  - No "cash only" bail – State v. Barton, supra
  - NOTE: Bond be forfeited only for FTA - State v. Darwin, supra
  - Bonding company keeps fee
- Appearance bond – bond in a specified amount, and deposit in court registry cash or other security. Deposit:
  - not to exceed 10% of bond amount
  - can be forfeited for noncompliance with any condition, i.e., a new crime
  - returned upon performance of conditions

NOTE ON MONEY BAIL: Court must consider accused's financial resources in setting bond that will reasonably assure community safety, prevent justice interference. CrR 3.2(d)(6), CrRLJ 3.2(d)(6); accord RCW 10.21.050(3)(a)

The court must find no less restrictive condition(s) than money bail will assure public safety and/or noninterference with justice. CrR 3.2(d)(6), CrRLJ 3.2(d)(6).

Delay of release authorized when:

- Person is intoxicated and release will jeopardize safety or public safety.
- Person has mental condition warranting possible commitment. CrR 3.2(f), CrRLJ 3.2(f)

Review of Conditions

Right to reconsideration after preliminary appearance if unable to post bail. CrR 3.2(j)
NOTE: There is no parallel CrRLJ to CrR 3.2(j).

Revoking or Amending Release Order

Change of circumstances or new information or good cause. CrR 3.2(j)(k), CrRLJ 3.2(j)(k); accord RCW 10.21.030

- Revocation requires clear and convincing evidence. CrR 3.2(k)(2), CrRLJ 3.2(k)(2)

Cases and Statutes

- Individualized determination; no blanket conditions - State v. Rose, 146 Wn. App. 439 (2008); accord RCW 10.19.055 (individualized basis for class A, B felonies)
- Condition must relate to CrR 3.2, CrRLJ 3.2 goals, preventing FTA or violent crime or justice interference - State v. Rose, supra (random UAs not causally connected to court appearance); cf.,"Blomstrom "fix" below
- Condition must not authorize unlawful search - Blomstrom v. Tripp, 189 Wn.2d 379 (2017)-random UAs as a first-time DUI condition is unlawful search; not authorized by CrRLJ 3.2 or statute. But see "Blomstrom "fix"- RCW 10.21.030 authorizes UAs as pretrial condition for misdemeanors, gross misdemeanors (DUI), felonies.
- Condition must be least restrictive condition - Butler v. Kato, 137 Wn. App. 515 (2007) (alcohol treatment and sobriety meetings not least restrictive condition to assure court appearance and hence violate CrRLJ 3.2; also unconstitutional search and violated Fifth Amendment)
- RCW 10.21.015 – no work release, electronic monitoring, day monitoring or other pretrial supervision program if violent or sex offense and violent or sex offense in last 10 years, unless person has posted bail
- RCW 10.21.055 – ignition interlock or SCRAM required where charge is DUI, physical control, vehicular homicide or vehicular assault and prior conviction that involved alcohol

ATTACHMENT F

Considering the Possible Effects of Pleading Guilty

Before you enter your plea

Consider the Possible Effects of Pleading Guilty

You have a right to see a defense attorney, even if you can't pay for one. Your attorney will explain what can happen because of your plea and help you decide what to do.

In addition to possible penalties such as jail time and fines, examples of issues you may want to discuss with an attorney include:

If You Plead Guilty:

IMMIGRATION
If you are a non-citizen, you may:
- Be DEPORTED, or removed, from the United States
- Be denied entry to the United States
- Lose certain benefits

EMPLOYMENT
You may be unable to:
- Work with children or vulnerable adults
- Work in airport security, the state patrol, and certain jobs involving transportation
- Obtain work that requires a driver's license

HOUSING
You may be subject to:
- Private landlord screening
- Denial of public housing and subsidies
- Evictions

PUBLIC BENEFITS
You may lose eligibility for:
- Food stamps
- Social Security/disability
- Other welfare benefits

PROBATION AND OTHER ISSUES
A guilty plea — even for a minor offense — may result in having probation revoked, and there are many other possible effects of a guilty plea. Only an attorney can identify all the consequences for you.

STUDENT LOANS, VOTING, DRIVING
You may lose your ability to:
- Obtain eligibility for federal education assistance
- Vote and serve on jury duty
- Hold a driver's license

MILITARY SERVICE
You may:
- Be disqualified from serving in the military
- Lose certain privileges

FAMILY ISSUES
You may be affected with regard to:
- Proceedings involving your children
- Attempts to adopt
- Foster care proceedings

REMEMBER

- You have a RIGHT to an attorney right now.
- An attorney can explain the potential consequences of your plea.
- If you cannot afford an attorney, an attorney will be provided at NO COST to you.
- If you don't have an attorney, you can ask for one to be appointed and for a continuance until you have one appointed.

Antes de que usted se declare

Considere las consecuencias de admitir culpabilidad.

Usted tiene el derecho de consultar a un abogado, incluso si no tiene los recursos para pagar sus servicios. Su abogado le explicará lo que puede suceder a consecuencia de su declaración y le aconsejará a decidir lo que puede hacer.

Además de posibles condenas tales como encarcelamiento y multas, ejemplos de asuntos a discutir con un abogado incluyen los siguientes:

Si usted admite culpabilidad:

INMIGRACIÓN
Si no es ciudadano, usted puede ser deportado, o removido, de los Estados Unidos. Se le puede negar la entrada a los Estados Unidos y puede perder ciertos beneficios.

EMPLEO
- Tal vez usted no pueda trabajar con niños o adultos vulnerables o indefensos.
- No podrá trabajar en ocupaciones como seguridad aeropuertaria, la patrulla estatal y ciertos trabajos relacionados con el transporte.
- Usted tampoco podrá obtener trabajos que requieran una licencia de manejar.

EDICTOS DE FAMILIA
Usted se puede ver afectado son respecto a:
- Procedimientos que impliquen a sus hijos.
- Tramites de adopción.
- Procedimientos de custodia temporal.

RENTA DE VIVIENDA
Usted puede ser sujeto a:
- Investigación privada del propietario.
- Negación de vivienda pública y de subsidios.
- Desahucios y evicciones.

SERVICIO MILITAR
Usted puede ser descalificado de dar servicio militar y de perder ciertos privilegios.

SERVICIOS SOCIALES
Usted puede dejar de sel elegible para:
- Bonos de racionamiento.
- Seguro Social/Incapacidad.
- Otros servicios sociales.

PRESTAMOS ESTUDIANTILES, DERECHO AL VOTO, MANEJO DE VEHÍCULOS
Usted puede perder el derecho de:
- Ser elegible de recibir ayuda federal para costear su educación.
- Votar en elecciones y de servir como miembro de un jurado.
- Obtener y portar una licencia de manejar.

LIBERTAD CONDICIONAL Y ASUNTOS RELACIONADOS CON ESTA
Una admisión de culpabilidad — incluso de un delito menor — puede dar lugar a que la libertad condicional sea revocada, incluyendo otros efectos posibles debido a una admisión de culpabilidad. Solamente un abogado puede identificar y explicar todas las consecuencias posibles para usted.

RECUERDE:

- Usted tiene derecho a los servicios de un abogado inmediatamente.
- Un abogado le puede explicar las consecuencias potenciales de su admisión.
- Si usted no puede pagar a un abogado, se le proporcionarán los servicios de uno.
- Si aún no tiene un abogado, puede pedir que se le asigne uno y que se le otorgue una "continuación" hasta que usted pueda contar con los servicios de un abogado.

WASHINGTON STATE BAR ASSOCIATION

MEMO

To: WSBA Board of Governors

From: Governor Carla Higginson and Chief Communications and Outreach Officer Sara Niegowski

Date: Nov. 5, 2019

Re: The name of *NWLawyer* magazine

ACTION Change the name of WSBA's member magazine from *NWLawyer* back to *Washington State Bar News,* its original name.

UPDATED FROM FIRST READING IN OCTOBER: Several governors requested a comprehensive list of titles of other bar journals from across the nation, which is now included. More information about the rationale and feedback mechanisms for the name change to NWLawyer is included in the Background section. We have also updated the survey data to reflect the responses we have continued to receive from members. As you will note, a significant majority of respondents favor the magazine's title specifically referencing Washington state in general and changing the name back to Washington State Bar News specifically.

WSBA's member magazine was named *Washington State Bar News* from its inception in 1947 until 2013, when it was switched to *NWLawyer*. After more than 5 years, it is time to revert back to the original name for three main reasons:

1. The name *NWLawyer* is not inclusive of all WSBA's legal license types, and WSBA has a practice and value around being inclusive in all of its communications and language;
2. Many members still prefer and call the magazine by its original name, *Bar News;* and
3. We want members to have a clear indication that the magazine is the official publication of WSBA.

Background

The WSBA Board of Governors unanimously approved the title change for the magazine in September 2012, which was before the onset of the LLLT license and resulting communication practice and value to use language that is more inclusive than "lawyers" for all licensees.

The rationale for the name change was to "better reflect its content and readership," according to the board memo. It states the reasons for the change:

- *It carries a more progressive, slightly less formal tone;*
- *it comes across as more friendly and feels more approachable;*
- *it is more inclusive and speaks to our NW neighbors in Oregon and Idaho who are also members of WSBA;*
- *It speaks more holistically to one's life and lifestyle, not just his/her profession; and*
- *It better reflects the magazine's content and its intended audience.*

The cover design would include the WSBA logo, the name NWLawyer*, as well as a tagline that says:* The official publication for members of the Washington State Bar Association. *These three*

elements—the name, the tagline and the logo—make it clear what the magazine is, who it's for, and who provides it.

Groups that provided input and review for the change included the Board of Governors, the Editorial Advisory Committee, and the staff of the communications department. The communications director also cleared the name with the bar associations in Idaho and Oregon to make sure they had no concerns about the "NW" portion of the name.

Member Feedback

Following the inquiry about a potential name change at the July meeting, the *NWLawyer* team took the opportunity to gather feedback from membership to assist the Board of Governors in their decision. They published an online survey—advertised to members in Take Note, the website homepage, social-media postings, and other means—beginning in late August. The survey was reviewed by the Editorial Advisory Committee (EAC); the survey also assisted the EAC by asking for content suggestions and author contributors.

From Aug. 20 to Nov. 7, 194 members responded. The PDF with complete responses is enclosed. Some key findings:

- 19% said to keep the current name
- 23% said that they have no strong feelings either way about the name.
- 40% said to change the name back to *Washington State Bar News.*
- 19% said to change the name to a new name and offered recommendations (see below)—although many of those recommendations were *Washington State Bar News,* lending further support of reverting to the previous name.

The strongest sentiments were around these name factors:

- 56% said it is NOT important that the name is inclusive of all legal professionals.
- 45% said it is EXTREMELY important that the name reflects Washington state specifically.
- 37% said it is NOT important that the name of the member magazine reflects a focus on a dialogue among legal professionals.

Some recommended new names:

- *WSBA Magazine*
- *Washington Legal Network*
- *State of Washington Attorney News*
- *NW Legal News*
- *Washington State Bar Journal*
- *WSBA News*
- *Washington State Bar News and Views*
- *Washington State Lawyer*
- *Washington Lawyer* (note: taken by Federal Bar Association)
- *The REAL Washington Bar Legal News*

Implementation Considerations for a New Name

WSBA would need to register the name change with the Library of Congress to receive an updated ISSN (International Standard Serial Number) and ensure continuity of record keeping for the publication.

WSBA would announce the name change and rational via Take Note, website, social media, and, significantly, in the magazine itself. We would likely devote some kind of special call-out alongside the name of the first issue with a new name.

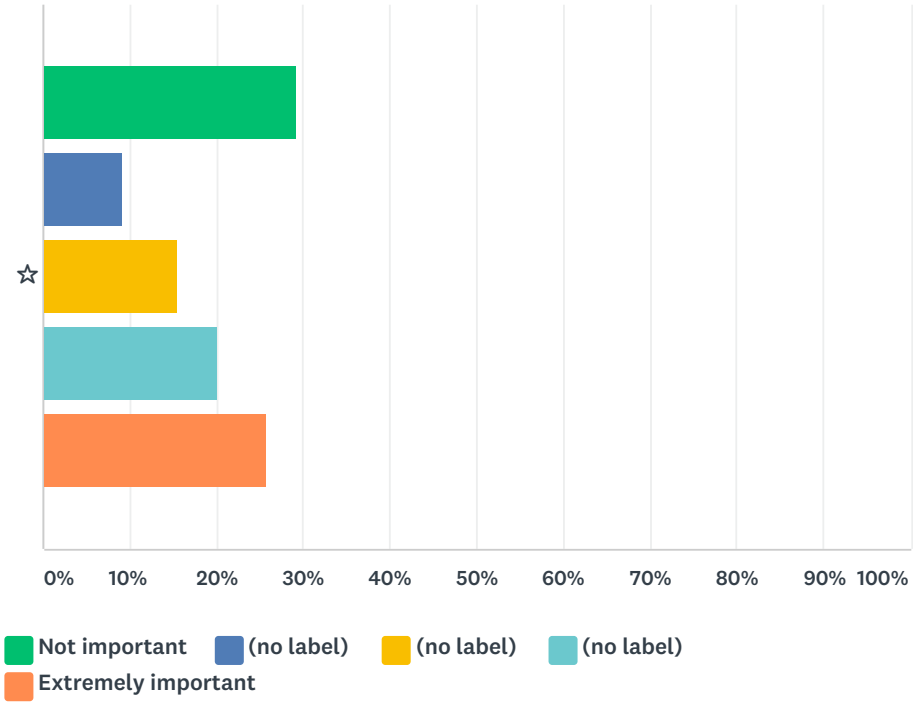
Titles of Bar Journals across the Nation

- *ABA Journal*
- *Advocate (Idaho State Bar)*
- *Advocate (State Bar of Texas)*
- *Advocate (Vancouver Bar Association)*
- *Alabama Bar Bulletin*
- *Alabama Law Journal (Tuscaloosa)*
- *Alabama Lawyer*
- *Alaska Bar Rag*
- *Alaska Law Journal*
- *Alternative Law Journal*
- *Alternative Resolutions*
- *Annual Report of the Massachusetts Bar Association*
- *Appellate Advocate*
- *Arkansas Lawyer*
- *Bar Bulletin* (Boston Bar)
- *Bar Bulletin* (Erie County Bar)
- *Bar Bulletin* (New York)
- *Bar Leader*
- *Bar Report*
- *Bench & Bar* (Kentucky Bar)
- *Bench & Bar of Minnesota*
- *Boston Bar Journal*
- *Bulletin of the Association of the Bar of the City of New York*
- *Bulletin of the Bar Association of Nassau County*
- *Bulletin of the New Haven County Bar Association*
- *California State Bar Journal*
- *Canadian Bar Review*
- *CBA Record*
- *Chicago Bar Record*
- *Cleveland Bar Journal*
- *Colorado Lawyer*
- *Connecticut Bar Journal*
- *Connecticut Lawyer*
- *Dallas Bar Speaks*
- *Dayton Bar Bulletin*
- *Delaware Law Review*
- *Delaware Lawyer*
- *Detroit Lawyer*
- *Detroit Legal News*
- *District Lawyer*
- *Duke Bar Association Journal*
- *Federal Bar Journal*
- *Federal Lawyer*
- *Florida Bar Journal*
- *Florida Bar News*
- *Gavel*
- *Georgia Bar Journal*
- *Georgia Bar Journal (Macon)*
- *Georgia Law Reporter*
- *Georgia Lawyer*
- *Georgia State Bar Journal*
- *Hennepin Lawyer*
- *Indiana Law Journal (Crawfordsville)*
- *Indiana Law Journal (Indianapolis)*
- *Inter Alia*
- *International Bar Journal*
- *International Society of Barristers Quarterly*
- *Iowa Bar Review*
- *Iowa Lawyer*
- *Iowa State Bar Association Quarterly*
- *IUS Gentium*
- *Journal Bar Association of the District of Columbia*
- *Journal of the Kansas Bar Association*
- *Journal of the Missouri Bar*
- *Kansas City Bar Bulletin*
- *Legal Management*
- *Los Angeles Bar Journal*
- *Los Angeles Lawyer*

- *Louisville Lawyer*
- *Maine Bar Bulletin*
- *Maine Bar Journal*
- *Maryland Bar Journal*
- *Massachusetts Law Review*
- *Michigan Bar Journal*
- *Michigan Probate & Estate Planning Journal*
- *Mississippi Lawyer*
- *Missouri Bar*
- *Missouri Bar Journal*
- *Montana Lawyer*
- *Nassau Lawyer*
- *National Bar Journal*
- *Nebraska Lawyer*
- *Nebraska State Bar Journal*
- *Nevada Lawyer*
- *New Hampshire Bar Journal*
- *New Hampshire Bar News*
- *New Hampshire Law Weekly*
- *New Jersey Lawyer*
- *New Jersey State Bar Association Quarterly*
- *New York State Bar Association Journal*
- *North Carolina Law Journal*
- *North Carolina State Bar Journal*
- *North Carolina State Bar Newsletter*
- *North Carolina State Bar Quarterly*
- *NWLawyer*
- *Ohio Law Abstract*
- *Ohio Law Bulletin*
- *Ohio Lawyer*
- *Ohio State Bar Association Bulletin*
- *Ohio State Bar Association Report*
- *Oklahoma Bar Journal*
- *Oregon State Bar Bulletin*
- *Vols. 1-79 (1941-2019)*
- *Oregon State Bar Bulletin*
- *Pennsylvania Bar Association Quarterly*
- *Proceedings of the Arkansas State Bar Association*
- *Record of the Association of the Bar of the City of New York*
- *Report of Committee on Legislation*
- *Report of the Louisiana Bar Association*
- *Res Gestae*
- *San Francisco Bar*
- *South Carolina Bar News*
- *South Carolina Lawyer*
- *South Dakota Bar Journal*
- *St. Louis Bar Journal*
- *State Bar Review*
- *Tennessee Bar Journal*
- *Texas Bar Journal*
- *Third Branch*
- *Utah Bar Bulletin*
- *Utah Bar Journal (First Series)*
- *Utah Bar Journal (Second Series)*
- *VBA Journal* (Virginia)
- *Vermont Bar Journal*
- *Washington Lawyer*
- *West Virginia Lawyer*
- *West Virginia State Bar Journal*
- *West Virginia State Bar News*
- *Wisconsin Lawyer*
- *Wisconsin Student Bar Journal*
- *Women Lawyers Journal*

Q1 How important is it to you that the name of the member magazine reflects a focus on what's happening in the Washington State Bar Association?

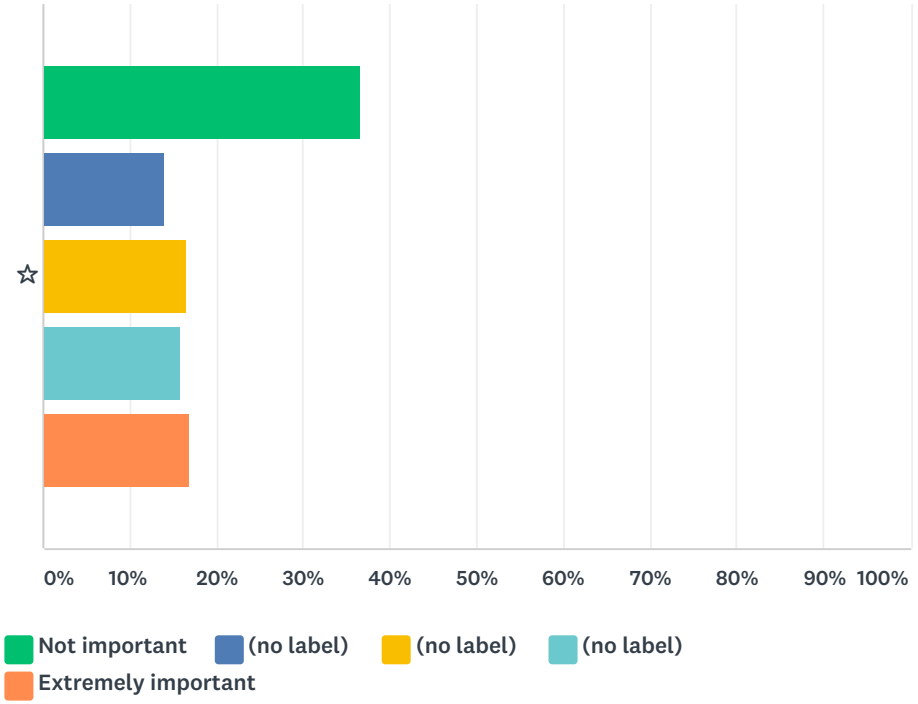
Answered: 194 Skipped: 0



	NOT IMPORTANT	(NO LABEL)	(NO LABEL)	(NO LABEL)	EXTREMELY IMPORTANT	TOTAL	WEIGHTED AVERAGE
☆	29.38% 57	9.28% 18	15.46% 30	20.10% 39	25.77% 50	194	3.04

Q2 How important is it to you that the name of the member magazine reflects a focus on a dialogue among legal professionals?

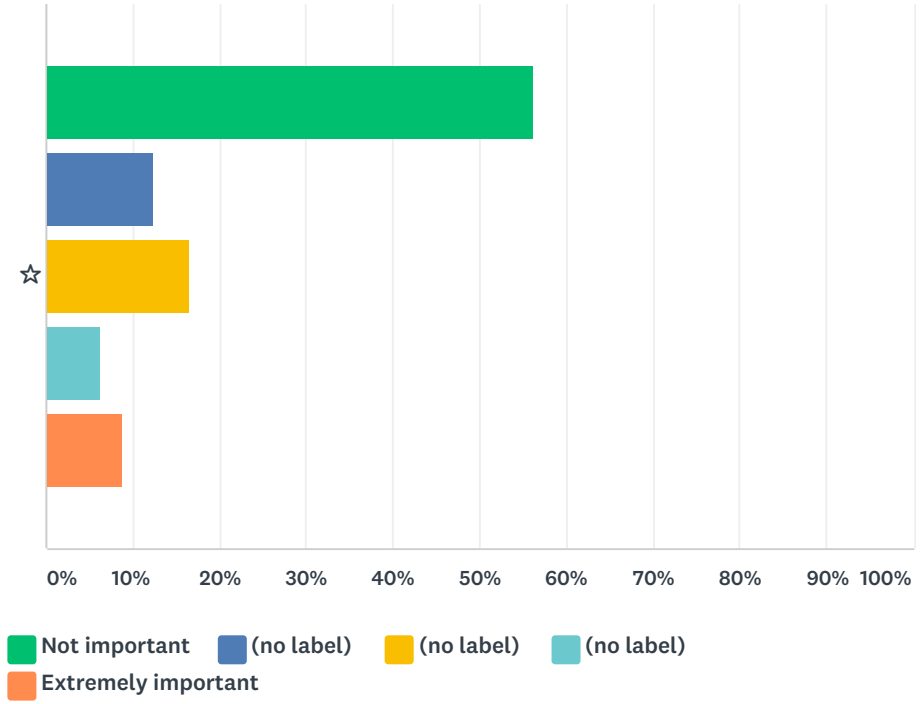
Answered: 194 Skipped: 0



	NOT IMPORTANT	(NO LABEL)	(NO LABEL)	(NO LABEL)	EXTREMELY IMPORTANT	TOTAL	WEIGHTED AVERAGE
☆	36.60% 71	13.92% 27	16.49% 32	15.98% 31	17.01% 33	194	2.63

Q3 How important is it to you that the name of the member magazine is inclusive of all legal professionals (all legal license types)?

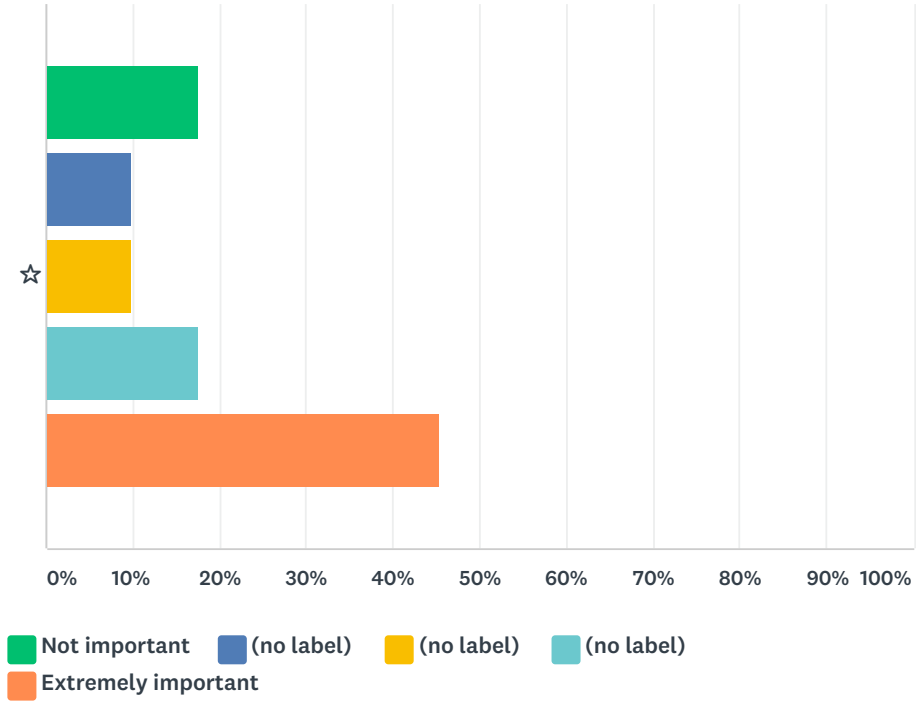
Answered: 194 Skipped: 0



	NOT IMPORTANT	(NO LABEL)	(NO LABEL)	(NO LABEL)	EXTREMELY IMPORTANT	TOTAL	WEIGHTED AVERAGE
☆	56.19% 109	12.37% 24	16.49% 32	6.19% 12	8.76% 17	194	1.99

Q4 How important is it to you that the name of the member magazine reflects Washington state specifically?

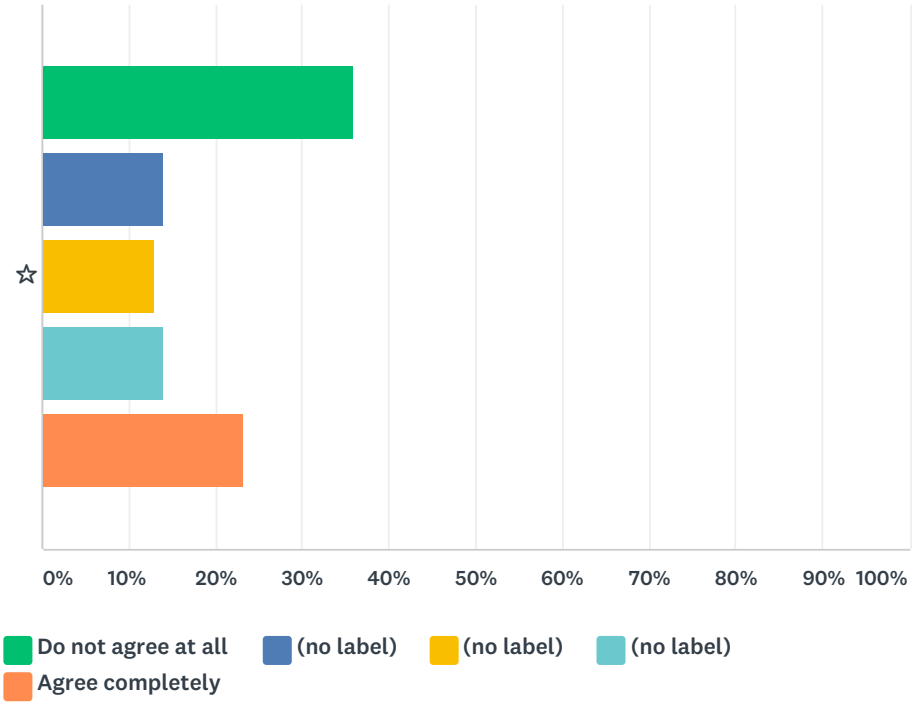
Answered: 194 Skipped: 0



	NOT IMPORTANT	(NO LABEL)	(NO LABEL)	(NO LABEL)	EXTREMELY IMPORTANT	TOTAL	WEIGHTED AVERAGE
☆	17.53% 34	9.79% 19	9.79% 19	17.53% 34	45.36% 88	194	3.63

Q5 I don’t have a strong feeling about the name as long as it reasonably represents legal news and voices. How much do you agree with the preceding statement?

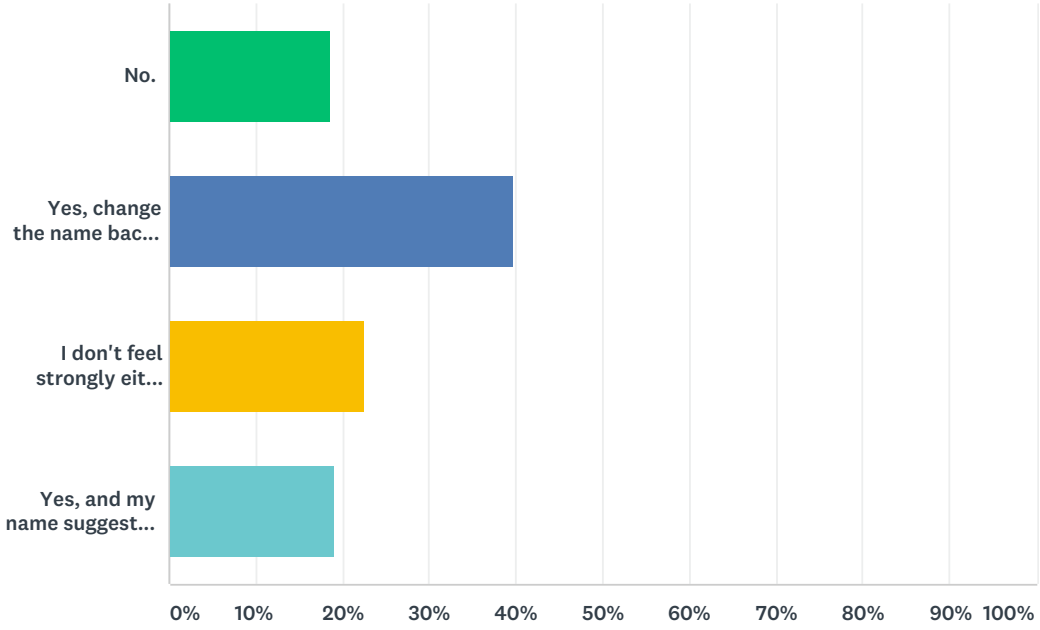
Answered: 194 Skipped: 0



	DO NOT AGREE AT ALL	(NO LABEL)	(NO LABEL)	(NO LABEL)	AGREE COMPLETELY	TOTAL	WEIGHTED AVERAGE
☆	36.08% 70	13.92% 27	12.89% 25	13.92% 27	23.20% 45	194	2.74

Q6 Should the name of WSBA's member magazine be changed?

Answered: 194 Skipped: 0



ANSWER CHOICES	RESPONSES	
No.	18.56%	36
Yes, change the name back to Bar News.	39.69%	77
I don't feel strongly either way.	22.68%	44
Yes, and my name suggestion is (specific name or attributes of a name):	19.07%	37
TOTAL		194

#	YES, AND MY NAME SUGGESTION IS (SPECIFIC NAME OR ATTRIBUTES OF A NAME):	DATE
1	WSB Magazine	10/3/2019 8:07 AM
2	The Washington State Bar News	10/2/2019 9:21 PM
3	Washington Lawyer	10/2/2019 4:12 PM
4	Washington State Bar News	10/2/2019 4:09 PM
5	The Washington Lawyer	10/2/2019 3:58 PM
6	Washington State Bar News	10/2/2019 3:55 PM
7	Include Washington or Washington State. I'm also a member of the DC Bar, which publishes Washington Lawyer. Maybe Washington State Lawyer or State of Washington Law...	9/23/2019 8:52 PM
8	Inclusive of all member types	9/22/2019 10:28 AM
9	Washington State Bar News	9/20/2019 1:43 PM
10	The Law and different aspects of the Law (as opposed to what is going on in the bar itself)	9/20/2019 12:27 PM
11	Washington St BAR nEWS	9/19/2019 3:17 PM
12	Washington State Bar News and Views	9/18/2019 6:56 PM
13	Washington State Bar News	9/18/2019 1:58 PM

14	Washington State Bar News	9/18/2019 1:32 PM
15	Washington legal Network	9/12/2019 7:48 PM
16	State of Washington Attorney News	9/11/2019 11:12 AM
17	WA bar news or similar	9/9/2019 3:00 PM
18	Thumbs up!	9/9/2019 10:58 AM
19	Washington State Bar News	9/7/2019 11:30 AM
20	Use the word Washington, not NW	9/6/2019 8:01 AM
21	Stop sending me this crap, I am tired of throwing it away	9/6/2019 7:01 AM
22	NW Legal News	9/5/2019 5:10 PM
23	no	9/5/2019 3:58 PM
24	Washington Bar Journal	9/5/2019 3:51 PM
25	Washington State Bar News	9/5/2019 2:58 PM
26	Washington State Bar News	9/5/2019 2:44 PM
27	Washington State Bar News	9/5/2019 1:52 PM
28	Washington State Lawyer	9/5/2019 1:51 PM
29	Washington State Bar News	9/5/2019 1:39 PM
30	Any name that specifically includes Washington, and makes it clear it is the magazine of the Washington State Bar Association	9/5/2019 1:39 PM
31	WSBA News	9/5/2019 1:29 PM
32	Washington State Bar News - we don't emcompass ID or OR	9/5/2019 1:13 PM
33	Washington State Lawyers' Magazine	9/5/2019 12:48 PM
34	Washington State Bar News	9/3/2019 1:27 PM
35	Do not have a suggestion.	9/3/2019 12:34 PM
36	I liked the old titled, "WSBA Bar News"	8/27/2019 3:31 PM
37	The REAL Washington Bar Legal News	8/26/2019 9:44 AM

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA President, President-Elect, Immediate Past President, and Board of Governors

FROM: Terra Nevitt, Interim Executive Director

DATE: November 13, 2019

RE: Resolution to Adopt Schedule of Public Meetings

ACTION: **Approve Resolution adopting schedule of public meetings to file with Code Reviser in compliance with the Open Public Meetings Act.**

The Open Public Meetings Act provides that the governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business of that body. [RCW 42.30.070] The schedule, including the time and place of the regular meetings, shall be filed with the code reviser on or before January or each year for publication in the Washington State Register. [RCW 42.30.075] This resolution contains the required information for filing with the code reviser. After the Board adopts this Resolution and it is filed with code reviser, the Board will be able to have regular, rather than special meetings.

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RESOLUTION ADOPTING SCHEDULE OF REGULAR MEETINGS OF THE WASHINGTON STATE BAR ASSOCIATION BOARD OF GOVERNORS

Whereas, RCW 2.48.050 authorizes the Board of Governors to adopt rules concerning annual and special meetings; and

Whereas, WSBA Bylaws Article VII.B.8 provides that each bar entity will set regular and special meetings as needed;

NOW, BE IT RESOLVED THAT on November 23, 2019, the Washington State Bar Association Board of Governors adopts this 2020 Meeting Schedule and directs the Executive Director to file this Resolution with the Code Reviser.

DAY(S)	DATE(S)	START TIME	LOCATION	DESCRIPTION
Tuesday	January 7	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Saturday	January 11	10:00 AM	WSBA Offices Seattle, WA	Washington Young Lawyers Committee
Monday	January 13	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Monday	January 13	10:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Wednesday	January 15	12:00 PM	WSBA Offices Seattle, WA	Diversity Committee
Thursday - Friday	January 16-17	9:00 AM	WSBA Offices Seattle, WA	Board of Governors Meeting
Tuesday	January 21	12:00 PM	WSBA Offices Seattle, WA	Editorial Advisory Committee

Tuesday	February 4	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Friday	February 7	10:00 AM	WSBA Offices Seattle, WA	Committee on Professional Ethics
Saturday	February 8	10:00 AM	WSBA Offices Seattle, WA	Diversity Committee
Monday	February 10	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Monday	February 10	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Monday	February 24	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee
Tuesday	March 3	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Monday	March 9	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Saturday	March 14	10:00 AM	WSBA Offices Seattle, WA or Pierce County	Washington Young Lawyers Committee
Monday	March 16	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Wednesday	March 18	12:00 PM	WSBA Offices Seattle, WA	Diversity Committee
Thursday - Friday	March 19 – 20	9:00 AM	Hotel RL Olympia, WA	Board of Governors Meeting
Friday	March 20	9:00 AM	Temple of Justice Olympia, WA	Board of Governors Meeting with Supreme Court
Monday	March 30	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee

Tuesday	April 7	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Monday	April 13	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Monday	April 13	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Wednesday	April 15	12:00 PM	WSBA Offices Seattle, WA	Diversity Committee
Friday	April 17	10:00 AM	WSBA Offices Seattle, WA	Committee on Professional Ethics
Friday - Saturday	April 17-18	9:00 AM	WSBA Offices Seattle, WA	Board of Governors Meeting
Monday	April 20	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee
Tuesday	May 5	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Saturday	May 9	10:00 AM	Northwest Region	Washington Young Lawyers Committee
Monday	May 11	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Monday	May 11	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Thursday – Friday	May 14-15	9:00 AM	Hotel Bellwether Bellingham, WA	Board of Governors Meeting
Saturday	May 23	10:00 AM	WSBA Offices Seattle, WA	Diversity Committee
Tuesday	June 2	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee

Monday	June 8	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Monday	June 15	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Wednesday	June 17	12:00 PM	WSBA Offices Seattle, WA	Diversity Committee
Friday	June 19	10:00 AM	WSBA Offices Seattle, WA	Committee on Professional Ethics
Monday	June 22	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee
Tuesday	July 7	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Monday	July 13	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Wednesday	July 15	12:00 PM	WSBA Offices Seattle, WA	Diversity Committee
Monday	July 20	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee Meeting
Thursday	July 23	9:00 AM	Skamania Lodge Stevenson, WA	Board of Governors Retreat
Friday – Saturday	July 24-25	9:00 AM	Skamania Lodge Stevenson, WA	Board of Governors Meeting
Saturday	July 25	10:00 AM	Skamania Lodge Stevenson, WA	Washington Young Lawyers Committee
Monday	August 3	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee
Tuesday	August 4	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee

Monday	August 10	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Friday	August 21	10:00 AM	WSBA Offices Seattle, WA	Committee on Professional Ethics
Monday	August 24	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Friday – Saturday	August 28-29	9:00 AM	Davenport Hotel Spokane, WA	Board of Governors Meeting
Monday	August 31	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee
Tuesday	September 1	1:00 PM	WSBA Offices Seattle, WA	Pro Bono and Public Service Committee
Saturday	September 12	10:00 AM	Large Financial Center Room Seattle, WA	Diversity Committee
Saturday	September 12	10:00 AM	WSBA Offices Seattle, WA	Washington Young Lawyers Committee
Monday	September 14	9:30 AM	WSBA Offices Seattle, WA	Court Rules and Procedures Committee
Monday	September 14	11:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Thursday - Friday	September 17-18	9:00 AM	WSBA Offices Seattle, WA	Board of Governors Meeting
Friday	October 2	10:00 AM	WSBA Offices Seattle, WA	Committee on Professional Ethics
Monday	October 19	10:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Monday	October 26	10:00 AM	WSBA Offices Seattle, WA	BOG Executive Committee

Thursday – Friday	November 12-13	9:00 AM	WSBA Offices Seattle, WA	Board of Governors Meeting
Monday	November 16	10:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee
Friday	December 4	10:00 AM	WSBA Offices Seattle, WA	Committee on Professional Ethics
Monday	December 14	10:00 AM	WSBA Offices Seattle, WA	BOG Personnel Committee

Adopted by the Washington State Board of Governors on November 23, 2019.

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Rajeev Majumdar
President

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Rajeev Majumdar

DATE: November 6, 2019

RE: Proposed policy to address potential conflicts in governor and officer roles

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ACTION: Adopt BOG Governor-Chair Conflict Policy

Following discussion of potential conflicts when governors are also serving in officer roles at the September 26-27, 2019 Board of Governors meeting, attached please find a proposed policy to address such conflicts.

WSBA

BOARD OF GOVERNORS

BOG GOVERNOR-CHAIR CONFLICT POLICY

The Board of Governors recognizes that there are times when a sitting Governor may be called upon to Chair a meeting in lieu of the President of the WSBA. A particular example is that the President-elect (who may be a Governor) and the Treasurer (who is always a Governor), are both in the line of Chair succession if the President is removed, unavailable, conflicted, or otherwise incapable of doing so. *Bylaws IV.B. (2 & 4)*.

The Board of Governors has identified some potential conflicts, and adopted the following policies to deal with such conflicts:

Quorum.

Potential Conflict: The Bylaws define the roles of President and the Treasurer as members of the Board, but the roles of President-elect and Immediate Past President are not considered voting members of the Board. *Bylaws IV.B. (1-4)*. This may have been done, in part, to keep the number of board members to 15—the maximum number allowed under the State Bar Act. *RCW 2.48.030*. The President is not treated as a voting member for purposes of quorum; this is not specified in the Bylaws, but appears to be a long standing WSBA practice, based on the President's limited voting role. *Notes of General Counsel Shankland*. This is a debated issue under Robert's Rules of Order.[i] The potential issue under the WSBA Bylaws is, whether the Treasurer or a governor who is also serving as President-elect would count for quorum when he or she is acting as President.

Adopted Policy: A governor acting as President will count for quorum.

Voting.

Potential Conflict: Governors, unless recused, may vote on all issues before the Board. The President only votes to break a tie. The potential issue under the WSBA Bylaws is whether a governor retains the right to vote when he or she is acting as President.

Adopted Policy: A governor acting as President may not vote on an issue before the Board while acting as President except to break a tie.

Voting Twice/Tie Breaking.

Potential Conflict: A governor could be put in a position where they vote on a matter and *then* is required to temporarily act as President.[ii] Under Robert's Rules of Order, this would not be permitted.[iii] The potential issue under the WSBA Bylaws is how to handle a tie vote of the Board when a governor that has already voted is acting as President.

Adopted Policy: A governor acting as President after he or she has voted and then faced with a tie, will not be allowed to break the tie vote. Instead the matter will be tabled and set over to the earliest of the next day, or the next meeting. Should the matter be tabled in a tie for three meetings,

the matter will be considered to have failed.

Herein adopted by the WSBA Board of Governors on November _____, 2019.

_____
Rajeev D. Majumdar, President

[i] https://robertsrules.forumflash.com/topic/21953-quorum-president-votes-only-on-tie-vote-do-they-count-as-quorum-member/.
[ii] *In arguendo*: medical emergency, late recusal, late identified conflict, or refusal of the President.
[iii] RONR(11th ed.) p.406, ll. 14-15.

WASHINGTON STATE
BAR ASSOCIATION

TO: Board of Governors

FROM: Alternative Dispute Resolution Section

DATE: November 12, 2019

RE: Bylaw Amendments

ACTION: Approve proposed ADR Section Bylaw Amendment

The proposed changes are intended to accomplish the following:

1. Change the term of office of Chair from one year to two years. (4.5, 8.1))
2. Eliminate the officer position of Chair Elect. The only "Chair Elect" will be the new Chairperson for the few months between election and assuming office. (6.1)
3. Establish the officer position of Vice Chair, to assume the duties previously performed by the Chair Elect position. (4.2, 7.1, 8.2))
4. Stagger the Executive Board At-large Member terms so that approximately 3 will come up for renewal each year. (5.2)
5. In order to implement the staggered terms, the election in 2020 will have two positions elected for the usual 3-year terms (to 2023) and three positions designated to be elected for a 2-year term (to 2022). (5.2)

This Bylaw Amendment was approved by the Executive Committee of the ADR Section on September 20, 2019 with no dissenting votes. Please let me know if you have any questions or concerns, or need anything else from the Section.

WASHINGTON STATE BAR ASSOCIATION
ALTERNATIVE DISPUTE RESOLUTION SECTION
BYLAWS

(As Last Amended and Approved by the Washington State Bar Association Board of Governors on _____)

ARTICLE I. NAME

This section shall be known as the "Alternative Dispute Resolution Section" (hereinafter referred to as the "Section") of the Washington State Bar Association (hereinafter referred to as "Association").

ARTICLE II. MEMBERSHIP

Any Active member in good standing of the Association, Emeritus Pro Bono member (APR 8(e)), Judicial Member, House Counsel (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 enrolled as a voting member of this Section upon request and payment of annual Section dues in the amount and for the purpose approved by the Board of Governors of the Association pursuant to Article 5.5 of these Bylaws. In addition, inactive members of the Association and others may be subscribers of the Section by paying the Section dues established by the Section and approved by the Board of Governors, and law students may be subscribers of the Section by paying the standard annual law student dues amount set by the Board of Governors. Subscriber members are non-voting members of the Section and may not hold an elected office.

ARTICLE III. OFFICERS

The officers of this Section shall be the Chair, Vice-Chair, Secretary and Treasurer. No individual may hold more than one officer position at a time.

ARTICLE IV. DUTIES OF OFFICERS

4.1 Chair

The Chair, as chief executive officer, shall preside at all meetings of the executive committee and of the Section membership, and have such other executive powers and perform such other duties as are not inconsistent with these bylaws or the Bylaws of the Association. The Chair may, at his or her discretion, appoint other members of the executive committee to perform some of the tasks normally performed by the Chair.

4.2 Vice Chair

The Vice Chair shall perform all duties of the Chair during the latter's absence or inability to act and, when so acting, shall have all the executive powers and perform such other duties as are not inconsistent with these bylaws or the Bylaws of the Association. The Vice Chair shall have such other powers and perform such other duties not inconsistent with these bylaws as, from time to time, may be requested by the Chair or the executive committee.

4.3 Secretary

The Secretary shall be responsible for the taking of minutes at each meeting of the Section and the executive committee, and the transcription and distribution of such minutes to the members of the Section and to the Association for publication and record retention. The Secretary shall also send timely notices of executive committee meetings and the annual meeting.

4.4 Treasurer

The Treasurer shall be responsible for maintaining accurate records of the finances of this Section, tracking the dues and other receipts of the Section, and approving the necessary disbursements thereof, consistent with the budget and subject to such procedures as shall be prescribed by the executive committee or the Board of Governors of the Association. The Treasurer will work with the Association to ensure that the Section complies with Association fiscal policies and procedures, work with the Association to prepare the Section's annual budget, and review the Section's monthly financial statements for accuracy and comparison to budget.

4.5 Term.

The term of office of each Officer shall commence on October 1 and shall be for one year, except that the term for Chair shall be for two years, and the Executive Committee voting term for Immediate Past Chair shall expire when a new Immediate Past Chair assumes the position.

ARTICLE V. EXECUTIVE COMMITTEE

5.1 Membership

There shall be an executive committee composed of all the officers of this Section, the Immediate Past Chair of this Section, the Young Lawyer Liaison and up to eight (8) other At-Large members. All other past Chairs of this Section shall be non-voting ex officio members of the executive committee.

5.2 Term.

The term of each member of the executive committee, other than officers, shall begin on October 1, and be for three (3) years, or until the member resigns or is removed for cause. The terms shall be staggered so that approximately three (3) members will have terms expiring each year. Therefore, before elections are held for the beginning of the October 1, 2020 term, three of the executive committee terms expiring September 30, 2020 shall be designated to expire September 30, 2022 instead of 2023. The executive committee may, by majority vote, appoint members to the executive committee to fill an unexpired term. 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. Any member may be removed from the executive committee by a two-thirds majority vote of the sitting voting members. Grounds for removal shall include, but are not limited to, regular absence from executive committee meetings (failing to attend two-thirds, i.e., eight out of twelve, of the monthly meetings) and events, failing to perform job 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. The member shall be provided the reason(s) in writing and may, if he or she chooses, present his or her reasons for his or her acts or omissions at the next regular meeting of the Executive Committee meeting. If a majority of the Executive Committee still determines that the member should be removed, a replacement shall be appointed.

5.3 Duties

The executive committee shall supervise and direct the affairs and determine the policies of this Section, subject to and in accordance with these bylaws and the Bylaws and policies of the Association.

5.4 Meetings

The executive committee may act at a meeting duly called. A majority of the voting members of the executive committee shall constitute a quorum to transact business. Meetings shall be called by the Chair or by a majority of the members of the executive committee, and notice of such meetings shall be given to members of the executive committee and made reasonably available to the public not less than three days prior to such meeting.

5.5 Dues

The executive committee shall have the right to assess annual Section membership dues upon each member of this Section, subject to approval by the Board of Governors of the Association.

ARTICLE VI. COMMITTEES

6.1 Standing Committees

The chair of each standing committee shall be selected for the next year, which begins October 1, by the Chair or Chair-elect, if applicable, upon the approval of the executive committee. The committee chair shall serve for one year, unless reappointed by the next Chair or Chair-elect. In addition, the Chair shall have the power, in consultation with the executive committee, to appoint such ad hoc committees as are necessary for the purpose of furthering the objectives of this Section.

6.2 Members

The Chair shall have the power to designate the members of standing committees of this Section in consultation with the executive committee. The members of the standing committees shall be

selected from among members of this Section by the Chair in consultation with each committee chair.

ARTICLE VII. MEETINGS OF MEMBERS

7.1 Meetings

This Section may hold an annual meeting of its members at any time called for by the Chair subject to approval of the executive committee. Special meetings of the members may be called by the Chair, Vice Chair, or a majority of the members of the executive committee.

7.2 Notices

Notice of the time and place of all meetings shall be given to all members of this Section and made reasonably available to the public at least five days prior to the meeting date.

7.3 Quorum

Ten voting members shall constitute a quorum for the transaction of business at any meeting of this Section.

7.4 Rules of Order

All meetings of this Section shall be guided by Robert's "Rules of Order, Newly Revised" or The Standard Code of Parliamentary Procedure, Latest Edition (formerly the Sturgis Standard Code of Parliamentary Procedure).

ARTICLE VIII. ELECTIONS

8.1 Time

This Section shall hold a regular annual election of officers, except for the second year of office of the Chair, and At-Large members of the executive committee for open At-Large seats. Nominations and elections will be held between March and May each year.

8.2 Nominating Committee

The nominating committee shall consist of the Immediate Past Chair, the current Chair and the Vice Chair, and one Section member who is not currently a voting member of the executive committee. The nominating committee shall nominate one or more members of this Section for each of the offices of Chair, Vice Chair, Secretary and Treasurer, and for the open At-Large executive committee positions. All applicants will apply through an electronic application process administered by the Association. The executive committee will also have an alternative nominating process to allow for nominations to occur outside of the nominating committee process. 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.

8.3 Procedure

The Association will administer the elections by electronic means and certify the results, unless the Section develops its own equivalent electronic election process. In the event of a tie, the winner will be determined by a single toss of a coin.

ARTICLE IX. AMENDMENTS TO BYLAWS

These bylaws may be amended at any annual meeting of the Section by a majority vote of the voting members of the Section present. These bylaws may also be amended at any regular or special meeting of the executive committee of the Section called for the purpose of amending the bylaws and upon seven days written notice to members of the executive committee and made reasonably available to the public, and by a majority vote of the voting members of the executive committee present, once a quorum is established. No amendment to these bylaws shall become effective until approved by the Board of Governors of the Association. These bylaws are subject to the Bylaws of the Association.

As last amended and adopted by the executive committee of the Section on September 20, 2019.

Approved by the Board of Governors of the Association on [ ].

REDLINE

WASHINGTON STATE BAR ASSOCIATION
ALTERNATIVE DISPUTE RESOLUTION SECTION
BYLAWS

(As Last Amended and Approved by the Washington State Bar Association Board of Governors on _____)

ARTICLE I. NAME

This section shall be known as the "Alternative Dispute Resolution Section" (hereinafter referred to as the "Section") of the Washington State Bar Association (hereinafter referred to as "Association").

ARTICLE II. MEMBERSHIP

Any Active member in good standing of the Association, Emeritus Pro Bono member (APR 8(e)), Judicial Member, House Counsel (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 enrolled as a voting member of this Section upon request and payment of annual Section dues in the amount and for the purpose approved by the Board of Governors of the Association pursuant to Article 5.5 of these Bylaws. In addition, inactive members of the Association and others may be subscribers of the Section by paying the Section dues established by the Section and approved by the Board of Governors, and law students may be subscribers of the Section by paying the standard annual law student dues amount set by the Board of Governors. Subscriber members are non-voting members of the Section and may not hold an elected office.

ARTICLE III. OFFICERS

The officers of this Section shall be the Chair, Vice-Chair ~~-elect~~, Secretary and Treasurer. No individual may hold more than one officer position at a time.

ARTICLE IV. DUTIES OF OFFICERS

4.1 Chair

The Chair, as chief executive officer, shall preside at all meetings of the executive committee and of the Section membership, and have such other executive powers and perform such other duties as are not inconsistent with these bylaws or the Bylaws of the Association. The Chair may, at his or her discretion, appoint other members of the executive committee to perform some of the tasks normally performed by the Chair.

4.2 ~~Chair-elect~~Vice Chair

The ~~Chair-elect~~Vice Chair shall perform all duties of the Chair during the latter's absence or inability to act and, when so acting, shall have all the executive powers and perform such other duties as are not inconsistent with these bylaws or the Bylaws of the Association. The ~~Chair-elect~~Vice Chair shall have such other powers and perform such other duties not inconsistent with these bylaws as, from time to time, may be requested by the Chair or the executive committee.

4.3 Secretary

The Secretary shall be responsible for the taking of minutes at each meeting of the Section and the executive committee, and the transcription and distribution of such minutes to the members of the Section and to the Association for publication and record retention. The Secretary shall also send timely notices of executive committee meetings and the annual meeting.

4.4 Treasurer

The Treasurer shall be responsible for maintaining accurate records of the finances of this Section, tracking the dues and other receipts of the Section, and approving the necessary disbursements thereof, consistent with the budget and subject to such procedures as shall be prescribed by the executive committee or the Board of Governors of the Association. The Treasurer will work with the Association to ensure that the Section complies with Association fiscal policies and procedures, work with the Association to prepare the Section's annual budget, and review the Section's monthly financial statements for accuracy and comparison to budget.

4.5 Term.

The term of office of each Officer shall commence on October 1 and shall be for one year, except that the term for Chair shall be for two years, and the Executive Committee voting term for Immediate Past Chair shall expire when a new Immediate Past Chair assumes the position.

ARTICLE V. EXECUTIVE COMMITTEE

5.1 Membership

There shall be an executive committee composed of all the officers of this Section, the Immediate Past Chair of this Section, the Young Lawyer Liaison and up to eight (8) other At-Large members. All other past Chairs of this Section shall be non-voting ex officio members of the executive committee.

5.2 Term.

The term of each member of the executive committee, other than officers, shall begin on October 1, and be for three (3) years, or until the member resigns or is removed for cause. The terms shall be staggered so that approximately three (3) members will have terms expiring each year. Therefore, before elections are held for the beginning of the October 1, 2020 term, three of the executive committee terms expiring September 30, 2020 shall be designated to expire September 30, 2022 instead of 2023. The executive committee may, by majority vote, appoint members to the executive committee to fill an unexpired term. 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. Any member may be removed from the executive committee by a two-thirds majority vote of the sitting voting members. Grounds for removal shall include, but are not limited to, regular absence from executive committee meetings (failing to attend two-thirds, i.e., eight out of twelve, of the monthly meetings) and events, failing to perform job 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. The member shall be provided the reason(s) in writing and may, if he or she chooses, present his or her reasons for his or her acts or omissions at the next regular meeting of the Executive Committee meeting. If a majority of the Executive Committee still determines that the member should be removed, a replacement shall be appointed.

5.3 Duties

The executive committee shall supervise and direct the affairs and determine the policies of this Section, subject to and in accordance with these bylaws and the Bylaws and policies of the Association.

5.4 Meetings

The executive committee may act at a meeting duly called. A majority of the voting members of the executive committee shall constitute a quorum to transact business. Meetings shall be called by the Chair or by a majority of the members of the executive committee, and notice of such meetings shall be given to members of the executive committee and made reasonably available to the public not less than three days prior to such meeting.

5.5 Dues

The executive committee shall have the right to assess annual Section membership dues upon each member of this Section, subject to approval by the Board of Governors of the Association.

ARTICLE VI. COMMITTEES

6.1 Standing Committees

The chair of each standing committee shall be selected for the next year, which begins October 1, by the Chair or Chair-elect, if applicable, upon the approval of the executive committee. The committee chair shall serve for one year, unless reappointed by the next Chair or Chair-elect. In addition, the Chair shall have the power, in consultation with the executive committee, to appoint such ad hoc committees as are necessary for the purpose of furthering the objectives of this Section.

6.2 Members

The Chair shall have the power to designate the members of standing committees of this Section in consultation with the executive committee. The members of the standing committees shall be

selected from among members of this Section by the Chair in consultation with each committee chair.

ARTICLE VII. MEETINGS OF MEMBERS

7.1 Meetings

This Section may hold an annual meeting of its members at any time called for by the Chair subject to approval of the executive committee. Special meetings of the members may be called by the Chair, ~~Chair-elect~~Vice Chair, or a majority of the members of the executive committee.

7.2 Notices

Notice of the time and place of all meetings shall be given to all members of this Section and made reasonably available to the public at least five days prior to the meeting date.

7.3 Quorum

Ten voting members shall constitute a quorum for the transaction of business at any meeting of this Section.

7.4 Rules of Order

All meetings of this Section shall be guided by Robert's "Rules of Order, Newly Revised" or The Standard Code of Parliamentary Procedure, Latest Edition (formerly the Sturgis Standard Code of Parliamentary Procedure).

ARTICLE VIII. ELECTIONS

8.1 Time

This Section shall hold a regular annual election of officers, except for the second year of office of the Chair ~~which automatically shall be filled by the Chair-elect~~, and At-Large members of the executive committee for open At-Large seats. Nominations and elections will be held between March and May each year.

8.2 Nominating Committee

The nominating committee shall consist of the Immediate Past Chair, the current Chair and the ~~Chair-elect~~Vice Chair, and one Section member who is not currently a voting member of the executive committee. The nominating committee shall nominate one or more members of this Section for each of the offices of Chair, ~~-elect~~ Vice Chair, Secretary and Treasurer, and for the open At-Large executive committee positions. All applicants will apply through an electronic application process administered by the Association. The executive committee will also have an alternative nominating process to allow for nominations to occur outside of the nominating committee process. 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.

8.3 Procedure

The Association will administer the elections by electronic means and certify the results, unless the Section develops its own equivalent electronic election process. In the event of a tie, the winner will be determined by a single toss of a coin.

ARTICLE IX. AMENDMENTS TO BYLAWS

These bylaws may be amended at any annual meeting of the Section by a majority vote of the voting members of the Section present. These bylaws may also be amended at any regular or special meeting of the executive committee of the Section called for the purpose of amending the bylaws and upon seven days written notice to members of the executive committee and made reasonably available to the public, and by a majority vote of the voting members of the executive committee present, once a quorum is established. No amendment to these bylaws shall become effective until approved by the Board of Governors of the Association. These bylaws are subject to the Bylaws of the Association.

As last amended and adopted by the executive committee of the Section on ~~June 1, 2017~~September 20, 2019.

Approved by the Board of Governors of the Association on [ ].

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Legal Opinions Committee of the Business Law Section

DATE: November 6, 2019

RE: Request for Approval of the Legal Opinions Committee Amended and Restated Report on Third-Party Legal Opinion Practice in the State of Washington

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ACTION: Request for Approval of the Committee's Amended and Restated Report on Third-Party Legal Opinion Practice in the State of Washington

The Legal Opinions Committee[1] of the Business Law Section (the "Committee") recently completed a comprehensive legal opinion report entitled *Amended and Restated Report on Third-Party Legal Opinion Practice in the State of Washington* (the "Report"), a copy of which is attached as Appendix A. The Report integrates, amends, and restates the Committee's prior 1998 and 2000 reports. The Report contains an illustrative form of opinion letter and detailed footnotes that explain the procedures Washington opinion givers customarily follow when conducting the factual and legal investigations required to support their opinions, as well as the customary meaning of language typically used in opinion letters.

The Report takes into account certain developments in legal opinions practice since the 1998 and 2000 Washington reports. For instance, in recent years, the national legal opinion literature has moved closer toward a consensus that factual confirmations expose opinion givers to added risk (*See* Section IV-A Cautionary Note about Factual Confirmations of the Report). The Report agrees with and adopts this position. In a similar way, "negative assurances" have become much less common in Washington and elsewhere.

In terms of its structure, the Report's illustrative opinion includes some, but not all, assumptions, qualifications, exclusions, and other limitations that are understood as a matter of Washington customary practice to be included whether or not expressly stated (*See* Section V-Listing of Assumptions, Qualifications, Exclusions, and Other Limitations of the Report). The Committee chose to expressly include them in part because firms have diverse preferences with respect to the appropriateness of listing customary terms, and greater explicitness may be beneficial in certain situations. But while the Committee has chosen to expressly state certain clearly customary terms in the illustrative form, the Report does not advocate their express inclusion in every opinion letter. To the contrary, the Report emphasizes the importance of streamlining opinion letters and tailoring express qualifications to the most important issues. And, of course, the Report reiterates that many assumptions and other limitations are customarily included in opinion letters, whether or not stated expressly.

The Report also addresses evolving trends and commercial expectations with respect to reliance on opinion letters by unknown future assignees, such as future lenders under syndicated loan transactions. Although many Washington attorneys choose to strictly limit reliance in order to reduce their potential liability, others are willing

[1] *The Legal Opinions Committee is a committee of the Business Law Section and is made up of Section members from around the State. Current members are identified at the end of the Report immediately prior to the illustrative form of opinion.*

to allow future reliance under certain limited circumstances. Accordingly, the Report provides two alternative forms of reliance language (*See* the final paragraph of the illustrative opinion and related footnote #109). The first alternative strictly limits reliance. The second permits reliance by successor lenders, but expressly states that reliance must be reasonable and that consent to future reliance does not constitute reissuance of the opinions or create any obligation to update the opinions.

In preparing the Report, the Committee reviewed state, national, and international legal developments that have the potential to impact Washington legal opinion practice. For instance, the Report addresses, among other things, uncertainty created by the Washington Supreme Court's 2012 response[2] to a certified question as to whether Mortgage Electronic Registration Systems, Inc. ("MERS") was a lawful beneficiary under two deeds of trust where MERS was named as beneficiary but never held the notes evidencing the obligations secured by the deeds of trust (*See* Qualification D6(vi) and related footnote #106). Similarly, the Report details recent changes to the information set forth in certificates of existence issued by the Washington Secretary of State, provides sample language to address credit agreements that contain European Union bail-in provisions, and draws practitioners' attention to the potential impacts of the Hague Securities Convention's choice-of-law rules on transactions involving securities accounts.

The Committee shared drafts of the Report prior to publication with key stakeholder groups inside and outside the state of Washington, including other WSBA Sections and national commentators on legal opinion matters. The comments provided by these stakeholder groups assured the Committee that the Report reflected the best guidance for Washington lawyers on legal opinion practice. Following publication on the Business Law Section's webpage, the Committee has received favorable comments from several national commentators on the quality and accuracy of the Report.

We are confident that the Report will be a valuable resource for lawyers engaged in giving and receiving third-party legal opinion letters in the state of Washington, and that it will also serve as a useful reference tool for business and corporate lawyers working on commercial transactions in our state. We look forward to addressing any questions or comments that you may have regarding the Report during your meeting to consider formal approval of the Report by the WSBA. ***The Committee respectfully requests that the Board of Governors consider and approve the Report on behalf of the WSBA.***

[2] *Bain v. Metropolitan Mortgage Grp., Inc.,* 175 Wn.2d 83 (2012).

AMENDED AND RESTATED REPORT ON THIRD-PARTY LEGAL OPINION PRACTICE IN THE STATE OF WASHINGTON
by
THE LEGAL OPINIONS COMMITTEE OF THE BUSINESS LAW SECTION OF THE WASHINGTON STATE BAR ASSOCIATION

November 30, 2018*

The Legal Opinions Committee of the Business Law Section of the Washington State Bar Association (the "**Committee**") determined that developments in the law, opinion practice, and legal practice as a whole warranted a new report (this "**Report**") that integrates, amends, and restates its prior reports.[1] The purpose of this Report is to provide a reference guide for lawyers engaged in preparing and reviewing third-party legal opinion letters in the state of Washington. It does not purport to be exhaustive in its treatment or to replicate the considerable volume of general information already available to practitioners.[2]

I. Introduction

Substantial transactions often involve delivery of a third-party legal opinion letter ("**opinion letter**"). As the name suggests, these opinion letters are addressed directly to a third-party recipient. For example, in a commercial loan transaction, the lender may require as a condition to closing that the borrower provide an opinion letter from the borrower's counsel to the lender. Typically, this opinion letter states that the borrower exists, that it has the power to execute and deliver the loan documents and to consummate the transaction, that all necessary action on the part of the borrower to authorize the transaction has been taken, and that the loan documents are enforceable against the borrower in accordance with their terms.

An opinion letter of this sort represents a formal statement of a lawyer's considered professional judgment, on which a non-client third-party recipient will be entitled to rely as part of its diligence with respect to the transaction. Attorneys must take special care to manage the unique risks associated with such opinion letters.

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*This Report was updated in August 2019 to include several clarifications. On Page A-4, brackets were placed around the text, "We have examined only the foregoing documents for purposes of this opinion letter." A new sentence was added at the end of the first full paragraph of footnote 32 to explain the now bracketed sentence. A sentence was deleted from the end of the first full paragraph of footnote 70.

[1] AD HOC COMM. ON THIRD-PARTY LEGAL OPS. OF THE BUS. LAW SECTION OF THE WASH. STATE BAR ASS'N, SUPPLEMENTAL REPORT ON THIRD-PARTY LEGAL OPINION PRACTICE IN THE STATE OF WASHINGTON COVERING SECURED LENDING TRANSACTIONS (2000) [hereinafter 2000 Report]; AD HOC COMM. ON THIRD-PARTY LEGAL OPS. OF THE BUS. LAW SECTION OF THE WASH. STATE BAR ASS'N, REPORT ON THIRD-PARTY LEGAL OPINION PRACTICE IN THE STATE OF WASHINGTON (1998) [hereinafter 1998 Report].

[2] The Legal Opinion Resource Center (the "Resource Center"), an online library co-sponsored by the Legal Opinions Committee of the ABA Business Law Section and the TriBar Opinion Committee, provides an excellent starting place. *See Legal Opinion Resource Center*, AMERICAN BAR ASS'N, https://www.americanbar.org/groups/business_law/migrated/tribar.html.

This Report provides guidance as to the customary practice of Washington lawyers experienced in preparing and reviewing opinion letters. It contains an illustrative form of opinion letter and footnotes that explain: (i) the procedures opinion givers customarily follow when conducting the factual and legal investigations required to support their opinions, and (ii) the customary meaning of certain language used in opinion letters.

II. The Importance of Customary Practice

In promulgating this Report, the Committee recognizes that the Restatement (Third) of the Law Governing Lawyers treats bar association reports on opinion practice as valuable sources of guidance on customary practice.[3] The Restatement (Third) of the Law Governing Lawyers and the Restatement (Second) of Torts indicate that the customary practice of lawyers similarly situated is a primary factor in determining compliance with applicable standards of conduct when issuing an opinion letter.[4] Comment e to Section 95 of the Restatement (Third) of the Law Governing Lawyers explains:

> The parties' ultimate agreement as to the nature and extent of the opinion coverage in a particular transaction and the acceptability of limitations, qualifications, and disclaimers will normally follow customary practices for transactions of the kind in question. Similarly, once the form of the opinion has been agreed on, customary practice will also determine the nature and extent of the factual and legal diligence to be employed by the opinion giver in connection with its issuance.[5]

Likewise, a leading report on opinion letters describes the role of customary practice as follows:

> Customary practice establishes the ground rules for rendering and receiving opinions and thus allows the communication of ideas between the opinion giver and counsel for the opinion recipient without lengthy descriptions of the diligence process, detailed definitions of the terms used and laborious recitals of standard, often unstated, assumptions and exceptions….Unless otherwise indicated, an opinion recipient is entitled to assume that the opinion giver has followed customary practice in rendering an opinion. Reciprocally, an opinion giver is entitled to assume that the opinion recipient understands customary practice and recognizes that it has been followed in preparing the opinion letter.[6]

The Committee concurs with a 2008 Statement by the Legal Opinions Committee of the Business Law Section of the American Bar Association (the "**ABA**"), in which the TriBar Opinion Committee and twenty-five other committees, organizations, and sections (including the Business

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[3] RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 95 reporter's note to cmt. b (Am. Law Inst. 2000).

[4] *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 52, 95 (Am. Law Inst. 2000); RESTATEMENT (SECOND) OF TORTS § 299A (Am. Law Inst. 1965).

[5] RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 95 cmt. e (Am. Law Inst. 2000).

[6] TriBar Op. Comm., *Third-Party "Closing" Opinions*, 53 BUS. LAW. 592, 600 § 1.4(a) (1998) [hereinafter TriBar II].

Law Section of the Washington State Bar Association) joined: "Some closing opinions refer to the application of customary practice. Others do not. Either way, customary practice applies."[7]

III. Core Principles of Opinion Practice

The following core principles[8] reflect the understanding and practice of attorneys in Washington who regularly prepare and review legal opinions. The Committee believes that these principles are consistent with current national opinion practice.

Principle 1. ***A legal opinion is not appropriate when the costs associated with preparing it exceed the benefits it provides.***

All opinion letters add costs to transactions, but not all add commensurate value. Generally speaking, opinion letters (and the opinions they contain) are appropriate when they add value beyond representations and warranties obtained directly from parties and when the diligence needed to support the opinions can be accomplished in a cost-effective manner. Therefore, in any given transaction, the two initial questions to ask with respect to opinions are whether an opinion letter is appropriate and, if so, what opinions it should contain.

Principle 2. ***The purpose of an opinion letter is to provide an expression of professional judgment as to certain legal underpinnings of a transaction; the purpose is not to insure against loss or guarantee that a court will reach any particular result.***

Although the purpose of an opinion letter is not to insure against loss or guarantee any particular result, an opinion letter may help the parties manage certain legal risks. For instance, when significant legal risks are posed by the structure or documentation of a transaction, the process of preparing and reviewing an opinion letter, through guiding analysis and diligence, may bring these difficulties to light and allow either correction or informed evaluation of the risks by the opinion recipient.

Principle 3. ***It is not appropriate to request an opinion that counsel for the opinion recipient, in the same situation as the opinion giver, would not be prepared to give (the "Golden Rule").***

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[7] *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277, 1278 (2008) [hereinafter ABA Customary Practice Statement].

[8] Each principle has been expressed elsewhere and the exact formulation may vary. *See, e.g.*, ABA Customary Practice Statement, *supra* note 7; ABA Bus. Law Section Legal Ops. Comm., *Guidelines for the Preparation of Closing Opinions*, 57 BUS. LAW. 875 (2002) [hereinafter 2002 ABA Guidelines]; ABA Bus. Law Section Legal Ops. Comm., *Legal Opinion Principles*, 53 BUS. LAW. 831 (1998) [hereinafter ABA Principles]. A Joint Committee of the Working Group on Legal Opinions and the Legal Opinions Committee of the ABA Business Law Section has been working on a "Statement of Opinion Practices" (the "2018 ABA Statement") that updates the ABA Principles in its entirety, and updates certain provisions of the 2002 ABA Guidelines. At the time of this writing, the 2018 ABA Statement remains subject to completion and approval by the Board of Directors of the Working Group on Legal Opinions Foundation and the American Bar Association's Legal Opinions Committee.

Lawyers should only give legal opinions that are within their competence and expertise and appropriate in the context of the transaction. Opinion givers should not be expected to give opinions on matters that are not typically within the expertise of lawyers, such as financial statement analysis and economic forecasting. Likewise, it may be inappropriate for a lawyer or law firm with the requisite skills to refuse to give an opinion, otherwise appropriate in the context of the transaction, that lawyers skilled in addressing the matters under consideration would find within their competence and expertise. Nevertheless, the language "otherwise appropriate in the context of the transaction" deserves emphasis. Many situations exist in which an opinion may properly be given following the completion of appropriate diligence, but where the cost of conducting such diligence substantially outweighs the value of the opinion.

Principle 4. ***An opinion speaks only to those matters it specifically addresses.***

The opinions included in an opinion letter should be limited to reasonably specific and determinable matters of law that involve the exercise of professional judgment, and should be construed to cover only those matters they specifically address. An important aspect of this principle is that so-called back-door opinions, or opinions by implication, should not be read into an opinion letter. For instance, as a matter of Washington customary practice, an enforceability opinion with respect to a secured lending transaction is understood to address only the enforceability of the borrower's obligations under the agreements, and does not express any opinion with respect to the creation, attachment, or perfection of any security interest purportedly granted by such agreements. Opinions regarding the creation, attachment, or perfection of security interests, if given, are as a matter of customary practice set forth in separate opinions.

Principle 5. ***Opinion letters are based solely on a limited scope of inquiry***.

Opinion givers are not expected to conduct an inquiry of other lawyers in their firm or a review of the firm's records to ascertain factual matters, except to the extent opinion givers recognize that a particular lawyer is reasonably likely to have, or a particular record is reasonably likely to contain, information not otherwise known to them that is necessary to give an opinion. Similarly, opinion givers are not expected to canvass all laws and regulations that might conceivably apply to a transaction. Accordingly, opinions included in an opinion letter addressing the law of the state of Washington are understood to cover only the Washington law that Washington lawyers, exercising customary professional diligence in similar circumstances, would reasonably recognize as being applicable to the client or the transaction that is the subject of the opinion. Such opinions would not be construed to cover municipal and other local law, or certain specialized areas of law (e.g., securities, tax, and insolvency), even though they are otherwise applicable to the client or transaction. An opinion may, however, cover law that would not otherwise be covered if the opinion does so expressly.

Principle 6. ***Reliance by opinion givers on information, and by opinion recipients on an opinion, must be reasonable under the circumstances.***

An opinion giver is entitled to rely on factual information provided by others, including the client, unless the opinion giver knows that the information is incorrect or knows of facts that the opinion giver recognizes would make reliance under the circumstances unwarranted. An

opinion recipient is entitled to expect that an opinion giver has exercised the diligence customarily exercised by lawyers who regularly give such opinions; however, an opinion recipient is not entitled to rely on an opinion if it knows the opinion to be incorrect or if reliance on the opinion is unreasonable under the circumstances. The parties may, however, agree to include certain expressly stated factual assumptions that are contrary to fact, and reliance on such assumptions is not unreasonable so long as doing so will not mislead the opinion recipient regarding the opinions given.

IV. A Cautionary Note About Factual Confirmations

No Litigation Confirmations. In the past, opinion letters often contained a "no litigation" confirmation covering the existence of legal proceedings against the opinion giver's client. Although often referred to as an opinion, the no litigation confirmation is different because whether the client has been sued or threatened with a lawsuit is purely a factual matter that requires no legal analysis.

Many practitioners have grown resistant to giving no litigation confirmations. These factual confirmations are often unnecessary, as pending or threatened lawsuits are typically the subject of representations obtained directly from the client in the transaction documents. A widely publicized Massachusetts decision, *Dean Foods Co. v. Pappathanasi*,[9] reinforces the view that factual confirmations expose opinion givers to added risk. In that decision, a law firm that issued an opinion letter stating that, to its knowledge, there were no pending or threatened investigations against the client, was held liable for over $9 million in damages and costs because that "opinion" turned out to be inaccurate.

Today, many firms refuse to give no litigation confirmations. Among those firms that are still willing to give them, the clear trend is toward narrowing the scope to cover litigation challenging or relating to the transaction at hand and not to cover other litigation matters affecting the client's business generally. Some firms further limit the confirmation to matters handled by the opining firm's lawyers.[10]

Negative Assurance Confirmations. A "negative assurance" is a statement that the opinion giver lacks knowledge of particular factual matters. Like the no litigation confirmation, negative assurances do not involve the exercise of the opinion giver's professional legal judgment, are disfavored, and have become much less common. Opinion givers are, however, still occasionally asked to include negative assurance language following a statement that the opinion giver is relying solely on certain sources of information as to factual matters. An example of this type of request is italicized, below:

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[9] No. Civ.A. 01-2595 BLS, 2004 WL 3019442 (Mass. Sup. Ct. Dec. 3, 2004).

[10] *See, e.g.*, CORPS. COMM., CAL. STATE BAR, LEGAL OPINIONS IN BUSINESS TRANSACTIONS (EXCLUDING THE REMEDIES OPINION) 62 n.188 (2005 rev. Oct. 2007) available at the Resource Center, *supra* note 2; ABA Bus. Law Section Legal Ops. Comm., *Report on the 2010 Survey of Law Firm Opinion Practices*, 68 BUS. LAW. 785, 796–97 (2013) (summarizing the trend away from giving no litigation confirmations, and describing techniques some lawyers use to materially limit the scope of the confirmation); Donald W. Glazer & Stanley Keller, *A Streamlined Form of Closing Opinion Based on the ABA Legal Opinion Principles*, 61 BUS. LAW. 389, 396 n.18 (2005).

> Wherever we indicate that our opinion with respect to the existence or absence of facts is based on our knowledge, our opinion is based solely on (i) the current actual knowledge of the attorneys currently with our firm who have performed services related to the Transaction, (ii) the representations and warranties of the Borrower contained in the Credit Agreement, and (iii) the Opinion Certificates. We have made no independent investigation as to such factual matters. *However, we know of no facts which lead us to believe such factual matters are untrue or inaccurate*.

On the surface, the italicized sentence seems fairly benign and is sometimes argued by the requester as merely confirming the opinion giver's compliance with the customary practice of not permitting reliance on factual information the opinion giver knows to be false. However, as a respected opinion practice treatise explains, this type of negative assurance "is a wolf in sheep's clothing, providing an opinion recipient a basis for bringing an action against the opinion giver even if all the opinions given by the opinion giver are true."[11]

Wafra Leasing Corp. 1999-A-1 v. Prime Capital Corp.,[12] which involved federal securities claims, illustrates the dangers of including language of this sort. In *Wafra*, the court declined to dismiss an investor's Rule 10b-5 claims against a law firm that issued an opinion letter with respect to a securities offering. The opinion letter included a negative assurance that no information had come to the firm's attention which would give the firm actual knowledge or actual notice that the documents, certificates, reports, and other information it relied on were inaccurate or incomplete. The court found that this language introduced questions of fact sufficient to overcome potential legal defenses of the opining firm. Although the firm later prevailed on a motion for summary judgment, the victory was the product of years of litigation to resolve questions relating to the negative assurance language.

For all of these reasons, both broad affirmative factual confirmations and negative assurances are strongly disfavored by the opinion bar[13] and are much less frequently requested or given[14] than in the past.

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[11] DONALD W. GLAZER ET AL., GLAZER & FITZGIBBON ON LEGAL OPINIONS: DRAFTING, INTERPRETING AND SUPPORTING CLOSING OPINIONS IN BUSINESS TRANSACTIONS § 18.8 (3d ed. 2008 & Cum. Supp. 2017).

[12] 192 F. Supp. 2d 852 (N.D. Ill. 2002).

[13] For instance, the Legal Opinions Committee of the ABA Business Law Section explains:

> An opinion giver normally should not be asked to state that it lacks knowledge of particular factual matters. Matters such as the absence of prior security interests or the accuracy of the representations and warranties in an agreement or the information in a disclosure document . . . do not require the exercise of professional judgment and are inappropriate subjects for a legal opinion letter even when the opinion is limited by a broadly worded disclaimer.

2002 ABA Guidelines, *supra* note 8, § 4.4.

[14] One special type of negative assurance that is still commonly given in connection with securities offerings is the so-called 10b-5 opinion. In a 10b-5 opinion, the opinion giver typically provides assurance to underwriters and other intermediaries who have a diligence defense that nothing has come to the attention of the opinion giver that would lead the opinion giver to believe that the prospectus or other offering document has any material inaccuracies or omissions. *See* Subcomm. on Sec. Law Ops., ABA Section of Bus. Law, *Negative Assurance in Securities Offerings (2008 Revision)*, 64 BUS. LAW. 395 (2009).

V. Listing of Assumptions, Qualifications, Exclusions, and Other Limitations

The illustrative form of opinion letter includes some assumptions, qualifications, exclusions, and other limitations that are understood as a matter of customary practice to be included whether or not expressly stated.[15] The Committee chose to expressly include them in part because firms have diverse preferences with respect to the appropriateness of listing customary terms, and greater explicitness may be beneficial in certain situations. The Committee also recognizes that whether and to what extent opinion givers should expressly include customary limitations has become one of the more contentious areas of opinion practice. For instance, in the wake of a New York appellate court's reversal of the lower court's denial of a motion to dismiss in *Fortress Credit Corp. v. Dechert LLP*,[16] some practitioners have concluded that there may be value in expressly stating clearly customary assumptions. In its decision that the claims against an opinion giver's firm should be dismissed, the court noted that the subject opinion letter, "by its very terms" provided, among other things, that it was "clearly and unequivocally circumscribed by the qualifications that defendant assumed the genuineness of all signatures and the authenticity of the documents."[17] The court's reference to the fact that the assumptions were expressly stated has left many practitioners wondering whether the court would have given similar weight to an opinion giver's reliance on clearly customary, rather than express, assumptions.[18]

Although the Committee has chosen to expressly state certain clearly customary terms, we do not advocate their express inclusion in every opinion letter. To the contrary, the Committee is sympathetic to the views expressed by Donald Glazer (co-author of GLAZER AND FITZGIBBON ON LEGAL OPINIONS) and Stanley Keller (the then-Chair of the Legal Opinions Committee of the ABA Business Law Section):

> Opinions can be challenged in many ways, and only with hindsight can one know which express qualification will be helpful in litigation. Thus, the logical alternative to streamlining is to throw the kitchen sink into opinion letters in an effort to assure that every possible limitation is expressly stated. The problem with that approach, however, is that it so overqualifies an opinion letter that it exposes the opinion giver to the risk that a court, concluding that the opinion letter must mean *something,* will disregard the qualifications . . . . Moreover, no recitation of limitations can be complete, and an opinion giver may well have hanged itself by negative implication if the limitation it needed is not stated . . . . Streamlining opinion letters also has the important benefit of focusing the opinion letter on the issues that matter. Rather than becoming buried in an overabundance

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[15] *See, e.g.*, TriBar II, *supra* note 6, § 2.3; Subcomm. on Mortgage Loan Ops., Ass'n of the Bar of N.Y.C. & Attorney Op. Letters Comm., Real Prop. Law Section, The N.Y. State Bar Ass'n, *Mortgage Loan Opinion Report*, 54 BUS. LAW. 119, 128 n.20 (1998) [hereinafter New York Mortgage Loan Opinion Report].

[16] 89 A.D.3d 615 (2011).

[17] *Id*. at 617.

[18] It should be noted that the court's first basis of decision was that, absent allegations that the opinion recipient informed the opinion giver that "its obligations were not limited solely to a review of relevant and specified documents" or "that it was to investigate, verify and report on the legitimacy of the transaction," the opinion recipient "cannot establish that [the opinion giver] breached a duty of care," thereby suggesting that it believed the opinion giver's diligence was appropriate under customary practice regardless of whether the express assumptions had been taken. *Id.*

> of limitations, the streamlined form underscores exceptions and assumptions that are unique to the transaction by omitting those that are not. Thus, it prevents misunderstanding and assures that issues of importance receive the attention they deserve. The streamlined form, therefore, furthers the utility of an opinion letter as a device for communicating information the recipient has identified as important.[19]

VI. Structure and Use of the Illustrative Form of Opinion Letter

In General. This Report contains an illustrative form of opinion letter for secured lending transactions, which has been annotated with the Committee's commentary. Although directed at secured lending transactions, much of the opinion letter is of general applicability to other types of transactions. For example, practitioners may find the illustrative language and associated comments helpful when giving existence, power, and authority opinions with respect to entities involved in other types of commercial transactions.

Of course, no one form of opinion letter fits every situation. Rather, for any given transaction, a common starting point may be available from which the parties can negotiate. The illustrative form of opinion letter contains some opinions (such as existence and authority) that are common to nearly all opinion letters. The form also provides examples of common (and a few less common) opinions and related assumptions, qualifications, exclusions, and other limitations. In preparing this Report, the Committee sought to strike a balance between presentation of common elements and inclusion (for illustrative purposes) of additional material that is appropriate only in certain transactions. Accordingly, the form is not meant to be followed indiscriminately. Opinion givers should thoughtfully craft an opinion letter that consists of provisions relevant to the particular transaction. The footnotes and other commentary in this Report are intended to assist with such efforts.

The illustrative form of opinion letter addresses secured lending transactions because it allows inclusion of more opinions commonly given. In addition, in the view of the Committee, that is the context in which opinion letters are currently most commonly requested and given in Washington. In contrast, when the Committee issued its first opinions report in 1998, opinion letters were common in a variety of other commercial transactions, including business acquisitions. The last decade, however, has seen a dramatic decline in the use of opinion letters in mergers and acquisitions.[20]

There are a number of other specialized contexts in which opinion letters are commonly given, such as "true sale" opinions, bankruptcy nonconsolidation opinions, and opinions on behalf of issuers in venture capital financings and other securities offerings. Each of these specialized

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[19] Donald W. Glazer & Stanley Keller, ABA Bus. Law Section Legal Ops. Comm., *Recent Developments—Opinion Practice Implications of the* Fortress *Decision*, LEGAL OPINION NEWSL., Spring 2012, at 8–9.

[20] According to a recent survey, the percentage of mergers and acquisitions transactions in which legal opinions of seller's counsel are required as a condition to closing has declined from 68% in 2011 to 16% in 2016. SRS Acquiom, M&A Deal Terms Study, slide 49 (June 22, 2017). Similarly, studies conducted by the ABA Mergers and Acquisitions Committee found that the percentage of private target transactions in which the target's counsel was required to deliver legal opinions has steadily declined from 70% in 2006 to 7% in 2017. M&A Market Trends Subcomm., ABA Bus. Law Section, Private Target Mergers and Acquisitions Deal Points Study, slide 61 (Dec. 22, 2017).

opinions has, to one degree or another, its own considerations and conventions, although they have many common elements for which the illustrative form of opinion can be helpful. Such opinion letters, to the extent they have their own unique aspects, are beyond the scope of this Report. Washington lawyers are urged to seek out other resources[21] when confronted with transactions that involve such specialized opinions.

Form of Opinion Certificate. As part of the diligence with respect to an opinion letter, an opinion giver should ensure that all material facts required to support the opinions have been obtained through reliance on the representations and warranties contained in the transaction documents, public authority documents, or through confirmations received directly from the client or others. If an opinion is based on confirmations received directly from the client, these confirmations should be set forth in a written certificate signed by an appropriate officer or other representative of the client the opinion giver believes to be knowledgeable about the subject matter involved. To this end, the illustrative form of opinion letter includes a form of opinion certificate covering factual matters on which an opinion giver may base its legal conclusions.

VII. Conclusion

We hope that this Report and the illustrative form of opinion letter will be useful to Washington lawyers. We anticipate that this Report, like its predecessor reports, will be supplemented or updated from time to time as practice developments warrant.

We wish to thank Michael Herbst, David Levant, Dennis Ostgard, Virginia Pedreira, and David Rockwell for their substantial contributions to earlier drafts of this Report; Donald Glazer, Stanley Keller, Steven Weise, and Edward Wicks for their helpful comments on an exposure draft prior to its finalization; and Joshua Harms and Carrie Mount for their editorial assistance. Please note that this is a collaborative work reflecting an overall consensus of the Committee; it does not necessarily reflect the views of any given member.

Scott W. MacCormack, Chair

Joel N. Bodansky	Shannon J. Skinner
Diane Lourdes Dick	Keith A. Trefry
Troy J. Hickman	W. Scott Wert
Brian D. Hulse	David H. Zielke
Berrie J. Martinis	

[21] *See, e.g.*, Ops. Comm., Bus. Law Section of the State Bar of Cal., *Sample California Third-Party Legal Opinion for Venture Capital Financing Transactions*, 70 BUS. LAW. 177 (2015) (venture capital financings); TriBar Op. Comm., *Opinions in the Bankruptcy Context: Rating Agency, Structured Financing and Chapter 11 Transactions*, 46 BUS. LAW. 717 (1991) (nonconsolidation opinions); *see also* other materials collected at the Resource Center, *supra* note 2.

ILLUSTRATIVE FORM OF OPINION LETTER

[Opinion Giver's Firm Letterhead]

[Date]

[Name and Address of Opinion Recipient(s)][22]
_____
_____
_____

Re: [Brief Description of Transaction]

Ladies and Gentlemen:

We have acted as [limited Washington] counsel to _____, a Washington corporation (the "**Borrower**"),[23] and to _____, a Washington limited liability company (the "**Guarantor**"; together with the Borrower, the "**Loan Parties**" and each a "**Loan Party**"), in connection with the transactions contemplated by the [*Credit Agreement*][24] dated as of [_____ __], 20[__] (the "**Credit Agreement**") between the Borrower and _____, (the "**Lender**"). We provide this opinion letter to you at the request of the Loan Parties pursuant to Section _____ of the Credit Agreement. Capitalized terms used and not otherwise defined in this opinion letter have the definitions assigned to such terms in the Credit Agreement.

[22] The suggested approach is to list as addressees only the lender(s) named in the loan documents or the agent for the named lender(s). The ability of successor lenders who take interests in the loan documents after closing (through assignment or participation) to rely is addressed in the reliance paragraph at the end of the opinion letter. *See infra* note 109 and accompanying text. Including as addressees "all lenders who become parties to the Credit Agreement from time to time" may undercut the protections provided in the reliance paragraph.

[23] The illustrative form of opinion letter assumes that the borrower is a Washington corporation, that the guarantor is a Washington limited liability company, and that the loan documents are governed by Washington law. In an actual transaction, the borrower or the guarantor may be a different type of entity. Accordingly, throughout the opinion letter, references to "corporation," "limited liability company," and similar terms will require modification to reflect the actual status of the borrower or the guarantor. Coverage of entities organized under the law of a jurisdiction other than the state of Washington and of loan documents governed by the law of another jurisdiction are largely beyond the scope of this Report. For additional discussion of these and related issues, see *infra* note 49 (addressing coverage of entities organized under the law of a jurisdiction other than the state of Washington) and note 94 (addressing coverage of loan documents governed by the law of another jurisdiction); see also Comm. on Legal Ops. in Real Estate Transactions, ABA Section of Real Prop., Tr. & Estate Law, et al., *Local Counsel Opinion Letters in Real Estate Finance Transactions*, 51 REAL PROP. TR. & EST. L.J. 167 (2016).

[24] Here and elsewhere in Section A of the opinion letter, the bracketed and italicized text should be completed with the title of the specific document examined.

The law covered by the opinions expressed herein is limited to the law of the state of Washington.[25]

A. Loan Documents and Matters Examined

In connection with this opinion letter, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents[26] [dated as of the date hereof, except as otherwise indicated]:

A1. The Credit Agreement.

A2. [*Promissory Note*] by the Borrower payable to [the order of] the Lender in the stated principal amount of $[_____].

A3. [*Deed of Trust*] (the "**Deed of Trust**") by the Borrower, as grantor, to [_____], as trustee, for the benefit of the Lender, as beneficiary.

A4. [*Security Agreement*] (the "**Security Agreement**") by the Borrower, as debtor, to the Lender, as secured party.

A5. [*Assignment of Leases and Rents*] (the "**Assignment of Leases and Rents**") by the Borrower, as assignor, to the Lender, as assignee.

A6. [*Assignment of Contracts*] by the Borrower, as assignor, to the Lender, as assignee.

A7. [*Environmental Indemnity Agreement*] (the "**Environmental Indemnity Agreement**") by the Borrower [and the Guarantor] for the benefit of the Lender.

A8. [*Pledge Agreement*] (the "**Pledge Agreement**") by the Borrower, as debtor, to the Lender, as secured party.

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[25] Whether or not this language is expressly included, the Committee is of the view that an opinion letter issued by a Washington attorney is limited to the law of the state of Washington unless the opinion letter expressly states that it also covers the law of other jurisdictions. With respect to federal law, if an opinion letter does not state that it covers federal law, that law is understood as a matter of customary practice not to be covered except to the extent that it is expressly addressed by specific opinions in the letter. *See* TriBar II, *supra* note 6, § 4.1; *see also* Comm. on Legal Ops. in Real Estate Transactions, ABA Section of Real Prop., Tr. & Estate Law, et al., *Real Estate Finance Opinion Report of 2012*, 47 REAL PROP. TR. & EST. L.J. 213, 229 § 1.3 (2012) [hereinafter ABA/ACREL Report]. It may be appropriate to request coverage of federal law in an opinion letter provided to a foreign (non-U.S.) recipient; however, it may be more appropriate for the opinion recipient to retain, and rely on the advice of, its own U.S. counsel for the transaction. *See* Legal Ops. Comm., ABA Bus. Law Section, *Cross-Border Closing Opinions of U.S. Counsel*, 71 BUS. LAW. 139 (2016). Furthermore, even when a federal law opinion is given, a number of specific areas of federal law are customarily viewed as excluded unless explicitly included. Thus, if an opinion giver has examined specific federal statutes or regulations (such as securities laws, tax laws, or other specific statutes or regulations) for purposes of giving an opinion, such statutes and regulations should be identified in the opinion letter.

[26] If only unexecuted versions of the transaction documents are provided, the opinion giver may want to identify which versions were examined for purposes of giving the opinion (such as by describing the sender and method, date, and time of delivery).

A9. [*Deposit Account Control Agreement*] (the "**Deposit Account Control Agreement**") among the Borrower, as debtor, [*Bank*], as bank, and the Lender, as secured party.

A10. [*Securities Account Control Agreement*] (the "**Securities Account Control Agreement**") among the Borrower, as debtor, [*Broker*], as securities intermediary, and the Lender, as secured party.

A11. [An unfiled Uniform Commercial Code financing statement in the form attached as **Exhibit [A]** (the "**Financing Statement**"), which is to be filed with the Washington Department of Licensing (the "**Filing Office**").] ***[OR]*** [The Uniform Commercial Code financing statement filed with the Washington Department of Licensing (the "**Filing Office**") on [_____ __], 20[__], under file number [_____] (the "**Financing Statement**").][27]

A12. [*Guaranty Agreement*] (the "**Guaranty**") by the Guarantor to the Lender.

A13. The following with respect to the Borrower: (i) Articles of Incorporation as filed with the Washington Secretary of State; and (ii) Bylaws dated [_____] (collectively, the "**Borrower Entity Documents**").

A14. [*Consent/Resolution*] of the board of directors of the Borrower.

A15. The following with respect to the Guarantor: (i) Certificate of Formation as filed with the Washington Secretary of State; and (ii) Limited Liability Company Agreement dated [_____] (collectively, the "**Guarantor Entity Documents**").

A16. [*Consent/Resolution*] of [members or managers] of the Guarantor.

A17. (i) Certificate of Existence of the Borrower issued by the Washington Secretary of State, dated [_____ __], 20[__]; and (ii) Certificate of Existence of the Guarantor issued by the Washington Secretary of State, dated [_____ __], 20[__] (collectively, the "**Public Authority Documents**").

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[27] Under Article 9A of the Uniform Commercial Code currently in effect in the state of Washington (the "Washington UCC"), financing statements are not signed, which creates a risk that the form of financing statement intended to be covered by an opinion may not be the form actually filed (usually, by counsel for the secured party/opinion recipient). Moreover, in some jurisdictions, financing statements may be filed via completion of a web-based form, meaning that the opinion giver may be unable to review the information in the exact form in which it is transmitted to the filing office. Parties might only receive confirmations or acknowledgments of filings, with no paper form of financing statement to append to the opinion letter. The illustrative form of opinion letter addresses these risks with two alternatives: (a) by attaching to the opinion letter the form of financing statement on which the opinion is given, or (b) by referencing the filing date and file number of any pre-filed financing statement. If the latter alternative is used, the debtor must authorize the pre-filing. *See* RCW 62A.9A-502(d); 62A.9A-509. If a financing statement will be filed in the county real property records as a fixture filing or as a filing covering timber to be cut or as-extracted collateral, it should also be attached or described, with an appropriate reference to the filing office in the county in which the property is located as the place of filing for record.

A18. Certificates of the Borrower and the Guarantor with respect to certain factual matters[, copies of which have been provided to you][, attached as **Exhibit [B]**] (the "**Opinion Certificates**").[28]

[A19. The agreements, contracts, and instruments listed on the certificate attached as **Exhibit [C]** (the "**Specified Agreements**").[29]]

The documents listed in Al through A10 are collectively referred to as the "**Borrower Documents**."[30] The Security Agreement and [*include other applicable documents granting security interests*] are collectively referred to as the "**Security Documents**."[31] The documents listed in A7 and A12 are collectively referred to as the "**Guarantor Documents**." The Borrower Documents and the Guarantor Documents are collectively referred to as the "**Loan Documents**." The documents listed in A13 through A18 are collectively referred to as the "**Authority Documents**." The extension of credit contemplated by the Loan Documents is referred to as the "**Loan**." [We have examined only the foregoing documents for purposes of this opinion letter.][32]

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[28] On the role and nature of opinion certificates generally, see *supra* Part VI. Care should be taken so that opinion certificates state objective facts rather than legal conclusions. A certificate that includes one or more legal conclusions is not ineffective in its entirety; rather, it may be relied on for the objective factual statements it contains. Any legal conclusions may also serve as confirmation that the certifying person is not aware that the particular statement is untrue.

Some opinion givers attach copies of opinion certificates to the opinion letter, either in signed or unsigned form. Although the practice is not universal, attaching copies or otherwise providing the opinion certificates to the opinion recipient can help to avoid confusion regarding the facts on which the opinion giver is relying. In some cases, however, the information contained in the opinion certificates will be proprietary or confidential, in which case the client may be unwilling to give it to the opinion recipient.

In the illustrative form of opinion letter, the *opinion giver* is permitted to rely on the accuracy and completeness of the certifications contained in the opinion certificates. *See infra* paragraph B4. Nevertheless, notwithstanding the client's and opinion giver's willingness to deliver or otherwise share copies of the opinion certificates, an *opinion recipient* is not entitled to rely on the factual certifications they contain. If the opinion recipient were entitled to so rely, then the opinion certificates could have the unintended consequence of expanding and/or altering the client's representations and warranties in the transaction documents. In order to avoid any confusion, the illustrative form of opinion certificate includes an express disclaimer stating that no other person is entitled to rely on such certificate.

[29] The list of specific documents relates to the no breach opinion. *See infra* paragraph C11.

[30] Note that the defined term "Borrower Documents" excludes any financing statement[s] described in paragraph A11. This is because a financing statement is an unsigned notice filing that does not contain enforceable obligations. It is common to exclude any financing statement from the enforceability opinion, and to give only limited opinions with respect to it. *See infra* paragraphs C13 and C19.

[31] The term "Security Documents" should be defined to include all documents under which a security interest is granted under Article 9A of the Washington UCC. This may include, but is not limited to, a credit agreement, deed of trust, security agreement, pledge agreement, assignment of leases and rents, and assignment of contracts. If only one document contains a grant of a security interest, then this defined term can be removed and all references to it replaced with the defined term for that particular agreement.

[32] Washington opinion letters generally include a list of the transaction documents that are covered by the opinion letter, and many include an express disclaimer that no other documents have been examined for purposes of the opinion letter. These practices are helpful because, in many cases, a defined term such as "Transaction Documents" in the agreements between the parties will be more inclusive than the list of documents intended to be covered by the opinion letter. If the opinion giver wishes to limit the documents reviewed for purposes of the opinion letter, the opinion letter should expressly state that the listed documents are the only documents reviewed.

For purposes of this opinion letter, the Revised Code of Washington is sometimes referred to as "**RCW**," and the Uniform Commercial Code currently in effect in the state of Washington is sometimes referred to as the "**Washington UCC**." Additionally, the term "**Collateral**" means all real and personal property in which a lien or security interest is stated to be granted under the Loan Documents, the term "**Mortgaged Property**" means the real property located in the state of Washington and described in the Deed of Trust, and the term "**Article 9A Collateral**" means the Collateral described in the Security Documents in which the Borrower has rights and as to which the creation of a security interest is governed by Article 9A of the Washington UCC.

B. Certain Assumptions

For purposes of this opinion letter, we have relied[33] on the following assumptions:

[The illustrative form of opinion letter includes some assumptions, qualifications, exclusions, and other limitations that are considered as a matter of customary practice to be included whether or not expressly stated. For additional discussion of the Committee's decision to state these terms expressly, see *Part V of this Report. Also note that some of these assumptions are specific to particular types of transactions and may be deleted if they do not relate to the transactions that are the subject of the opinion letter.]*

B1. Each Loan Document, Authority Document, and other document examined by us is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine.[34] The form and content of all Loan Documents examined by us as unexecuted final drafts do not differ in any respect relevant to this opinion letter from the form and content of such Loan Documents as executed and delivered.

In some transactions, such as multistate transactions in which the opinion giver is acting solely as local counsel, the parties may agree to a limited review of documents. In such cases, if the opinion giver is asked to review only the deed of trust (and perhaps the security agreement and any other local instruments) and is not expected to review the credit agreement or other loan documents, an express statement to such effect should be included in the opinion letter. An example is set forth below:

> We have examined only the Deed of Trust[, the Security Documents and the Financing Statement], and we have not examined the Credit Agreement or the other Loan Documents[, except that we have examined the Credit Agreement solely with respect to definitions of certain terms used in the Deed of Trust].

[33] Assumptions are made without investigation, whether or not the opinion letter so states. As discussed in Part III, an opinion giver is entitled to rely on factual information provided by others, including the client, unless the opinion giver knows that the information is incorrect or knows of facts that the opinion giver recognizes would make reliance on the information otherwise unwarranted.

[34] Opinion letters commonly assume, whether stated or not, that all signatures are genuine. Opinion recipients occasionally request that an assumption that signatures are genuine not apply to signatures on behalf of the opinion giver's clients. In effect, such a request might be construed to require the opinion giver to assure that signatures are not forgeries and that the persons signing are in fact the persons they purport to be. Such an assurance is a purely factual matter. *See supra* Part IV.

B2. Each party to the Loan other than the Borrower and the Guarantor (each an "**Other Party**") exists and has complied with all legal requirements[35] pertaining to its status as such status relates to its rights to enforce the Loan Documents against the Borrower and the Guarantor, and each such Other Party's obligations set forth therein are enforceable against it in accordance with the terms thereof.[36]

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[35] **Opinion that Lender is not Required to Register or Qualify to do Business in Washington**. When the lender is organized under the law of a jurisdiction other than the state of Washington, the opinion giver may be asked to opine that the lender's activities in making the loan and potentially foreclosing on real or personal property security in Washington do not require the lender to register or qualify to do business in Washington. Such opinions are generally not appropriate, as they depend on the nature of the lender and on facts about its activities that are unknown to the opinion giver. Advice about what governmental filings or approvals are required as a result of the lender's activities in Washington is best given by the lender's counsel. *See* Attorneys' Op. Comm., Am. Coll. of Real Estate Lawyers & Comm. on Legal Ops. in Real Estate Transactions, ABA Section of Real Prop., Prob. & Tr. Law, *Real Estate Opinion Letter Guidelines*, 38 REAL PROP. PROB. & TR. J. 241, 253 § 4.1.a (2003).

Multiple statutory schemes are potentially relevant to the lender's analysis of this issue. For instance, the affirmative requirement to register with the Washington Secretary of State to do business in Washington is set forth in RCW 23.95.505, which is part of Washington's Uniform Business Organizations Code, chapter 23.95 RCW (the "UBOC"). Pursuant to RCW 23.95.520, the following activities, among others, of a foreign entity, as defined in RCW 23.95.105 (a "UBOC Foreign Entity"), do not constitute doing business in Washington under the UBOC: creating or acquiring indebtedness, mortgages, or security interests in property or securing or collecting debts or enforcing mortgages or security interests in property securing the debts. These exceptions are applicable only to UBOC Foreign Entities, which include "business corporations," nonprofit corporations, limited liability companies, limited partnerships, and certain other types of entities, wherever organized. Notably, banks that are not chartered by the state of Washington do not appear to be UBOC Foreign Entities.

Moreover, pursuant to RCW 30A.04.020, the activities described in the foregoing paragraph do not constitute banking or engaging in a trust business for purposes of RCW title 30A, the Washington Commercial Bank Act (the "Commercial Bank Act"). The Commercial Bank Act does not include requirements to register to do business in the state per se, although it has its own regulatory scheme for banks. Other Washington statutes with detailed regulatory schemes for other types of lenders include RCW titles 30B (Washington Trust Institutions Act), 31 (Miscellaneous Loan Agencies, including credit unions), 32 (Washington Savings Bank Act), and 33 (Washington Savings Association Act).

Whether a lender is subject to the Washington business and occupations tax or other taxes with respect to a particular loan is governed by other statutes and that analysis is unrelated to whether the lender is required to register with the Washington Secretary of State.

A lender receiving an opinion that it is not required to register or qualify to do business in Washington could potentially misinterpret such an opinion to mean that it is not required to make any filings with, obtain any approvals from, or pay any taxes to, the state with respect to the loan. Such an interpretation is not appropriate. Even if a lender receives an opinion that it is not required to register or qualify to do business in Washington, such an opinion, without more, means only that the lender is not required to register with the Washington Secretary of State to do business in Washington under the UBOC. Such an opinion does not address any other regulatory scheme, tax issue, or other matter under Washington law.

[36] Certain assumptions regarding other parties to a transaction are appropriate, and in some cases—such as when the opinion giver is serving as special counsel or the borrower or guarantor is organized under the law of a foreign jurisdiction—may be required with respect to the opinion giver's clients.

In addition, it is customary practice in Washington for opinion givers to assume without expressly stating that the trustee named in a deed of trust meets all required qualifications. If the opinion giver nevertheless desires to include an express assumption to this effect, it may add the following to the opinion letter:

> B[]. The trustee named in the Deed of Trust is, and any successor trustee will be, authorized to act as a trustee of a deed of trust under RCW 61.24.010 and RCW 61.24.030(6).

B3. All public records (including their due and proper recordation or filing, and their due and proper indexing) are accurate and complete.

B4. All representations and statements contained in all documents, instruments, and certificates that we have examined in connection with this opinion letter are accurate and complete.

B5. The Loan is primarily for commercial, investment, or business purposes, and not for personal, family, or household purposes, within the meaning of RCW 19.52.080.[37]

B6. The Mortgaged Property is not used principally for agricultural purposes or primarily for personal, family, or household purposes.[38]

B7. The Mortgaged Property has been properly platted and/or subdivided in a manner sufficient to permit the conveyance of a real property interest under applicable Washington law.[39]

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[37] This assumption provides the basis for the usury opinion in paragraph C26. *See infra* note 93. Absent a qualification to the contrary, the enforceability opinion is understood to include an assurance that the interest rate does not violate the state usury statute. Therefore, it is prudent to include this assumption unless the opinion letter expressly excludes any opinion on usury issues. This assumption also establishes the basis for concluding that the loan is a "commercial loan" within the meaning of the Washington Deed of Trust Act, chapter 61.24 RCW. *See* RCW 61.24.005(4). A lender of a commercial loan has greater rights under various provisions of the Washington Deed of Trust Act than does a lender of a loan that is not for commercial purposes. *See, e.g.*, RCW 61.24.100.

[38] The statement to the effect that the mortgaged property is not used principally for agricultural purposes relates to RCW 61.24.030(2), which prohibits nonjudicial foreclosure of a deed of trust unless the deed of trust contains a statement to that effect and that statement is true either when the deed of trust is entered into or on the date of the trustee's sale. Additionally, the mortgaged property cannot be part of the deed of trust grantor's homestead under RCW 6.13.010 in order for the property's rents to be available to a receiver under RCW 61.24.030(4), and cannot be occupied by the borrower as his/her principal residence as of the date of the trustee's sale in order for the lender to pursue a deficiency for waste or wrongfully retained rents, insurance proceeds, or condemnation awards under RCW 61.24.100(3)(a).

The court in *Schroeder v. Haberthur* rejected an argument by the grantor of a deed of trust that timberland is principally used for agricultural purposes within the meaning of the deed of trust statute. 200 Wn. App. 167 (2017). Nevertheless, it remains unclear whether timberland could in some circumstances be considered agricultural, especially where it is used as a site for growing trees that are harvested or replanted in another location early in their life cycles. If the real property includes timberland, it is appropriate to include the following qualification:

> D[]. We do not express any opinion as to whether the Deed of Trust may be foreclosed nonjudicially. Under RCW 61.24.030(2), real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods. It is unclear under what circumstances timber might be considered to be a "crop" within the meaning of the statute. The Deed of Trust contains an affirmation by the Borrower that the Mortgaged Property is not used principally for agricultural purposes; however, unless this statement is true either on the date the Deed of Trust was granted or on the date of a nonjudicial foreclosure sale under the Deed of Trust, the Deed of Trust may not be foreclosed nonjudicially.

[39] Conveyances that violate the Washington subdivision statute are illegal and may be enjoined by the prosecuting attorney. RCW 58.17.200. Unlike some states, Washington does not have a statutory exemption for sheriff's sales or trustee's sales. *See* RCW 58.17.040; *cf.* ORS 92.010(9)(a) (excluding from Oregon's partition/subdivision statute divisions of land resulting from lien foreclosures).

The Mortgaged Property is not registered property under chapter 65.12 RCW, which provides for a Torrens land registration system.[40]

B8. The signatures of the Borrower on the [Deed of Trust and the Assignment of Leases and Rents] have been properly acknowledged according to applicable law.[41]

B9. The descriptions of the Collateral in the Loan Documents are accurate and sufficiently describe the property intended to be covered thereby. The descriptions of the Collateral in the Financing Statement are accurate and sufficiently indicate the property intended to be covered thereby.[42]

B10. The Borrower holds the requisite interest or rights[43] in and to the Collateral and the Borrower's interest in the Mortgaged Property is of record.[44]

B11. Value has been given to the Borrower under the Borrower Documents.[45]

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[40] Although it is unusual to encounter properties registered under the Torrens system in Washington pursuant to chapter 65.12 RCW, that fact would normally be discovered in the course of a title review by the title insurance company and therefore need not be investigated by the opinion giver. Under RCW 61.24.030(5), a deed of trust must be recorded to be foreclosed nonjudicially, and, under RCW 61.24.040(1)(a), notice of the trustee's sale must be recorded. Consequently, if a deed of trust is registered only under the Torrens system, nonjudicial foreclosure may be unavailable.

[41] RCW 64.04.010 requires generally that "[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed." RCW 64.04.020 provides that "[e]very deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgments of deeds." Acknowledgments in Washington are usually taken by a notary public. The requirements for acknowledgment of real property instruments are set out in RCW ch. 64.08, and the detailed requirements notaries must follow are set forth in RCW ch. 42.45. Many of these requirements are factual in nature and cannot practically be verified by an opinion giver. Furthermore, where a document is signed outside Washington, it will be acknowledged by an out of state notary or other appropriate official governed by the law of the jurisdiction of signing and will also be subject to RCW 64.08.020 and .040 and RCW ch. 42.45, which have provisions for acknowledgments taken outside Washington. Because of the factual issues involved in all acknowledgments and the foreign law issues involved in acknowledgments of documents to be recorded in Washington that are acknowledged out of state, it is appropriate for an opinion giver to assume that a document requiring acknowledgment has been properly acknowledged in accordance with applicable law.

[42] The opinion giver is not normally expected to inquire into the status of title or the accuracy or adequacy of the description of the collateral.

[43] The debtor must have *either* rights in the collateral *or* the power to transfer rights in the collateral. RCW 62A.9A-203(b)(2).

[44] In Washington, opinion givers are not expected to search the real property records to confirm that a borrower holds title to real property collateral. A title insurance policy is routinely ordered and relied on by the lender to give it comfort as to the borrower's interest in such property.

[45] This assumption supports both the enforceability opinion and the UCC perfection opinion. This is because, under the Washington UCC, value must be given for a security interest in personal property to attach and be enforceable, and the security interest must attach before it can be perfected. RCW 62A.9A-203; 62A.9A-308(a). "Value" is defined for purposes of the Washington UCC to include "a binding commitment to extend credit" and "any consideration sufficient to support a simple contract." RCW 62A.1A-204. An opinion recipient may ask the opinion giver to remove the assumption that value has been given based on the fact that the loan will be advanced at closing or that the loan documents contain a "binding commitment to extend credit." If, however, no advance is made at closing, the opinion giver should be especially reluctant to remove the assumption. The Washington Supreme Court

B12. All conditions precedent to closing the Loan have been satisfied or waived.[46]

B13. Each natural person has sufficient legal capacity to enter into and perform, or to carry out that person's role in, the transactions effected by the Loan Documents.

[B14]. *[The following assumption is only needed if the Guarantor is a corporation and the board has not adopted resolutions to the effect that the Guarantor Documents are reasonably expected to benefit the Guarantor.]* The transactions effected by the Loan Documents may be reasonably expected to benefit, directly or indirectly, the Guarantor.[47]

[B15]. The filing of the Financing Statement has been authorized by the Borrower, and the Financing Statement has been properly filed and indexed in the Filing Office.[48]

[B16]. *[Consider the following assumption if the Loan Documents contemplate perfection by control pursuant to a control agreement as to deposit accounts maintained with a bank that is not the secured party and when the secured party does not become the bank's customer with respect to the deposit accounts.]* The Deposit Accounts (as defined in the Deposit Account Control Agreement) are accurately and sufficiently described in the Deposit Account Control Agreement, and each of such Deposit Accounts is a deposit account as defined in Article 9A of the Washington UCC. The Bank is a bank as defined in Article 9A of the Washington UCC.

[B17]. *[The following assumption should be used if the Borrower or the Guarantor is not a Washington entity or if the opinion giver is not opining as to the following matters.[49]]* [The Borrower][The Guarantor] (i) is existing and, where applicable, in good standing under the law of

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reasoned in a 1973 decision that fairly typical conditions to advances contained in loan documents gave the lender such broad discretion that they thereby "rendered the advances optional rather than obligatory." Nat'l Bank of Wash. v. Equity Investors, 81 Wn.2d 886, 899 (1973). Although the decision focused on laws other than the Washington UCC, the court's reasoning may provide a basis for arguments that similar funding conditions prevent a loan transaction from satisfying the value requirement.

[46] Enforceability is predicated on the loan closing. For this reason, it is appropriate for the opinion giver to assume that the contractually specified preconditions to closing have been satisfied or waived.

[47] This assumption refers to RCW 23B.03.020(2)(h), which states: "As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation." Accordingly, if the guarantor corporation's board of directors has adopted resolutions setting forth that the guaranty may be reasonably expected to benefit the corporation, then this assumption is unnecessary.

[48] Use this assumption if paragraph A11 refers to a filed, rather than an unfiled, financing statement. *See infra* paragraph C19.

[49] Lenders often make loans to borrowers with multistate operations and properties and may require opinions of local counsel in the states where properties that will secure the loan are located. In such situations, the borrower's regular counsel will normally give opinions as to the borrower's status, authority, and execution and delivery of the loan documents, and local counsel will include an assumption as to such matters.

In some cases, local counsel only opine on enforceability of the deed of trust covering real estate in the attorney's jurisdiction. In addition to the matters related to organizational status described in the preceding paragraph, it may be necessary for such local counsel to assume enforceability of the credit agreement, note, and other loan documents secured by the deed of trust covered by such local counsel's opinion letter.

the jurisdiction of its formation, (ii) has the power to execute and deliver, and to consummate the transactions effected by, [each of the Borrower Documents/the Guarantor Documents], (iii) has authorized, by all necessary action on its part, the execution and delivery of, and the consummation of the transactions effected by, [each of the Borrower Documents/the Guarantor Documents], and (iv) has executed and delivered [each of the Borrower Documents/the Guarantor Documents].

[B18]. *[Add as applicable for constituent entities that need to authorize or sign the Borrower Documents/the Guarantor Documents to the extent the opinion giver is not expressly opining on the following matters.]* Each entity that owns a direct or indirect interest in [the Borrower/the Guarantor] whose authorization or consent is required for [the Borrower/the Guarantor] to be authorized to execute and deliver [the Borrower Documents/the Guarantor Documents] and to consummate the transactions effected by [the Borrower Documents/the Guarantor Documents] (i) is existing and, where applicable, in good standing under the law of the jurisdiction of its formation, (ii) has all necessary power to authorize or consent to such actions, and (iii) has authorized or consented to, by all necessary action on its part, the execution and delivery by [the Borrower/the Guarantor] of, and the consummation of the transactions effected by, each of [the Borrower Documents/the Guarantor Documents].

[B19]. *[Include if not opining as to the execution and delivery of the Loan Documents.]* The Loan Documents have as a matter of fact been executed and delivered by the Borrower and the Guarantor with the intent to be bound thereby.[50]

[B20]. [*Include if not opining on the enforceability of all transaction documents, such as a credit agreement governed by the law of a state other than Washington.]* [Without limiting the opinions in paragraphs C[3], C[5], and C[7]], all [non-Washington law transaction documents] are the enforceable obligations of the parties thereto, enforceable in accordance with their terms under the law governing the same.

[B21]. [*Add any other appropriate entity or transaction-specific assumptions, such as may be applicable for entities in regulated industries.*]

In connection with the opinions in this opinion letter, we have relied without investigation or analysis on information in the Public Authority Documents. Except to the extent the information constitutes a statement, directly or in practical effect, of any legal conclusion at issue, we also have relied, without investigation or analysis, on the information contained in the representations and warranties made by the Borrower and the Guarantor in the Loan Documents and on information in the Opinion Certificates.

[50] Enforceability is predicated on the loan documents having been executed by the person purportedly doing so and delivered with an intent to be bound by their terms. Meyer v. Armstrong, 49 Wn.2d 598, 599 (1956). The opinion giver may only have examined unexecuted drafts of the loan documents and may not be present at the closing. As a result, delivery may be conditioned on facts that the opinion giver is not in a position to ascertain, and the opinion giver may not be in a position to confirm actual execution and delivery of the documents. Under these circumstances, it is reasonable to assume such matters or rely on an opinion certificate that provides the factual support for execution and delivery.

[Add the following if the opinion letter contains knowledge limitations.] The phrase "to our knowledge," or any other similar phrase, is a limitation that means the opinion [or confirmation] using such phrase is based solely on the conscious awareness of information by one or more of the following persons: (i) the lawyer who signs this opinion letter on our behalf, and (ii) any lawyer at our firm who has been actively involved in negotiating the transaction, preparing the Loan Documents, or preparing this opinion letter. Such phrases do not imply that we have undertaken an independent investigation to determine the accuracy of the matters covered by any such statement and any limited inquiry undertaken by us during the preparation of this opinion letter should not be regarded as such an investigation. No inference as to our knowledge of any matters bearing on the accuracy of the facts underlying any such statement should be drawn from the fact of our representation of the Borrower or the Guarantor.

C. Opinions

Based on and subject to the preceding examinations, assumptions, and other provisions, and also subject to the qualifications, exclusions, and other limitations stated or referred to below, we are of the opinion that:

C1. *[For a Washington corporation]* The Borrower is a corporation existing under Washington law.[51]

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[51] Paragraph C1 provides that the borrower is "existing" under Washington law. Opinion recipients sometimes request an opinion that a corporation is "validly existing." The Committee does not consider "validly existing" to have a different meaning from "existing." Similarly, in the past, opinion letters often contained the additional statement that a corporation is "duly incorporated." The Committee does not consider the language "duly incorporated" to impart any additional meaning to an opinion that a corporation is "existing" under Washington law.

With respect to the opinion giver's diligence, RCW 23.95.235 provides that a certificate of existence issued by the Washington Secretary of State for a domestic entity must state, among other things: (a) the name of the entity, (b) that the entity's public organic record has been filed and has taken effect, (c) that the records of the Washington Secretary of State do not reflect that the entity has been dissolved, (d) that all fees, interest, and penalties owed by the entity to the state of Washington and collected through the Washington Secretary of State have been paid, if payment is reflected in the records of the Washington Secretary of State and nonpayment affects the existence of the entity, and (e) that the Washington Secretary of State has not begun the process of administrative dissolution. RCW 23.95.235 also provides that, subject to any qualification stated in a certificate of existence, the certificate of existence may be relied on as conclusive evidence of the facts stated in that certificate and that, as of the date of issuance of that certificate, the subject domestic entity is in existence and duly formed or incorporated, as applicable. Therefore, there is no meaningful distinction in the diligence required for existence opinions and due incorporation opinions in the state of Washington. This represents a divergence of Washington law from the law and practice in some other jurisdictions, although the law in other jurisdictions appears to be moving in a similar direction. *See, e.g.*, OPS. COMM., BUS. LAW SECTION OF THE STATE BAR OF CAL., SAMPLE CALIFORNIA THIRD-PARTY LEGAL OPINION FOR BUSINESS TRANSACTIONS 8 n.17 (2010 rev. 2014). *See generally* TriBar II, *supra* note 6, § 6.1 (discussing practice in other jurisdictions).

A certificate of existence issued with respect to a domestic entity by the Washington Secretary of State may not be relied on as conclusive evidence of the name of the domestic entity for purposes of determining whether a financing statement sufficiently provides the name of that entity as a debtor. *See* RCW 62A.9A-502(a)(1); 62A.9A-503(a)(1). A financing statement sufficiently provides the name of a debtor that is a Washington registered organization only if the financing statement provides the name that is stated to be that organization's name on the public organic record most recently filed with or issued or enacted by the state of Washington that purports to state, amend, or restate that organization's name. RCW 62A.9A-503(a)(1); 62A.9A-102(a)(68); 62A.9A-102(a)(71).

Due Organization Opinion. Sometimes, an opinion giver is asked to opine that an entity is "organized" or "duly organized." Such opinions are generally not cost-effective and should be avoided. The term "organized" means that, in addition to the formation of the corporation, all other steps required for organization of the corporation have been taken. Under the Washington Business Corporation Act, chapter 23B RCW, the other steps involve election of directors to the extent not already named in the articles, the appointment of officers, the adoption of bylaws, and the filing of an initial report with the Washington Secretary of State within 120 days of incorporation. *See* RCW 23B.02.050; 23.95.255. In addition, the corporation's shares must be properly issued to and the consideration determined by the board of directors paid by the corporation's initial shareholders. Because of the diligence required to establish these matters opinion givers should be cautious in giving organization opinions, especially if the opinion giver did not assist with the corporation's formation, the corporation's records are incomplete, or the corporation has been in existence for a substantial period of time.

Interplay with the Enforceability Opinion. The four underlying predicate opinions or assumptions needed for an opinion giver to issue an enforceability opinion are: (a) the corporation must exist under the law of the jurisdiction of its formation, (b) the corporation must possess the requisite corporate power to enter into and perform its obligations under the transaction documents subject to the opinion, (c) the corporation must have taken, or as a matter of law be deemed to have taken, the necessary corporate action empowering its officers and other authorized representatives to execute and deliver the transaction documents and perform the stated obligations, and (d) the authorized persons must have actually executed and delivered the agreements subject to the opinion. When asked to give an enforceability opinion, opinion givers typically have the client confirm in an opinion certificate (with supporting documentation as applicable) that the board of directors has not taken any actions to dissolve the corporation since the effective date of the certificate of existence being relied on, has not amended the articles or bylaws relied on for the predicate opinions, has adopted resolutions and/or taken other actions the opinion giver deems necessary to authorize or ratify the obligations to be performed under the transaction documents, and has authorized designated representatives to execute and deliver the agreements memorializing the authorized transaction. As discussed *infra* note 60, customary practice generally provides that the opinion giver is not required to examine the entire chain of authorization.

Good Standing Opinions. The concept of good standing does not exist under Washington business organizations law, and the Washington Secretary of State does not issue any certificate to such effect. In this respect, Washington law differs from that of some other jurisdictions. In some jurisdictions, such as California and Delaware, the failure to pay state taxes subjects a corporation to suspension of its corporate powers and, eventually, involuntary administrative dissolution. An opinion as to good standing in those jurisdictions is customarily understood to mean that the state taxing authority has assured the opinion giver that state taxes have been paid. The Washington Business Corporation Act, chapter 23B RCW, does not provide for the suspension of the corporate powers of a Washington corporation for nonpayment of state taxes, and there is no statutory mechanism for involuntary dissolution for failure to pay state taxes. Therefore, the Committee is of the view that a good standing opinion with respect to a Washington corporation is inappropriate because it has no legal meaning. If given, it should be understood as merely a confirmation that the Washington corporation is existing as of the date of the opinion letter.

Even though the concept of good standing does not exist under Washington business organizations law, an entity's failure to satisfy certain obligations to the state is still considered when opining on the entity's existence. Contrary to the case with unpaid state *taxes*, under RCW 23.95.605, the nonpayment of fees, penalties, and interest collected through the Washington Secretary of State can become a basis for the Washington Secretary of State to commence the process of administratively dissolving a Washington domestic entity. Until that process is concluded, however, the powers of the obligor entity are not suspended or negatively affected. Therefore, in connection with an existence opinion, opinion givers should consider an entity's fee payment status with the Washington Secretary of State, and whether the process of administrative dissolution for nonpayment of fees has been commenced and concluded. As noted above, factual items set forth in a Washington certificate of existence include statements as to whether all fees, interest, and penalties owed to the state that are collected through the Washington Secretary of State have been paid, if nonpayment affects the existence of the obligor entity (RCW 23.95.235(2)(d)), whether an administrative dissolution proceeding is pending against the entity (RCW 23.95.235(2)(f)), and whether the records of the Washington Secretary of State reflect that the entity has been dissolved (RCW 23.95.235(2)(b)(iv)).

Foreign Qualification. When the borrower is engaged in activities in multiple states, the opinion giver may be asked to provide an opinion that the borrower has qualified to transact business in those states. The Committee is of the view that such foreign qualification opinion requests are inappropriate because the matter necessarily pertains to non-Washington law and the opinion typically is based solely on a certificate from an appropriate governmental

C2. *[For a Washington limited liability company]* The Guarantor is a limited liability company existing under Washington law.[52]

[C2. *[For a Washington limited partnership]* The Guarantor is a limited partnership existing under Washington law.][53]

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official in the state. Therefore, the addition of a legal opinion provides nothing of value. Parties should instead rely directly on the certificate. *See* TriBar II, *supra* note 6, § 6.1.6; 2002 ABA Guidelines, *supra* note 8, § 4.1.

If a foreign qualification opinion is given, it should state that it is given solely in reliance on such a certificate and should be limited to a specified list of states, as opposed to alternative formulations such as that the entity is qualified "in all jurisdictions in which failure to qualify would have a material adverse effect on its financial condition" or wherever "the nature of its properties or business requires it." These latter formulations are overly broad and require the opinion giver to make factual determinations that are inappropriate and to interpret the law of jurisdictions not covered by the opinion letter.

Qualification of a Foreign Corporation in Washington. In situations in which the borrower is incorporated in another state, the opinion giver may be asked to opine that the borrower is authorized to transact business in Washington. In such cases, the following form of opinion may be used:

> C[]. Relying solely on the applicable Public Authority Document, the Borrower is authorized to transact business as a foreign corporation in Washington.

The diligence required for the issuance of such an opinion is similar to the diligence required to give an opinion as to a domestic Washington entity's existence; namely, the opinion giver should obtain a certificate of registration from the Washington Secretary of State. The opinion giver should also ensure that the certificate of registration is included in the defined term "Public Authority Documents" in the opinion letter. RCW 23.95.235 provides that, subject to any qualification stated in the certificate of registration, the certificate of registration may be relied on as conclusive evidence of the facts stated in the certificate, and that as of the date of its issuance, the subject foreign entity is registered and authorized to transact business in Washington.

Opinion that Qualification in Washington is Unnecessary. If a lender is from outside Washington, the opinion giver may be asked to opine that the lender's activities in making the loan and potentially foreclosing on real property security in Washington do not require the lender to qualify to transact business in Washington. Such opinions are generally not appropriate for the reasons discussed *supra* note 35.

[52] The Washington Limited Liability Company Act, chapter 25.15 RCW, provides that a limited liability company is formed when the Washington Secretary of State files the entity's certificate of formation. *See* RCW 25.15.071(2). Under RCW 23.95.235, a certificate of existence for a domestic entity must state, among other things: (a) the name of the entity, (b) that the entity's public organic record has been filed and has taken effect, (c) that the records of the Washington Secretary of State do not reflect that the entity has been dissolved, (d) that all fees, interest, and penalties owed by the entity to the state of Washington and collected through the Washington Secretary of State have been paid, if payment is reflected in the records of the Washington Secretary of State and nonpayment affects the existence of the entity, and (e) that the Washington Secretary of State has not begun the process of administrative dissolution. Note, however, that under RCW 25.15.265, a non-administrative dissolution of a limited liability company may have occurred without the Washington Secretary of State being notified. Therefore, in addition to relying on the certificate of existence, the opinion giver should ensure that the opinion certificate obtained from a limited liability company client provides that the members have not taken any action to dissolve the entity. Finally, note that pursuant to RCW 62A.9A-503(a)(1), a certificate of existence issued with respect to a domestic entity by the Washington Secretary of State may not be relied on as conclusive evidence of the debtor's name for purposes of determining whether a financing statement sufficiently identifies the debtor. *See supra* note 51.

[53] The Washington Uniform Limited Partnership Act, chapter 25.10 RCW, provides that a limited partnership is formed when the Washington Secretary of State files the certificate of limited partnership. RCW 25.10.201(3). Under RCW 23.95.235, a certificate of existence for a domestic entity must state, among other things: (a) the name of the entity, (b) that the entity's public organic record has been filed and has taken effect, (c) that the records of the Washington Secretary of State do not reflect that the entity has been dissolved, (d) that all fees, interest, and penalties

[C2. *[For a Washington general partnership]* The Guarantor is a general partnership under Washington law.][54]

[C2. *[Opinion recipients occasionally request an opinion with respect to a trust or a trustee. The footnoted material may be helpful when giving opinions about trusts.]*[55]]

owed by the entity to the state of Washington and collected through the Washington Secretary of State have been paid, if payment is reflected in the records of the Washington Secretary of State and nonpayment affects the existence of the entity, and (e) that the Washington Secretary of State has not begun the process of administrative dissolution. Note, however, that under RCW 25.10.571 and 25.10.576, a non-administrative dissolution of the limited partnership may have occurred without the Washington Secretary of State being notified. Therefore, in addition to relying on the certificate of existence, the opinion giver should ensure that the opinion certificate obtained from a limited partnership client provides that the partners have not taken any action to dissolve the entity. Note, too, that pursuant to RCW 62A.9A-503(a)(1), a certificate of existence issued with respect to a domestic entity by the Washington Secretary of State may not be relied on as conclusive evidence of the debtor's name for purposes of determining whether a financing statement sufficiently identifies the debtor. *See supra* note 51. Finally, note that for the very few remaining limited partnerships formed prior to June 6, 1945, different rules may apply. *See* RCW ch. 25.12.

[54] The form of opinion for a general partnership does not use the word "existing," but if an opinion recipient requires that "existing" appear in paragraph C2, the Committee does not believe that adding it would change the meaning. The Washington Revised Uniform Partnership Act, chapter 25.05 RCW, defines a partnership as an association of two or more persons to carry on as co-owners a business for profit. RCW 25.05.005(1), (6); 25.05.055(1). In contrast to corporations, limited liability companies, limited partnerships, and certain other business associations, Washington law does not set forth any steps that must be taken to form a general partnership. The partnership agreement may be written, oral, or implied. RCW 25.05.005(7). Moreover, although RCW 25.05.110 permits a partnership to file a statement of partnership authority with the Washington Secretary of State, there is no filing requirement to form a general partnership under Washington law. Normally, however, a general partnership borrower will have a written partnership agreement as evidence of the existence of the general partnership. The opinion giver should obtain appropriate certifications from one or more of the partners or other authorized representatives of the general partnership that the agreement examined by the opinion giver constitutes the entire partnership agreement and that the chief executive office of the partnership is located in the state of Washington. The latter is intended to address RCW 25.05.030(1), which states that (except as provided in RCW 25.05.030(2) with respect to a limited liability partnership), "the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and the partnership."

[55] **Trustee Certification Statute; Reliance**. The practice of giving opinions with respect to a trust or a trustee in Washington changed substantially with the enactment of RCW 11.98.075 (effective January 1, 2012), which applies to all trusts (except those excluded from the scope of the trust statute by RCW 11.98.009) regardless of when they were created. *See* note to RCW 11.103.020. The statute generally allows parties dealing with a trustee to rely on a certification of any trustee or any attorney for the trust as to the identity of the trustees, their powers, nonrevocation of the trust, and other facts concerning the trust. The statute provides that "[a] person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct." With this, lenders may increasingly choose to rely on a certification of the trustee or trustees rather than on a legal opinion as to the matters on which such reliance is permitted by the statute. Note that the trust certification statute does not apply to Massachusetts Trusts under chapter 23.90 RCW as to which a certificate of beneficial interest has been provided to the beneficiary. *See* RCW 11.98.009.

Although the trust certification statute permits a third party dealing with the trustee to "require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer on the trustee the power to act in the pending transaction or any other reasonable information," it also provides that: "A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument." RCW 11.98.075(5), (8).

C3. *[For a Washington corporation]* The Borrower has the corporate power to execute and deliver, and to perform its obligations under, each of the Borrower Documents.[56]

Certain Unique Aspects of Giving Opinions about Trusts. An opinion recipient may request that the opinion giver provide opinions similar to the existence, power, and authority opinions typically given on behalf of corporations, limited liability companies, and limited partnerships. If an opinion giver is willing to give such opinions, they should not be given without careful review of the issues and appropriate tailoring and limitations. In giving any opinion with respect to a trust or trustee, the opinion giver should take into account a number of facts that make such opinions unique, including the following:

(a) The fact that, generally, a trust is not an entity, but is rather a relationship among the trustee, the trustor, and the beneficiary. *See In re* Bowden, 315 B.R. 903, 907 (Bankr. W.D. Wash. 2004); RESTATEMENT (THIRD) OF TRUSTS § 2 (Am. Law Inst. 2001).

(b) It may be unclear whether Washington law applies to the trust. *See* RCW 11.98.005(1); *see also* Laughlin v. March, 19 Wn.2d 874, 877 (1941) (the validity of a trust of an interest in land is to be determined by the law of the state where the land is situated).

(c) The various statutory requirements for the creation of a valid trust, including those set forth in RCW 11.98.008 and .011 through .015.

(d) Whether the trust is a typical trust of the type used in estate planning or is a specialized type of trust used for other purposes (such as a Massachusetts Trust under chapter 23.90 RCW).

(e) Whether the transaction is a "significant nonroutine transaction" in which the trustee may not engage in the absence of a "compelling circumstance" without giving certain notices to the trustors of the trust, if living, and to certain beneficiaries pursuant to RCW 11.100.140. Subsection (7) of the statute provides that a person dealing with a trustee may rely on the trustee's written statement that the requirements of the statute have been met for a particular transaction and that, if a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of the statute have not been met.

(f) Whether the execution of a document is within a trustee's power if the instrument is not for a trust purpose (such as execution of a guaranty of debt incurred by the settlor that is not for the benefit of trust property).

Special Rules for Financing Statements Against Trustee Debtors. When giving an opinion that a security interest granted by a trustee under Article 9A of the Washington UCC is perfected by filing a financing statement, an opinion giver should be careful to ensure that the complicated and often counterintuitive requirements for properly completing and filing such a financing statement have been met. *See generally* Norman Powell, *Filings Against Trusts and Trustees Under the Proposed 2010 Revisions to Current Article 9 – Thirteen Variations*, 42 UCC L.J. 375 (2010). Among other things, the opinion giver must be aware that, although the trustee is the debtor, the name of the debtor to be shown on the financing statement is the name of the trust if the trust has a name and, otherwise, the name of the settlor (i.e., the trustor) together with information sufficient to distinguish the trust from other trusts created by the same settlor. RCW 62A.9A-503(a)(3). The financing statement must be filed in the location of the debtor (i.e., the trustee), as determined under RCW 62A.9A-307.

[56] The corporate power opinion confirms that the corporation is permitted, under its charter documents and enabling legislation pursuant to which the corporation is organized, to enter into the transaction in question or to take the action referenced. Under the Washington Business Corporation Act, chapter 23B RCW, Washington corporations are authorized to pursue a broad range of activities. Accordingly, unless the charter documents contain restrictions on the scope of its activities, giving this opinion with respect to a Washington corporation usually should not be difficult. The reference to "corporate power" is intended to emphasize that the power opinion addresses only the corporate power necessary to permit the corporation to enter into and perform its obligations under the transaction documents. The word "corporate" is not necessary; it is understood whether or not expressly stated. The opinion does not address whether third-party, governmental, or internal (such as, in the case of a corporation, director or shareholder) approvals are required to approve, authorize, or take the indicated action. Historically, the opinion referred to both power and authority. Because in this opinion the terms "power" and "authority" have the same meaning and the use of the term

C4. *[For a Washington limited liability company]* The Guarantor has the limited liability company power to execute and deliver, and to perform its obligations under, each of the Guarantor Documents.[57]

[C4. *[For a Washington limited partnership]* The Guarantor has the limited partnership power to execute and deliver, and to perform its obligations under, each of the Guarantor Documents.[58]]

[C4. *[For a Washington general partnership]* The Guarantor has the partnership power to execute and deliver, and to perform its obligations under, each of the Guarantor Documents.[59]]

C5. *[For a Washington corporation]* The Borrower has authorized,[60] by all necessary corporate action on the part of the Borrower, the execution and delivery by the Borrower of, and

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"authority" could create some confusion with the authorization opinion addressed in paragraph C5, the Committee has elected to use the term "power" alone in this opinion.

Opinion recipients will occasionally seek to expand the scope of the corporate power opinion to cover the power of the corporation to own its properties and to carry on its business as it is now conducted. Two objections are frequently raised to giving this expanded opinion. The first is the questionable relevance of the expanded opinion in connection with lending transactions. The second is the difficulty of determining the scope of a large and complex corporation's activities or the nature of its assets. Accordingly, it is appropriate to decline opining as to a corporation's corporate power to conduct its business and to own its properties.

[57] Limited liability companies have the power to engage in any lawful business or activity. *See* RCW 25.15.031. Nevertheless, a limited liability company's certificate of formation or limited liability company agreement may limit its powers. *See also supra* note 56 (discussing the meaning of the power opinion generally).

[58] For a description of limited partnership purposes and powers, see RCW 25.10.021 and 25.10.031. For a discussion of the meaning of the power opinion generally, see *supra* note 56.

[59] Although the Washington Revised Uniform Partnership Act, chapter 25.05 RCW, does not contain restrictions on a partnership's purposes or powers, limitations may be contained in a partnership agreement (written or oral) or in publicly filed statements of authority. *See* RCW 25.05.110; *see also supra* note 56 (discussing the meaning of the power opinion generally).

[60] The authorization opinion means that the corporation has taken all corporate action required to authorize it to execute and deliver and to consummate the transactions effected by, the transaction documents. The reference in the opinion to "all necessary corporate action" is intended to make clear that the opinion speaks only as to internal authorization (such as, in the case of a corporation, director and/or shareholder consent), and does not cover authorization by a governmental authority or any other third party whose consent or authorization might be required. The latter types of authorization are addressed in paragraph C13. In addition, if the corporation operates in a regulated industry, additional opinions regarding compliance with the applicable regulatory requirements may be appropriate.

The opinion certificate obtained from the client should provide the factual support for the authorization opinion. *See* TriBar II, *supra* note 6, §§ 2.2, 2.5. In many cases, a reference to the adoption by the corporation's board of directors of resolutions authorizing the transaction, perhaps together with an incumbency certificate, may provide the necessary support.

Opinion givers are not generally required to examine the entire chain of authorization (for instance, to determine that, from the corporation's formation, each director was properly elected, and that all shares that are entitled to vote were properly issued). The opinion giver is entitled to assume without stating that there are no breaks in such chain of authority.

the consummation by the Borrower of the transactions effected by,[61] each of the Borrower Documents.

C6. *[For a Washington limited liability company]* The Guarantor has authorized, by all necessary limited liability company action on the part of the Guarantor,[62] the execution and delivery by the Guarantor of, and the consummation by the Guarantor of the transactions effected by, each of the Guarantor Documents.

[C6. *[For a Washington limited partnership or general partnership]* The Guarantor has authorized, by all necessary partnership action on the part of the Guarantor, [63] the execution and delivery by the Guarantor of, and the consummation by the Guarantor of the transactions effected by, each of the Guarantor Documents.]

C7. The Borrower has executed[64] and delivered[65] each of the Borrower Documents.

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[61] The opinion refers to the borrower's "consummation" of the transactions "effected by" the Borrower Documents. The Committee chose the word "consummation," instead of the alternative word "performance," to make clear that the opinion does not cover events that are to take place after the opinion is given. Such an opinion should not be construed to cover approvals, authorizations, or other actions that may become necessary as a result of the future occurrence or non-occurrence of specified events or circumstances (such as the requirement that the borrower obtain a building permit to rebuild any encumbered property following a casualty), because the opinion giver has no way to determine whether such events or circumstances will occur. *See* TriBar II, *supra* note 6, § 6.5.4. Similarly, the Committee chose to use the phrase "effected by," rather than the alternative "contemplated by," to avoid an implication that the opinion covers future events and because it believes the phrase "contemplated by" to be undesirably vague.

[62] Due to the flexibility granted by the Washington Limited Liability Company Act, chapter 25.15 RCW, for members of a limited liability company to define management roles and authority, the opinion giver should review the management and member approval provisions of the limited liability company agreement. If no written limited liability company agreement exists, the opinion giver may not be able to satisfy its diligence requirements without requiring the members of the limited liability company to memorialize their agreement in writing.

[63] Special care should be taken by opinion givers when giving authorization opinions with respect to general or limited partnerships. Although Washington law provides each partner in a general partnership substantial authority to bind the partnership to transactions that are consistent with the business of the partnership, a partnership agreement (written or oral) or a statement of authority filed under RCW 25.05.110 may contain restrictions. Likewise, a limited partnership agreement may impose notice or voting requirements beyond what is required by statute.

[64] The execution opinion means that (a) the individual or individuals who signed the applicable document on behalf of the borrower were authorized to sign in a representative capacity, and (b) such execution by those individuals was sufficient, as a matter of law, to make the obligations of the executed document binding on the borrower, assuming that the agreement is delivered to the other parties to the transaction. The board resolutions approving the borrower's participation in the transaction will typically designate the officer or officers having authority to execute and deliver transaction documents on behalf of the borrower. Confirmation that the person signing in fact holds an office with the requisite authority is usually evidenced by an incumbency certificate certifying that the designated person was elected and continues to hold the designated office. If the opinion giver is not in a position to confirm that the authorized officers have executed the documents, or if the opinion giver has examined only unexecuted drafts for purposes of the opinion, then an assumption as to execution is appropriate in place of an opinion. *See supra* note 50 and accompanying text.

[65] The delivery opinion means that the borrower has delivered the transaction documents to the lender with an intent to be bound (meaning there are no unfulfilled conditions or contingencies that must be satisfied before the documents would be binding on the borrower). Conditions to the effectiveness of the documents contained within the documents themselves do not prevent a legally effective delivery. The delivery opinion is, in virtually all cases, coupled with requests for authorization and execution opinions. Under Washington law, "[a] valid written instrument

C8. The Guarantor has executed and delivered each of the Guarantor Documents.

C9. The Borrower Documents are enforceable[66] against the Borrower in accordance with their terms.

C10. The Guarantor Documents are enforceable against the Guarantor in accordance with their terms.[67]

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is predicated upon . . . its execution, and . . . its delivery with intent to put it into effect." Meyer v. Armstrong, 49 Wn.2d 598, 599 (1956).

Because the opinion giver may not be present at the closing, or the closing may be handled through an escrow agent, title company, or other intermediary, the opinion giver may not be able to confirm actual delivery of the documents. Moreover, delivery may be conditioned on satisfaction of certain conditions, and the opinion giver may not, at the time the opinion is given, be in a position to ascertain whether such conditions have been satisfied. Under these circumstances, the opinion giver is justified in assuming delivery of the documents rather than opining that the documents have been delivered. *See supra* note 50 and accompanying text. This is especially helpful in real estate transactions in which physical delivery of the documents, such as deeds and deeds of trust, is a prerequisite to the effectiveness of the conveyance or deed of trust.

[66] Some opinion recipients request the following formulation of the enforceability opinion: "The Borrower Documents are legal, valid, and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms." This formulation has the same meaning as the opinion in paragraph C9. Additionally, it is not customary practice in Washington to give an unqualified enforceability opinion. For a discussion of common qualifications to the enforceability opinion, see *infra* note 97 and accompanying text.

In the illustrative form of opinion letter, the borrower documents include a security agreement and certain other security documents. As a matter of customary practice, an enforceability opinion with respect to those agreements is understood to address only the enforceability of the borrower's obligations under the agreements, and does not express any opinion with respect to the creation, attachment, or perfection of any security interest purportedly granted in such agreements. Opinions regarding the creation, attachment, or perfection of security interests, if given, are typically set forth in separate opinions, such as those in paragraphs C17, C18, and C19 of the illustrative form of opinion letter. *See* TriBar Op. Comm., *Special Report of the TriBar Opinion Committee: UCC Security Interest Opinions—Revised Article 9*, 58 BUS. LAW. 1449, 1460 § 2.2 (2003) [hereinafter TriBar UCC Opinion Report].

[67] The following matters should be considered when giving an enforceability opinion on a guaranty or any other loan document that raises suretyship issues (such as one in which a person other than the borrower is encumbering its assets to secure the borrower's obligations to the lender, or one in which there are multiple borrowers, which can be considered sureties with respect to one another's obligations).

Effect of Washington's Antideficiency Statute on the Enforceability of Guaranties. Washington's antideficiency statute, RCW 61.24.100, permits an action against a guarantor of a commercial loan for recovery of a deficiency following a nonjudicial foreclosure, but prescribes certain time limits, notices, valuation procedures, and other requirements that may limit the ability of a lender to recover a deficiency against a guarantor.

Waivers of Suretyship Defenses. The form of guaranty will likely contain provisions under which the guarantor purports to waive one or more defenses that arise under the common law of suretyship. In Washington, waivers of suretyship defenses are generally enforceable. *See, e.g.*, Lincoln v. Transamerica Inv. Corp., 89 Wn.2d 571 (1978); Fruehauf Trailer Co. of Canada Ltd. v. Chandler, 67 Wn.2d 704 (1966); Union Bank, N.A. v. Blanchard, 194 Wn. App. 340 (2016); Grayson v. Platis, 95 Wn. App. 824 (1999); Franco v. Peoples Nat'l Bank of Wash., 39 Wn. App. 381 (1984); MGIC Fin. Corp. v. H.A. Briggs Co., 24 Wn. App. 1 (1979); s*ee also* Warren v. Wash. Trust Bank, 92 Wn.2d 381 (1979).

Qualification of Enforceability of Waivers of Suretyship Defenses. Because waivers of suretyship defenses often do not specifically identify the defense purportedly waived or may be unfair if enforced absolutely under all circumstances, there may be circumstances in which waivers are not enforceable as written. Also, waivers of

C11. The execution and delivery by the Borrower of, and the consummation by the Borrower of the transactions effected by, the Borrower Documents (i) do not violate the Borrower Entity Documents[, (ii) do not breach[68] any existing obligation of the Borrower under any of the Specified Agreements],[69] and [(ii)] [(iii)] are not prohibited by, and do not subject the Borrower

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suretyship defenses may not have been given by all parties that may at some point in the loan relationship have suretyship defenses. Although such circumstances may be adequately covered by the equitable principles limitation to the enforceability opinion, the principal remedies qualification, or in qualifications relating to the implied covenant of good faith and fair dealing, an opinion giver may wish to include a specific qualification relating to the enforceability of waivers of suretyship defenses such as the one that appears in paragraph D7. It is the Committee's view that a qualification such as that set forth in paragraph D7 is customarily understood and that failure to include a specific qualification relating to waivers of suretyship defenses does not mean that the opinion giver is opining that all waivers of suretyship defenses are enforceable or that all suretyship defenses have been adequately waived in the loan documents.

Upstream/Cross Stream Guaranty Issues. If the guarantor is a subsidiary of the borrower or the borrower and the guarantor are owned, directly or indirectly, by a common parent, the guaranty arrangement is sometimes referred to as an upstream guaranty (a guaranty by a subsidiary of its parent's obligations) or a cross stream guaranty (a guaranty by one brother/sister entity of another brother/sister entity's obligations). Upstream and cross stream guaranty issues can also arise if there is no guaranty agreement, but the subsidiary or brother/sister corporation enters into a security agreement or deed of trust securing obligations of the parent or brother/sister affiliate or if the entities are co-borrowers. Depending on the facts and circumstances, such guaranties may be determined by a court to be fraudulent transfers. *See, e.g.*, *In re* Sabine Oil & Gas Corp., 547 B.R. 503 (Bankr. S.D.N.Y. 2016) (upstream guaranties and security interests granted by insolvent subsidiaries were potentially avoidable fraudulent transfers); *see also In re* UC Lofts on 4th, LLC, 2015 WL 5209252 (B.A.P. 9th Cir. 2015) (declining to treat benefit to an upstream entity as reasonably equivalent value).

Completion Guaranties and Other Guaranties of Performance. Guaranties of performance of an obligation other than the payment of money—such as a guaranty that a financed project will be completed—raise additional enforceability issues. For example, these guaranties often provide that the lender may obtain a decree of specific performance requiring the guarantor to complete the project or that the lender can recover the cost to complete the project from the guarantor even if the lender does not itself complete the project. Washington case law suggests that such provisions may not be enforceable as written and that the lender may be entitled only to recover its actual damages arising from breach of the performance obligation. *See* Western Const. Co. v. Austin, 3 Wn.2d 58 (1940); *see also* Sherman v. Western Const. Co., 14 Wn.2d 252 (1942). These limitations are covered by the equitable principles qualification set forth in paragraph D1 and need not be separately stated. If an opinion giver nevertheless desires to include a specific qualification relating to the enforceability of a performance guaranty, then a qualification such as the following may be used:

> D[]. The enforceability of the [Completion] Guaranty may be subject to Washington case law to the effect that a guaranty of performance of an obligation other than an obligation to pay money may not be specifically enforceable and may be enforced only to the extent of a recovery of the amount of the actual loss incurred by the beneficiary of the guaranty as a result of the breach of the performance obligation.

[68] The no breach opinion provides that the borrower's execution and delivery of, and the consummation by the borrower of the transactions effected by, the transaction documents, will not constitute a breach under identified obligations of the borrower. The term "breach" covers situations in which entering into the transactions constitutes the breaking of a promise given by the borrower to some other party or constitutes an "event of default" as that term is defined in some other agreement to which the borrower is a party. The opinion recipient may prefer the term "default" or may ask that both "breach" and "default" be addressed. The Committee views these terms as interchangeable in this context. Because the phrase "conflict with" is uncertain and vague in this context, however, the Committee disfavors the use of this phrase in the no breach opinion.

[69] The term is defined *supra* paragraph A19. The illustrative form of opinion letter reflects the preferred, and increasingly common, approach of using an exhibit to identify specific documents examined, rather than making

to the imposition of a fine, penalty, or other similar sanction for a violation under, any statutes or regulations of the state of Washington that in our experience are typically applicable to agreements similar to the Borrower Documents and the transactions effected thereby.[70]

C12. The execution and delivery by the Guarantor of, and the consummation by the Guarantor of the transactions effected by, the Guarantor Documents (i) do not violate the Guarantor Entity Documents[, (ii) do not breach any existing obligation of the Guarantor under any of the Specified Agreements], and [(ii)] [(iii)] are not prohibited by, and do not subject the Guarantor to the imposition of a fine, penalty, or other similar sanction for a violation under, any applicable statutes or regulations of the state of Washington that in our experience are typically applicable to agreements similar to the Guarantor Documents and the transactions effected thereby.

C13. Except for (i) the recordation of the Deed of Trust and the Assignment of Leases and Rents referred to below in paragraphs C15 and C16, (ii) the filing of the Financing Statement referred to below in paragraph C19, and (iii) such approvals, authorizations, actions, or filings that have been obtained or made, no approval, authorization, or other action by, or filing with, any governmental authority of the state of Washington is required in connection with the execution and delivery by the Borrower of, and the consummation by the Borrower of the transactions effected by, the Borrower Documents.[71]

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reference to a vague or insufficiently defined universe (as in "all agreements known to us"). The list of specific documents should be agreed on early enough to allow the borrower to assemble, and the opinion giver to review, the documents.

Certain of the documents examined may be governed by the law of a jurisdiction other than the state of Washington or any other jurisdiction expressly covered by the opinion letter. In such cases, the opinion giver is entitled to assume, without so stating in the opinion letter, that those agreements would be interpreted in accordance with their plain meaning. *See* TriBar II, *supra* note 6, § 6.5.6.

[70] The no violation of laws opinion addresses whether the borrower's consummation of the transactions effected by the transaction documents (a) is prohibited by any Washington statute or regulation, or (b) exposes the borrower to a sanction for violating a Washington statutory or regulatory prohibition (either civil or criminal in nature). This opinion is limited to an examination of statutes or regulations and does not cover common law doctrines or judicial and administrative decisions. It is reasonable to expect the opinion giver to be knowledgeable regarding the laws typically implicated in transactions of the type contemplated by the transaction documents. It is, however, not reasonable to expect encyclopedic knowledge of all Washington statutes and the ability to anticipate novel applications of statutes that are not typically applied to such transactions.

Sometimes this opinion is expressed by stating that the borrower's performance does not "violate or conflict with" applicable laws. Because the phrase "conflict with" is uncertain and vague in this context, the Committee disfavors its use in the no violation of laws opinion. On occasion, the opinion recipient may ask the opinion giver to opine that the borrower is in full compliance with applicable laws. Such a request is overreaching. The opinion giver can never conduct the diligence necessary to give this opinion (which would include assessing the legal compliance of all activities of the borrower, against all applicable laws), and the cost of achieving even minimal comfort for the opinion giver is unlikely to produce any reasonably commensurate benefit. The legal opinion literature uniformly recognizes such requests to be unreasonable. *See* GLAZER ET AL., *supra* note 11, § 6.3.

[71] The governmental approval opinion addresses only approvals, authorizations, and other governmental actions required under Washington law. The opinion is understood as a matter of customary practice not to cover requirements of local (such as county or municipal) law. *See* TriBar II, *supra* note 6, § 6.7. Accordingly, it speaks only as to whether the borrower has, at or before the closing, obtained the requisite governmental approvals to close the loan transaction, and does not refer to the borrower's performance of the transaction documents.

C14. Except for such approvals, authorizations, actions, or filings that have been obtained or made, no approval, authorization, or other action by, or filing with, any governmental authority of the state of Washington is required in connection with the execution and delivery by the Guarantor of, and the consummation by the Guarantor of the transactions effected by, the Guarantor Documents.

C15. The Deed of Trust is in form sufficient (i) to create a lien on the Borrower's interest in the Mortgaged Property[72] [and a security interest in the Borrower's interest in fixtures affixed to the Mortgaged Property] [, (ii) to be effective as a financing statement filed as a fixture filing from the date of its recording,][73] and [(ii)] [(iii)] for recording in the real property records of the [county] [counties] in which the Mortgaged Property is located.

C16. The Assignment of Leases and Rents is in form sufficient (i) to create a lien on the Borrower's interest in the unpaid rents of the Mortgaged Property[74] and (ii) for recording in the real property records of the [county] [counties] in which the Mortgaged Property is located.

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[72] Customarily, opinion givers opine that a deed of trust "is in form sufficient" to create a lien, rather than that the deed of trust "creates a lien" on the mortgaged property. Beneficiaries under deeds of trust generally address the risks associated with lien creation and priority by obtaining title insurance because there are many formal requirements for lien creation on real Washington property, including that the contract creating the encumbrance must contain an accurate and valid legal description of the mortgaged property, which is a factual matter beyond the expertise of legal counsel.

[73] The bracketed language should be included only if the deed of trust also qualifies as a fixture filing pursuant to RCW 62A.9A-502(c). Additionally, two alternative approaches available under Washington law are discussed below.

First, a separate financing statement meeting the requirements of RCW 62A.9A-502(b) may qualify as a fixture filing if recorded in the appropriate real property records. If a separate financing statement is used, (a) the financing statement must comply with the requirements of RCW 62A.9A-502(b), (b) the words "and the Fixture Filing" should be included in the first line of paragraph C18 after the words "recordation of the Deed of Trust," and (c) the financing statement (referred to in the opinion letter by the defined term "Fixture Filing") should be added to the list of documents identified in Section A of the opinion letter. Note that if a separate financing statement is filed as a fixture filing in the real property records, continuation statements must also be filed in accordance with RCW 62A.9A-515.

Second, a security interest in fixtures may also be perfected by filing a financing statement in the personal property records with the Washington Department of Licensing pursuant to RCW 62A.9A-501(a)(2); however, when perfected in this manner, the security interest will not enjoy the additional priority with respect to fixtures accorded by RCW 62A.9A-334.

Note that special rules apply to fixture filings against transmitting utilities (as defined in RCW 62A.9A-102(81)). *See, e.g.*, RCW 62A.9A-501(b); 62A.9A-515(f).

[74] The opinion states that the assignment of leases and rents is in a form sufficient to create a *lien* on the Borrower's interest in unpaid rents, but many such assignments are written as *absolute* assignments (e.g., "the Borrower hereby assigns and transfers, absolutely, unconditionally and not merely for security purposes, all of its interest in the rents, whether paid or unpaid, from the Property"). A license to collect the rents is then granted back to the borrower so long as no default has occurred. This language is traceable to the laws of certain states that (a) treat such absolute assignments of rents as transferring a present ownership interest in the rents to the assignee rather than just a lien, and (b) provide a lender holding such an absolute assignment with better rights than a lender with a collateral assignment. *See* Julia Patterson Forrester, *Still Crazy After all These Years: The Absolute Assignment of Rents in Mortgage Loan Transactions*, 59 FLA. L. REV. 487 (2007) (discussing the history of such provisions and their treatment in various states). There is no comparable Washington law to the effect that a purportedly absolute assignment of rents would be enforced as such. Although a Washington court may find that such an assignment creates a lien on the leases and unpaid rents, there is no reported case expressly so holding.

C17. The Security Documents create a security interest in the Article 9A Collateral.[75]

C18. The recordation of the Deed of Trust in the real property records of [the county] [each of the counties] in which the Mortgaged Property is located[76] will constitute the only recordation in the state of Washington necessary [(i)] to give constructive notice to third parties of any lien created by the Deed of Trust on the Borrower's interest in the Mortgaged Property [and (ii) to perfect any security interest created by the Deed of Trust in the Borrower's interest in fixtures affixed to the Mortgaged Property].[77]

During the 1980s, some bankruptcy courts interpreting Washington law held that, if an assignment of rents was not perfected by appointment of a receiver to collect the rents (or by certain other actions) prior to the bankruptcy of the assignor, the assignment remained inchoate and could be avoided in bankruptcy. *See In re* Johnson, 62 B.R. 24 (B.A.P. 9th Cir. 1986); *In re* Ass'n Ctr. Ltd. P'ship, 87 B.R. 142 (Bankr. W.D. Wash. 1988). To address these cases, RCW 7.28.230 was amended in 1989 to provide that the recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property *intended as security* "shall immediately perfect the security interest" and no further action is required to perfect such interest. The statute also provides that any lien created by such an assignment, mortgage, or pledge, when recorded, shall be deemed "specific, perfected and choate." The Ninth Circuit Court of Appeals subsequently held that the amendment was effective to overrule the holding in the earlier cases. *In re* Park at Dash Point, L.P., 985 F.2d 1008 (9th Cir. 1993).

For the opinion giver to provide an opinion that the assignment of leases and rents is in a form sufficient to create a lien, the assignment should clearly state that the parties intended the assignment to be for security and not an absolute assignment. In the absence of such language, the opinion giver should decline to give a specific opinion that the assignment creates a lien, and should include the following limitation in the opinion letter:

> D[]. We express no opinion as to the enforceability or effect of any assignment of leases and rents that purports to be an absolute assignment rather than an assignment intended as security.

[75] *See* RCW 62A.9A-108 (setting forth requirements for collateral descriptions). Normally, the opinion regarding creation of security interests is limited to those security interests that are governed by Article 9 of the UCC of the opinion giver's jurisdiction. *See* TriBar UCC Op. Report, *supra* note 66, § 2.1(b). Accordingly, the opinion set forth in paragraph C17 does not apply to security interests governed by (a) federal law, (b) the Uniform Commercial Code as enacted in any other jurisdiction, or (c) Washington law other than the Washington UCC. Because of the customary exclusion noted in paragraph D3(i), this opinion is also inapplicable to collateral of a type described in RCW 62A.9A-501(a)(1) (including timber to be cut and as-extracted collateral (such as minerals)). The opinion set forth in paragraph C17 states only that a security interest is created, and avoids expressing an opinion that the security interest secures any particular obligation. By doing so, it avoids expressing an opinion that any dragnet clause (a clause stating that the collateral secures all present and future obligations of the debtor to the secured party) is effective, if such a clause is included.

RCW 62A.9A-203(b) requires, among other things, that the debtor has rights in the collateral and that value has been given. The existence and extent of such rights is primarily factual and it is impractical, if not impossible, to give opinions with respect to a borrower's rights in collateral. Accordingly, opinion givers customarily assume that these elements have been satisfied. *See supra* paragraphs B10, B11.

[76] *See* RCW 65.08.070. The opinion giver may be asked for an opinion identifying the proper place for recording the deed of trust and assuring the opinion recipient that, following due recordation, the deed of trust will create a perfected lien on the real property. Perfection is a concept that typically relates to security interests in personal property; with respect to liens on real property, opinion givers traditionally refer to constructive notice by compliance with applicable recording laws.

[77] Subsection (ii) should be included only if the deed of trust will qualify as a fixture filing under RCW 62A.9A-502(c). Alternatively, a separate financing statement could qualify as a fixture filing if recorded in the appropriate real property records and meeting the requirements of RCW 62A.9A-502(b). *See supra* note 73 (discussing these requirements and other matters relating to initial and continued perfection in fixtures).

C19. *[For perfection by central filing in the state of Washington. Use the first bracketed alternative if the opinion giver has examined an unfiled financing statement; use the second bracketed alternative if the opinion giver has examined a pre-filed financing statement.]* [Upon the filing of the Financing Statement in the Filing Office after the execution and delivery by the Borrower of the Security Documents, the Lender will have a perfected security interest in those portions of the Article 9A Collateral that are described in both the Financing Statement and the Security Documents[78] and in which a security interest can be perfected under Article 9A of the Washington UCC by the filing of a financing statement in the Filing Office.] [*or*] [Upon the execution and delivery by the Borrower of the Security Documents, the Lender will have a perfected security interest in those portions of the Article 9A Collateral that are described in both the Financing Statement and the Security Documents and in which a security interest can be perfected under Article 9A of the Washington UCC by the filing of a financing statement in the Filing Office.][79]

C20. *[For perfection by delivery as to certificated securities in registered or bearer form.]*[80] The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of certificated securities represented by the Share Certificate[81] will be perfected under Article 9A of the Washington UCC upon the Lender acquiring possession of the Share Certificate in the state of Washington.

C21. *[For perfection by control as to certificated securities in registered form.]* The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of certificated securities in registered form and represented by the Share Certificate will be perfected under Article 9A of the Washington UCC [upon the Lender acquiring possession of

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[78] Because the collateral description in the financing statement may not be consistent with the collateral description in the security documents, protection is provided to the opinion giver by the reference to portions of the Article 9A Collateral that are described in one or more of the security documents and the financing statement. Note that the financing statement may indicate that it covers "all assets" or "all personal property" of the debtor if the debtor authorizes the filing of a financing statement containing such an indication. RCW 62A.9A-504(2); 62A.9A-509; 62A.9A-510. If properly authorized (including pre-filing authorization), such language is a sufficient indication of the collateral covered by the financing statement, but a similar overly generic description of collateral in a security agreement would not reasonably identify the collateral and, accordingly, would not be a sufficient description for creation and attachment purposes. *See* RCW 62A.9A-108(a), (c).

[79] *See* RCW 62A.9A-301 and 62A.9A-307 (setting forth rules to determine the location of the debtor and the law governing perfection of the security interest). Neither version of opinion C19 can be given under Washington law if the debtor (as grantor of the security interest) is located (as determined pursuant to RCW 62A.9A-307) in a jurisdiction other than the state of Washington.

[80] Practitioners must take special care to properly classify ownership interests in business associations as collateral under the Washington UCC. For instance, even if represented by a certificate, an ownership interest in a general partnership, limited partnership, or limited liability company is considered a general intangible rather than a security unless it meets the requirements of RCW 62A.8-103(3). With respect to ownership interests that are properly classifiable as certificated securities, Washington law governs perfection if and so long as the certificate is located in Washington. *See* RCW 62A.9A-305(a)(1); *see also* RCW 62A.9A-313(a); 62A.9A-313(e); 62A.8-301(1)(a). Note that possession of a bearer form certificated security perfects a security interest in that security by control. *See* RCW 62A.9A-314(a); 62A.9A-106(a); 62A.8-106(1).

[81] Any such document should be added to the list of documents in Section A of the opinion letter.

the Share Certificate and the Stock Power[82] in the state of Washington][83] [or] [upon the Lender acquiring possession of the Share Certificate in the state of Washington, and the Share Certificate being registered in the name of the Lender upon registration of transfer by the issuer of the Share Certificate.[84]

C22. *[For perfection by control as to uncertificated securities that are not held in a securities account.]* The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of uncertificated securities described in Schedule [__] to the [_____ Agreement] [and in the Uncertificated Securities Control Agreement[85]] will be perfected under Article 9A of the Washington UCC [by control pursuant to the Uncertificated Securities Control Agreement][86] [or] [upon the issuer's registration of the Lender as the registered owner of such uncertificated securities].[87]

C23. *[For perfection by control pursuant to a control agreement as to deposit accounts maintained with a bank that is not the secured party and when the secured party does not become the bank's customer with respect to the deposit accounts.]* The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of the Deposit Accounts (as defined in the Deposit Account Control Agreement) will be perfected by control pursuant to the Deposit Account Control Agreement.[88]

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[82] Any such document should be added to the list of documents in Section A of the opinion letter.

[83] *See supra* note 80 regarding the law governing perfection. *See also* RCW 62A.9A-314(a); 62A.9A-106(a); 62A.8-301(1)(a); 62A.8-106(2)(a). Also note that the Stock Power must constitute an effective indorsement. RCW 62A.8-102(1)(k).

[84] *See* RCW 62A.9A-314(a); 62A.9A-106(a); 62A.8-301(1)(a); 62A.8-106(2)(b).

[85] Any such document should be added to the list of documents in Section A of the opinion letter.

[86] Perfection by control is the preferred, but not exclusive, method of perfecting a security interest in uncertificated securities that are not held in a securities account. RCW 62A.9A-314(a). The control agreement must provide that the share issuer has agreed that it will comply with instructions originated by the lender without further consent by the borrower. *See* RCW 62A.9A-106(a); 62A.8-106(3)(b). Also note that, with certain exceptions, the local law of the share issuer's jurisdiction will govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security. RCW 62A.9A-305(a)(2); 62A.9A-305(c); 62A.8-110(4). Deletion or appropriate revision of the opinion in paragraph C22 will be required if the share issuer's jurisdiction is not the state of Washington.

[87] *See* RCW 62A.9A-314(a); 62A.9A-106(a); 62A.8-106(3)(a); 62A.8-301(2)(a); *see also supra* note 86 (regarding the law that will govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security).

[88] Except as otherwise provided in RCW 62A.9A-315(c) and (d) for proceeds, a security interest in a deposit account, as defined in RCW 62A.9A-102(a)(29), may be perfected only by control. RCW 62A.9A-312(b)(1). The control agreement must be a record authenticated by the borrower (as debtor), the lender (as secured party), and the depositary bank, and must provide that the borrower, the lender, and the depositary bank have agreed that the depositary bank will comply with instructions originated by the lender directing disposition of the funds in the deposit accounts without further consent by the borrower. *See also* RCW 62A.9A-314(a); 62A.9A-104(a)(2). The local law of the depositary bank's jurisdiction (as determined pursuant to RCW 62A.9A-304) will govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in the deposit accounts. RCW 62A.9A-304. Deletion or appropriate revision of the opinion in paragraph C23 will be required if the depositary bank's jurisdiction is not the state of Washington.

C24. *[For perfection by control pursuant to a control agreement as to a securities account*[89] *and security entitlements carried in the securities account when the securities intermediary is not the secured party and the secured party does not become the entitlement holder.]* The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of the Securities Account (as defined in the Securities Account Control Agreement) and the security entitlements with respect to the financial assets carried in such Securities Account will be perfected by control pursuant to the Securities Account Control Agreement.[90] [91]

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[89] With respect to transactions involving securities accounts, note the Hague Securities Convention, which became effective as a matter of U.S. law on April 1, 2017. *See* Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, July 5, 2006, 17 U.S.T. 401, 46 I.L.M. 649 (entered into force April 1, 2017); Carl S. Bjerre, et al., *Changes in the Choice-of-Law Rules for Intermediated Securities: The Hague Securities Convention is Now Live,* BUS. L. TODAY, Aug. 2017, at 1, 3. The convention applies to any securities transaction or dispute "involving a choice" between the laws of two or more nations—a circumstance that may arise in any intermediated securities transaction, either at the transaction's outset or later in its life. For instance, a "choice" will be involved whenever any of the issuer, the underlying certificates or the issuer's books, or a wide range of parties (including a secured party) have connecting factors to different nations, regardless of whether the nations are parties to the convention. When applicable, the convention provides choice-of-law rules that may preempt some or all of the corresponding choice-of-law rules provided under common law, the UCC, and federal regulations. In most cases, the choice-of-law results under the convention will be the same as those reached under corresponding UCC principles, but there are some differences. In any event, paragraph D3(vii) excludes any opinion on the effect of international treaties or conventions from the coverage of the opinion letter.

[90] Perfection by control is the preferred, but not exclusive, method of perfecting a security interest in a securities account. RCW 62A.9A-314(a); 62A.8-501(1). The control agreement must sufficiently describe the securities account and provide that the securities intermediary has agreed that it will comply with entitlement orders originated by the lender without further consent by the borrower. *See* RCW 62A.9A-314(a); 62A.9A-106(a); 62A.9A-106(c); 62A.8-106(4)(b); 62A.8-501(1); 62A.9A-308(f). If the control agreement does not establish that the borrower is the entitlement holder of the security entitlements with respect to the financial assets carried in the securities account by stating that the securities intermediary maintains the securities account for the borrower and undertakes to treat the borrower as entitled to exercise the rights that comprise those financial assets, then the opinion giver should assume or otherwise verify that the borrower is the entitlement holder. Also note that, with certain exceptions, the local law of the securities intermediary's jurisdiction (as determined pursuant to RCW 62A.8-110(5)) will govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in the securities account and security entitlements carried in the securities account. RCW 62A.9A-305(a)(3); 62A.9A-305(c); 62A.9A-308(f); 62A.8-110(5). Deletion or appropriate revision of the opinion in paragraph C24 will be required if the securities intermediary's jurisdiction is not the state of Washington.

[91] If a lender requests an opinion regarding perfection by control pursuant to a control agreement as to a commodity account and commodity contracts carried in the commodity account when the commodity intermediary is not the secured party, the following opinion may be used if the commodity intermediary's jurisdiction (as determined pursuant to RCW 62A.9A-305(b)) is the state of Washington:

> C[]. The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of the Commodity Account (as defined in the Commodity Account Control Agreement) and the commodity contracts carried in the Commodity Account will be perfected by control pursuant to the Commodity Account Control Agreement.

The control agreement must provide that the borrower (as commodity customer), the lender (as secured party), and the commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contracts as directed by the lender without further consent by the borrower. *See* RCW 62A.9A-314(a); 62A.9A-106(b)(2); 62A.9A-106(c); 62A.9A-308(g). With certain exceptions, the local law of the commodity intermediary's jurisdiction will govern perfection, the effect of perfection or nonperfection, and the

C25. *[For perfection by control as to letter-of-credit rights.]* The security interest created by the Security Documents in the portion of the Article 9A Collateral that consists of letter-of-credit rights with respect to the Letter of Credit (as described and defined in the [_____ Agreement] and the Consent to Assignment) will be perfected by control pursuant to the [Consent to Assignment].[92]

C26. Washington law provides that the Borrower may not plead the defense of usury or maintain an action for usury with respect to the Loan.[93]

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priority of a security interest in the commodity account and commodity contracts carried in the commodity account. RCW 62A.9A-305(a)(4); 62A.9A-305(b); 62A.9A-305(c); 62A.9A-308(g).

[92] *See* RCW 62A.9A-312(b)(2); 62A.9A-314(a); 62A.9A-107; 62A.5-114(c). Except as otherwise provided in RCW 62A.9A-308(d), a security interest in a letter-of-credit right may be perfected only by control. RCW 62A.9A-312(b)(2). A secured party obtains control of a letter-of-credit right if the beneficiary of the applicable letter of credit has assigned to the secured party the beneficiary's right to all or part of the proceeds of the letter of credit and if the applicable issuer or nominated person has consented to the assignment of those proceeds under RCW 62A.5-114(c) or otherwise applicable law or practice. RCW 62A.9A-107; 62A.5-114. The local law of the jurisdiction of the issuer of the letter of credit (as determined pursuant to RCW 62A.5-116) or a nominated person will govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right perfected by control if the issuer's or nominated person's jurisdiction is a U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to U.S. jurisdiction. *See* RCW 62A.9A-306; 62A.9A-102(a)(77). Deletion or appropriate revision of paragraph C25 will be required if the issuer's or nominated person's jurisdiction is not the state of Washington.

[93] An opinion that loan documents are enforceable against the borrower implicitly includes compliance with usury law and no separate opinion should be required. Lenders nevertheless frequently request separate comfort as to compliance with applicable usury laws. Generally, in a commercial loan transaction such a usury opinion can be given on the basis of the business purpose exception from the usury law set forth in RCW 19.52.080, which provides:

> Profit and nonprofit corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and governments and governmental subdivisions, agencies, or instrumentalities may not plead the defense of usury nor maintain any action thereon or therefor, and persons may not plead the defense of usury nor maintain any action thereon or therefor if the transaction was primarily for agricultural, commercial, investment, or business purposes: PROVIDED, HOWEVER, That this section shall not apply to a consumer transaction of any amount. Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes.

Although the list of entities in the first clause of the statute does not expressly include limited liability companies, they are included by virtue of RCW 1.16.080(2), which provides that the term "association," when used in a statute, includes limited liability companies unless the context clearly indicates otherwise. Pursuant to RCW 1.16.080(1), the term "person," as used in the second clause, "may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual."

Paragraph C26 does *not* state that only Washington usury law may govern the transaction; rather, the opinion merely provides assurance that the transaction will not violate Washington usury law. Given the conflict of law principles unique to the issue and the fact that the Washington Supreme Court has held that the usury law is a fundamental policy of the state, Washington practitioners generally should not give opinions that the usury law of a state other than Washington governs. *See* Wash. State Bar Ass'n, WASHINGTON COMMERCIAL LAW DESKBOOK § 30.2(7) (3d ed. 1982); Whitaker v. Spiegel, Inc., 95 Wn.2d 661, 667–68 (1981); Golden Horse Farms, Inc. v. Parcher, 29 Wn. App. 650 (1981).

The assumption in paragraph B5 establishes the factual predicate for giving a usury opinion. In addition, the loan documents will usually contain covenants or representations and warranties regarding the borrower's use of the loan

C27. *[Include if the Loan Documents choose the law of a state other than Washington.]* The Loan Documents provide that they will be governed by the law of the state of [_____]. Although the issue is not free from doubt, if the matter were presented to a Washington state court (or a federal court applying Washington choice-of-law rules), then, assuming the interpretation of the relevant law on a basis consistent with existing authority, such choice-of-law provisions should be given effect, except that (i) creation, perfection, recording, priority, or enforcement of a lien on real property may be governed by the law of the situs of the real property, (ii) to the extent otherwise provided in the Uniform Commercial Code as adopted in any applicable jurisdiction with respect to the perfection or nonperfection, the effect of perfection or nonperfection, or the priority of security interests [and agricultural liens], the law of other jurisdictions may govern such matters, (iii) subject to certain exceptions, Washington choice-of-law rules require a reasonable basis for the selection of the chosen law, such as a reasonable and/or substantial relationship between the parties and/or transactions effected by the Loan Documents and the chosen law, (iv) matters that are procedural rather than substantive may be governed by the law of the forum, and (v) the law of another jurisdiction (including the state of Washington) may be applied notwithstanding the parties' choice of law to the extent that the application of the law of the chosen jurisdiction would violate the public policy of such other jurisdiction and (1) such other jurisdiction has a materially greater interest in the determination of the particular issue and (2) such other jurisdiction's law would apply in the absence of an effective choice of law by the parties. Because of the fundamentally factual nature of many of these issues, and because this opinion is based solely on our review of the Loan Documents, we do not opine that any court considering any or all of these exceptions would necessarily hold that any choice-of-law provision is binding on the parties.[94]

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proceeds and the opinion giver is entitled to assume that the borrower will comply with such covenants in assessing whether a usury opinion can be given.

Lenders often will request an opinion stating simply that the loan is not usurious or does not violate Washington usury law. Because of the specific business purpose exception to Washington's usury law discussed above, opinion givers in commercial loan transactions generally should decline this request and instead provide the form of opinion in paragraph C26.

[94] Nearly every commercial contract has a provision selecting the law that will govern the agreement. In Washington—as in most states—contractual choice-of-law clauses are subject to a number of limitations. For example, absent express intent to the contrary, such clauses are understood to mean the chosen state's substantive local law and not the totality of its law, including procedural and choice-of-law rules. *See, e.g.*, McGill v. Hill, 31 Wn. App. 542 (1982). Moreover, agreements governing the descent, alienation, transfer, or conveyance of real property located in Washington—including the construction, validity, and effect of such conveyances—are governed by Washington law pursuant to a longstanding principle that the law of the place where the property is located governs such matters. *See, e.g.*, *In re* Stewart's Estate, 26 Wash. 32 (1901). Similarly, in the case of security interests and agricultural liens, provisions of Article 9 of the UCC govern choice-of-law with respect to perfection or nonperfection, the effect of perfection or nonperfection, and priority. Finally, transactions involving securities accounts may be subject to choice-of-law rules set forth in the Hague Securities Convention, discussed at *supra* note 89.

With respect to most other matters, parties have wide latitude to choose the law that will govern their agreements, subject only to judicial balancing tests that take into account facts and circumstances relating to the parties, the transaction, and public policy considerations. Washington courts strive to uphold the parties' intent. Although some states have sought to alleviate uncertainty by enacting statutes that validate the choice of their law to govern agreements that meet certain specified conditions (see, e.g., N.Y. GEN. OBLIG. LAW § 5-1401), Washington has not enacted a statutory bright-line rule of this sort. Instead, modern Washington choice-of-law principles largely reflect Section 187 of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS (Am. Law Inst. 1971). In an effort to balance the

expectations of the parties with the fundamental policies of the state whose law would otherwise apply, the Restatement provides that a choice-of-law clause should be given effect unless either (a) there is no "substantial relationship" between the parties or the transaction and the chosen state and there is no other "reasonable basis" for the selection of the law of the chosen state, or (b) application of the law of the chosen state would be contrary to a fundamental public policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which (under the rule of Section 188 of the Restatement) would be the state of the applicable law in the absence of an effective choice of law by the parties. *See, e.g.*, Brown v. MHN Gov't Services, 178 Wn.2d 258 (2013); Schnall v. AT&T Wireless Services, 171 Wn.2d 260 (2011); McKee v. AT&T Corp., 164 Wn.2d 372 (2008); Erwin v. Cotter Health Ctrs., 161 Wn.2d 676 (2007); *see also* TriBar Op. Comm., *Supplemental Report: Opinions on Chosen-Law Provisions Under the Restatement of Conflict of Laws*, 53 BUS. LAW. 592 (2013); Philip A. Trautman, *Choice of Law in Washington—The Evolution Continues*, 63 WASH. L. REV. 69 (1988) (providing historical context for Washington's choice-of-law rules).

For transactions governed by the UCC, Section 1-301 (RCW 62A.1-301 of the Washington UCC), addresses the effectiveness of contractual choice-of-law clauses. Under that section, parties may choose the law of a state that "bears a reasonable relation" to the transaction, unless otherwise required by the UCC. Official comments to the UCC explain that the test of "reasonable relation" is similar to that set forth in *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403 (1927), such that the chosen law must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs.

Many Washington lawyers are reluctant to give an opinion as to choice of law on the grounds that, among other things, the law is uncertain, factual questions are involved, and application of the foreign substantive law may violate public policy. Practitioners increasingly decline to give choice-of-law opinions, or they agree to give them only in the form of reasoned opinions that expressly consider the contacts between the parties or the transaction, on the one hand, and the state whose law has been selected to govern any or all of the agreements, on the other. *See, e.g.*, ABA/ACREL Report, *supra* note 25.

The Committee agrees that a conservative approach is justified. The form of opinion set forth in paragraph C27 attempts to strike a balance: it offers guidance on this evolving area of Washington law, while declining to provide an express and unqualified opinion as to the effect of a choice-of-law clause.

When a separate opinion regarding choice of law—such as that set forth in paragraph C27—is included in the opinion letter, the scope of the choice-of-law opinion will be limited to what is set forth in the separate opinion. To make this clear, the opinion letter should expressly exclude choice of law (see *infra* paragraph D3(viii)) except as may be provided by an express choice-of-law opinion such as that set forth in paragraph C27.

One alternative to giving a choice-of-law opinion is to give an enforceability opinion as to the transaction documents as a whole, without regard to the contractual choice-of-law clause, based on an express contrary-to-the-fact assumption in the opinion letter that the law of the opinion giver's jurisdiction would govern the contract notwithstanding the parties' selection(s) to the contrary. The following or similar assumption and related qualification may be used:

> B[]. That the internal law of the state of Washington, without regard to its choice-of-law principles, governs the provisions of the Loan Documents and the transactions effected thereby, even though all or some of the Loan Documents provide that they are governed by [foreign state] law.

The related qualification language may be added as subparagraph D3(xi):

> [(xi)]. the enforceability of the choice-of-law provisions in the Loan Documents, any provisions of the Loan Documents that reference specific statutes or regulations from jurisdictions other than the state of Washington, or the effect of any provisions of Washington law prescribing specific legends or other language that must be included in Washington agreements in order to obtain the benefit of such provisions.

Whether or not this assumption is expressly stated, an opinion letter issued by a Washington attorney is limited to the law of the state of Washington unless the opinion letter expressly states that it also covers the law of the foreign jurisdiction(s) governing one or more of the transaction documents. *See supra* note 25 and associated text.

[*No Litigation Confirmations*. *In the past, opinion letters often contained a no litigation "opinion" covering the existence of legal proceedings against the opinion giver's client. Opinion givers increasingly decline to provide no litigation confirmations because they do not believe a transactional attorney's role is to be a certifier of facts. The Committee agrees with this position. For additional discussion, see Part IV of this Report.*]

D. Certain Qualifications and Exclusions

The opinions set forth in this opinion letter are subject to the following qualifications and exclusions: [95]

D1. Our opinions may be limited by the effects of bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent transfer or conveyance, voidable transaction, and other similar law affecting the rights and remedies of creditors generally, and the effects of general principles of equity, whether considered in a proceeding at law or in equity.[96]

D2. Certain provisions contained in the Loan Documents may be limited or rendered unenforceable by applicable law, but, subject to the other limitations applicable to this opinion letter, such unenforceability will not render any of the Loan Documents invalid as a whole or preclude:[97]

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[95] Extensive lists of assumptions, qualifications, exclusions, and other limitations are not cost-effective, necessary or, in many cases, informative. The Committee is of the view, also reflected in the ABA Customary Practice Statement, *supra* note 7, that many common qualifications, including some of those listed in the illustrative form of opinion letter or elsewhere in these notes, should be understood to apply whether or not expressly stated in the opinion letter. *See supra* Part V; *see also* TriBar II, *supra* note 6, § 1.4. The Committee also recognizes, however, that some opinion givers desire to explicitly set forth these customarily implied assumptions, qualifications, exclusions, and other limitations.

[96] Opinion letters may be affected by bankruptcy, insolvency, and other similar law, and by the application of general principles of equity. Insolvency and equitable principles qualifications are implied even if not expressly stated; nevertheless, most practitioners prefer to expressly state them.

[97] The need for additional qualifications to the enforceability opinion beyond the bankruptcy and insolvency and equitable principles qualifications in secured lending transactions is caused by the frequent use of complex loan documents containing remedies and other provisions that are either not enforceable precisely as written in the document or are of questionable enforceability. Many lawyers attempt to deal with these questionable provisions by including an extensive list of exceptions to the enforceability opinion. Current opinion practice, including that in Washington, disfavors extensive lists of assumptions, qualifications, exclusions, and other limitations. This is because extensive lists often result in unnecessary and costly debate between the opinion giver and opinion recipient and can make it difficult to understand the scope of the enforceability opinion. As a substitute for extensive lists, the practice has developed of setting forth a generic qualification excluding from the enforceability opinion certain limited or unenforceable provisions (without specific identification), followed by some form of assurance regarding the validity of the overall transaction and the availability of a remedy to the lender following a default. The following or similar practical realization language is often used:

> D[]. Without limiting the other qualifications set forth in this opinion letter, certain provisions contained in the Transaction Documents may be limited or rendered unenforceable by applicable law, but in our opinion such law does not make the remedies afforded by the Transaction Documents inadequate for the practical realization of the principal benefits intended to be provided thereby.

The Committee believes that the principal remedies and practical realization approaches are common forms of the generic qualification and assurance, which have gained wide acceptance in Washington and other jurisdictions. Either

(i) judicial enforcement in accordance with applicable law of the state of Washington of the Borrower's obligation to repay the principal amount of advances made under the Loan Documents, together with interest thereon (to the extent not deemed a penalty), subject to nonrecourse or limited recourse provisions, as and to the extent provided in the Loan Documents;

(ii) judicial enforcement in accordance with applicable law of the state of Washington of the Guarantor's obligation to repay amounts set forth in the Guaranty as provided in the Guaranty (to the extent not deemed a penalty and subject to defenses of a surety that have not been or cannot be waived), as and to the extent provided in the Guaranty;

(iii) acceleration in accordance with applicable law of the state of Washington of the Borrower's obligation to repay such principal (to the extent the Loan Documents provide for such acceleration), together with such interest, upon default in the payment of such principal or interest or upon a continuing material default by the Borrower in the performance of any other enforceable obligation under the Loan Documents; or

(iv) foreclosure in accordance with applicable law of the state of Washington of any lien or security interest created by the Loan Documents under circumstances described in subsection (iii) above.

D3. We express no opinion as to:

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approach is preferable to having an extensive list of specific exceptions to the enforceability opinion; however, each approach is subject to the criticism that its scope is not precise.

To avoid some of the ambiguity inherent in the practical realization approach, the illustrative form of opinion letter follows the principal remedies approach and is designed to give the opinion recipient assurance as to the availability of the remedies that are most likely to be important to the lender following a material default: (a) judicial enforcement of the payment of principal and interest, (b) judicial enforcement of the guarantor's obligation to repay amounts set forth in the guaranty, (c) acceleration following a payment default or material default in the performance of other enforceable obligations under the loan documents, and (d) foreclosure of liens securing the debt. This approach has been recommended in a number of legal opinion reports. *See, e.g.*, ABA/ACREL Report, *supra* note 25; New York Mortgage Loan Opinion Report, *supra* note 15.

The approach is not free from criticism. The New York Mortgage Loan Opinion Report, *supra* note 15, at 159 n.39, notes that material default "is a term that may not be defined with precision." The New York Mortgage Loan Opinion Report also notes that the existence of a material default depends on future facts and circumstances that are unknown at the time the opinion is issued and the opinion giver will have no way to predict whether a future breach will constitute a material default. As a result, that report states that many lawyers have "elected to include a long laundry list of potential exceptions to enforceability," even though the approach undercuts the primary purpose behind both generic qualification and assurance forms.

Some versions of the principal remedies approach, such as in the one found in the ABA/ACREL Report, *supra* note 25, compound the potential ambiguity related to the use of the term "material" by stating that the "material default" must be to a "material provision." Several commentators have criticized this approach. *See* New York Mortgage Loan Opinion Report, *supra* note 15, at 161 n.40; TriBar II, *supra* note 6, § 3.1. The New York Mortgage Loan Opinion Report states that the term "material default" alone more accurately describes the underlying concept. *Id.* at 161 n.40.

(i) any security interest in commercial tort claims, or the perfection of any security interest in timber to be cut, as-extracted collateral, or collateral represented by a certificate of title;[98]

(ii) except to the extent such limitation or prohibition is rendered ineffective by Sections 9-406 through 9-409 of the Uniform Commercial Code as enacted in any applicable jurisdiction, (a) any purported assignment of, or grant of a security interest in, any contract, agreement, license, permit, or other property, if such assignment or grant of a security interest, or enforcement thereof, is limited or prohibited by the terms of the same or by any applicable law, (b) whether any of the Security Documents or the execution and delivery of, and the consummation of the transactions effected by, the Security Documents, or enforcement of any assignment or grant of a security interest contained therein, violate any such limitation or prohibition, or (c) the effect of any such violation;

(iii) the right of the Lender to manage, take possession of or collect the rents from the Mortgaged Property except by means of having a receiver appointed in accordance with Washington law;[99]

(iv) the Lender's ability, absent a showing of material impairment to the Lender's security, to enforce remedies in the Loan Documents based on a further encumbrance of the Mortgaged Property, lease of the Mortgaged Property, or transfers of interests in the Mortgaged Property or direct or indirect interests in the Borrower;[100]

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[98] Special rules apply to the creation and/or perfection of security interests in these categories of property. For instance, to create a security interest in commercial tort claims, the security agreement must sufficiently identify the commercial tort claims subject to the security interest. RCW 62A.9A-108(e)(1). On perfecting security interests in timber to be cut and as-extracted collateral, see RCW 62A.9A-501. On perfecting security interests in collateral represented by a certificate of title, see RCW 62A.9A-311.

[99] This Washington-specific qualification disclaims any opinion as to a lender's right (a) to take possession of real property collateral or collect rents and profits without having a receiver appointed as permitted by RCW 7.28.230, or (b) to the appointment of a receiver, as RCW 7.60.025 specifies statutory prerequisites to such an appointment.

[100] Secured lending documents typically contain restrictions on transfers of the mortgaged property and interests in the borrower, prohibitions on further encumbrances, and limitations on entering into leases. To the extent that a provision restricts the transfer of title to the mortgaged property, a due-on-sale clause generally permits the lender to declare a default if a transfer occurs without the lender's consent. The Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. §§ 1701j-3 *et seq*., (the "Garn Act") provides that a lender may enforce (with certain exceptions) a contract containing a due-on-sale clause with respect to a real property loan, notwithstanding any provision of state law to the contrary, "if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent."

The Garn Act does not, however, specifically provide that a lender may exercise its remedies by reason of the occurrence of other types of transfers that do not involve a transfer of title to the mortgaged property, such as the granting of a leasehold estate in, or a junior encumbrance against, commercial real property security or transfers of ownership interests in the borrower entity (i.e., non-title transfers). Thus, it is not clear whether the Garn Act authorizes a lender to exercise its remedies upon the occurrence of non-title transfers and preempts prior Washington law in such cases. If it does not, the enforcement of such provisions will be limited by certain decisions of Washington courts to the effect that the lender must demonstrate that enforcement is necessary to protect against impairment of the lender's security or to protect against an increased risk of default. *See* Bellingham First Fed. Sav. & Loan Ass'n v. Garrison, 87 Wn.2d 437 (1976).

(v) provisions of the Loan Documents in conflict with Washington law (including chapters 6.21, 61.12, and 61.24 RCW) that establishes or prescribes the rights, powers, obligations, and liabilities of a trustee of a deed of trust, the manner of appointing a successor trustee, the trustee's fees, attorneys' fees, and other charges that may be imposed in connection with the noticing of defaults and sales, the manner of conducting a foreclosure sale, the disposition of the proceeds of the foreclosure sale, or the effect of a trustee's deed;

(vi) except to the extent that such matters are expressly addressed by specific opinions set forth in this opinion letter, the creation, attachment, perfection, priority,[101] or enforcement of any lien or security interest;

(vii) the effect of, or compliance with, (a) international treaties or conventions; or (b) laws, rules, regulations, or decisions (1) involving land use, zoning, subdivision, environmental, health and safety, building code or human disabilities (including whether any governmental permits, approvals, authorizations, or filings are required in connection with either the development of the Mortgaged Property or the construction of improvements thereon, or as to the effect on the enforceability of the Loan Documents in the event any such required permits, approvals, authorizations, or filings are not made or obtained),[102] (2) of counties, towns, municipalities, and special political subdivisions, and (3) that as a matter of customary practice are understood to be covered only when expressly referenced by the opinion giver, including those concerning criminal and civil forfeiture, equal credit opportunity, anti-discrimination, unfair or deceptive practices, privacy, securities, antitrust, tax, fiduciary duties and disclosure, pension, labor, employee benefits, health care, or financial institution regulation; [103]

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[101] Priority opinions are generally not given in Washington opinion practice. For further discussion of the issues that make priority opinions undesirable, and the circumstances in which they might nevertheless be justified, see TriBar UCC Opinion Report, *supra* note 66; see also GLAZER ET AL., *supra* note 11, § 12.8; COMMERCIAL TRANSACTIONS COMM., STATE BAR OF CAL., REPORT ON LEGAL OPINIONS IN PERSONAL PROPERTY SECURED TRANSACTIONS § 6 (2005); LEGAL OPINION LETTERS: A COMPREHENSIVE GUIDE TO OPINION LETTER PRACTICE §10.7[C] (M. John Sterba Jr. ed., 3d ed. 2003 & Supp. 2015).

[102] In cases in which a governmental approval opinion of the sort set forth in paragraph C14 is given, if the opinion giver does not use the exclusion in subsection D3(vii)(a), the opinion giver may wish to include language making clear that such opinion does not extend to approvals related to the development of, and construction of improvements on, the real property. The opinion set forth in paragraph C14 should be understood to exclude such matters even if no specific reference is made to them.

[103] As a matter of customary practice, opinion givers are not expected to canvass all laws and regulations that might conceivably apply to a transaction. *See* TriBar II, *supra* note 6, § 3.5.2. Certain laws and regulations are customarily excluded from the scope of opinion letters in secured lending transactions, either because they are recognized as not generally applicable to such transactions (such as securities, antitrust, and tax laws and regulations), because they involve inherently factual determinations (such as laws relating to fiduciary duty and disclosure), because the opinion recipient is better positioned than the opinion giver to address them (such as bank regulations), or because the effort required to give an opinion with respect to them would generally not be cost-effective (such as land use, environmental, and municipal laws). The Committee believes that under customary practice in the secured lending area, those laws and regulations are excluded, and that opinion letters should be understood to exclude them even if no specific reference is made to them.

(viii) provisions of the Loan Documents that concern choice of law[except as provided above in paragraph C27], choice of forum, consent, or submission to the personal or subject matter jurisdiction of courts, venue of actions, means of service of process, waivers of rights to jury trials, and agreements regarding arbitration;

(ix) provisions of the Loan Documents that purport to appoint any person as attorney-in-fact for another; or

(x) provisions of the Loan Documents that purport to indemnify or exculpate any party for such party's own negligence or misconduct.[104]

D4. We call your attention to the fact that provisions of the Loan Documents regarding payment of attorneys' fees, costs, and disbursements are subject to RCW 4.84.330, which states that if a contract provides that one party is entitled to attorneys' fees to enforce the contract, then the prevailing party in an action to enforce the contract is entitled to an award of reasonable attorneys' fees, costs, and necessary disbursements. In addition, the right of any party to collect fees, costs, and disbursements in any enforcement or foreclosure proceedings under the Loan Documents may be limited to the party's reasonable fees, costs, and disbursements.

D5. *[Add if including subsection (ii) of paragraphs C11 and C12.]* [With respect to the opinions expressed above in subsection (ii) of paragraphs C11 and C12, we express no opinion as to a breach of any existing obligation of the Borrower or the Guarantor that (i) is not readily ascertainable from the plain meaning of the language in any Specified Agreement without regard to parol or other extrinsic evidence bearing on the interpretation or construction of such Specified Agreement and without regard to any interpretation or construction that might be indicated by the law of any jurisdiction other than the state of Washington that may govern such Specified Agreement or (ii) arises from (a) any financial covenant or other provision in any Specified Agreement that requires financial or numerical calculations or determinations to ascertain

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[104] Indemnification and exculpation clauses are generally enforceable in Washington unless (a) they violate public policy, (b) the negligent act falls greatly below the legal standard for protection of others, or (c) the contractual language is inconspicuous. *See* Johnson v. UBAR, LLC, 150 Wn. App. 533 (2009). Provisions that operate to indemnify or exculpate a party for its own negligent or wrongful acts are disfavored and strictly construed against the party claiming indemnification or exculpation. *See* McDowell v. Austin Co., 105 Wn.2d 48 (1985). Because of the uncertainty regarding the enforceability of such provisions in specific cases, the Committee believes that it is appropriate to exclude them from the scope of the enforceability opinion. This approach is consistent with the recommendations contained in other reports and commentaries on the subject. *See, e.g.*, OPS. COMM., BUS. LAW SECTION OF THE STATE BAR OF CAL., SAMPLE CALIFORNIA THIRD-PARTY LEGAL OPINION FOR BUSINESS TRANSACTIONS 19 (2010 rev. 2014).

In addition to these general principles, provisions in contracts for construction, alteration, repair, or maintenance of real estate, contracts for certain design or surveying services, or contracts for motor carrier transportation that purport to indemnify against liability for damages caused by or resulting from the sole negligence of the indemnitee or its agents or employees are against public policy and are void and unenforceable under RCW 4.24.115. RCW 4.24.115 also provides that the validity and enforceability of provisions in such an agreement that purport to indemnify against liability for damages caused by or resulting from the concurrent negligence of the indemnitee or its agents or employees will be limited. The qualification contained in paragraph D3(x) is intended to be broad enough to include circumstances covered by this statute, but opinion givers may wish to expressly reference the statute in appropriate cases.

compliance,[105] (b) any provision in any Specified Agreement that relates to the occurrence or existence of any material adverse change, effect or event or similar concept, (c) any cross-default provision that relates to a default under any agreement or instrument that is not a Specified Agreement, (d) any provision incorporated by reference in a Specified Agreement from any other agreement or instrument that is not itself a Specified Agreement, or (e) any purported grant of a security interest in, any purported assignment for security or other assignment or transfer of, or any foreclosure, collection, or other realization with respect to, any Specified Agreement that by its nature or terms is not assignable or transferable, in whole or in part, without the consent of any person unless such consent is obtained.]

D6. Washington deed of trust and foreclosure statutes may limit the enforceability of certain provisions of the Deed of Trust and other Loan Documents. Without limiting the generality of the foregoing, we advise you that:

(i) RCW 61.12.120 and RCW 61.24.030(4) generally prohibit judicial foreclosure of a mortgage or deed of trust or exercise of the trustee's power of sale under a deed of trust, respectively, while any other action relating to the obligation or matter secured thereby is pending or any judgment obtained in such other action is being executed upon. RCW 61.12.120 also prohibits a mortgagee from prosecuting a separate action for the same matter while the mortgagee is foreclosing its mortgage or prosecuting a judgment of foreclosure.

(ii) After a trustee's sale under a deed of trust, RCW 61.24.100: (a) may affect a beneficiary's ability to recover a deficiency judgment against a borrower, grantor or guarantor (or a general partner in any thereof) on obligations that the deed of trust secures by (x) limiting or completely barring the right to a deficiency judgment if the deed of trust secures a commercial loan and (y) completely barring the right to a deficiency judgment in all other cases, and (b) may limit or completely bar recovery of an obligation in an agreement or instrument that is not secured by the deed of trust if that obligation or its substantial equivalent is also secured by the deed of trust, such as a hazardous substance indemnity contained in both the deed of trust and in a separate unsecured agreement or instrument.

(iii) RCW 61.24.090 allows various parties the right to cure defaults in obligations secured by a deed of trust set forth in the notice of trustee's sale and cause the nonjudicial foreclosure sale to be discontinued following such cure. Such cure of a monetary default may be made on a nonaccelerated basis at any time prior to the eleventh day before the scheduled date of the trustee's sale or any continuance thereof.

[105] Because it is impractical for the opinion giver to determine whether the borrower's performance under the transaction documents would violate or cause the borrower to violate financial covenants in other documents to which the borrower is a party (or constitute a "material adverse event"), it should not be inferred that an opinion giver has performed the underlying financial analysis and calculations as to compliance with financial covenants. This is consistent with the core principle that opinion givers should not be expected to give opinions on matters that are not within the expertise of lawyers (such as financial statement analysis and economic forecasting). *See supra* Part III.

(iv) RCW 61.24.030(2) and (5) impose as conditions precedent to the nonjudicial foreclosure of a deed of trust the requirements that (a) the deed of trust state that the real property conveyed is not used principally for agricultural purposes (however, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially) and (b) the deed of trust has been recorded in each county where the real property or some part of it is situated. RCW 61.24.030(2) provides that real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods.

(v) Certain acts in the execution, completion, or assembly of the Deed of Trust may cause it not to be in technical compliance with the formatting requirements for recorded instruments set forth in RCW 65.04.045. Nevertheless, RCW 65.04.045(2) provides that "an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins." RCW 65.04.048 provides: (i) documents that must be recorded immediately and that do not meet margin and font size requirements (but do meet legibility requirements) may be recorded for an additional fee of fifty dollars, and (ii) in addition to preparing a properly completed cover sheet as described in RCW 65.04.047, the person preparing the document for recording must sign a statement attached to the document that reads substantially as follows: "I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document."

(vi) *[Add if an agent bank, indenture trustee, MERS, or other representative for the holders of the secured obligations is named as the beneficiary of a Washington deed of trust.]* RCW 61.24.005(2) defines the "beneficiary" of a deed of trust as "[t]he holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation" and does not expressly provide for such holder or holders to appoint an agent, an indenture trustee, a nominee, or any other representative to act as beneficiary. In *Bain v. Metropolitan Mortgage Group, Inc.,* 175 Wn.2d 83, 285 P.3d 34 (2012), the Washington Supreme Court responded to a question certified to it by the U.S. District Court for the Western District of Washington as to whether Mortgage Electronic Registration Systems, Inc. ("MERS") was a lawful beneficiary under two deeds of trust where MERS was named as beneficiary but never held the notes evidencing the obligations secured by the deeds of trust. The Washington Supreme Court stated that only the actual holder of the promissory note or other instrument evidencing the obligations secured by a deed of trust may be a beneficiary with the power to proceed with a nonjudicial foreclosure on real property, and concluded that MERS was an ineligible beneficiary under the Washington Deed of Trust Act, chapter 61.24 RCW, if it never held the promissory notes or other debt instruments that were secured by the deeds of trust in question. Although the Washington Supreme Court stated that nothing in its opinion should be construed to suggest that an agent cannot represent the holder of a note, at least for some purposes, it found that on the record before it MERS was not a beneficiary by contract or under agency principles. The Washington Supreme Court stated that nothing in its opinion should be interpreted as preventing the parties from proceeding with judicial foreclosures; at the same time, it acknowledged that it did not

consider that issue, which must await a proper case. The *Bain* decision has created uncertainty as to the ability to foreclose or otherwise enforce a Washington deed of trust if the deed of trust names as beneficiary an agent, an indenture trustee, a nominee, or any other representative or person other than the actual holder or holders of the instruments or documents evidencing the obligations secured by the deed of trust. Our opinion, as to the enforceability of the [Deed of Trust], is qualified by the effects of the *Bain* decision, and we express no opinion on the effects of the *Bain* decision.][106]

D7. The enforceability of the Loan Documents may be subject to Washington case law to the effect that a guarantor or other surety[107] may be exonerated if the beneficiary of the guaranty or suretyship obligation alters the original obligation of the principal obligor, fails to inform the guarantor or surety of material information pertinent to the principal obligor or any collateral, elects remedies that may impair the subrogation rights of the guarantor or surety against the principal obligor or that may impair the value of any collateral, fails to accord the guarantor or surety the protections afforded a debtor under Article 9A of the Washington UCC, or otherwise takes any action that materially prejudices the guarantor or surety unless, in any such case, the guarantor or surety validly waives such rights or the consequences of any such action. While express and specific waivers of a guarantor's or surety's right to be exonerated are generally enforceable under Washington law, we express no opinion as to whether the Loan Documents contain an express and specific waiver of each exoneration defense a guarantor or surety might assert.

D8. *[Add if any collateral or the borrower or guarantor's business is of a highly regulated nature or is likely to involve governmental filings or approvals.]* We express no opinion as to: (i) whether any limitation is imposed or any approval, authorization, or other action by, or filing with, any governmental authority is required due to the nature of any of the Collateral, including any Collateral consisting of alcohol, liquor, food, drugs, or tobacco *[consider alternate or additional categories specific to the transaction, such as firearms, ammunition, nuclear materials, defense materials, etc.] [*or due to the nature of [the Borrower's/the Guarantor's] business]; or (ii) the effect of any such limitation or the failure to satisfy any such requirement.

D9. *[Include only if the Credit Agreement has European Union bail-in provisions.]* We express no opinion on the enforceability or effect of any provision in the Loan Documents relating to the [Bail-In Legislation] or any [Bail-In Action] (each as defined in the Credit Agreement), including any effect on the enforceability of the obligations of the Borrower or the Guarantor under the Loan Documents.[108]

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[106] For additional discussion, see LEGAL OPS. COMM., WASH. STATE BAR ASS'N., OPINIONS ON DEEDS OF TRUST IN FAVOR OF AGENTS, TRUSTEES AND NOMINEES (March 14, 2013).

[107] Even when a loan transaction does not involve a guaranty, the transaction may nonetheless raise suretyship issues. For instance, suretyship issues may arise in loan transactions that involve multiple borrowers or third-party grantors of collateral. *See supra* note 67.

[108] The European Union Bank Recovery and Resolution Directive, (the "Directive"), which became effective January 1, 2016, confers on European regulators extensive powers designed to prevent European Union ("EU") financial institutions from failing. Council Directive 2014/59, 2016 O.J. (L 173) 191. Under Article 55 of the Directive, EU financial institutions are required to include in their contracts that are governed by non-EU law (such as, for example, credit agreements governed by U.S. law) provisions recognizing the right and power of EU authorities to

D[]. *[Insert other appropriate transaction-specific qualifications and exclusions.]*

This opinion letter is delivered as of its date and without any undertaking to advise you of any changes of law or fact that occur after the date of this opinion letter even though the changes may affect the legal analysis, a legal conclusion or information confirmed in this opinion letter. No opinions are implied beyond those expressly stated in this opinion letter.

[Select one of the following alternative forms of reliance language.][109] [This opinion letter is rendered only to you and is solely for your benefit in connection with the transactions contemplated by the Loan Documents.] ***[OR]*** [The opinions expressed in this letter are solely for the benefit of the Lender in connection with the Loan Documents. We consent to reliance on the opinions expressed herein, solely in connection with the Loan Documents, by any party that becomes a successor or additional Lender subsequent to the date of this opinion letter in accordance with the provisions of the Loan Documents (each a "**Successor Lender**") as if this opinion letter were addressed and delivered to such Successor Lender on the date hereof, on the condition and understanding that: (i) in no event shall any Successor Lender have any greater rights with respect hereto than the original addressees of this letter on the date hereof, nor, in the case of any Successor Lender that becomes a Successor Lender by assignment, any greater rights than its assignor; (ii) in furtherance and not in limitation of the foregoing, our consent to such reliance shall in no event constitute a reissuance of the opinions expressed herein or otherwise extend any statute of limitations period applicable hereto on the date hereof; and (iii) any such reliance also must be actual and reasonable under the circumstances existing at the time such Successor Lender becomes a Successor Lender, including any circumstances relating to changes in law, facts, or any other developments known to or reasonably knowable by such Successor Lender at such time.] This opinion letter may not be used or relied on for any other purpose or by any other person without our prior written consent.

Very truly yours,[110]

[Firm Name]

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write down, reform the terms of, cancel, and convert to equity the liabilities of a failing EU financial institution. Because EU financial institutions are lenders or potential future lenders in many U.S.-based syndicated loans, these so-called bail-in provisions have become nearly universal in multi-lender credit agreements, even if the initial lenders are all U.S. financial institutions. The Loan Trading and Syndication Association has promulgated a standard version of the bail-in provisions, which appear to be in common use by major U.S. banks. Without such provisions, future assignments to EU financial institutions would not be possible. Because these provisions give EU authorities the power to cancel or modify EU financial institutions' obligations under the credit agreement, there is concern that such action could relieve the borrower and its affiliated parties from their obligations under the loan documents or otherwise result in a modification of their obligations. As a result, many U.S. firms include an exclusion in their opinion letters for the effect of bail-in provisions.

[109] Two alternative forms of reliance language are provided. The first alternative strictly limits reliance. The second permits full reliance by successor lenders, but expressly states that reliance must be reasonable and that consent to future reliance does not constitute reissuance of the opinions or create any obligation to update the opinions.

[110] Consistent with customary opinion practice, the recommended practice in Washington is for opinion letters to be signed in the firm's name rather than in the name of an individual lawyer.

CERTIFICATE OF OFFICER
of
_____

[*Use only those paragraphs that relate to the opinions being given and modify or add to them as required in the context of the opinion letter and to support the precise language used in the applicable opinion paragraphs of the letter*.]

By this certificate, dated as of _____, 20__, the undersigned certifies to _____ ("**Law Firm**") as follows:

1. **Capacity**. I am the _____ of _____, a Washington corporation (the "**Company**"), and in such capacity I have personal knowledge of the affairs of the Company and believe that I am aware of all material matters affecting the certifications made in this certificate after making such inquiries of others as I believe necessary to knowledgeably make those certifications.

2. **Transaction Documents**. This certification is made in connection with the documents, instruments, and agreements listed on **Schedule 1** attached to this certificate (the "**Transaction Documents**") to be entered into by the Company with or in favor of _____. I am generally familiar with the terms and provisions of the Transaction Documents and the Company's obligations thereunder and have made such inquiry of persons as I have deemed appropriate to verify or confirm the statements contained in this certificate.

3. **Legal Opinion—Reliance**. Law Firm has been requested to provide certain legal opinions on behalf of the Company in connection with the Company's entering into the Transaction Documents and the transactions effected thereby. This certificate is made to provide certain factual and other information that I understand Law Firm will rely on in preparing its legal opinions on behalf of the Company. No party, other than Law Firm, is entitled to rely on this certificate.

4. **Existence—Organizational Documents**. The Company's articles of incorporation were filed with the Washington Secretary of State on _____ and a true and correct copy, including all amendments, is attached as **Exhibit A**. A true and correct copy of the Company's bylaws, including all amendments, is attached as **Exhibit B**. No actions have been taken, or are contemplated, by the Company's board of directors or shareholders to amend, rescind or otherwise modify the Company's articles of incorporation or bylaws. The documents attached as **Exhibit A** and **Exhibit B** are complete and in full force and effect on the date of this certificate. The Company has not adopted a plan of liquidation or otherwise taken, or omitted to take, any action the effect of which could reasonably be expected to cause the dissolution or liquidation of the Company or its business and assets.

5. **Authorizing Resolutions**. The authorized number of directors on the Company's board of directors is ___. Attached as **Exhibit C** is a true, correct, and complete copy of resolutions

duly adopted by the directors of the Company [by unanimous written consent] [at a meeting duly called at which a quorum was present throughout]. Those resolutions have not been amended, modified or revoked and are in full force and effect on the date of this certificate. No other shareholder or director resolutions concerning the transactions and Transaction Documents described in those resolutions have been adopted. The individual[s] signing the document attached as **Exhibit C** [are all the duly elected and serving directors of the Company] [is the duly elected and serving secretary of the Company].

6. **Execution and Delivery**. _____, the _____ of the Company, has been authorized to sign the Transaction Documents on behalf of the Company, and has, in fact, signed each of the Transaction Documents. The Company's intent to enter into a binding agreement is demonstrated by such signature, and the Company has delivered each executed Transaction Document to the other party or parties thereto with the intent of creating a binding agreement on the part of the Company.

7. **Incumbency**. Each of the individuals named in **Schedule 2** attached hereto is a duly elected or appointed officer of the Company currently holding the office indicated opposite such individual's name in **Schedule 2** and the signature written opposite such individual's name in **Schedule 2** is his or her true and correct signature.

8. **No Special Regulation of Company**. The Company is engaged only in the business of _____. The Company is not currently engaged, and does not propose to engage, in any industry, business or activity, or to own any property or asset, that causes or would cause it to be subject to special local, state, or federal regulation not applicable to business corporations generally, and I am not aware of any regulatory or other approval, authorization, or filing with any federal, state, municipal, or other governmental commission, board, or agency, or other governmental authority, that is necessary or required for the Company to execute and deliver the Transaction Documents or to consummate the transactions effected thereby [except the recording of any applicable real property security instruments and the filing of a Uniform Commercial Code financing statement].[111]

9. **No Breach of Other Agreements or Orders**. The execution and delivery by the Company of, and the consummation by the Company of the transactions effected by, the Transaction Documents do not: (a) breach, or result in a default under, any existing obligation of the Company under any material agreement or instrument to which the Company is a party; or (b) breach or otherwise violate any existing obligation of the Company under any court or administrative order that names the Company and is specifically directed to it or its property. In reaching this conclusion, I have examined or am generally familiar with the Company's significant

[111] This paragraph may be included if the opinion giver is issuing the opinions to which the paragraph relates and if it is not clear that neither the borrower's business nor the collateral is of a highly regulated nature, such that there may be laws or regulations that limit the borrower's ability to grant security interests in its property or to incur debt or that would limit the lender's ability to realize on the collateral in a default situation. Examples include pharmaceuticals, alcohol, firearms, defense materials, public utility services, and certain securities businesses. Also, where such legal limitations exist or may exist, the opinion giver may consider adding an appropriate qualification or exclusion to the opinion letter.

agreements, such as those with its bank or other lenders and agreements with the Company's customers and suppliers under which the Company has significant obligations or rights.

10. **Reliance on Other Certificates**. In addition to this certificate, in providing its legal opinions, Law Firm may rely on any certificate provided by the Company or any officer of the Company to any party in connection with the Transaction Documents.

I certify as to the foregoing as of the date first set forth above.

[NAME OF COMPANY, a _____]

By: _____

Name: _____
Title: _____

[***Optional***: The undersigned certifies that _____ is the duly elected or appointed _____ of the Company, that such individual currently holds that office, and that such individual's signature written above is such individual's true and correct signature.

_____

Name: _____, as _____ [*title*] of the Company]

Name:

_____

SCHEDULE 1

List of Transaction Documents

1. _____.
2. _____.
3. _____.
4. _____.
5. _____.

SCHEDULE 2

Incumbency

Name	Title	Signature

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Rajeev Majumdar

DATE: November 6, 2019

RE: Proposed amendments to the WSBA Bylaws

ACTION (FIRST READ): Amend[1] Articles II, IV, VI, VII, and XI of the WSBA Bylaws

Attached please find the following proposed amendments to the WSBA Bylaws:

1. Article II(E)(2) – Definition of Quorum
2. Articles IV(A), VI(A)(1)-(2), VI(C)(1), VI(C)(3), VI(D) – Board Terms, Composition, and Elections
3. Article VII(D)(2) – Executive Committee Membership
4. Article XI – Section Communications and Elections

Background

In light of the Court's original request and the Court's recent order, you have on the agenda several proposed bylaw changes. These include both new items advanced by Personnel or Executive Committee, involving a terms limit for Executive Directors (*included in a separate submission*), membership of the Executive Committee, and the definition of quorum; as well as old items that have been in suspension, including a process to allow for Sections to comment to the Legislature, and the composition and election of at-large governor representation. The last item consolidates many proposed previous changes holistically taking into account member feedback in 2018 and the collected materials of the Additional Governor Workgroup, and also incorporates democratic elections and the ability for members to serve as governor more than once. The original proposals and their amendments are also included for reference.

Due to the time that has passed, and because we are re-examining things that were done over member objections and in a rushed manner, I have reset these all to 1st read, so that we don't fall into the same trap of not giving members time to look at the materials and provide input to you.

[1] The WSBA Bylaws may be amended at any regular meeting of the Board of Governors or at any special meeting called for that purpose. All proposed bylaw amendments must be posted to the WSBA website and presented for "first reading" at least one meeting prior to the meeting at which the Board will vote on the amendment except as otherwise provided in the WSBA Bylaws. WSBA Bylaws Art. XVI (Amended May 17, 2018).

Bylaw amendment regarding "Quorum"

Bylaws Section II.E.2 currently is as follows:

> "Quorum" means the presence of a majority of the voting membership (i.e., more than half the voting members plus one). A quorum must be present when votes are taken.

Issue: Currently the definition of a Quorum (50% +1) is results in a higher threshold if the total voting members are an odd number, versus a simple majority threshold if over half the total voting members is an even number . The following examples demonstrate the differing results if the total voting membership is an even number compared to an odd number.

Committee A has 7 members. 50% of 7 is 3.5. Since there are no ½ members, the 50% is rounded up to 4 and the plus one results in 5 people required for a quorum. Committee B has 6 members. 50% is 3 and the plus one quorum is 4. If we correct the definition, the quorum for a 7-member committee is 4 (more than half), and the quorum for a 6-member committee is also 4, but in both instances the rule works the same. It is over 50% of the voting members.

Proposed Amendment:

> "Quorum" means the presence of a majority of the voting membership (i.e., more than half the voting members ~~plus one~~). A quorum must be present when votes are taken.

Proposed Bylaw Amendments –Governor Elections
(Art. IV & VI)

These amendments are intended to achieve three goals:

1. Policy/Governance Transparency.

2. Enhance Member Influence/Engagement in WSBA Governance.

3. Retain Governance Experience on the Board.

These changes do not affect the requirements for the existing At-Large positions but moves the election of the candidates to the general membership instead of the BOG. There is nothing about the makeup of the BOG that makes it more qualified than the membership at large to select the membership's representatives, but does impose a duty on the BOG to ensure the candidates do meet such criteria. These changes also reverse changes made in a rushed manner and made contrary to the finding of the governance study which recommended shrinking the size of the BOG. This does not preclude the issue of composition or limit future discussion with the court, but rather resets the discussion to the appropriate point before these changes to composition were rushed through.

REDLINE PROPOSED BYLAW AMENDMENTS re: Governor Elections

IV. GOVERNANCE

A. BOARD OF GOVERNORS

…

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) ~~six~~ three Governors elected at-large pursuant to these Bylaws.

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 ~~18~~ 48 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.

2. At Large Governors: There will be a total of ~~six~~ three At Large Governor positions.
   a. Two ~~Lawyer~~ Member At Large Positions: Any Active ~~lawyer~~ member of the Bar, except a person who has previously served as a Governor for more than ~~18~~

48 months, may be nominated or apply for election as an At Large Governor, except as provided in this Article.

b. One Young Lawyer Position: Any Active lawyer member of the Bar who qualifies as a Young Lawyer, except a person who has previously served as a Governor for more than ~~18~~ 48 months, may be nominated or apply for election as an At Large Governor, except as provided in this Article.

~~c. One Limited License Legal Technician (LLLT) or Limited Practice Officer (LPO) Position: Any Active LLLT or LPO member licensed in Washington State, except a person who has previously served as a Governor for more than 18 months, may be nominated or apply for election as an At Large Governor, except as provided in this Article.~~

~~d. Two Community Representatives: Any resident of Washington State, except a person who has previously served as a Governor for more than 18 months or who is licensed or has previously been licensed to practice law in any state, may be nominated or apply for election as an At Large Governor, except as provided in this Article.~~

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

…

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 ~~two~~ one At Large Member Governor~~s (one lawyer and one community representative)~~ – 2014 and every three years thereafter.

b. First, Fourth, Fifth Congressional Districts and the South region of the Seventh Congressional District and ~~two~~ one At Large Young Lawyer Governor~~s (one from nominations made by the Young Lawyers Committee and one LLLT/LPO)~~ – 2015 and every three years thereafter.

c. Second, Ninth and Tenth Congressional Districts and ~~two~~ one At Large Member Governor~~s (one lawyer and one community representative)~~ – 2013 and every three years thereafter.

…

3. Election of At-Large Governors

~~At-Large Governors are elected by the BOG as set forth below~~. At-Large Governors shall be elected in the same manner as Governors from Congressional Districts, except that all Active members wherever they reside shall be eligible to cast a vote in each At-Large election. Candidates must meet the requirements for office of the specific At-large position they seek as outlined in §VI.A.2 and be put forward onto the ballot by the Board of Governors as follows:

a. For each of the two Member At Large positions, the Board of Governors shall select and place no more than three candidates on the ballot from nominations made by the Diversity Committee. 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. Under-representation and diversity may be based upon, but not be limited to age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor will be determinative. The Board of Governors may place less than three candidates on the ballot if less than three candidates apply or meet the criteria.

b. For the Young Lawyer At Large position, the Board of Governors shall place three candidates on the ballot from nominations made by the Young Lawyers Committee. The Young Lawyers Committee will forward two or more candidates who will be Young Lawyers as defined in Article XII of these Bylaws at the time of the election. The Board of Governors may place less than three candidates on the ballot if less than three candidates have been forwarded by the Young Lawyers Committee.

…

D. ELECTIONS BY BOARD OF GOVERNORS

~~**1.** At- Large Governors~~

~~The BOG will elect four additional Governors from the Active membership and two additional Governors from the public. The election of At Large Governors will take place during a BOG meeting not later than the 38th week of each fiscal year and will be by secret written ballot.~~

~~**a.** The BOG will elect two At Large Governors who are persons who, in the BOG's sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented 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 the discretionary determination of the BOG at the time of the election of any At Large Governor to include, but not be limited to age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor will be determinative.~~

~~**b.** The BOG will elect one At Large Governor from nominations made by the Young Lawyers Committee. The Young Lawyers Committee will nominate two or more candidates who will be Young Lawyers as defined in Article XII of these Bylaws at the time of the election.~~

~~**c.** The BOG will elect one At Large Governor who is a LLLT or LPO from nominations made by the Nominations Committee.~~

~~**d.** The BOG will elect two At Large Governors who are members of the general public from nominations made by the Nominations Committee~~

… [THE REMAINDER OF SECTION D UNCHANGED EXCEPT FOR RENUMBERING]

Proposed Bylaw Amendments – Executive Committee
(Art. VII.D.2)

This amendment is intended to achieve one goal:

1. Policy/Governance Transparency.

This change allows the Executive Committee delegate from a BOG class not otherwise represented to send an alternate; this ensures maximal participation and representation in Executive Committee decisions.

REDLINE PROPOSED BYLAW AMENDMENTS re: Executive Committee

VII.D.2

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 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.

Proposed Bylaw Amendments – The Sections
(Art. XI)

These amendments are intended to achieve three goals:

1. Policy/Governance Transparency.
2. Maintain Democratic Weight.
3. Realignment towards addressing member concerns.

There have been several years of change and uncertainty in direction given to both the WSBA staff and Section leadership on the ability of Sections to comment on and take positions on issues of interest to their members. Sections are intended to be subject matter experts within their areas of law, both for the benefit of their members and the public. Section leaders have expressed concern and frustration in regards to this change and their inability to do some of the basic functions sections were set up to do by gathering expertise.

These amendments are intended to clarify and protect certain advocacy rights for Sections, while protecting the WSBA's public identity as a whole, as well as to increase flexibility in the timing of elections consistent with concerns about pairing elections with mid-year section meetings.

REDLINE PROPOSED BYLAW AMENDMENTS

E. BYLAWS AND POLICIES

1. 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 present at a section meeting. Section bylaws or amendments thereof will become effective when approved by the BOG. However, no Bar Bylaw, policy, or procedure will prevent a section from commenting or issuing a position on a public matter, so long as:

a. Such position has been approved by the Section's Executive Committee;

b. The Section has promulgated Bylaws providing for reasonable comment and feedback on the issue from its members;

c. The Section has carried out a GR 12 Analysis in line with a GR 12 Analysis Policy promulgated by the Board of Governors; and

d. The Section makes explicitly clear in all communications that its position is not that of the WSBA as a whole, but only that of the Section, and that the position is not endorsed by the WSBA as a whole.

G. NOMINATIONS AND ELECTIONS

3. Timing. Nominations and elections for open section executive committee ~~persons~~ positions will be held ~~between March and May~~ no later than June 30th of each year.

WASHINGTON STATE
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Additional Materials

Proposed Bylaw Amendments on the table: as previously proposed and for continued discussion/consideration

and submit all required licensing forms for the applicable membership type for the year in which the member will be readmitted.

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 readmission to Active status from Suspended status will be handled in a similar fashion to applications for readmission 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 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 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) ~~six~~ three Governors elected at-large pursuant to these Bylaws.

2. Duties

Proposed Bylaw Amendments – Administration
(Art. IV)

These amendments are intended to achieve two goals:

1. Policy/Governance Transparency.

2. Fiscal/Public Responsibility.

These changes affect Art. IV and the administration and oversight of the WSBA, and reduce costs, including: the right of governors to communicate with the membership; eliminating the Immediate Past President position; capping E.D. compensation; requiring Board of Governors approval for hiring or firing of GC or Chief Disciplinary Counsel; and putting a ten year term limit on the position of the E.D.

REDLINE PROPOSED BYLAW AMENDMENTS re: Administration

IV. GOVERNANCE

A. BOARD OF GOVERNORS

…

2. Duties

…

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. To facilitate such Governor communications, at the request of any Governor representing a Congressional District, the staff of the WSBA shall transmit to the members of such Congressional District without delay any communications described in (2) above by the means requested by such Governor, whether electronic or physical mail, and without in any way altering such communications without the express permission of said Governor.

…

B. OFFICERS OF THE BAR

…

3. Immediate Past President (Eliminated)

~~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.~~

~~...~~

5. Executive Director
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. Notwithstanding the foregoing, the Executive Director shall not have the authority to hire or fire the General Counsel or the Chief Disciplinary Officer, which authority is reserved exclusively to the Board of Governors, acting by majority vote to take such actions. The Executive Director serves in an ex officio capacity and is not a voting member of the BOG. The Executive Director's total annual compensation may not exceed the then current total compensation paid to the Associate Supreme Court Justice of Washington.

…

7. Vacancy

…

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. No individual shall serve as Executive Director for more than ten years.

~~The President-elect.~~

The President, President Elect, Executive Director and Chief Operations Officer serve as *ex officio*, non-voting members, and the Treasurer serves as Chair of the Committee and has a vote on the committee. ~~Up to two additional voting members who are not Governors or officers may be appointed by the President subject to the approval of the BOG.~~

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 ~~lawyer~~ member of the Bar, except a person who has previously served as a Governor for more than 18 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.

2. At Large Governors: There will be a total of ~~six~~ three At Large Governor positions.

Proposed Bylaw Amendments – At-Large Governor Elections
(Art. VI)

These amendments are intended to achieve two goals:

1. Policy/Governance Transparency.

2. Enhance Member Influence in WSBA Governance.

This change does not affect the requirements for the At-Large positions but moves the election of the candidates to the general membership instead of the BoG. There is nothing about the makeup of the BoG that makes it more qualified than the membership at large to select the membership's representatives.

REDLINE PROPOSED BYLAW AMENDMENTS re: At-Large Governor Elections

VI. ELECTIONS

C. ELECTION OF GOVERNORS

…

3. Election of At-Large Governors

~~At-large Governors are elected by the BOG as set forth below.~~ At-Large Governors shall be elected in the same manner as Governors from Congressional Districts, except that all Active members wherever they reside shall be eligible to cast a vote in each At-Large election. Candidates must meet the requirements for office of the specific At-large position they seek as outlined in §VI.A.2.

…

~~**D.** ELECTIONS BY BOARD OF GOVERNORS~~

~~**1.** At-Large Governors~~

~~The BOG will elect four additional Governors from the Active membership and two additional Governors from the public. The election of At Large Governors will take place during a BOG meeting not later than the 38th week of each fiscal year and will be by secret written ballot.~~

~~**a.** The BOG will elect two At Large Governors who are persons who, in the BOG's sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented 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 the discretionary determination of the BOG at the time of the election of any At Large Governor to include, but not be limited to age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor will be determinative.~~

~~**b.** The BOG will elect one At Large Governor from nominations made by the Young Lawyers Committee. The Young Lawyers Committee will nominate two~~

~~or more candidates who will be Young Lawyers as defined in Article XII of these Bylaws at the time of the election.~~

~~**c.** The BOG will elect one At Large Governor who is a LLLT or LPO from nominations made by the Nominations Committee.~~

~~**d.** The BOG will elect two At Large Governors who are members of the general public from nominations made by the Nominations Committee~~

… [THE REMAINDER OF SECTION D UNCHANGED]

a. Two Lawyer At Large Positions: Any Active lawyer member of the Bar, except a person who has previously served as a Governor for more than 18 months, may be nominated or apply for election as an At Large Governor, except as provided in this Article.

b. One Young Lawyer Position: Any Active lawyer member of the Bar who qualifies as a Young Lawyer, except a person who has previously served as a Governor for more than 18 months, may be nominated or apply for election as an At Large Governor, except as provided in this Article.

~~c. One Limited License Legal Technician (LLLT) or Limited Practice Officer (LPO) Position: Any Active LLLT or LPO member licensed in Washington State, except a person who has previously served as a Governor for more than 18 months, may be nominated or apply for election as an At Large Governor, except as provided in this Article.~~

~~d. Two Community Representatives: Any resident of Washington State, except a person who has previously served as a Governor for more than 18 months or who is licensed or has previously been licensed to practice law in any state, may be nominated or apply for election as an At Large Governor, except as provided in this Article.~~

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.

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Proposed Bylaw Amendments

Additional Materials

Exhibit A, Letter from Govs. Elect Meserve, Majumdar, Bridges
Exhibit B, Report on Optimal Size of Boards
Exhibit C, WSBA's Use of Public Participants
Exhibit D, Report on Cost of a Governor
Exhibit E, Report on WSBA Member Involvement
Exhibit F, Report on Timeline of New Governor
Exhibit G, Addition of New Governors Workgroup Roster
Exhibit H, LPO Survey Results
Exhibit I, Workgroup Notes

WASHINGTON STATE
BAR ASSOCIATION

Exhibit A
Letter from Govs. Elect Meserve, Majumdar, Bridges

Mr. Rajeev Majumdar, Governor-Elect, District 2
Mr. Dan Bridges, Governor-Elect, District 9
Ms. Chris Meserve, Governor-Elect, District 10

September 22, 2016

Board of Governors
Washington State Bar Association
1345 - Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear Board of Governors:

We have watched the debate concerning the proposed amendments to the Bylaws, GR 12, and APRs. We have reviewed many responses from members and Bar organizations. We write to share our perspective, reached independently of each other, coming to the same conclusions.

Here, we assume all the amendments have value. Our concern is process. We have heard the Board's explanation to members that holding a special meeting in August for a first reading followed in short order by a vote in September is standard. With the greatest of respect, that does not appear to be the case as shown by a variety of other matters brought before the Board in the last few months.

We appreciate the time you put into this work and know you view it as the capstone of a long process. We think, though, this is not "the end," but "the beginning of the end." These proposals deserve as much opportunity for input and consideration as others coming before the Board, including Escalating Costs of Civil Litigation, prayers at Indian Law seminars, etc. It is not enough to say there have been meetings and a time for input. Members do not consider proposals such as this until they are in a final form and these were not final until last month. Let the members consider them in a reasonable manner.

Our sense is this Board is not giving due weight to how this process is being viewed by the members. We have heard you acknowledge it but we fear you are underestimating it. The members will, rightly or wrongly, view this as rushed through before they could even figure out what was going on. They will view the entire process, including town hall meetings pushed in on the eve of the vote, as contrived. Again, we take no position whether that is true. However, insofar as the last few months the Bar News has had on its cover everything **except** these proposals, members might have basis to argue the Bylaw changes have been hidden in plain sight.

We agree members have a responsibility to be informed and participate. They are starting to now. Let them continue. The members are asking for, and we support, more time. We acknowledge President Hyslop's column in September discussed some (but not all) of the proposals. That is a good start but we submit more needs to be done. We urge the Board to present these to the members beginning with a cover story in the Bar News and a "pro and con" section within it. We encourage direct outreach at local bar meetings, in publications, and e-mails to reach the greatest numbers of members possible. <u>These amendments change the very nature of what the Bar is</u>. We submit they ought to be affirmatively published and discussed at all levels consistent with that gravity.

We do not ask you to reject the proposals. We urge this Board vote to table them and establish a timeframe for their meaningful consideration by the members before a final vote. We appreciate you have traveled a long road to get to where you are, but for the sake of the Board, the members, and the Bar as a whole, we urge you to act in a judicious manner. These bylaws, if passed, may last beyond our mutual lifetimes. If it requires a few months to obtain a meaningful consensus of the members or to create a better product, that is a small price to pay. The perception there was a rush to judgment could create a wound which will take a decade or more to heal, if ever. We ask that you proceed carefully and pause before this important final step.

Thank you for your consideration.

Very truly yours,

Rajeev Majumdar
Governor-Elect, District 2

Dan Bridges
Governor-Elect, District 9

Christina Meserve,
Governor-Elect, District 10

WASHINGTON STATE
BAR ASSOCIATION

Exhibit B
Report on Optimal Size of Boards

To: New Governor Exploration Board.

From: Daniel Clark, WSBA Governor District 4

Date: August 13, 2018

Re: Board Size Best Practices & Neighboring States use of Public Members.

For my contribution for the Work Group, I am exploring what the 2014 Work Group on the new Governor's came up with as far as recommendations, then what the BOG ultimately did in 2016, and then examining best practices and how they relate to best practices of non-profit governing boards, specifically the BOG. I also will examine the current board sizes and compositions of seven (7) neighboring states.

Please note that any conclusions drawn in this report to the information are solely my own personal observations and not meant to represent that of the group.

I. WSBA 2014 work group recommendations:

The Governance Taskforce spent eighteen (18) months conducting an in-depth review of the governance of the WSBA and its final report was finished June 24, 2014. Pertinent to the discussion regarding the potential current bylaw change before the Board of Governors is a found in page 18 of the report. I will provide the actual pertinent quote from the report for the Taskforce:

Recommendation: ***To accommodate the additional Governors, the number of elected positions should be reduced to nine. The three current "at-large" positions should be retained to ensure participation by a "young lawyer and members that reflect historically under-represented groups. This would provide for a Board of 15 persons, one of which would be the President.***

> Accommodating the two public and one LPO/LLLT members on the Board of Governors could be done by adding more seats. But that is not ideal. With the President, there are currently 15 members on the Board. Increasing the size of the Board will lead to reduced accountability and participation by members. Indeed governance best practices typically recommend smaller boards between 10 and 15 members. See e.g., Daniel Suhr, *Right-Sizing Board Governance*, Hasting Law Journal (2012). As such, the number of attorney members on the Board should be reduced. That reduction should come from the member elected positions, rather than from the at-large positions. This can be accomplished by reducing the number of member-elected positions from eleven to nine. The at-large positions should not be reduced; those positions provide diversity that may not be achieved through the member election process.

Governor Daniel D. Clark
District 4 Governor
Room 211, Yakima County Courthouse
Yakima, Washington 98901
(509) 574 1200; Fax: (509) 574-1201

> Reducing the number of member-elected positions from eleven to nine will require that the historical connection to congressional districts be changed. This linkage originated in the State Bar Act, which provides for at least one governor from each congressional district. See RCW 2.48.030. One way to approach this- and there may be others- is to elect three governors from each of the Court of Appeals districts. Doing so would continue to ensure geographic diversity among Board members. Given that the WSBA operates under the auspices of the Supreme Court, basing the election on districts drawn from judicial elections is a sensible alternative.

A footnote to this report indicated "If the Supreme Court and WSBA do not wish to reduce the number of electoral positions, we would still recommend adding two public and one LPO/LLLT member to the Board of Governors. In such circumstances, however, we would recommend that the Board consider steps that can be taken to ensure accountability and participation by members given the larger size of the Board.
(Governance Final Report Pages 18 & 19: https://www.wsba.org/docs/default-source/about-wsba/governance/governance-task-force/wsba-governance-task-force-report-and-recommendations---final.pdf?sfvrsn=23163ef1_8

Pertinent Law Review Article Information:

Reflecting the "current recommendations for smaller, more effective "working boards" 5 different ABA publications recommend board of directors ranging from 7 to 15 members."

ABA Coordinating Comm. on Nonprofit Governance, supra note 1, at 21. 32. Id. at 20 (suggesting 9 to 12 directors); ABA Corporate Laws Comm., Corporate Director's Guidebook 42 (6th ed. 2011) (suggesting 7 to 11 directors); Gregory V. Varallo et al., Fundamentals of Corporate Governance 14 (2d ed. 2009) (citing a study recommending 8 to 9 directors); William G. Bowen, Inside the Boardroom: A Reprise, in Nonprofit Governance and Management 3, 5 (Victor Futter ed., 2002) (suggesting 10 to 15 directors); Martin Lipton & Jay W. Lorsch, A Modest Proposal for Improved Corporate Governance, 48 Bus. Law. 59, 67 (1992) (recommending boards of 8 or 9, and not more than 10); see Sanjai Bhagat & Bernard Black, The Uncertain Relationship Between Board Composition and Firm Performance, 54 Bus. Law. 921, 941 (1999) (reviewing literature arguing for small board size without delivering an independent conclusion). 33. Am. Law Inst., Principles of the Law of Nonprofit Organizations § 320 cmt. g(3), at 118 (Discussion Draft, 2006) (discussing a study of the board size and composition of S&P 500 companies); id. § 320 n.17 (same).

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As Suhr argues:

> This move to small boards is based on empirical research comparing the different organizational and interpersonal dynamics on a large boards versus small boards. Large boards tend to run on parliamentary procedure (particularly when the board comprises a group of lawyers!) where speakers are called on and identified, rather than the conversational style possible on a small board. This conversational style allows for consensus to emerge more organically, after a full and vigorous discussion, whereas decisions on big boards are almost always made by a formal vote after a stilted and often shortened discussion. Moreover, large boards allow for free-rider members who may attend a few meetings but who do not contribute to the actual governance of the organization: in the memorable phrase of William O. Douglas, "directors who do not direct". By contrast, everyone on a small boards needs to contribute for the board to complete its work. Additionally, members of a small board have the opportunity to get to know one another, which fosters a sense of cohesion and collegiality. One a large board of 50 members, it is almost impossible to achieve this level of interpersonal intimacy along all the directors. Knowing one another as individuals helps directors operate more effectively as members of the board "team." Finally, disengaged and unwieldy boards simply transfer power to the CEO and other staff, who manage the organization without effective oversight. On a smaller board, however, the CEO must work with engaged directors who hold him or her accountable through regular meetings in which the directors can make prompt decisions based on good information. In short, these small-board dynamics increase the productivity and cohesion of the board, making it more efficient, effective, and collegial.
> See pages 5 & 6 of law review article at:
> http://www.hastingslawjournal.org/wp-content/uploads/Suhr-Voir-Dire.pdf

Suhr concludes in his law review report recommending smaller Bar Association Governance by stating:

> … Many bars operate with ill-structured, hands-off boards that almost necessarily delegate significant power to management. These boards are unwieldly, ineffective, and out of step with best practices for corporate and nonprofit governance. This problem stems from a fundamental misunderstanding about the role and goal of the board. Contrary to the assumptions that lead to bloated boards the role of a bar association's board is not to be a representative legislative assembly, but rather to be the governing body atop a significant organization with thousands of

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members, millions of dollars, and scores of staff. When bar leaders consider their role in that light, they may start to take their own advice and move to smaller, more effective boards that play a vital role in the organization's operations and strategic direction. Bar associations should follow California's lead by undertaking self-study evaluations. And the conclusion of those studies should be a course of action similar to that taken by Minnesota: a smaller board of directors that actually governs, and a larger representative assembly to speak for the profession on legal and legislative issues.

Corporate Board Best Practices:

I next looked at what typical corporate board structures look like. A common question that several websites ask is "how many people are typically on corporate boards?

Answer: Boards typically have between 7 and 15 members, although some boards have as many as 31 members. According to a Corporate Library, study the average board size is 9.2 members. Some analysis think boards should have at least seven members to satisfy the board roles and committees. See https://www.2020wob.com/individuals/20-questions-about-boards

There does not appear to be a universal agreement on the optimum size of a board of directors. **A large number of members represents a challenge in terms of using them effectively and/or having any kind of meaningful individual participation.** (emphasis added).

The pros of smaller boards is that they tend to meet more often because it's easier to accommodate everyone's busy schedules. Board discussions are generally shorter and more focused than those of larger boards, which typically leads to faster and better decision-making. Since smaller boards spend much time together, they form close bonds and are typically willing to give everyone a fair say.

Board dynamics also tend to different with larger boards. Board discussions are typically longer with larger boards, as they bring forth a greater variety of perspectives. On the flip side, having many opinions around the table allows quieter members to kick back and disengage causing them to feel like their voices have no meaning. It's also easier for cliques to form with larger boards which can isolate some board members even further. Many large boards alleviate some of these problems by using an executive committee as a steering committee. See: https://www.boardeffect.com/blog/board-size-nonprofit-governance/

Discussion:

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The 2016 Board of Governors adopted the recommendation to amend the bylaws to add three (3) new potential Governors to the Board of Governors. It appears based upon the record, that the 2016 BOG completely failed to adopt any measures to address the ramifications to increase the size of the BOG from 14 to 17 members (18 including the WSBA President, and 20 including the President-Elect and Immediate Past President).

Taking this current action seems to violate the best practices as mentioned above with regard to the size of a Board. The BOG does not appear to have taken any steps to look to address the "**challenge in terms of using them effectively and/or having any kind of meaningful individual participation.**"

The 2016 BOG appears to have adopted some of the recommendations of the Taskforce but simply ignored others in their adoption of the current bylaws. There does not appear to be any mitigation considerations on the increase of the size of the board, how that will potentially impact current BOG dynamics, increased cost, increased time for BOG meetings, and potentially for increased BOG dysfunction.

The Taskforce recommended the BOG look at potentially changing the current 11 geographical congressional district Governor elections. The problem with that is that each Governor that has been elected arguably has a liberty and property interest having been elected as Governor for their respective District and with staggered elections on a three (3) year rotational basis, it seems unlikely and problematic that current Governors would be willing to forego the remaining terms of their elected service.

Other potential considerations for the now BOG:

1. **Look to change and reduce the 11 Geographically elected Congressional District Governor positions.**

The Taskforce recommended the BOG look at potentially changing the current 11 geographical congressional district Governor elections. The problem with that is that each Governor that has been elected arguably has a liberty and property interest having been elected as Governor for their respective District and with staggered elections on a three (3) year rotational basis, it seems unlikely and problematic that current Governors would be willing to forego the remaining terms of their elected service.

Another practical problem would be if the BOG were to adopt such a plan and reduce the 11 to 9, to retain the smaller ultimate BOG size, there were no recommendations on how to ensure that geographic diversity would occur within the three (3) appellate court districts which would be one way that the WSBA could redistrict elected governors. An example of this would be with District 4 and 5 currently, where District 4, encompasses the Tri-Cities, Moses Lake and Yakima areas, along with other much smaller populated areas of the central Washington. District 5, is predominately the remaining east side of the state and is overwhelmingly dominated in population and attorney membership in

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Spokane County. From practical standpoints, unless WSBA were to carve out at least 1 geographically designated Governor for former District 4, almost certainly just by sheer membership location, Spokane County would end up with all three (3) of the Appellate III Governor positions.

2. **Look to Potentially reduce the size of the two-at large BOG Governor positions to accommodate new BOG Governor (potential Public and LPO/LLLT member).**

The 2014 Taskforce's final report recommended not changing the current makeup of the three (3) at-large Governor positions. They recommended that the current WYLC young lawyer at-large position be retained, along with the two other at large positions to ensure diversity. The 2014 report didn't give any basis for that decision. With WSBA having celebrated its five (5) year anniversary for equity and inclusion for its current Diversity emphasis, an argument could be made that as WSBA evolves and this program intends to reach its goals, that there may be a potential to look to reduce the size of the BOG to maintain optimal governance size by looking to reduce one or both of the current at-large Governor positions. Under this hypothetical potential, if WSBA and the Diversity Program are effectively working, the current BOG elections would seem to now afford equity and inclusion of traditionally under-represented WSBA member demographics.

If the BOG were to adopt such a change, it would seem reasonable to look to phase in the elimination of one (1) BOG at large position to help mitigate the increased size of the BOG if the BOG retains the current bylaw. The counter-argument to this would be that by eliminating the at large position, it will undermine the goals of equity and inclusion and potentially take away a current avenue for under represented WSBA membership to be able to serve on the BOG and/or have a meaningful voice in governance. This may be something that the BOG wants to look at though if the overall goal is not to increase the size of the current BOG and/or to avoid going past 15 overall Governors.

3. **Abolish the entire Geographic District representation and just have WSBA wide member elections.**

Another potential for the current BOG to consider would be to look to abolish all positions by a certain date and just have all WSBA member wide elections. Obviously doing this would seem to potentially violate the current State Bar Act, and from a practical standpoint would seem greatly problematic. Given that the vast amount of membership is centered in the Seattle/King County metro area, from a practical standpoint, one can clearly assume that most candidates that would ultimately be elected if there were no geographical Governor safeguards, it is more than likely that Governors in District 1, 2, 3, 4, and potentially 5 and WSBA members in those regions

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would end up not having geographic representation. Given that there is a vast political differences in philosophies by geographical location in this state, and a real "divide" between the west and east of this state in regards to liberal v. conservative philosophies, doing this would seem to be ill advised and likely problematic.

4. **Roll Back 1 or 2 Public Member Governor positions.**

Another option to reduce the size of the BOG in order to maintain the ideal board size, would be to look to not implement both Public member positions, but instead only to adopt 1 of the 2. The 2014 Governance Taskforce recommended at least two because:

> Adding one public member, however is not sufficient. There is a real danger that he or she would find him-or herself quickly outnumbered and isolated. At least two public members are necessary to provide a respectable counterweight to those members who are attorneys or other legal professionals.
>
> Page 18 of report.

The report does not cite any basis for the conclusion to recommend two members. This BOG may want to look to eliminate one of the two public member positions to help mitigate the increased size of the BOG. Doing so would seem to accomplish the goal of ensuring that:

> the WSBA must operate for the benefit and protection of the public, the inclusion of public members on the Board of Governors is essential. As other bar associations have discovered already, such members bring a unique perspective, and their relative lack of legal expertise helps to keep a board focused on monitoring, oversight, and providing direction as opposed to management.
>
> Page 18.

The addition of at least 1 public member may also help reduce the risk of Anti-trust claims being made against the WSBA.

5. **Roll Back and/or defer implementation of the guaranteed LPO/LLLT Governor position.**

The 2014 report found "Although the WSBA also supervises and regulates Limited Practice Officers (LPOs) and Limited License Legal Technicians (LLLTs), neither LPOS nor LLLTs are eligible to serve on the Board. (Page 17 of report).

The report further added, "The WSBA is also charged with the regulation of LPOs and LLLTs. Their inclusion on the Board is appropriate; one Governor should be appointed from the pool of LPO and LLLT members.

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There are currently 37 LLLT members, with 34 active. There are currently 772 active LPO's who reside in the state of Washington and 153 total inactive LPOs that reside in the State of Washington.

The smallest geographic District with WSBA membership is District 4. Per the July 3, 2018 report from the Executive Director, District 4 had 1351 members and 1139 active members in it.

It would seem potentially reasonable to look to defer implementation of an automatic guaranteed Governor seat to these two limited license types until the aggregate combined total of both were equal to or greater of that than the lowest number of a geographic district.

If that were to be done, I would firmly believe it would make sense to then immediately allow both limited license types to run for any and all WSBA elections. It seems very fair that WSBA members are WSBA members, so we shouldn't be expecting these limited license types to pay the same membership license fees, but not receive the same benefits of membership, one of which is the ability to run for an elected office and/or vote in a WSBA election.

One very interesting quote from the 2014 Taskforce report that the 2016 BOG appears to have agreed with, but then appears to have ignored is the following:

> The WSBA is also charged with the regulation of LPOs and LLLTs. Their inclusion on the Board is appropriate; one Governor should be appointed from the pool of LPO and LLLT members. **However, the Limited Practice Board indicated little interest in participation on the Board of Governors at this time. And LLLTs will not begin to be licensed until 2015. Until there is a sufficient pool from which to select a Governor, the LPO / LLLT "slot" should be filled with a public member. (emphasis added).**

The fact that currently there is 37 total LLLTs and 34 active LLLTs does not seem to be what would be a "sufficient pool" to guarantee a spot as Governor. While this issue may be open for debate and the 2014 Task Force did not really address what would be "sufficient", it seems to be an issue for discussion as far as if it would be better to potentially defer the LPO/LLLT position at this time for a public member, if the Board felt that overall board size was of paramount importance.

6. **Potentially have 1-3 of these currently scheduled position be "advisory" positions without voting power.**

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One other potential discussion item would be in examining other neighboring states, some have public and/or other members that are part of the BOG in a non-voting member status. If the now BOG were to adopt something like this, it could satisfy having public members concerns and input by the current BOG as well as LPO/LLLT's, but that would not officially expand the current footprint of the overall BOG.

Doing so, would potentially be seen as disrespectful to both classes, would likely be argued to not really give either a meaningful voice, because they would not be empowered with a vote. However, it would seem as a potential to help give both currently unrepresented groups on the BOG input and voice and to have the current 14 Governors be able to better hear from both of these groups about issues involving governance.

II. OTHER NEIGHBORING STATE BAR ASSOCIATIONS TREATMENT OF PUBLIC MEMBERS & OVERALL GOVERNANCE SIZE

With the goal of examining how other neighboring states to Washington dealt with self-governance issues of their respective state Bar Associations, and in wanting to examine how many states currently have public members on their BOGs, I examined at seven (7) neighboring State Bar Associations formation of Government. They varied in ranges in size between 5 and 30. Arizona seems the vast outlier, with 30 member which include Dean's from the 3 law schools and various other ex-officio members and 19 attorney members and 4 public members. Idaho was the smallest with 5 "Commissioners" that are analogous to WSBA Governors which serve WSBA's Governor functions.

Three (3) of the seven (7) states had thirteen (13) BOG members, with 2 other states having sixteen (16) and nineteen (19) respectively. Using averages for all seven (7) states, the mean score was: 15.57 members including the high and low. Removing Arizona and Idaho, the two states with the highest and lowest number of BOG members, the mean average was: 14.8 members.

The following is a breakdown of the various neighboring western states to Washington's bar governance structure:

Idaho: 5 Commissioners that run bar. No public members.

Oregon: 19 Governors, including 1 that serves as President. 4 public members with one each year elected.

Montana: They call their BOG the Board of Trustees. 16 total members. (does not appear to have public members).

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California: 13 total members called Trustees. 5 attorneys appointed by California Supreme Court. 2 Attorneys appointed by legislature. 6 public or non attorney members four appointed by the Governor, one by the Senate Committee on Rules and one by the Speaker of the Assembly.

Utah: called Commissioners: 13 voting members, 11 attorneys and 2 public members. They also have ex-officio members: 13 total, who do not vote, including State ABA delegates, ABA YLD representative, Paralegal Division Representative, Women Lawyers Representative, Young Lawyers, Representative, LGBT & Allied Lawyer Representative, Law School Dean representatives (2), Minority Bar Representative, and Immediate Past President.

Arizona: Comprised of 30 people, four non-attorney, public members appointed by the Board, three at large members appointed by Arizona Supreme Court, 19 attorney members elected by fellow Bar members in their district, and four ex-officio members. (immediate and past president and deans of Arizona's three law schools).

Alaska: 13 total governors including 2 public members (1 currently is Treasurer, with 40 years in banking including masters degrees in finance.).

This was a limited sampling of neighboring states. It may be worthwhile to have WSBA staff continue to expand the sample size of states and what other states bars do for governance. The universal trend though does seem to include at least 1 public member on neighboring states.

Conclusion:

The above information has been compiled by me in good faith. The thoughts and suggestions contained therein, are my own personal observations, and not meant to be that of the workgroup, and/or any other Governor's. The intent of this was to try to give a history of the 2014 Taskforce's final report, what concerns are over the overall size of the BOG, and to try to suggest various issues that our Taskforce and potentially the other all BOG will need to examine in ultimately deciding this issue.

In any event, thank you and please let me know if you have any questions or concerns.

Respectfully,

Dan Clark

District 4 Governor

WSBA #35901

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WASHINGTON STATE
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Exhibit C
WSBA's Use of Public Participants

WASHINGTON STATE
BAR ASSOCIATION

MEMO

To: Addition of New Governors Workgroup

From: Jean McElroy

Date: August 27, 2018

Re: Public Members on WSBA and WSBA-Administered Boards, Committees, and Other Entities

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Below is a table showing the WSBA and WSBA-administered Boards, Committees, and other WSBA entities that include public members among the members of the entity, based on Court rules, charters, or staff or website information about entity makeup and (sometimes) membership information in the online directory re: current members.

NAME OF ENTITY	# MEMBERS	# PUBLIC MEMBERS
Access to Justice Board	11	2
Addition of New Governors Workgroup	21	2
Character and Fitness Board	14	3
Civil Litigation Rules Drafting Task Force	23	1
Client Protection Fund Board	13	2
Council on Public Defense	26	3
Discipline Advisory Roundtable	14	2
Disciplinary Board	14	4
Limited Practice Board	8	3
LLLT Board	15	5 (1 *ex officio*)
Mandatory Malpractice Insurance Task Force	18	3
MCLE Board	7	1
Practice of Law Board	12	3
Pro Bono and Public Service Committee	18	3
Antitrust, Consumer Protection & Unfair Business Practices Section Executive Committee*		1 (non-voting)
Cannabis Law Section Executive Committee*		1 (non-voting)
Solo & Small Practice Section Executive Committee*		3 (non-voting

- This Section Executive Committee information was provided by Paris Eriksen, Sections Program Manager.

WASHINGTON STATE
BAR ASSOCIATION

Exhibit D
Report on Cost of a Governor

MEMORANDUM

TO : NEW GOVERNOR WORKGROUP

FROM : DAN BRIDGES

DATE : AUGUST 21,2018

RE : COST OF A GOVERNOR

I. OVERVIEW

The cost of a governor is directly related to their geography. For ease of reference there are three categories to consider: Eastern Washington with plane travel, Western Washington generally, and Seattle-based governors who do not ask for any out-of-pocket reimbursements. Those break down as averages, per governor, per year as follows:

1.	Eastern Washington	:	$ 12,000.00
2.	Western Washington	:	$ 5,000.00
3.	Seattle based, asking for no reimbursements	:	$ 3,000.00

As a yearly cost that presents a range of $9,000 to $36,000 a year for 3 new seats.

Based on the raw data, if you take a governor's service life of 3 years, and given the cost of a governor changes over time based on meeting commitments, my sense is the amortized cost averaged across all geography is approximately **$7,000 a year** which does not include all costs. Some people are double that in one year while some are less. The raw data is attached for you to draw your own conclusions.

The highest single person cost incurred in 2017 was approximately $14,000 for a person on the east side of the state.

II. DISCUSSION

It is impossible to combine numbers and arrive at an average. There are too many variables and the cost of a governor changes between their first and third years. Also, we did not attempt to capture many discrete costs that are for a certainty incurred.

It is clear the cost of a governor is largely geographically dependent. There might be a sense we should discount the costs of officers. I suggest that is inaccurate. Other than the person serving as current president, a fully participating governor is at no fewer events than the elect or immediate past president. For example, the past president serves on executive committee, attends personnel and budget and audit committee. But, that could be said of a governor as there has been at least one governor on all those committees and executive committee.

Therefore, while consideration of the cost of the president should be removed from the equation, our past president in Spokane is an important comparator. This year, we have two people from Spokane, Bill

Hyslop as immediate past president and Angie Hayes as a governor. WSBA spent no less than $14,000 on past-president Hyslop and $11,000 on Governor Hayes in 2017. Governor Hayes is not on materially fewer committees or groups than past-president Hyslop. The difference is that often governor Hayes attends by phone whereas past-president Hyslop most always flies to Seattle.

That said, simply looking at numbers on a chart is an impossible way of accurately gauging the cost.

For example, second-year governors go to either California or Maui for the Western States Conference. That is over a $1,000 expense. But, that is only incurred by second-year governors. If you serve on the Board, at some point you will incur that expense but looking at a chart of costs, only three or four governors a year are incurring it in a given year. Therefore, pointing at any one governor who did not attend that year artificially decreases their cost to WSBA as it is simply true WSBA did not incur that cost that particular year but it will in a different year.

There is an additional complication considering the cost of new Governor seats. For example, a small number of governors make the personal decision never to ask for a reimbursement as a part of their contribution back to the profession. I am unsure it is reasonable to rely on that level of voluntary giving from a public member because while we can be grateful for that service, I suggest it is more likely they will ask for reimbursement for out-of-pocket costs.

Finally, the numbers found do not include all costs. For ease of research we only examined easily identifiable, large expenditures such as travel, events when the Board is out of town, and direct requests for reimbursements. However, as one example of uncaptured costs the group registrations and meeting costs identified do not include any of the catering costs; not at board meetings or any of the many lunches and other events catered and we pay per head at.

Without question WSBA spends a not insubstantial sum on other issues which individually may seem de minimis but over the course of a year or three years of a Governor's term add up such as costs for materials, staff time, etc. Those costs are not included.

If a governor is any further east than Yakima, it seems the cost is consistently over $11,000. Even Governor Hayes who attended many meetings by phone, incurred $10,000 of out-of-pocket cost in 2017 not including any of the ancillary costs we did not consider in this analysis.

For a governor outside of the Puget Sound area but on this side of the mountains, those costs are not less than $5,000. In that regard, consider the costs of Governor Doane and Risenmay, both in the Puget Sound and both with cost over $5,000 not including any of the ancillary cost we do not consider in this analysis.

I suggest it would be error or to seize on a first year Governor such as myself last year, with offices in Seattle, who did not ask for a single reimbursement, and did not attend the Western states conference for the reasons stated above. I also did not stay at the hotel in Olympia in 2017. Similarly, Governor Popiliou did not attend all of out of town meetings.

Board Member	Direct Reimbursements[1]	BOG Meeting Costs[2]	BOG T&O Group Registrations[3]	BOG Conference Attendance[4]	TOTAL
Black	$ 1,048.48	$ 2,668.02	$ -	$ -	$ 3,716.50
Bridges	$ -	$ 895.50	$ 445.00	$ -	$ 1,340.50
Cava	$ -	$ 1,687.78	$ 345.00	$ -	$ 2,032.78
Clark**	$ 872.76	$ 920.20	$ -	$ -	$ 1,792.96
Danieli	$ 1,099.35	$ 1,154.34	$ 850.00	$ -	$ 3,103.69
Doane	$ 2,936.74	$ 1,024.92	$ 445.66	$ 595.00	$ 5,002.32
Hayes	$ 6,558.96	$ 2,474.82	$ -	$ 915.00	$ 9,948.78
Jarmon	$ -	$ 1,812.10	$ 652.04	$ -	$ 2,464.14
Karmy	$ -	$ 1,340.14	$ 105.00	$ -	$ 1,445.14
Majumdar	$ 2,285.62	$ 2,105.62	$ 78.62	$ -	$ 4,469.86
Meserve	$ 1,416.38	$ 1,810.10	$ -	$ -	$ 3,226.48
Papailiou	$ 475.26	$ 444.78	$ 355.00	$ -	$ 1,275.04
Risenmay	$ 3,344.40	$ 1,103.70	$ -	$ 595.00	$ 5,043.10
Furlong- President/PE	$ 4,958.18	$ 2,383.90	$ 682.04	$ 1,351.82	$ 9,375.94
Haynes- President	$ 15,121.06	$ 908.72	$ 700.00	$ 1,849.11	$ 18,578.89
Hyslop- Immediate Past	$ 10,632.42	$ 2,474.82	$ 65.00	$ -	$ 13,172.24
Pickett- PE	$ 5,523.65	$ 1,421.06	$ -	$ 915.00	$ 7,859.71
TOTALS	**$ 56,273.26**	**$ 26,630.52**	**$ 4,723.36**	**$ 6,220.93**	**$ 93,848.07**

** Dan Clark only served a partial term; hence, his lower dollar cost.

NOTES:

1) Direct reimbursements are payments made out to the individual Board member, typically based on the submission of an expense reimbursement report. Costs typically include travel costs for Board-related work, conferences (including meals and registration), and other events.

2) BOG Meeting Costs are based on nightly lodging to attend board meetings, paid directly by WSBA. This does not include group meal costs and meeting space. As an approximation,**add $720 a governor for meals at Board meetings calculated at $20 a meal (averaged), at 6 meals, for 6 Board meetings. This does NOT include meals for spouses and others WSBA pays.**

3) BOG Travel & Outreach Group Registrations are expenses to attend events held by other organizations throughout the year. WSBA pays directly for the registrations for these events on behalf of the Board members.

4) BOG Conference Attendance expenses are WSBA paid registrations and lodging for Board attendance at annual conferences such as NCBP, BLI, and WSBC.

WASHINGTON STATE
BAR ASSOCIATION

Exhibit E
Report on WSBA Member Involvement

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August 13, 2018

WSBA Workgroup regarding
Addition of new BOG Members
c/o Darlene Nuemann, Paralegal
Office of the General Counsel
darlenen@wsba.org

RE: Review of WSBA Member Involvement

Darlene,

I would appreciate it if you would disseminate this letter and attachments to the appropriate recipients.

Fellow Workgroup Members,

As you will recall, at the July 12 Workgroup meeting I was tasked to seek out and report back on the issue, as follows:

> How do members process information: In other words, WSBA arguably had a long process leading up to the passage of the bylaw amendments to add new governors (governance task force, by law drafting work group, etc) but the tip of the spear of, "here are amendments to do so," was a fairly short time frame between being presented to the members and passed. When and how do members respond to information. Is it at the initial investigation stage, work group stage, or is when there is something as with concrete language to consider.

I sent out a request to several different groups and asked each of them to respond and to disseminate the request as much as possible. I am attaching the email hereto for review as **Exhibit A**, so the workgroup can see exactly what the responses were to. I would note that it wasn't until late Saturday evening August 11th that I received an email from an attorney who corrected an error in my email. I am attaching it hereto as **Exhibit B**. Upon reading it and reviewing the WSBA Notice re the additional 3 seats, I sent out a correction regarding that error, as well as a clarification, based on another response I received. I am also attaching that email to **Exhibit B**.

I sent the request for input to my local Bar, (The Tacoma Pierce County Bar Association (The President of the TPCBA and the President of the TPCBA Family Law Section)); I sent the request to the FLEC (WSBA Family Law Executive Committee); I sent it to the members of DRAW (a recently formed Association of Washington Family Law attorneys); I sent it to Paul Swegle to forward to the group he emails updates to regularly; and after expressing my concerns regarding the response rate to Rajeev Mujamdar, he suggested I send it to Carla Higginson at the San Juan County Bar as they have been very active in providing input to the WSBA.

I am attaching all of the responses I received hereto for review as **Exhibit C**; (note I have cut and pasted them to remove identifiers and save space). I received responses from a Judge, a Family Law Commissioner, retired and semi-retired attorneys, current attorney members, and a Deputy Prosecuting Attorney. I did not receive any input from any LPO or LLLT members.

Finally, in order to obtain more data, I reached out to members and asked them face to face for their input. Obviously I did not take verbatim notes and I am not, and cannot provide transcripts of our conversations. But, I am going to do my best to include that input as well herein.

I will try to reduce the responses (from all sources) to an executive summary for review here. The responses fall into a few general categories. First and overwhelmingly most prevalent is the fact that the vast majority of members did not respond. I believe this is emblematic of the Bar Membership in general. The consensus is that the Members are too busy to deal with the extra effort of reviewing and responding to communications. Many also indicated that was because they trusted the BOG to review and address the issues in a manner that represented the Members.

Next, the members who responded appear to believe the WSBA notice process is either unintentionally, or intentionally, designed to make the chances of seeing important notices unlikely. These seemed to generally indicate that the notices they felt were important were buried deep in vast volumes of unimportant issues. To be fair, I assume that all of the issues are important to some portion of the Members and what each feels is, or is not, important varies. But, the sentiment that issues effecting the entire membership, and/or that have significant effects on the entire membership are not singled out in an "Executive Summary" manner. There were references to "the Old Bar News" having a Notice section, which did a somewhat better job of notifying the Members of important issues than the new "NW Lawyer" does. The feeling seems to be that the notice periods were too brief and that the period of time between when the Members were informed of an issue and the decision on the issue did not allow for appropriate review and

input from the Members. Some responses acknowledge that the process includes sometimes years of work, but that time is not relevant to the Members opinion of the membership being able to review and have input on important issues.

While my task was not to specifically address the LLLT, the Bylaws Amendments as to the Sections, or the Dues Referendum issues, you will note that many of the responses used these issues as examples of the lack of WSBA and BOG communication with the Members.

Some suggestions to address the issue of lack of perceived communication with the membership were to provide succinct emails with "executive summary" headers so issues that were important to any individual member could quickly be noted and reviewed more in-depth and issues not important to a member could be deleted. The use of a "Pros and Cons" description of each issue so the Members could review them and see what the critical issues were and what each side was saying was good/bad so the Members could decide what to look into further was also discussed.

Of significant note to me was the general belief of those who responded to my requests for input that the WSBA has ceased to be an Association who represented its Members. I believe this is due to the Members own lack of involvement in the process, which is based on a combination of being too busy to investigate issues based on a belief that others who have the time to be involved will look out for their best interests. At a recent BOG meeting, former President Anthony Gipe recited many sad statistics about the incredibly small percentage of Members who voted in BOG elections. I understood his comments to mean the BOG really wasn't a representative body and therefore need not be concerned with what the general membership wanted. I believe the opposite is true: that because of the trust placed in the BOG to represent the membership, there is an increased obligation to act on behalf of the membership.

Overall, I believe better communication at earlier stages of the process to the membership is critical. Better, in my opinion, by setting out a concise statement of each issue being considered by the BOG being disseminated to the membership in an easy to obtain location (not buried in hundreds of pages of meeting materials, and not left in executive session portions not available to the membership). Issues being considered should have a concise statement describing it in the header, or "re: line" and then, in the body a brief Pro and Con of what the effect would be of the issue.

I hope my efforts have been directed in the manner intended so as to provide information helpful to the BOG as it moves forward and considers issues critical to the status of WSBA, the BOG and the membership.

Sincerely,

Cameron J. Fleury
Attorney at Law

CJF:

Enclosures as stated

\\Mgps-fs1\users\CJF\Desktop\WSBA Workgroup report.docx

EXHIBIT A

Cameron Fleury

From: Main@DRAW.groups.io on behalf of Cameron Fleury <cjf@mcgavick.com>
Sent: Monday, July 23, 2018 9:28 AM
To: Main@DRAW.groups.io
Subject: [DRAW] WSBA Workgroup input needed

Fellow DRAW members,

As you are hopefully aware, at a recent Special Session of the BOG, a Workgroup was formed to report back on the pending addition of three new seats to the BOG: to be comprised of a LLLT, a LPO and an at-large member, all appointed (not voted) to their positions.

The portion of the issue I have been tasked with reviewing and reporting back on is as follows:

> How do members process information: In other words, WSBA arguably had a long process leading up to the passage of the bylaw amendments to add new governors (governance task force, by law drafting work group, etc.) but the tip of the spear of, "here are amendments to do so," was a fairly short time frame between being presented to the members and passed. When and how do members respond to information. Is it at the initial investigation stage, work group stage, or is when there is something as with concrete language to consider.

I think this issue is appropriate for me to look into because I was what I believe to be a "standard" Member of the Bar for the last 22+ years. Even after I read the Bar's "Interim Governance Report", and the final "Governance Report" a few years back, I wasn't aware of any effects it could have on me personally as a Member of the Bar. It only became clear to me that something seriously wrong when the Proposed Bylaws Amendments, rolled out during the Holidays a couple years ago, that I became aware that incredibly important, and in my opinion, horrible, changes were happening in the WSBA and became involved.

What I need is to hear back from as many Members as possible, about YOUR impressions and experiences with WSBA leadership, management and the process for informing YOU, the Members, about what their Association is up to. To see if it is "working", or if not, what needs to be done to change it.

For example, from my perspective, the Bylaws Amendments rolled out a few years ago during the holidays were "sprung" on the Membership during the Holidays when most Members were focused on family, year-end CLE's, etc. in an effort to secure their approval without being noticed until it was too late. Since I have become involved, I now see the process for these Amendments began almost 4 years before they were rolled-out. Giving the WSBA the "benefit of the doubt" I can now see why they say they are shocked at the opposition when the process has been going on for so long and there has been opportunity for input at several stages before the final input period.

That was MY perspective. What I need to hear about, and report back to the Workgroup is what is/was YOUR perspective on the process and opportunity for YOUR input. Please circulate this email. I want to get more than just Family Law attorneys' perspectives on this process.

Please feel free to contact me directly at cjf@mcgavick.com to provide me with your input, or to discuss this matter further.

Keep in mind that the Workgroup has only two more meetings before we have to submit our input to the overall BOG for consideration at their September Meeting. Therefore, time is short.

Regards,

EXHIBIT B

Please correct the information on your request for feedback about the proposed BOG seats. Two seats are for members of the public (non-lawyers) and one seat is for someone with a limited license (either LLLT or LPO). You have incorrectly implied the seats are for one LLLT, one LPO and one at-large.

The BOG should at a minimum have community members representing the public interest. Having someone with a limited license is also appropriate.

--

Paul,

Thank you for forwarding the email request for input. It has had tremendous results.

Could you please email the following to the group you sent the request for input to?

> Greetings:
>
> I want to thank everyone who has responded for their input. It has been very helpful and I am in the process of collating it into a report back to the work group for the meeting this week.
>
> One error needs to be corrected and one clarification needs to be made in my previous email. If these have ANY impact on your comments, please let me know ASAP.
>
> 1 – I was incorrect when I wrote the 3 new BOG positions are to be 2 LLLT/LPO and one at large public member. The correct information is the 3 new BOG positions at issue are to be comprised of two at large members of the public and 1 LLLT/LPO seat.
>
> 2 – I want to be clear that the December/January 2015/16 issue which was sent out for comment was the Sections Workgroup Amendments to the Bylaws not the LLLT notice or the additional BOG seats notice. The first read of the proposed bylaws to add 3 additional at large positions was at a special meeting in AUGUST 2016. The bylaws were passed in September 2016. This was also an exceptionally short notice period and during the summer vacation for many Members.
>
> I apologize for my error.
>
> Thanks,
> Cameron

EXHIBIT C

Dear Cameron:

After receiving your email from Paul Swegle on Thursday, I have posted it to the Probate Listserve today to give your request a broader exposure.

I have been what you call a "standard" member of the Bar for 41 years.
In my younger years, I was involved in volunteering in the Legal Clinics, in writing for the Young Lawyers Manual and the Washington Methods of Practice, presenting at CLE on the subject of Dealing with the IRS, and other non-governance activities.
As I am almost retired, and family health and other matters take up my time, my contributions have been limited.

I have been a member of the Real Property and Probate Section, and until recently was a member of the Taxation Section. I have been on the Probate List Serve since I think it started.

Prior to December, 2015, the information that I received or processed from the WSBA was basically by reading the Bar News and I often did not pay much attention. I do note that I emailed comments back in 2012 to the Task Force that back then was looking at Mandatory Malpractice Insurance.

In December, 2015, the WSBA rolled out a proposal to change the Sections. As I recall, it was sent out on December 30. Who sends out important notices on December 30 unless they are deliberately trying to get away with something? There had been some Sections study or Group that **had no Section leadership involved and did not ask for responses by the Sections.**

You are probably familiar with that whole debacle. The Sections rebelled, there were all kinds of objections, and a new Group was formed and eventually this issue was resolved. I remember writing comments, and reading everything that came out on this matter.

For me, and I think for many Bar members, the Sections are the most important part of our Bar membership. The Probate List Serve is invaluable and where we go for help and questions. How out of touch is the WSBA leadership with their members that they thought that they should start changing or messing with the Sections.

It was at that point that I really started paying attention to what the WSBA was doing. And then there was the whole Bar Dues Increase & Referendum debacle in 2016. Whether the bar dues should have been increased or not is something that reasonable people can debate. But I won't forgive the WSBA leadership for the way they handled it and just got a Supreme Court order to ignore their membership. I wished the Legislature had passed Senate Bill 5721. The WSBA deserved it.

The next item was the LLLT Board proposal of expansion of LLLT services to additional Family Law matters and to Estate and Healthcare Law areas. That was in March, 2017. Prior to that date, I had not paid a lot of attention to the LLLT issue. It seemed reasonable that LLLT might be a real service in the Family Law area. But I have real concerns about expanding their services to other areas.

I sent comments on those proposals and followed this situation on the Probate List Serve. Most of the proposed increases in practice areas for LLLTs were not enacted.

There was much activity on this from all of the Sections and communications going on the various Section List Serves. I remember forwarding emails to one of the Family Law section members who was objecting, writing a letter, and asking for addition signors to his letter. His objections had been posted to the Probate List Serve and he was getting responses being posted back to the Probate List Serve. As he was a member of the Family Law List Serve but not the Probate List Serve, I was busy forwarding those responses to him.

Also in this process, Julie Fowler posted the attached email to the Probate and Family Law List Serves. She noted that some of the BOG governors thought that "tagging on to someone else's letter" was not a "real" objection. Again, what arrogance by the BOG, and complete disrespect of the WSBA members.

With regards to the LLLT situation, I think this has been a high cost for little results and needs to be completely re-thought. When the LLLT Board came out with the latest proposal to extend the LLLT areas to Consumer, Money and Debt Law, I went back and pulled all the original articles on the LLLT and the LLLT board minutes for the last 2 years. After reading them, I have concluded that the LLLT Board seems to be empire building and look for areas to expand that are probably not good choices. Since an LLLT cannot file bankruptcy for clients as that is a federal area, what benefit are they offering in this expansion? The Draft noted that there are other organizations that have offered services in these areas for decades but consumers are not using them. Why should the LLLT expansion be any better?

I was going to write a detailed letter on this issue to the LLLT Board but family health matters (family member with terminal cancer) intervened and I had to leave this issue up to other WSBA members to deal with.

The one thing that did happen with this latest LLLT expansion draft was that it was properly and well communicated to the WSBA members for comment. I saw more than one email with the Draft and requesting comments. I think that is the first time that I have seen a issue really well circulated to the members for comment.

With regards to the current issue of expanding the Board by 3 appointed members, one an LLLT, one a LPO and one an at-large member. I do not recall seeing any real explanation or understanding of this issue until lately. If it has been going on for 4 years, it was really not communicated well. There are multiple issues here that should have been presented to the members for comment:

1. What is the purpose of having appointed rather than elected BOG members?? And personally I am opposed to BOG members who are not elected. You would have to go a long way to convince me that there should be any appointed BOG members, and if there are, I believe the should be non voting positions.

2. Why should LLLT or LPOs have their own Board slots?? They are a tiny amount of the WSBA members. They do not represent most of the WSBA members. If they want to be on the Board, they can run for the Board like everyone else. If there is a really good reason for them to be on the Board, they they can be non voting members, which will allow them to be heard but not vote on matters where they represent only a tiny number of the total WSBA members.

I don't recall what the WSBA membership is today but it is close to at least 40,000. With that many members of all colors, genders, and social and political opinions, I do not believe that the LLLT and LPOs need designated BOG slots. They can have their voices heard and if they have good arguments and issues, there will be WSBA members to support them.

In summary, these Board amendments were not well publicized. They were not well explained. I do not recall any discussion of why there should be an expansion, why their should be appointed rather than elected slots, why the LLLTs or LPOs should have their own slot.

These issues have only been visible recently as Paul Swegle and like minded members of the BOG and the membership have started to question the WSBA governance.

What is the best way for the WSBA to communicate with its members?
It can send out an email. I do read the emails from the WSBA, whether I agree or trust them or not. More importantly, they can send comminations to the Sections and request that such communications be posted on the Section List Serves. I trust my Section officers. I listen to their opinions. And they can publish in the Bar News. I do read the Bar News although I mostly just skim it. But I have picked up requests to comment in the Bar News. And then emailed comments on recent matters such as the new Mandatory Malpractice Task Force and the Referendum Review Process, although I was not aware of the Referendum Review Process until

already issued majority and minority reports.

The WSBA prime communication methods should be by email to its members and by email to the Sections. I suspect that the number of WSBA members without emails is becoming fewer and fewer but the WSBA can communicate with them by other means.

I do not believe that the WSBA leadership has made any effort to communicate with its members or to explain issues to its members. In fact, I believe that they deliberately have tried to hide their efforts from the members because they knew that if the members really understood their actions, the members would object.

This is a long response to your question. But I think you will find that many members feel as I do. As a woman who was admitted to the bar in 1977 when women were about 3% of the bar nationwide, I can tell you that I felt more respected and consulted by the bar leadership back in the 1980s and 1990s than I do today. In the past 10 years or so, I think the WSBA leadership has gone off the track and just done what it wants. It does not want to hear from its membership because it is probably will not like what it hears.

Very truly yours,

J. A. Cyphers
WSBA # 7252

From: Julie Fowler
Date: 3/6/2017 4:24:49 PM
To: 'WSBA Probate & Trust Listserv'; WSBA-Family-Law@yahoogroups.com
Subject: Re: [WSBAPT] Fwd: [WSBA-Family-Law] response to LLLT expansion

For what it's worth, when I attended the BOG meeting a few months ago, to speak out on the changes the BOG was making, it was pointed out by a few governors that "tagging on to someone else's letter" was not a "real" objection. Therefore, the tagalongs were not considered, despite how many members said they supported letters already written. A few governors said they would only consider individual member contact as legitimate concerns. I spoke out against that snide attitude as well, but ultimately the BOG did what it wanted.

On this issue, given the BOG attitude, I would encourage you to individually reach out, not only to your governor, but to all the governors, and voice your opinion on this issue.

Julie K. Fowler

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~ OFFICE HOURS ~ 9:30 am - 3:30 pm

So Cameron...

I've retired, both from practice and from WSBA work, both because it was time and because of the leadership of WSBA, respectively. It is clearly time for a change within the WSBA. I served on a number of bar committees and it became apparent to me over time that my 'job' was to carry water for the party line. We were tasked with making decisions (about WSBA CLE's) based upon a preset number of options, none of which were really acceptable to any of us. The prior committee was tasked with improvement to CLE and had a staff member direct us to consider outsourcing the work. Strongly. We actually did an RFP, which failed miserably. So, we then developed proposals more in line with our actual feelings, CLE stopped for a bit, then was reactivated with very specific tasks, focused around the new agenda – LLLT, easier access without the necessity of learning measures, etc. I served as Chair twice. The second time did it for me, and I left with a pretty sour taste in my mouth. When you are asked to volunteer your time and bring your experience to the table, that can be rewarding. When you realize you are supposed to present options based upon a master plan somewhat unrelated to what you think might actually work, it is not.

Paula has her agenda. She is close to the Supremes, who periodically issue directives to WSBA which are all amazingly consistent with what she and Steve (and others) want to see happen. She believes we are all dying off, and if we don't add non-lawyers quickly, WSBA will have to shrink and if it does, it will not be able to fulfil its mission to the public. From my perspective, it has a mission to serve the members, and if the members want to do public service, help them do so, not the other way around.

I served on a task force several times as it was reconstituted from time to time to address diversity in the Bar. We met, talked a lot, created yet another report, but

basically did nothing despite good ideas which would have improved things. Nothing happened, other than to convene a task force. Again and again.

By the time I left WSBA 'service', I was both frustrated and angry. Honestly, I've not missed any of it.

Years ago, following the referendum to reduce dues (which I think was stupid, but it was a sign of frustration at the direction of the bar), WSBA was short of money to operate the empire on Fourth Avenue. What to do? Solution: CLE had created an account with close to $2,000,000 set aside to build a professional CLE center through careful planning. One with parking, office space areas for people who needed to work, etc. Nothing was secret, and clearly the money was WSBA funds; however, when things got tight, Mark Sideman and the COO were 'relieved' and the fund raided for a period of about two years. No CLE activities took place as leadership 'reassessed' the programs. If you wondered how they could operate with the same numbers, now you know.

CLE funds like this belong to the membership, and the Board can do with them as it wishes; however, there was no discussion about plans or needs, just a raid. It happened a number of years prior with Section funds as well when budgets were not followed. Things got interesting when the membership told Paula to stop it in additional referenda, but thus ended the planned CLE program and facility.

CLE would not have built anything without membership knowledge and approval; however, we never got there. The great maw of WSBA just swallowed it up. No one knew, per usual.

I was in Section leadership when Paula went after Section control, and helped push back. Not because of my CLE experience (I wasn't particularly unhappy at that time), but because the proposals were designed to gut the most active and involved part of the WSBA program for members. WSBA backed off and decided to talk with Section leadership, but during that time, WSBA leaders were unresponsive and really uninterested in feedback from Sections. It was pretty amazing.

My solution? It's time for new leadership and a new leadership team.
I am now retired, and will let my license lapse next year. That decision was, in no small part, made based upon my experience within WSBA.

Cameron,

You're very welcome. Upon review of my e-mails, I did notice receipt, starting in March, 2018, of Wa. State Bar "News and Updates" that includes (per the footer) "Selected Executive Director and Board of Governor's Communications".

However, after a cursory review of the WSBA's current bylaws, and based on the BOG's prior actions, the WSBA e-mails seem like a shallow pretense for "notice".

As I'm sure you know, amending the WSBA's bylaws requires only a majority vote of the attending BOG members in a special meeting that is called at the discretion of a myriad of potential parties.

The notice is to be posted "at least" five days prior to the meeting on the Bar's website (i.e.. only five days notice is required). Another section has slightly different language, with exception for good cause shown under exceptional circumstances demonstrating an "emergency basis" with affirmative vote by 2/3rd's of the BOG.

One section cynically describes an "Open Meetings Policy except as otherwise provided" including the special meetings and numerous other exceptions.

Petitioning for a referendum of BOG decisions requires the petition to be qualified first - signature by at least 5% of Active membership, then compliance with GR 12 as determined by the same BOG (with no deadline for that review or definition as to what compliance entails), and must be filed and voted on by the Active Membership, all to be done within a strict, apparently random 90 day deadline.. The only purpose I see for the imposed deadline, in combination with all those requirements, is to deter and prevent referendums from succeeding.

In comparing these bylaws to 4-5 other state bar bylaws I quickly reviewed, several things struck me (caveat - 4-5 is hardly a thorough survey):

1) Wa. State only requires a majority vote of the "attending BOG" members for an amendment to the bylaws, not a majority of the BOG;

2) Wa. States's bylaws provide substantially more exceptions to general rules - to the extent the general rules are the exceptions. The effect is to create loopholes subject to manipulation for desired outcomes, and to skirt transparency.;

3) Wa. State's bylaws grant a non-BOG member - the "executive director" - substantial authority, involvement, and control over BOG activities - including the ability to unilaterally schedule special meetings, the requirement she be notified of special meetings, be notified and basically involved in every BOG, executive committee, and related action, authority to determine deadlines for statements accompanying referendums (limited to 750 words), and, the ability to represent the Bar and communicate with the judiciary, elected officials, and the community at large regarding Bar matters and policies established by the BOG without prior approval from the BOG. I in aggressively minimize notice periods for BOG. Also unusual is the need to include "bar staff" in certain BOG related matters. I saw nothing comparable.

4) Wa. State's bylaws seem to aggressively minimize notice, and provide opportunity to skirt notice entirely in cases of "emergency". I saw no exceptions for "emergencies" and "catastrophic" circumstances that would permit decisions taken with little or no notice. Those provisions make the bylaws look like a poorly written insurance policy and just creates more opportunity to skirt rules.

Well, I went a little longer than anticipated. My two cents.

Dear Cameron,

First, I want to apologize for not responding sooner to your email. I was focused on some really bad news about one of my sisters and a cancer diagnosis that was quite unexpected. I am now catching up on things and wanted to get back to you. I did manage to talk with my colleagues at the San Juan County Bar Association meeting last Friday, and I have also spoken with them before about the lack of involvement of the members on topics and changes that dramatically affect them. My comments, based on their input and my own observations over the past 38 years as an attorney, are these:

The bar association as a whole does a terrible job of communicating with its members about proposals and issues that affect our members. Committees (whether standing or ad hoc or work group) are given, or originate, an issue to pursue. That issue is not disseminated to the members but is instead discussed in the committee until such time as it is brought to the Board of Governors for an initial report. Two months later, the issue or proposal is then presented to the Board for approval. If it is to then to on to the supreme court, it is published in the proposed rules and only then do members generally become aware of the situation. By that time, it has bee months to years in committee, where the committee members are vested in their work, it has been discussed (often too briefly due to time constraints) by the Board of Governors, and then the court has (I presume discussed and revised it before publishing it for comment). Frankly, by then it's too late. There is little recognition in the process of the need to contact the members, most of whom are busy attorneys running their practices, to alert them to the issue or proposal under consideration, give them the salient, points that can be quickly scanned, and to ask for their input. As a result of this poor communication, attorneys feel quite understandably that they are ignored and that the bar association does not have their best interests in mind.

Let me know if you have any questions regarding my comments. I will also be attending the workgroup meeting this week by phone so can echo whatever you present. By the way, I am opposed to adding three more positions to the Board. It's too big and too unwieldy as it is.

Hope this helps.

Cameron,

From my perspective being involved in several leadership WSBA positions (former member RPC committee and Professionalism committee, former member of Disciplinary Board and past Disciplinary Board Chair, past Litigation section executive committee member and chair, Civil Rules Task Force member) the WSBA makes great efforts to get the word out and members ignore the communications until the changes are finally made, then scream they were never told. I agree the WSBA could do better outreach, and some of the changes absent input end up being bone headed.

As to how members process, I think until the actual concrete proposal is out there in writing it is hard to get their attention. When that final product comes so late in the game people are offended at the quick timelines to respond. Maybe extending the approval timeline getting drafts earlier and building more time into the process for input after the first reading would be more meaningful to most members.

This is in reaction to your email about "What I need is to hear back from as many Members as possible, about YOUR impressions and experiences with WSBA leadership, management and the process for informing YOU, the Members, about what their Association is up to. To see if it is "working", or if not, what needs to be done to change it."

Brielfy, my impressions and experiences with WSBA leadership, management and the process for informing Members about what their Association is: it isn't working.

I assume that this is likely not from lack of trying. I am aware that Bar News is still being published (under a new, sportier name) and I see that there are Minutes + Action Items of long, elaborate processes, kept at https://www.wsba.org/about-wsba/who-we-are/board-of-governors/board-meeting-minutes

However, these are not well-constructed for informing me or for giving me the sense that my opinion matters. There is no easy way to search for a particular topic. There are no threaded discussions and no easy mechanism to react to the Minutes or Action items.

Part of the problem may be that Minutes are necessarily organizeby the date of the meeting, not by subject matter. Thus, the most significant bit of information on that page is the fact that a meeting was held.

Meetings tend to be collections of many subjects, united only by the happenstance that they were considered on the same date. This is not effective information organization since the most important thing about an issue is the issue itself, not the day on which BOG discusses it.

Interest in the content is greatly decreased because comments are not enabled, creating the (inaccurate) impression that it doesn't matter what I think.

In contrast, threaded discussion fora such as are omnipresent on the internet facilitate informing, discussing and achieving buy-in to superior solutions. A host proposes a topic, e.g. "Shall WSBA Add An Appointed LTTT Member To The BOG"? Proponents, Opponents and Discussants can provide their materials when convenient to them, and all have equal access to the content.

The fora also create institutional memory, since they can be consulted many years later to discover how a particular choice came about. Without such institutional memory, organizations do not function at their best

I hope this is helpful

Cameron and Kit,

I appreciate the opportunity to give my input. I was recently surprised to receive a notice from the WSBA that a task force is considering requiring all persons licensed to practice law in the state to carry professional liability insurance, with few exceptions, such as government lawyers. We were asked for input, but it wasn't clear to whom I should respond. I wondered if there had been a problem with too many lawyers dropping coverage, then committing malpractice. I certainly hadn't heard of such a problem. Personally, I think I should be allowed to practice law part-time, as I do, while not accepting clients myself, but taking only SGAL appointments and serving as arbitrator or mediator. I feel comfortable self insuring, in that regard. And since I've chosen to practice only part time, obtaining malpractice coverage again at what would undoubtedly be a high rate, would probably preclude my continuing to practice in this limited sense. Thanks for allowing my input.

I rarely hear about any decisions prior to them being enacted. My voice is not heard, nor is my input considered. I hear about things at best once there is concrete language, but typically only once we are voting. I have long been of the opinion that the bar does not represent me, and this request for input is actually a good example. The request was forwarded to a listserve that I use, but I would never have heard a word from official channels.
Sorry, rant over. Thanks for the request for input.

Cameron,

Your request for feedback was posted to the Solo Small Firm listserv, and I am pleased someone wants to hear from members.

I echo your surprise at learning, during the late part of that year, that the Governors were about to vote to add non-lawyers to the BOG and to create Bar memberships for non-lawyers as well. I was appalled.

I immediately emailed my Governor, who had just been elected to the BOG a couple months previous, of my opposition to both moves. As an active member of the Bar since July 1978, this was the first I had heard of the notion that non-lawyers should become actual members, and even have a voting role in BOG governance of the one organization I am mandated to support if I want to practice.

But the merits of my opposition are not the focus now. Rather, the information and communication issues are. I contacted my governor the day I first heard of these ideas. The direct response from my governor was to ignore my email.

She then proceeded to vote in favor of the changes, commenting to the effect that while she had received a number of communications in opposition, the changes had been under consideration for years (NB: that was news to me! And I had even taught LLT-qualifying courses at Highline College as late as winter Qtr 2015 – never heard anything about LLTs becoming Bar members or BOG eligible). She said opposition was too little, too late.

We have had LPOs closing real estate transactions for years under the Limited Practice rules established by the Supreme Court, but they were never considered to be eligible for membership in the Bar. That distinction only belongs to those who successfully pass the rigorous Bar Examination.

This move to make LPOs and LLTs members, to add them to the BOG by appointment rather than by winning members' votes, along with other non-lawyers, along with elimination of the members' referendum rights respecting dues, all amount to a massive power play whereby the entrenched top salaried Bar leadership seek permanently to expand their power over the profession. If there were more transparent communication to members, they would have less likelihood of succeeding.

One last thing on adding members of the public to the BOG: I watched the video of the meeting where the BOG put off implementation and to undertake more deliberation on the change.

I was particularly impressed by the testimony of those who stressed how many members of the public have participated in various Bar task forces and commissions. These groups at BOG direction then produced proposals for the BOG to consider and take action or not. The speaker was arguing this involvement justified adding public members to the BOG. But to me, it goes to the exact opposite conclusion: there is ample public involvement and input at the committee, commission and task force level so that the policy making BOG has the benefit of their participation, but ultimately the responsibility is where it belongs: on lawyers in good standing elected to the BOG to make decisions in the interest of the Bar and the public as a whole. Public members do not need to have voting power on our governing board. I would posit that the same os likewise true of limited licensees, both LPOs and LLTs.

Well, I am not arguing for eliminating everything, as some must be, but I DO want the new seats, and the existing at-large seats, to be voted on by membership (and the elimination of just one seat -public member, as I don't believe that lawyers need a public "advocate" on the BOG; our profession has been responsible to the public over many years). In any case, thank you for your reply, and you may certainly share my comments, edited, if you wish, with your colleagues on the BOG.

Agree with Kevin, and I think his suggestion is excellent. The usual "reports" from WSBA are packed with information, much of it of marginal importance. Major changes to the by-laws, like adding "appointed" instead of elected governors, should be by separate notice, not buried in routine minutiae.

I paid attention to the Governance Taskforce activity while it was happening, because it appeared to be an effort to prevent future referendum efforts concerning license fees. However, minutes of Taskforce meetings contained little information about proposals being discussed.

To get more information, I used a public records request to get emails exchanged between the bar staff and members of the Taskforce. However, most of my request was denied on the theory that the emails were on non-WSBA server computers, or on the theory that WSBA counsel attended the meetings, thus making everything privileged.

I very much agree with Kevin, below. Even where there have been momentous changes in Bar practices or governance, I feel like I miss the starting points, because they are buried on BOG agendas or the implications of the changes are unclear. Having regular email updates from my BOG members helps somewhat, but because they are most often focused on reporting back what's been done and not giving background on what's coming, they seem less transparent (and seem to not be happening any more? Haven't gotten one in awhile). Having information that is discreet and accessible in small, digestible amounts is incredibly important to me.

Thank you very much for your service to the Bar! I really appreciate reading your input on the listserve.

For what it's worth, I just got the King County Voter's Pamphlet, and they've been using a format that may be helpful for trying to increase input from people having difficulty justifying the time involved to become fully informed: a proposition, an explanatory statement (shorter), and statements in favor and in opposition.

If they restricted their communications to just one subject per email, I'd be able to see if it's something I'm interested in, and if so, the short format described above would probably lead me to at least read it, and possibly comment on it as well.

Dear Cameron
Thank you for spearheading something that is being sprung on us unsuspecting members. I am sure Paul would be happy to take the lead but I am glad he is getting away. I have no interest in seeing a LLLT, LPO and at large member being appointed to govern us hard working members of the Bar. Frankly, I do not believe they are qualified and I am disappointed that the WSBA would even consider putting someone without a law degree in a position of authority over lawyers. How does that serve us members? I am shocked by some of the leaders of the WSBA who appear to be the elite of the elite and exhibit arrogance of the weak and insecure. The WSBA should serve its members. After all, don't we pay dues for that service? Thank you, Tom

Good morning. I'm that rare animal, a dues paying but not allowed to vote member. Here's my two cents from afar: the Bar leadership has become more insular and at the same time more agenda-driven. The reality is that when you have a mandatory bar, you must act more like a representative of your constituents and less like a member who seeks to implement his or her own vision. I'm sure that there is a middle position somewhere, but there's zero effort to try and persuade the voting bar members of the rightness of a Governor's position. And so, the amendments appear as if dropped from the sky.

"We know we are right and they just don't understand" is not sufficient as a position for a governor in a mandatory bar.

The Bar needs to explain and persuade if it wants to change or expand the mission of the bar but then allow a mechanism for members to disagree such as in initiatives or voting approval in some cases.

Judge [redacted]
King County Superior Court

Hello Mr. Fluery,

I've been licensed 21 years and have never sought or reviewed the actions of the WSBA BOG, including reports, and don't recall ever receiving direct communications regarding their actions from the WSBA or my representative.

I first became aware of passage of the bylaws on the family listserve. If I weren't on the listserve, I most likely would remain unaware of it.

I'm fairly certain mine is the common experience.

The WSBA directly communicates with members on licensing related issues only, such as payment of annual fees and CLE requirements. I've only paid attention to direct communications.

In contrast, Information regarding BOG actions require going to the WSBA website. Again, I don't recall a direct communication.

It's inconceivable to me that the BOG would propose passage of bylaws that expand the practice of law to non-lawyers, require members to contribute financial resources for the expansion, and risk significant harm to the general public, with serving direct notice of the proposed changes to individual members, in the same manner ad license renewals.

In short, at minimum, any proposed changes that effects the practice of law should be served with substantial notice directly to each individual member. It will otherwise simply not be known about by the vast majority of WSBA members (unless practitioners have separately informed other practicioners).

Hi Cameron,

Until recently, I have viewed most communication from the bar as background noise, especially communications regarding proposals to form a committee to explore the potential to take some action at some time in the future. I am much more likely to pay attention when it looks like something is actually going to happen, which is toward the end of the process.

Sincerely,

To be quite honest, I tuned out until recently most of the stuff from BOG until it comes time for things to be voted on. I am now mostly retired at 78 but intend to keep my license to do one monthly job, collect monthly attorney's fees owing from his clients on permanent disability representation contracts between them and disbarred lawyer Peter Moote. I am required to have a license because L&I has a regulation that to collect pension payments from L&I one must have the monies deposited into an IOLTA! I get paid for the time, so I make a little income each month, but don't have malpractice insurance because I don't need it for what I do, simply collect monies and forward it to the attorney who was granted an assignment for the benefit of creditors by Mr. Moote shortly after he was released from federal prison,when the receivership I ran was closed following a final distribution of moneys to his victims which we had won through settlements with parties who made claims to be secured in the assets of the receivership estate (to which IRS did not object. After that distribution, the victims of Mr. Moote's thefts would have received nothing, as the IRS held a $400,000 priority claim! (At least I intend to continue doing this work until the BOG decides to forcibly retire me by requiring a $2500 annual malpractice policy for an annual payment of between $6,500 and $8,000.)

After talking with Paul last year several times and learning the extent of the efforts of the then officers and board and of the Exec. Director, I decided to sign on with Paul's effort to return governance to the membership and to support him, even though he represents North Seattle, and I live in South Seattle as divided by the WSBA. I note that I moved my office to Ballard in 2000 and practiced there until I closed my office by turning off my computer, putting in the backseat of my car in January 2015, and driving home.

But I am still very concerned with the governance of WSBA and I have been encouraging Paul to carry out his reform efforts, including, perhaps, going a step further, by making SOME by-laws subject to change only on an affirmative vote of the membership. I think that the by-law changes that create seats on the board should be voted on by the membership if new seats are to be filled other than by the constituency which elects current board members, that is, the general voting membership. I would argue that there should be NO appointed seats at all, including at-large lawyer seats, any seats created for non-lawyer licensees, and even for "public seats," which I strongly oppose, because this is an attorney's organization. I do not object to ONE non-lawyer licensee as a voting board member, as long as that licensee is ELECTED by the attorney and non-attorney licensees voting together.

I would ask you to support a by-law change which eliminates public member seats and changes at-large and non-attorney licensees and requiring a membership vote to approve the change, the by-law itself including a provision that it cannot be changed by affirmative vote of the membership.

Cameon:

I have been contacted by countless members of the WSBA over the last couple of years. The members I have talked to feel that the administration views the membership as simply a funding source for administration projects that are unrelated to the regulation of the profession.

Thank you for your efforts.

Hi Cameron,

I likewise share your view point that the WSBA is pushing ideologies that I do not agree with through an aggressive and reduced process for member feedback and input. Thank you for your voice in bringing this forward.

Cameron: I am responding to your email far below. I am a 21 plus year WSBA member, and probably also a "typical" one. I also have some experience actually trying to communicate with the BOG about issues being decided, which led me to seriously doubt whether the BOG cared to listen to its membership.

Several years ago the BOG was considering an amendment to the Rules of Appellate Procedures (RAP) to shorten the window to submit amicus curiae briefs. I appeared before them at a BOG meeting where the rule proposal was up for consideration. Several other lawyers submitted written materials. I had been an appellate lawyer at the state level for more than a decade at the time, both as the lawyer for a party, as well as a regular amicus brief author for media and watchdog group amici, so I knew what I was talking about. I, and many others, told the BOG that its proposed rule change would have left the appellate courts less informed, and denied numerous interested, and impacted, amici the opportunity to inform the state appellate courts before decisions were issued. Despite this being the overwhelming majority view of all those appearing before the BOG and writing to the BOG, the President was prepared to put the proposed RAP up to a vote and seemed to simply ignore all of the input that had been given. A minority BOG member protested, saying the BOG was disregarding what all those who weighed in were saying, and persuaded enough of his colleagues to set the matter over for a later meeting to be re-evaluated. This experience showed me that Bar Leadership really did not want input from its members, and wanted to pass whatever it wanted, and viewed the input of its members as a source of annoyance and distraction, rather than true fact-gathering.

I learn about proposals right before a vote, when someone calls the matter out to me clearly and directly. I do not follow requests for work groups or studies. I find the messaging we are sent by the WSBA Presidents to be press release pitches or white washes rather than true information. I would like something like we see in the Voter Guides – both pros and cons and clear explanations of a proposal rather than what we get now. I was shocked to discover the proposal to add 3 BOG seats to non-lawyers, and vehemently oppose that idea.

I am very disappointed in our state Bar. I do not find it responsive to its members. I do not find it transparent. I know the BOG is a body of volunteers, and I applaud those who step up to the job. But for more than a decade I have felt like the Bar is controlled by staff or hand-picked slates of BOG candidates, and that actual membership input is not sought, heard, and appreciated. I found the effort to overrule the license fee rollback dishonest and disrespectful of members and the referendum process. As a membership organization, where we are forced to be "members" to practice our chosen profession, this organization ought to listen to us more, solicit our input in a meaningful way, and act with the membership's interests front and center, rather than the interests of the governing body or staff of the organization or some outside interest group.

Thank you for asking for our impressions.

Cameron Fleury --

I believe the "long process" for these bylaws was a long "in-house" process which, as a practical matter, did not include the average attorney because we are busy doing our jobs rather than being preoccupied with bar politics.

No doubt those who were very politically active were "in the know" about all the "work groups" or the "task force" or some other committee with its recommendations. But as a practical matter, the average bar member doesn't have time to track every task force or work group set up by the BOG and still do our day-to-day job.

As a result, many of us didn't realize what was going on with the creation of the proposed bylaws until things "hit the fan" when word got around about the practical way in which those bylaws were going to impact us. When we realized the impact, some of us felt that too much power was being vested at the top while the average Joe or Jane bar member was losing a voice in our own bar association.

For example, it now makes me very uncomfortable to have these new BOG positions be "appointments" rather than positions which are voted on by the bar members. If the voice of the bar members are cut out of the process, who is that power being vested in to make the appointments? Is it really wise to have more and more power vested at the top? Or in the long run, will that disenfranchise the average bar member?

With great concern,

Dear Cameron,

Thank you for asking for feedback. I agree with your summary below:

Even after I read the Bar's "Interim Governance Report", and the final "Governance Report" a few years back, I wasn't aware of any effects it could have on me personally as a Member of the Bar. It only became clear to me that something seriously wrong when the Proposed Bylaws Amendments, rolled out during the Holidays a couple years ago, that I became aware that incredibly important, and in my opinion, horrible, changes were happening in the WSBA and became involved.

We WSBA members are extremely busy, especially at the end of the calendar year. That is a very bad time to send us something requiring careful thought and asking us to provide input. (Summer is another really bad time.)

Lengthy e-mails during the process are also a problem, unless there is a concise "executive summary" at the beginning telling us why this is important and what is needed from us. If that grabs our attention, we can print and read the longer e-mail.

I do suspect it was intentional to send the substantive changes our during the holiday season and then pass them shortly thereafter. That certainly looks like an attempt to slip something by the members without stirring up opposition. If that is NOT the intent, they should be sent out at a different time of year, with longer lead time.

I also do not recall hearing anything about these changes during the "four years" they were supposedly considering them. If they ever sent out information about this, it was not sent in a way to grab attention.

I personally receive hundreds of e-mails every day, and by necessity, I delete many of them after only a cursory look. (I am sure there are hundreds, if not thousands, of WSBA members who do the same thing.) If there is something important in an e-mail from WSBA, they need to say so up front and succinctly.

Thank you for considering my comments.

Cameron,
Like you, i first became aware of the significance of those changes during the Holidays. I was fortunate enough to have the ability to evaluate them at that time. But the other members of the Animal Law Section's Executive Committee (and no doubt members generally) were too busy with their busy end-of-year schedules to pay attention.

As you know there are constantly BOG and other WSBA meetings, work groups, studies, proposals and hundreds of pages of written materials produced throughout the year. It is literally impossible for any practicing lawyer to track and evaluate everything the BOG and WSBA is doing until relevant matters reach end-stage development, at which time I expect the BOG and WSBA management to notify members and allow them a genuine opportunity to provide feedback that impacts the decision making.

Thanks for asking!

Thanks, Cameron.

For what it's worth, Steve Crossland came up with the LLLT idea years ago believing (as Paula does) that her projections of a massive die off will dry up funding for WSBA. As you are aware, that did not occur, but Paula served a lot of cool aid in WSBA circles.

I think the idea of adding equal status non lawyers to a professional organization of lawyers is hair brained. As advisors or non voting members perhaps, but not as voting members who can decide how lawyers must practice law. I also think new lawyers need not to have to compete with essentially untrained non lawyers who have no limit on fees for the limited available business. The idea that glorified paralegals are skilled enough to practice law is scary from a consumer protection standpoint as well. Good lawyers really don't become 'good' absent about 30 years of study.

This, to me, is about poor lawyers for poor people. 'Training' paralegals to practice law may add to the ranks of dues paying members, but it avoids the real problem, which is how to provide quality legal services to those with limited means. That takes money and a willingness to tackle the real issue.

Putting citizens on our voting board makes even less sense. At least the paralegals know what happens in a practice. Those outside our work have no way to understand.

WSBA is (or was) an organization of and for lawyers. The Supremes regulate the practice. WSBA enhances it. That is not the direction we are moving, and the membership really has very little input. Sections make it work, yet they were the first target. When asked about LLLT's, bar members very clearly said no, but Paula blew that off as protectionism. I fear she fails to recognize what her members really fear. Lawyers don't care about protectionism. They care about professionalism and quality.

Cameron –

Your email was forwarded to me. Your recitation of the events resonated with me. I consider myself to be a fairly active member of the WSBA; I've been a member of the executive committee of the Corporate Counsel Section for at least a dozen years. Nevertheless, the bylaw changes that would further dilute the democratic governance of the bar association came as a complete surprise to me.

Why these matters weren't a cover story in the Northwest Bar News (or whatever our magazine is now called) is beyond me. They weren't mentioned in any of the Presidents' columns either.

I do not know why there are or should be ***any*** appointed positions to the BOG. I appreciate the benefits of diversity in the deliberative process; there certainly could be a place for stated liaisons with the Young Lawyers' Division, LLLTs and bar associations represented underrepresented minorities. This doesn't mean that these groups should be granted disproportionate ***voting*** power by fiat.

There are over 38,000 attorney members in the WSBA; my understanding is that there are fewer than a hundred LLLTs. I have no inkling why LLLTs should be so overrepresented in voting power in what is ostensibly a democratic organization.

Please let me know if I can be of further help to you.

The WSBA should have announced this in the monthly bar magazine with updates. I have several strong thoughts about the bar and its leadership or lack thereof for the last several years. I am willing to discuss with you further if you are interested.

Hello Mr. Fluery,

I've been licensed 21 years and have never sought or reviewed the actions of the WSBA BOG, including reports, and don't recall ever receiving direct communications regarding their actions from the WSBA or my representative.

I first became aware of passage of the bylaws on the family listserve. If I weren't on the listserve, I most likely would remain unaware of it.

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It's inconceivable to me that the BOG would propose passage of bylaws that expand the practice of law to non-lawyers, require members to contribute financial resources for the expansion, and risk significant harm to the general public, with serving direct notice of the proposed changes to individual members, in the same manner ad license renewals.

In short, at minimum, any proposed changes that effects the practice of law should be served with substantial notice directly to each individual member. It will otherwise simply not be known about by the vast majority of WSBA members (unless practitioners have separately informed other practicioners).

In the early days of my four membership I volunteered for him participated in committees.

While I was in house at a big accounting firm in Seattle, I got pushback as they couldn't imagine why I would want to participate on, for instance, the civil rights committee. Eventually, I was invited off of that committee.

It appears to the independent and conservative thinkers that the WSBA is only focused on the far left liberal agenda. It is at that point that I stopped paying close attention to the workings of the bar, as it clearly was not focused on advancing the law and the perception of lawyers in Washington.

I have no idea what kinds of communications the bar may have attempted to send me. It is only through Paul's email communications that I have become aware of the unfortunate lows the bar has now hit. It makes me sick that I am mandated to belong to such poor performing and unfair organization.

Like you, my sense of the recent amendments is not that it was a 4 year process, but that they were sprung relatively recently. In fact, I feel grateful to Paul Swegle for making me aware of them. It seems to me that members should have a pretty straight-forward and easy way to understand summary of proposed amendments from the very beginning. So, the communication was really not very good. Perhaps that could avoid some of the misunderstanding that occurred from this.

BTW, I have a close friend who is one of the new LLLTs. She came from a 25 year career as a family law paralegal, and I applaud this new means of providing limited legal services to the population at large, and in a financially more approachable manner. We should make it easy for them to have a seat on the Board, not difficult. This business of either not giving them representation, or making them run a campaign across the entire Bar, seems silly to me.

Poorly and with snap judgments. Tweets basically.

In all seriousness for me at least I ignore WSBA amendments and plans. I'm a new attorney at 8 years so in part I just personally don't know that I have much to offer that isn't already offered on most issues. Similarly, I, like most probably, have a lot going on. "Proposed" changes don't feel like they're worth my time in the hope that if there is a bad idea that the better experienced folks looking at the proposal solves those issues before I even need to be concerned with it.

Also I am entirely aware my position doesn't survive intellectual scrutiny. Particularly, given the relatively small size of the WSBA and the

Let's face it – most WSBA members ignore the WSBA.
It's leadership is, in my opinion, insular and out of touch with its members.

Most WSBA members are focused on their practice, their clients, making a living and their families.
Many WSBA members who are at larger law firms likely have no interaction with or knowledge of WSBA because their membership fees are taken care of by the firm (satisfying CLE requirements being their only contact point).
My sense is that a good number of those involved in WSBA are "climbing the ladder" or are interested in pushing their own private policy positions.
All of us are required to be members of WSBA but the leadership feels distant and focused on issues that are unrelated to our lives and concerns.
So, it should be of no surprise to the leadership that few (almost none?) of the members focuses on their proposals until they are "ready" for adoption.

A related problem is that the persons working on the projects or proposals are not reflective of the membership at large. Through various committees and the like, the participants are "self selecting" and, by that very process, are typically unrepresentative of the membership at large.

The challenge for leadership is to promote engagement earlier in the process – the issue is how to do that?
I don't have answers. I'm just providing the feedback you requested.

WASHINGTON STATE
BAR ASSOCIATION

Exhibit F
Report on Timeline of New Governor Bylaws

Draft Memo for ANG Workgroup:

From: Brian Tollefson, Sixth District Governor

Assignment:

4. Time frame of prior passage: Simply a chronological history of how the new governor bylaws came to be passed; governance task force, by law drafting task force, time line of when members were told of the content of the bylaws and their passage.

Response: This timeline was derived from reviewing the materials posted at the ANG Workgroup website: https://www.wsba.org/connect-serve/committees-boards-other-groups/addition-of-new-governors-work-group/materials

1. Sept.21, 2012: GOVERNANCE TASK FORCE ("GTF") CHARTER was approved by the Board of Governors. The only reference in the Charter to the addition of new governors was this provision: "WSBA overall governance, including but not limited to structure of representation. . . ."
2. April 3, 2014: The "Second Interim Report" of the GTF dated, at pages 15 – 16, contained a recommendation to add the new BOG members while at the same time recommending a reduction in elected BOG members:

   "Recommendation: Current elected positions on the Board of Governors should be reduced to nine to allow for the inclusion of two public, non-attorney members and one LPO / LLLT member. These latter three members would be appointed by the Supreme Court. The three current "at-large" positions should be retained to ensure participation by a young lawyer and members that reflect historically under-represented groups. This would provide for a Board of 15 persons, one of which would be the President."

3. June 5, 2014: The BOG formed the Governance Work Group ("GWG") to direct Board discussion and prepare the BOG response to the Governance Task Force report.
4. June 24, 2014: the GTF issues its Final Report, which includes recommendation to add the new BOG members: "Recommendation: Two public, non-attorney members and one LPO / LLLT member should be added to the Board of Governors. These three members should be appointed by the Supreme Court." A five paragraph justification for the addition was set forth as well.
5. July 25, 2014: A brief reference to the Final Report was mentioned in the week's on-line "Take Note." Members were advised that the Report had been "issued by the Governance Task Force;" that the "Board is now seeking member input on the contents of the report; and that members should "Email your input to governance@wsba.org."
6. November 14, 2014: The WSBA Board of Governors in public session discusses the addition of the three new governors in open meeting. The issue was framed this way: "Should we allow for the inclusion of two public, non-attorney members and an LPO/LLLT member?"

7. January 22-23, 2015: The WSBA Board of Governors in public session further discusses the addition of the three new governors.
8. March 19, 2015: The WSBA Board of Governors in public session continues discussion of the inclusion of two public, non-attorney members and an LPO/LLLT member.
9. June 12, 2015: Brief mention of the inclusion of two public, non-attorney members during the WSBA Board of Governors public session. The focus of the discussion was on these proposed member's voting rights.
10. July 25, 2015: the GWG presents to the BOG a first reading of the draft proposed BOG responses to the GTF recommendations in a report entitled "Leadership for Today and Tomorrow."
11. Aug. 20, 2015: Bylaws Work Group ("BWG") formed by then WSBA President Anthony Gipe.
12. September 17, 2015: The BOG votes to approve the report entitled "Leadership for Today and Tomorrow," with a section of this report addressing the inclusion of two public, non-attorney members and an LPO/LLLT member in a 96-word response.[1]
13. February 11, 2016: First mention in BWG minutes of bylaws for inclusion of two public, non-attorney members and an LPO/LLLT member.
14. June 2, 2016: Continued discussion in BWG minutes of bylaw draft for inclusion of two public, non-attorney members and an LPO/LLLT member.
15. June 2-3, 2016 BOG public meeting: Chair A. Gipe updates the BOG on BWG Bylaw amendments and asks for clarification: "Chair Gipe asked for clarification regarding whether it was the intent of the Board that LLLTs could run for district seats . . . . It was the consensus of the Board that it was not its intention that LLLTs run for District seats."
16. July 14, 2016: More discussion in BWG minutes of bylaw draft for inclusion of two public, non-attorney members and an LPO/LLLT member. In addition it is announced in the BWG minutes that the BOG will hold a special meeting on August 23, 2016, to consider the bylaw amendments.
17. August 8, 2016: Continued discussion at the BWG of inclusion of new governors, and the BWG votes to recommended alternate versions of the bylaws regarding election and appointment of the new Governor positions to be presented to the BOG for consideration.
18. August 16, 2016: Proposed WSBA Bylaw changes posted to WSBA's website.
19. August 18, 2016: Notice of BOG Special Meeting given via WSBA's website.
20. August 23, 2016: The BWG first reading of proposed amendments to the WSBA Bylaws given at the BOG's special public meeting. The three versions of the proposed amendments affecting

[1] "Recognizing the WSBA's responsibility to protect the public and further cognizant of best practices followed by other bar associations, the BOG agrees with the Task Force recommendation that three public members should be chosen for service on the BOG. They should be chosen from a group of nominees from the general public and limited license professionals. The potential members should be vetted and nominated by the existing BOG Nomination Review Committee with input from the limited license professionals. Nominees would then be reviewed and approved by the BOG for submission to the Supreme Court for appointment."

inclusion of new governors are discussed by BWG Chair Anthony Gipe. [2]The BWG continues to meet.

21. Sept. 11, 2016: WSBA website announcement of **Town Hall Discussion** to be held Wednesday, Sept. 14, 4–5:30 p.m. at the WSBA Conference Center, 1325 Fourth Ave., Seattle. The announcement mentioned that the Webcast available was available and there was a link to join that would be will be available on this page on Sept. 14.
22. Sept. 25, 2016: The BWG website announces anticipated bylaw action at the Sept. 29-30, 2016 Board meeting
23. Sept. 30, 2016: Board of Governors Final Action regarding inclusion of of two public, non-attorney members and an LPO/LLLT member. In summary: Art. IV – Approved as amended 13-1; Art. V – Approved unanimous; Art. VI – Approved as amended; unanimous.

A chronological listing of the governance history has been captured in an Excel spreadsheet by WSBA staff and can be found on the ANG WORK GROUP MATERIALS website here: https://www.wsba.org/docs/default-source/legal-community/committees/addition-of-new-governors-work-group/timeline-of-task-force-and-work-groups.xlsx?sfvrsn=138506f1_4

Timeline

2012	2013	2014			2015			2016		
20-Sep	4-Jun	3-Apr	5-Jun	24-Jun	25-Jul	17-Sep	1-Oct	23-Aug	30-Sep	18-Nov
Governance Task Force (GTF) *The Board of Governors approved the Charter and Roster for an independent governance task force(GTF).*	**GTF First Interim Report** *The task force reports on areas it has identified for analysis, a plan of action, including soliticing input and feedback from multiple stakeholders.*	**GTF Second Interim Report** *The second report focuses on issues and recommendations concerning the Supreme Court and WSBA; the BOG and WSBA; Organization and Selection of the Board; and the State Bar Act.*	**Governance Work Group** *The BOG formed the Governance Work Group to direct Board discussion and prepare the BOG response to the Governance Task Force report.*	**GTF Final Report** *The task force issues its final Report and Recommendations.*	**Governance Work Group First Reading** *The work group presented the draft proposed BOG responses to the GTF recommendations in a report titled, " Leadership for Today and Tomorrow."*	**Governance Work Group Final Report** *The work group presented the final report "Leadership for Today and Tomorrow." Member comments were also included with the BOG materials.*	**Bylaws Review Work Group** *BOG President Anthony Gipe formed the Bylaws Review Work Group to draft changes to the bylaws to implement the GTF recommendations adopted by the Board in September.*	**Bylaws Work Group First Reading of Proposed Bylaws** *The Bylaws Work Group's first reading of proposed amendments to the Bylaws.*	**Bylaws Work Group Proposed Bylaws Adopted** *The BOG adopts amendments to the Bylaws, except for Art. VIII, XI, XIV.*	**Section's Work Group Proposed Art. XI** *BOG consideration of amended Art. XI tabled to January 2017 meeting.*

[2]Chair Gipe explained that three versions of Article IV are being presented since Article IV is tied to Article VI on elections and addition of new members on the Board. Version 1, recommended by the Bylaws Work Group, suggests that all three proposed at-large positions be elected by the Board; version 2, recommended by the Governance Task Force, suggests all three at-large positions be appointed by the Washington Supreme Court; and version 3, recommended by the BOG Executive Committee, suggests a compromise of versions 1 and 2, which would entail the LLLT/LPO at-large members be elected by the Board, and the public at-large members be nominated by the Board and appointed by the Supreme Court . He asked that comments be sent to him and to General Counsel McElroy.

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Exhibit G
Addition of New Governors Workgroup Roster

WASHINGTON STATE BAR ASSOCIATION

Addition of New Governors Work Group (revised 7/18/2018)

NAME/ADDRESS	POSITION	TELEPHONE/E-MAIL
BRIDGES, Dan W. McGaughey Bridges Dunlap PLLC 3131 Western Avenue Seattle, WA 98121	Co-Chair Dist. 9	DanBOG@mcbdlaw.com 425.462.4000 (o) 425.637.9638 (f)
STEPHENS, Alec Alec Stephens Consulting 5718 55th Avenue South Seattle, WA 98118	Co-Chair Governor At-Large (B)	alecstephensjr@gmail.com 206.941.5690 (o)
CLARK, Daniel D. Yakima County Prosecuting Attorney Corporate Counsel Division 128 North Second St, Rm 211 Yakima, WA 98901	Governor Dist. 4	DanClarkBOG@yahoo.com 509.574.1207 (o) 509.574.1201 (f)
TOLLEFSON, Brian PO Box 7031 Tacoma, WA 98417	Governor Dist. 6	bhmtollefson@outlook.com 253.389.0071
HUNTER, Kim E. Law Offices of Kim E. Hunter, PLLC 13036 SE Kent Kangley Road #455 Kent, WA 98030	Governor Dist. 8	kim@khunterlaw.com 253.709.5050 (o) 253.397.3520 (f)
DOANE, James K. Costco Wholesale Corporation 999 Lake Drive Issaquah, WA 98027	Governor Dist. 7S	jamesdoane@me.com 425.427.7194 (o) 425.313.8114 (f)
KANG, Jean Y. Smith Freed Eberhard PC 705 Second Avenue, Suite 1700 Seattle, WA 98104	Governor At-Large (New & Young Lawyers)	jeankang.wsba.bog@gmail.com 206.576.7575 (o) 206.576.7580 (f)
ZALL, Barnaby 685 Spring St Friday Harbor, WA 98250-8058	WSBA Member At-Large	bzall@aol.com 360.378.6600 (o) 360.539.5358 (f)
FLEURY, Cameron J. McGavick Graves PS 1102 Broadway Ste 500 Tacoma, WA 98402-3534	WSBA Member At-Large	cjf@mcgavick.com (253) 627-1181(o) (253) 627-2247 (f)

WASHINGTON STATE BAR ASSOCIATION

Addition of New Governors Work Group (revised 7/18/2018)

NAME/ADDRESS	POSITION	TELEPHONE/E-MAIL
PAGE, Bryan L. Carmichael Clark, P.S. 1700 D St Bellingham, WA 98225-3101	WSBA Member At-Large	BPage@CarmichaelClark.com (360) 647-1500 (o) (360) 647-1501 (f)
JOHNSON, Richard L. LeSourd & Patten PS 600 University St Ste 2401 Seattle, WA 98101-4121	WSBA Member At-Large	RJohnson@LeSourd.com (206) 624-1040 (o) (206) 223-1099 (f)
ELLIS, Brian M. Amazon.com 2201 Westlake Ave. Suite 500 Seattle, WA 98121-2770	WSBA Member At-Large	beellis@amazon.com (206) 435-9586
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WASHINGTON STATE BAR ASSOCIATION

Addition of New Governors Work Group (revised 7/18/2018)

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The Addition of New Governors Work Group was approved by the Board of Governors on May 17-18, 2018.

WASHINGTON STATE
BAR ASSOCIATION

Exhibit H
LPO Survey Results

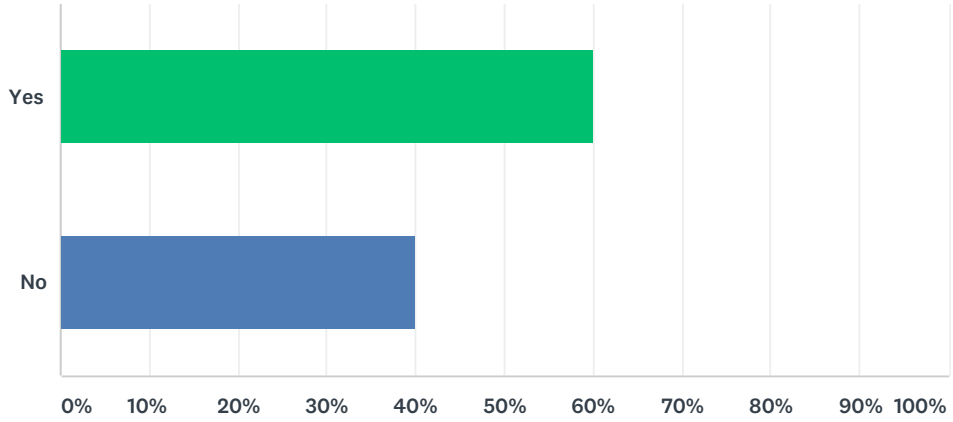
Q1 What is the approximate year you obtained your LPO?

Answered: 15 Skipped: 0

#	RESPONSES	DATE
1	1994	7/24/2018 10:25 AM
2	2017	7/17/2018 2:55 PM
3	2003	7/17/2018 1:59 PM
4	1993	7/17/2018 1:59 PM
5	2014	7/17/2018 1:56 PM
6	1991	7/17/2018 11:19 AM
7	2017	7/16/2018 5:30 PM
8	1990	7/16/2018 5:19 PM
9	1998	7/16/2018 4:37 PM
10	2004	7/16/2018 3:58 PM
11	1994	7/16/2018 3:56 PM
12	2001	7/16/2018 3:52 PM
13	2000	7/16/2018 3:48 PM
14	2004	7/16/2018 3:48 PM
15	2004	7/16/2018 3:48 PM

Q2 Do you find value in your Washington State Bar Association Membership?

Answered: 15 Skipped: 0

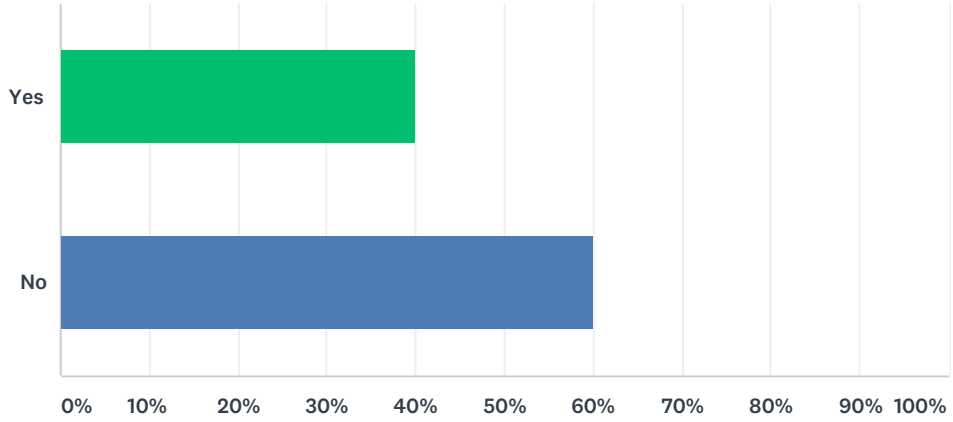


ANSWER CHOICES	RESPONSES	
Yes	60.00%	9
No	40.00%	6
TOTAL		15

#	OTHER (PLEASE SPECIFY)	DATE
1	I have found some good information and I like the access to documents and other information they have	7/16/2018 5:30 PM
2	No real value so far but it does appear that the WSBA has included the LPO's access to more resources recently.	7/16/2018 3:48 PM

Q3 Have you ever used the Bar's resources?

Answered: 15 Skipped: 0

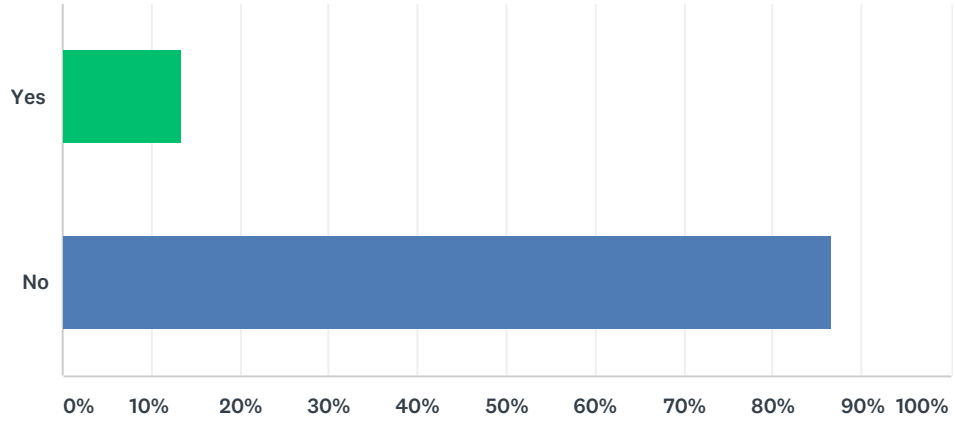


ANSWER CHOICES	RESPONSES	
Yes	40.00%	6
No	60.00%	9
TOTAL		15

#	OTHER (PLEASE SPECIFY)	DATE
1	LPO forms	7/17/2018 1:59 PM
2	approved docs links et cetera	7/16/2018 3:52 PM

Q4 Have you ever used any of your membership benefits?

Answered: 15 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	13.33%	2
No	86.67%	13
TOTAL		15

#	OTHER (PLEASE SPECIFY)	DATE
1	not yet	7/17/2018 1:56 PM
2	Not yet!	7/16/2018 5:30 PM
3	discounts of courses	7/16/2018 3:52 PM

Q5 Any additional comments on the WSBA, and your membership as an LPO?

Answered: 15 Skipped: 0

#	RESPONSES	DATE
1	No	7/24/2018 10:25 AM
2	NA	7/17/2018 2:55 PM
3	No	7/17/2018 1:59 PM
4	no	7/17/2018 1:59 PM
5	none	7/17/2018 1:56 PM
6	None	7/17/2018 11:19 AM
7	I know this will sound silly but I feel a strong sense of pride with my membership. It took a lot of studying and hard work to get there and I feel as though that is kind of our reward.	7/16/2018 5:30 PM
8	no	7/16/2018 5:19 PM
9	no	7/16/2018 4:37 PM
10	no	7/16/2018 3:58 PM
11	no	7/16/2018 3:56 PM
12	no thank you	7/16/2018 3:52 PM
13	I do like the new ceu reporting structure that is going in to place, earning the 30 hours in 3 years.	7/16/2018 3:48 PM
14	No	7/16/2018 3:48 PM
15	none	7/16/2018 3:48 PM

WASHINGTON STATE
BAR ASSOCIATION

Exhibit I
Workgroup Notes

SUMMARY & COMPILATION

OF NEW GOVERNORS WORKGROUP MATERIALS

Given the Court's October 21, 2019 order on bylaws, herein is summarized the work product of the New Governors Workgroup relating to the bylaw amendments being considered by the BoG which were stayed by the Court's 2018 order. The workgroup itself did not come to a final conclusion as its work was halted as an indirect effect of a 2018 WA Supreme Court order; however, it was not in the mandate of the workgroup to make a final conclusion but just to gather information and materials.

On the last day of their term, the 2016 Board voted to amend WSBA's bylaws to increase the Board's size by three Governors, over a very short (3-day) notice of a public forum on the issue, and the objection of many member comments including a letter from three Governors-elect: Bridges, Majumdar, and Meserve (**Exhibit A**).

In 2018, a subsequent Board expressed its intention to repeal that amendment. In particular, on enlarging the size of the Board, the Board respectfully but firmly expressed opposition to that idea as less manageable and efficient. Before the Court directed the Board of Governors to pass no further by-law amendments, the Board was favorably discussing an amendment to permit LLLTs and LPOs to join the Board, but to roll-back the creation of new Governorships. It was anticipated that would have passed if not stayed by this Court. It is material that the proposed amendments did *not* limit the number of LLLTs or LPOs who could serve at any one time. The amendment passed in 2016 limited them to only one.

Not while sitting as the Court, but during this Board's annual meeting with Justices in 2018, this issue was discussed and it was said the Board could reexamine the issue and communicate to the Court why it no longer wanted to increase the size of the Board.

To effectuate that, the Board created a Workgroup to study the issue. After the work was done but before a report could be issued, the Court ordered the Board to stay further bylaw amendments. The WSBA President at the time ordered the Workgroup be suspended. That was not without objection. Governors indicated the Workgroup should complete its work and issue a report because that would not violate the Court's bylaw freeze; a report is not a bylaw amendment. Regardless, the President stopped the Workgroup.

Thus, the New Governor Workgroup was created to study the issue in detail and report back for a final vote.

The workgroup's investigation found the following items; as an overview.

1. The cost of a Governor is material. The amount varies given geography but *the anticipated cost of adding 3 new Governorships is no less than approximately $27,000 a year.* The actual cost is higher.
2. The Board is already too large. It is established in peer reviewed literature *the optimal size for a Board such as WSBA is 10 members* <u>*inclusive*</u> of officers. *The Board has 17*

members; 14 Governors and 3 Officers (President, President-elect, and Past-president).[1] The Board is already too large and its size a hinderance in some respects. Increasing the Board's size will make those challenges worse.

3. To the extent some people assert WSBA would benefit from public input, WSBA *already has* significant public involvement on key Boards and committees and are often appointed to Workgroups that are public facing. Those are the most outwardly facing public presence and better effectuate public input on matters directly affecting the public as opposed to sitting on the Board of Governors whose primary functions are technical and involve understanding the legal system: interfacing with legal practitioners, the legislature, and the Court; providing for the needs of the members; ensuring the WSBA is able to regulate the practice of law and supervising its Executive Director; and making recommendations on Court Rules.
4. The method of passage of the those bylaws was irregular procedurally, made on faulty legal assumptions, and rushed through over significant objections. The intention of the original proposal to add 3 new appointed members cannot be ignored because it came with the added proposal that the number of *elected* Governors be *reduced* by 2. If passed, that would have yielded a 5 vote swing on the Board as between elected and appointed Governors. The result of the proposal would be to diminish the membership's ability through directly elected representatives to have an impact on the direction of WSBA.
5. The New Governor Workgroup included 2 public members, an LLLT, and 2 LPOs. When the Court stayed further amendments the Workgroup had *already* been working and meeting for months. The result was hundreds of pages of research and member responses, dwarfing any analysis or materials provided by the prior Governance Task Force that recommended adding three additional Governors. The New Governor Workgroup considered issues far broader than the Governance Task Force.

This review attempts to preserve materials and information that arose in the Workgroup's research. The raw work product, reports and information compiled by the Workgroup members is attached.

II. The Board Is Already Too Large

ABA recommendations on the appropriate size of governing Boards range between 7 to 15 members *inclusive of officers*. However, of those sources *only one* suggests 15 *might* be appropriate. The other four ABA sources recommend a minimum of 7 with a maximum of 12. Again, *inclusive of officers*. The recommended sweet spot appears to be 10, *inclusive of officers.* The WSBA Board already has 17. Adding three will bring our number to 20.

The negative consequences of too large a Board are well documented in the literature and identified in detail at **Exhibit B**. They include but are not limited to: (1) communication break-downs between Board members; (2) "free riders" emerge because in a large group it is easier to ride the coat-tails of others doing the majority of the work; and worse of all (3) it becomes *highly*

[1] Ignoring vacancies or other outlier situations.

impractical if not impossible for too large a Board to discharge its fiduciary duty of oversight. From the Hastings Law Journal cited in the Workgroup report at **Exhibit B**, page 3:

> …disengaged and unwieldy Boards simply transfer power to the CEO and other staff, who manage the organization without effective oversight. On a smaller Board, however, the CEO must work with engaged directors who hold him or her accountable through regular meetings… In short, these small-Board dynamics increase the productivity and cohesion of the Board, making it more efficient, effective, and collegial.

Clearly there are some who *prefer* the Board of Governors, in the words of the Hastings Law Journal, "transfer power to the (ED) and other staff… without effective oversight." That is how this Board functioned in the not distant past. However, the 2018-2019 Board clearly rejected that philosophy: It is contrary to basic concepts of proper Board governance and contradicts our long-standing bylaws.

The Board at all times acknowledged it must be respectful of the role of the staff and maintain strict firewalls where provided by Court Rule. However, a Board of Governors too large to function provides no oversight in which event the authority of the WSBA resides in the hands of one person: the Executive Director. The Court is without the time or means to meaningfully supervise the day-to-day affairs of the WSBA. If the Board does not exercise oversight, there is no oversight. That is not acceptable.

Other disadvantages documented in the literature at **Exhibit B** are longer meetings, an inability to reach consensus, a more glacial pace to accomplish goals, the disenfranchisement of some Board members, the formation of cliques, a lack of Board accountability, the ability of some members to take extreme positions to value display knowing their vote will not affect the outcome, difficulty holding meetings due to the number of schedules, and difficulty having meaningful conversations and colloquy to problem solve by the challenge of balancing the desires of too many people attempting to speak.

The Board of Governors has suffered all those problems with 17 members as it exists now. There may be other causes at play however without question the size of the Board is a substantial factor, consistent with the weight of the literature. Adding 3 more Governors will make the Board number 20 and can only make those challenges worse.

It is acknowledged some Bar Associations function with a very large Board. However, they function more like a house of representatives than a Board with governance oversight as the WSBA does. For instance, Texas has a Board of 46 members plus 14 *ex officio* non-voting members. But, it meets only three times a year and does not have the responsibilities of our Board.
https://www.texasbar.com/AM/Template.cfm?Section=Board_of_Directors&Template=/CM/HTMLDisplay.cfm&ContentID=38121.

It is significant that even the Governance Task Force report which was the impetus to add Governorships recommended the number of Governors be *reduced* by two to not unduly increase the size of the Board as adding 3 would make the Board too large.

III. WSBA Already Has Substantial Public Involvement

The work of the Board of Governors is technical. Its primary tasks are to consider and pass a budget, evaluate and oversee the Executive Director, vote to approve proposed Court Rules, and advise the Court, the public and the Legislature on matters related to the law.

The most meaningful work of WSBA that is public facing is done by its Boards, committees, and Workgroups. All the following, key WSBA Boards *already have* voting, public members:

1. Access to Justice Board;
2. Practice of Law Board;
3. Character and Fitness Board;
4. Client Protection Fund Board;
5. Council on Public Defense;
6. Discipline Advisory Roundtable;
7. Disciplinary Board;
8. Limited Practice Board;
9. LLLT Board;
10. MCLE Board; and
11. Pro Bono and Public Service Committee.

Those are just the Boards WSBA administers directly and which feed information and feedback directly to the Board of Governors. A variety of WSBA sections also have public members on their Boards. Additionally, WSBA *routinely* appoints public members to Workgroups and tasks forces.

In the last several years, WSBA has had 43 public members serving on those outwardly facing Boards and committees. More are added as programs expand. If public input is desired, WSBA already has an abundance of it. **Exhibit C**.

IV. Public Members Are Not Typically On Technical Boards

The New Governor Workgroup had two public members. One served in a long-time capacity as either a CFO or related job in at variety of hospitals and had years (decades) of experience working with Boards.

That person, Ron Oldfield, explained hospitals routinely have public members on Boards that address fund raising and public presence. However, they essentially universally do *not* have public members on their technical, governing Boards of the institutions themselves. As he explained it, public members are recruited to sit on Boards for their access to raising funds or communications outward to the public but do not have the technical knowledge to meaningfully contribute to decisions on how health care is delivered or the standards hospitals follow on either staff or procedures.

The Workgroup solicited input from a member of the Oregon Bar Board of Governors whose Board at the time had a public member. That individual said they found the input of their public member of assistance.

However, unlike the 2016 WSBA bylaw amendment to seat public members, Oregon's bylaws provide specific criteria requiring that any public member be selected to meet "the current needs of the Board." (Oregon State Bar Bylaws, 2.3000). The WSBA bylaw imposes no criteria: any person, friend, or ally may be appointed.

The Oregon Governor who presented to the Workgroup explained that Oregon applies its bylaw to require public members have unique technical expertise to supplement advice to the Board. The Oregon public member at the time the Workgroup met was the Global Data Privacy Officer for Siemens corporation. Past Oregon public members have been CPAs or held degrees in technical fields the Board would benefit from.

Also notable, Oregon's bylaws do *not require* that any public member be seated. That Board is allowed to determine at any one time if it wants a public member to fill a specific need.

It is within *that* context Oregon says it has had success with its public member, *not on matters relating to general governance or the practice of law*.

Finally, it was noted that it presented a somewhat loaded question to ask a sitting member of Oregon's Board to comment on whether they believed its current public member was a help or a hinderance; on a human level it is not expected a Board member would be overtly critical in that context.

V. The Cost Of Adding New Governors Is Material

A detailed analysis of the cost of a Governor was conducted by considering both the direct reimbursements for travel and related expenses and fixed costs. A breakdown of that is at **Exhibit D**.

The cost of a Governor is determined by two primary factors: geography and time on the Board. The cost of Geography speaks for itself. WSBA reimburses plane fare, hotel costs, and other expenses for Governors traveling from about any location over two hours. Even Governors living on the west side create expenses; given the location of Congressional districts only 3 or 4 Governors live a reasonable drive from Seattle.

The factor of time on the Board impacts a Governor's involvement. As a Governor progresses, they take on more responsibilities and have more duties. Thus, their need to attend meetings at WSBA and throughout the state increases.

The materials at **Exhibit D** provide a detailed discussion and demonstrate the median yearly cost of a Governor is approximately $9,000 a year (disregarding a Seattle based Governor who did not ask for a single reimbursement for three years). A first year Governor will cost less. A third year Governor will cost more. A Governor from Spokane typically costs WSBA no less than $11,000.

Thus, to add 3 new Governorships will cost approximately $27,000 a year. *However note:* attorney/Governors do not seek reimbursement of all reimbursable costs. Many see those expenses as a part of their service to their profession. It is anticipated a public member would seek a higher level of reimbursement thus their costs would be higher.

However, even the $27,000 a year is intentionally low and does not account for all costs. Additional costs will be incurred and they are material but the time to accurately research and identify them was nit completed when the workgroup was closed.

VI. The Method Of Passage Of The Additional Governor Amendment Was Irregular, Violated the Intention of the Bylaws, and Designed To Minimize Member Input

The New Governor Workgroup did substantial research on how members process information provided by the Board. Based on several surveys it is clear members do not see their time to provide input to be ripe until *an actual proposal with language* is brought forward. Until that time, a proposal may not be made at all. That material is at **Exhibit E**. Albeit, anecdotally this Board has witnessed that first hand to be true and members have said such explicitly during Board meetings.

It is accurate, as proponents of the new Governor seats have argued, that the Board created a Governance Task Force to make general governance recommendations and that it met for an extended time. However, merely saying that ignores several important facts.

First, that a task force discusses general recommendations does not mean the Board will vote to adopt them. Indeed, *most of the Governance Task Force's recommendation were not adopted.*

Second, and as noted above, given WSBA members do not see their time for input being ripe until there is actual language of a proposal to be adopted, it was only after the Board both voted to adopt a recommendation *and* provided draft language to implement it that members viewed their comment clock to have started running.

That leads to the important point: the process used by the Board in 2016 to pass its amendment, while perhaps sharply within the bylaws, was a clear derivation of our custom and practice and violated the bylaws' intent.

WSBA bylaws require a "first reading" of any by-law amendment. (Bylaws, XVI(B)). They must be presented at least once for debate before being voted on for approval.

The Board regularly meets every other month. Thus, *the fastest the bylaws contemplate an amendment may be presented and passed is the span of two meetings –* ***two months.***

Albeit, for significant actions even that may not be enough. The Board last year presented matters much *less* significant than bylaw amendments two and three times (over the course of six months) before holding a final vote, to ensure members had a chance to weigh in. At times, the President simply would not call a vote on matters *not even requiring a first read* to ensure the members had adequate time to be aware and comment.

A detailed time line of the process used by the 2016 Board to pass this amendment is at **Exhibit F**.

However, the material dates are only two.

(1) The bylaw amendment to add 3 new appointed Governor seats was presented for a first read on **August 23, 2016.**

(2) The amendment was brought to a final vote on **September 30, 2016** – 4 weeks later.

To end run the normal course, the Board in 2016 held a special meeting on short notice to satisfy the "first read" requirement. That was the *first time* the final language was presented. The Board held a final vote only four weeks later.

However, even with that short time the members did respond. In only a few short weeks, over 150 members responded speaking against the proposed amendments.[2] That is more member comment on an issue than has been received on any matter in the institutional history of the Board.

One Governor voting against the amendments was our now past-President Bill Picket who voted against them and said passing them was a betrayal of the members.

VII. Legal Advice Relied On For Passage Was Incorrect

The New Governor Workgroup had a Governor who was on the Board in 2016 when the amendment was approved. He reported the Board was told by the Executive Director at the time that adding public members would help protect WSBA against an anti-trust claim. The then Executive Director relied on North Carolina State Board of Examiners v. FTC, 574 US 494 (2015) as an example of how market actors regulating themselves could constitute an anti-trust violation and that adding public members would help insulate against such a claim. The Governor indicated that that advice was the only reason they voted for the bylaw amendment.

However, more Governors started studying the North Carolina case, and the Board felt that the assertion that WSBA was at risk of an anti-trust claim was not accurate; the Board felt the case was inapposite on the facts given that our Supreme Court has a direct hand in WSBA's activities (unlike the Dental Board) and WSBA does not act outside its state mandate (again, unlike the Dental Board).

In 2018, independent legal advice was given to the Board that the presence of a public member would not insulate the Board from an antitrust claim if one was made nor subject it to one by the absence of a public member. It was ultimately agreed by proponents on the staff that the presence or absence of a public member made no difference on this issue.

In short, the 2016 Board was persistently told it needed to seat public members or face an anti-trust challenge as in the North Carolina case. In reliance of that, the Board voted to add them. However, that advice was incorrect and was later conceded to be incorrect.

[2] As reported by staff.

VIII. The Rationale For Adding More Governors Was Flawed

As to adding public members, the Governance task force's analysis was based on several flawed assumptions.

The task force asserted adding public members would improve decision making and the public's perception of the practice of law. Based on the research identified above it is submitted the first point (improved decision making) has no support. In practice with technical Boards, that has not been found to be the case.

Further, where WSBA decisions can make the most difference to the public, (Character and Fitness Board, Client Protection Fund Board, etc.), WSBA *already has* public involvement and public votes.

It is submitted the rational of improving decision making as to *what the Board of Governors does*, is without support of the literature and contrary to the objective facts.

On the second point of improving the public's perception of the practice, while that is a laudable goal it is plainly speculation without basis. WSBA *already has* approximately 43 public members serving in important capacities. Further, WSBA is actively involved in pro and low bono efforts, law clinics, and other outreach. If all of that does not improve the public's impression of lawyers, it is unlikely that two public members would somehow change the tide.

The fact is that the public's perception of the practice of law is largely determined by its interaction with its own attorneys or those opposing them. Regrettably, since William Shakespeare in Henry VI, Part 2, uttered the phrase "The first thing we do, let's kill all the lawyers," there has been the perception the practice of law is not honorable. The WSBA believes this to be untrue. But the notion that appointing two public members will somehow improve that, much less cure it, plays into stereotypes about lawyers that should not be tolerated.

Further, the governance task force's reasoning for adding two public members was at best circular. According to the Governance Task Force, not one but two public members should be added; not because two was necessary to improve decision making, but because if there was only one they might feel "isolated." Even if the good faith of that suggestion is accepted, it does not outweigh the material financial cost ($18,000 a year) and disadvantages of increasing the Board's size so a public member could have another public ally.

Additionally, when public members are added to technical Boards, the one thing the literature *does* acknowledge is cooption. In short, a public member with no technical expertise or knowledge will naturally seek out an ally with that technical expertise. Studies show that more often than not, particularly on technical matters, the public member will defer to their ally both because he/she is the source of their technical information and out of personal loyalty. Thus, the literature demonstrates that adding public members as tokenism actually has the opposite effect of what is intended.

As to adding a dedicated seat for LLLTs and LPOs, the Governance Task Force asserted they (LLLTs and LPOs) wanted a voice at the table. However, the Governance Task Force did not

include a single limited license practitioner and its materials indicate it did not take the time to speak with any. (Governance Report, Appendix C and D, pp. 31-23).

Unlike the Governance Task Force which ironically did not include a LPO, LLLT, or public member despite the Task Force's opinion their inclusion was important for proper decision making, *the New Governor Workgroup had two LPOs, a LLLT, and two public members.* **Exhibit G.**

One LPO member was not just any LPO. Wyomia Menkens, LPO, is a Senior Division President at Stewart Title Company – one of the largest employers of LPOs in the state. She and her staff surveyed their LPOs to discover how they viewed themselves in relation to the WSBA. **Exhibit H**.

Mostly, LPOs view themselves as having no relation with WSBA. Meaning, they view their having an LPO license as simply a necessity to do their escrow work. They never gave a thought to being members of the Bar, much less do that want or feel they need to being involved in Governance or to participate in WSBA other than paying their license fee. They view their relationship to WSBA no differently than how a person with a driver's license views the DMV: a person needs a driver's license to drive, but needing to have one does not give rise to a desire to help run the DMV.

It may be agreed individual exceptions to that may be found. For instance, one survey taker at Stewart Title indicated she felt a strong connection to WSBA. However, that was one out of all surveyed. The rest expressed no opinion or stated they felt no connection and never used a single WSBA benefit.

As to LLLTs, one was included on the New Governor Workgroup and when asked, she expressed a desire to be on the Board. Other than when issues specific to LLLTs are discussed, this Board has not seen few if any LLLT attend a Board of Governors meeting in the last three years, for issues other than those directly related to that program.

Over time Governor seats have gone uncontested. If at some point if this Court allows, a LPO or LLLT will be on this Board by standing for election. But, they should stand for a vote as attorneys do and they should not have a dedicated seat as it creates a grossly disproportionate representation given their actual numbers.

IX. Final Considerations

The clear weight of the research and analysis submitted to the Workgroup weighed against enlarging the Board or seating public members. Without question there are members of the WSBA who favor doing both. However, while vocal they appear to be in the minority and as described above their arguments are not based in literature or data. Their arguments do not withstand close scrutiny and when the Governance task force final report is read with a close eye, it is clear its conclusions were supported by only supposition.

The WSBA Board should not be any larger. The Board has exhibited all the maladies reported in the literature when a governing Board is too large. Those challenges are not insurmountable and

over the past year the Board came together admirably as it put various transitional challenges behind it including irreconcilable governance perspectives with an executive director. However, increasing the Board by three appointed members will not improve the challenges that come with large board governance.

Reducing the number of elected Governors to make space for three new Governors is not a reasonable option. Members consistently speak of the need to maintain election of Governors by Congressional district to ensure geographical diversity. Reduction of that representation would be viewed poorly by our 40,000 members.

The WSBA is leaving behind a time when it sought to insulate the organization from the members it exists to serve. Adding three additional appointed Governorships along with the suggestion, albeit not adopted, to reduce the number of elected Governors by two, also needs no further elucidation: it was an attempt to insulate WSBA from accountability to the members. It has resulted in reduced trust by the membership and a reduced view of the legitimacy of the WSBA.

If the Court had decided to exclude the 40,000 voting members from the administration of their professional organization, arguably it has the plenary authority to do so if done within the scope of regulating the practice of law. However, neither the Court's Structures Workgroup nor the more recent order of the Court appears to endorse that option. Adding three appointed Governors, when there are already three appointed Governors, is a material erosion of democratic representation. It would allow future Boards to insulate themselves from accountability when it missteps and prevent the members from changing its course through elections. It would allow future Boards to entrench themselves and engage in cronyism. That does not serve the Court, the public, or the members.

If the Court opts for retaining governance by democracy, it should be consistent and allow the WSBA and its Board to determine how best to carry out its responsibilities. Despite the distraction over the last year and a half, there has been no interruption whatsoever of discipline, admissions, or any of our regulatory functions. While the Board has had disagreements over larger issues of governance, the Board has always been respectful of the critical firewalls between governance and mandatory functions.

Much like the relationship between the trial Courts and the appellate Courts, the Board should be given latitude as the initial trier of fact even if the Court might have reached a different conclusion if it was the original decision-maker. Provided WSBA continues to deliver on its mandatory functions and the Board does not abuse its discretion, the Board should be allowed to determine how it can best work within its own structure.

WASHINGTON STATE
BAR ASSOCIATION

WSBA MISSION

The Washington State Bar Association's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

WSBA GUIDING PRINCIPLES

The WSBA will operate a well-managed association that supports its members and advances and promotes:

- **Access to the justice system.**
  Focus: Provide training and leverage community partnerships in order to enhance a culture of service for legal professionals to give back to their communities, with a particular focus on services to underserved low and moderate income people.
- **Diversity, equality, and cultural understanding throughout the legal community.**
  Focus: Work to understand the lay of the land of our legal community and provide tools to members and employers in order to enhance the retention of minority legal professionals in our community.
- **The public's understanding of the rule of law and its confidence in the legal system.**
  Focus: Educate youth and adult audiences about the importance of the three branches of government and how they work together.
- **A fair and impartial judiciary.**
- **The ethics, civility, professionalism, and competence of the Bar.**

MISSION FOCUS AREAS	PROGRAM CRITERIA
Ensuring Competent and Qualified Legal Professionals • Cradle to Grave • Regulation and Assistance **Promoting the Role of Legal Professionals in Society** • Service • Professionalism	• Does the Program further either or both of WSBA's mission-focus areas? • Does WSBA have the competency to operate the Program? • As the mandatory bar, how is WSBA uniquely positioned to successfully operate the Program? • Is statewide leadership required in order to achieve the mission of the Program? • Does the Program's design optimize the expenditure of WSBA resources devoted to the Program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc?

2016 – 2018 STRATEGIC GOALS

- **Equip members with skills for the changing profession**
- **Promote equitable conditions for members from historically marginalized or underrepresented backgrounds to enter, stay and thrive in the profession**
- **Explore and pursue regulatory innovation and advocate to enhance the public's access to legal services**

GR 12
REGULATION OF THE PRACTICE OF LAW

The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. The legal profession serves clients, courts, and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons and entities acting under the Supreme Court's authority.

[Adopted effective September 1, 2017.]

GR 12.1
REGULATORY OBJECTIVES

Legal services providers must be regulated in the public interest. In regulating the practice of law in Washington, the Washington Supreme Court's objectives include: protection of the public; advancement of the administration of justice and the rule of law; meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;

(a) transparency regarding the nature and scope of legal services To be provided, the credentials of those who provide them, and the availability of regulatory protections;

(b) delivery of affordable and accessible legal services;

(c) efficient, competent, and ethical delivery of legal services;

(d) protection of privileged and confidential information;

(e) independence of professional judgment;

(f) Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs;

(g) Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

[Adopted effective September 1, 2017.]

GR 12.2
WASHINGTON STATE BAR ASSOCIATION: PURPOSES, AUTHORIZED ACTIVITIES, AND PROHIBITED ACTIVITIES

In the exercise of its inherent and plenary authority to regulate the practice of law in Washington, the Supreme Court authorizes and supervises the Washington State Bar Association's activities. The Washington State Bar Association carries out the administrative responsibilities and functions expressly delegated to it by this rule and other Supreme Court rules and orders enacted or adopted to regulate the practice of law, including the purposes and authorized activities set forth below.

(a) Purposes: In General. In general, the Washington State Bar Association 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 admission, regulation, and discipline of its members 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 association, 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 association 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 its members, including receiving and investigating complaints of misconduct by legal professionals, 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;

(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 legal professionals' trust accounts;

(13) Maintain a fund for client protection 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 Washington State Bar Association, 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.

[Adopted effective July 17, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2007; September 1, 2013; September 1, 2017.]

GR 12.3
WASHINGTON STATE BAR ASSOCIATION ADMINISTRATION OF SUPREME COURT-CREATED BOARDS AND COMMITTEES

The Supreme Court has delegated to the Washington State Bar Association the authority and responsibility to administer certain boards and committees established by court rule or order. This delegation of authority includes providing and managing staff, overseeing the boards and committees to monitor their compliance with the rules and orders that authorize and regulate them, paying expenses reasonably and necessarily incurred pursuant to a budget approved by the Board of Governors, performing other functions and taking other actions as provided in court rule or order or delegated by the Supreme Court, or taking other actions as are necessary and proper to enable the board or committee to carry out its duties or functions.

[Adopted effective September 1, 2007; amended effective September 1, 2017.]

GR 12.4
WASHINGTON STATE BAR ASSOCIATION ACCESS TO RECORDS

(a) Policy and Purpose. It is the policy of the Washington State Bar Association to facilitate access to Bar records. A presumption of public access exists for Bar records, but public access to Bar records is not absolute and shall be consistent with reasonable expectations of personal privacy, restrictions in statutes, restrictions in court rules, or as provided in court orders or protective orders issued under court rules. Access shall not unduly burden the business of the Bar.

(b) Scope. This rule governs the right of public access to Bar records. This rule applies to the Washington State Bar Association and its subgroups operated by the Bar including the Board of Governors, committees, task forces, commissions, boards, offices, councils, divisions, sections, and departments. This rule also applies to boards and committees under GR 12.3 administered by the Bar. A person or entity entrusted by the
Bar with the storage and maintenance of Bar records is not subject to this rule and may not respond to a request for access to Bar records, absent express written authority from the Bar or separate authority in rule or statute to grant access to the documents.

(c) Definitions.

(1)) "Access" means the ability to view or obtain a copy of a Bar record.

(2)) "Bar record" means any writing containing information relating to the conduct of any Bar function prepared, owned, used, or retained by the Bar regardless of physical form or characteristics. Bar records include only those records in the possession of the Bar and its staff or stored under Bar ownership and control in facilities or servers. Records solely in the possession of hearing officers, non-Bar staff members of boards, committees, task forces, commissions, sections, councils, or divisions that were prepared by the hearing officers or the members and in their sole possession, including private notes and working papers, are not Bar records and are not subject to public access under this rule. Nothing in this rule requires the Bar to create a record that is not currently in possession of the Bar at the time of the request.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation in paper, digital, or other format.

(d) Bar Records--Right of Access.

(1) The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this rule, or any other state statute (including the Public Records Act, chapter 42.56 RCW) or federal statute or rule as they would be applied to a public agency, or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission to Practice Rules and associated regulations, the Rules for Enforcement of Limited Practice Officer Conduct, General Rule 25, court orders or protective orders issued under those rules, or any other state or federal statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests or threat to safety or by the above-referenced rules, statutes, or orders, the Bar shall delete identifying details in a manner consistent with those rules, statutes, or orders when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained in writing.

(2) In addition to exemptions referenced above, the following categories of Bar records are exempt from public access except as may expressly be made public by court rule:

(A) Records of the personnel committee, and personal information in Bar records for employees, appointees, members, or volunteers of the Bar to the extent that disclosure would violate their right to privacy, including home contact information (unless such information is their address of record), Social Security numbers, driver's license numbers, identification or security photographs held in Bar records, and personal data including ethnicity, race, disability status, gender, and sexual orientation. Membership class and status, bar number, dates of admission or licensing, addresses of record, and business telephone
numbers, facsimile numbers, and electronic mail addresses (unless there has been a request that electronic mail addresses not be made public) shall not be exempt, provided that any such information shall be exempt if the Executive Director approves the confidentiality of that information for reasons of personal security or other compelling reason, which approval must be reviewed annually.

(B) Specific information and records regarding

(i) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

(ii) application, investigation, and hearing or proceeding records relating to lawyer, Limited Practice Officer, or Limited License Legal Technician admissions, licensing, or discipline, or that relate to the work of ELC 2.5 hearing officers, the Board of Bar Examiners, the Character and Fitness Board, the Law Clerk
Board, the Limited Practice Board, the MCLE Board, the Limited License Legal Technician Board, the Practice of Law Board, or the Disciplinary Board in conducting investigations, hearings or proceedings; and

(iii) the work of the Judicial Recommendation Committee and the Hearing Officer selection panel, unless such records are expressly categorized as public information by court rule.

(C) Valuable formulae, designs, drawings, computer source code or object code, and research data created or obtained by the Bar.

(D) Information regarding the infrastructure, integrity, and security of computer and telecommunication networks, databases, and systems.

(E) Applications for licensure by the Bar and annual licensing forms and related records, including applications for license fee hardship waivers and any decision or determinations on the hardship waiver applications.

(F) Requests by members for ethics opinions to the extent that they contain information identifying the member or a party to the inquiry.

Information covered by exemptions will be redacted from the specific records sought. Statistical information not descriptive of any readily identifiable person or persons may be disclosed.

(3) Persons Who Are Subjects of Records.

(A) Unless otherwise required or prohibited by law, the Bar has the option to give notice of any records request to any member or third party whose records would be included in the Bar's response.

(B) Any person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker.

(C) If the Bar decides to allow access to a requested record, a person who is named in that record, or to whom the records specifically pertains, has a right to initiate review or to participate as a party to any review initiated by a requester. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

(e) Bar Records--Procedures for Access.

(1) General Procedures. The Bar Executive Director shall appoint a Bar staff member to serve as the public records officer to whom all records requests shall be submitted. Records requests must be in writing and delivered to the Bar public records officer, who shall respond to such requests within 30 days of receipt. The Washington State Bar Association must implement this rule and adopt and publish on its website the public records officer's work mailing address, telephone number, fax number, and e-mail address, and the procedures and fee schedules for accepting and responding to records requests by the effective date of this rule. The Bar shall acknowledge receipt of the request within 14 days of receipt, and shall communicate with the requester as necessary to clarify any ambiguities as to the records being requested. Records requests shall not be directed to other Bar staff or to volunteers serving on boards, committees, task forces, commissions, sections, councils, or divisions.

(2) Charging of Fees.

(A) A fee may not be charged to view Bar records.

(B) A fee may be charged for the photocopying or scanning of Bar records according to the fee schedule established by the Bar and published on its web site.

(C) A fee not to exceed $30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

(f) Extraordinary Requests Limited by Resource Constraints. If a particular request is of a magnitude or burden on resources that the Bar cannot fully comply within 30 days due to constraints on time, resources, and personnel, the Bar shall communicate this information to the requester along with a good faith estimate of the time needed to complete the Bar's response. The Bar must attempt to reach

agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the Bar's response, which may include a schedule of installment responses. If the Bar and requester are unable to reach agreement, the Bar shall respond to the extent practicable, clarify how and why the response differs from the request, and inform the requester that it has completed its response.

(g) Denials. Denials must be in writing and shall identify the applicable exemptions or other bases for denial as well as a written summary of the procedures under which the requesting party may seek further review.

(h) Review of Records Decisions.

(1) Internal Review. A person who objects to a record decision or other action by the Bar's public records officer may request review by the Bar's Executive Director.

(A) A record requester's petition for internal review must be submitted within 90 days of the Bar's public records officer's decision, on such form as the Bar shall designate and make available.

(B) The review proceeding is informal, summary, and on the record.

(C) The review proceeding shall be held within five working days. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(2) External Review. A person who objects to a records review decision by the Bar's Executive Director may request review by the Records Request Appeals Officer (RRAO) for the Bar.

(A) The requesting party's request for review of the Executive Director's decision must be deposited in the mail and postmarked or delivered to the Bar not later than 30 days after the issuance of the decision, and must be on such form as the Bar shall designate and make available.

(B)) The review will be informal and summary, but in the sole discretion of the RRAO may include the submission of briefs no more than 20 pages long and of oral arguments no more than 15 minutes long.

(C) Decisions of the RRAO are final unless, within 30 days of the issuance of the decision, a request for discretionary review of the decision is filed with the Supreme Court. If review is granted, review is conducted by the Chief Justice of the Washington Supreme Court or his or her designee in accordance with procedures established by the Supreme Court. A designee of the Chief Justice shall be a current or former elected judge. The review proceeding shall be on the record, without additional briefing or argument unless such is ordered by the Chief Justice or his or her designee.

(D) The RRAO shall be appointed by the Board of Governors. The Bar may reimburse the RRAO for all necessary and reasonable expenses incurred in the completion of these duties, and may provide compensation for the time necessary for these reviews at a level established by the Board of Governors.

(i) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(j) Effective Date of Rule.

(1) This rule goes into effect on July 1, 2014, and applies to records that are created on or after that date.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test; the Public Records Act, chapter 42.56 RCW, does not apply to such Bar records, but it may be used for nonbinding guidance.

[Adopted effective July 1, 2014; amended effective September 1, 2017.]

GR 12.5
IMMUNITY

All boards, committees, or other entities, and their members and personnel, and all personnel and employees of the Washington State Bar Association, acting on behalf of the Supreme Court under the Admission and Practice Rules, the Rules for Enforcement of Lawyer Conduct, or the disciplinary rules for limited practice officers and limited license legal technicians, shall enjoy quasi-judicial immunity if the Supreme Court would have immunity in performing the same functions.

[Adopted effective January 2, 2008; amended effective September 1, 2017.]

WASHINGTON STATE BAR ASSOCIATION

2019-2020
WSBA BOARD OF GOVERNORS MEETING SCHEDULE

MEETING DATE	LOCATION	POTENTIAL ISSUES / SOCIAL FUNCTION	AGENDA DUE	BOARD BOOK MATERIAL DEADLINE*	EXECUTIVE COMMITTEE 10:00 am–12:00 pm*
November 22-23, 2019	WSBA Conference Center Seattle, WA	BOG Meeting	October 28, 2019	November 6, 2019	October 28, 2019 11:00 am – 1:00 pm
January 16-17, 2020	WSBA Conference Center Seattle, WA	BOG Meeting	December 16, 2019	January 2, 2020	December 16, 2019
March 19-20, 2020 March 20, 2020	Hotel RL Olympia, WA Temple of Justice	BOG Meeting BOG Meeting with Supreme Court	February 24, 2020	March 4, 2020	February 24, 2020
April 17-18, 2020	WSBA Conference Center Seattle, WA	BOG Meeting	March 30, 2020	April 1, 2020	March 30, 2020
May 14-15, 2020	Hotel Bellwether Bellingham, WA	BOG Meeting	April 20, 2020	April 29, 2020	April 20, 2020
July 23, 2020 July 24-25, 2020	Skamania Lodge Stevenson, WA	BOG Retreat BOG Meeting	June 22, 2020	July 8, 2020	June 22, 2020
August 28-29, 2020	Davenport Hotel Spokane, WA	BOG Meeting	August 3, 2020	August 12, 2020	August 3, 2020 August 17, 2020
September 17-18, 2020 September 17, 2020	WSBA Conference Center Seattle, WA TBD	BOG Meeting WSBA APEX Awards Banquet	August 31, 2020	September 2, 2020	August 31, 2020

*The Board Book Material Deadline is the final due date for submission of materials for the respective Board meeting. However, you should notify the Executive Director's office in advance of possible meeting agenda item(s).

This information can be found online at: www.wsba.org/About-WSBA/Governance/Board-Meeting-Schedule-Materials

*Unless otherwise noted.

WSBA Board of Governors
Congressional District Map

2019-2020


Rajeev Majumdar
President


Kyle Sciuchetti
President-Elect


Bill Pickett
Immediate Past President


Terra Nevitt
Interim Exec. Dir. & Secretary


Sunitha Anjilvel
Governor District 1


Carla Higginson
Governor District 2


P.J. Grabicki
Governor District 5


Brian Tollefson
Governor District 6


Paul Swegle
Governor District 7-North


Kim Hunter
Governor District 8


Jean Kang
Governor District 7-South


Bryn Peterson
Governor District 9


Thomas A. McBride
Governor District 10


Dan Clark
Governor District 4


Kyle Sciuchetti
Governor District 3


Hunter Abell
Governor At-Large


Alec Stephens
Governor At-Large


Russell Knight
Governor At-Large

BASIC CHARACTERISTICS OF MOTIONS

From: ***The Complete Idiot's Guide to Robert's Rules***
The Guerilla Guide to Robert's Rules

MOTION	PURPOSE	INTERRUPT SPEAKER?	SECOND NEEDED?	DEBATABLE?	AMENDABLE?	VOTE NEEDED
1. Fix the time to which to adjourn	Sets the time for a continued meeting	No	Yes	No[1]	Yes	Majority
2. Adjourn	Closes the meeting	No	Yes	No	No	Majority
3. Recess	Establishes a brief break	No	Yes	No[2]	Yes	Majority
4. Raise a Question of Privilege	Asks urgent question regarding to rights	Yes	No	No	No	Rules by Chair
5. Call for orders of the day	Requires that the meeting follow the agenda	Yes	No	No	No	One member
6. Lay on the table	Puts the motion aside for later consideration	No	Yes	No	No	Majority
7. Previous question	Ends debate and moves directly to the vote	No	Yes	No	No	Two-thirds
8. Limit or extend limits of debate	Changes the debate limits	No	Yes	No	Yes	Two-thirds
9. Postpone to a certain time	Puts off the motion to a specific time	No	Yes	Yes	Yes	Majority[3]
10. Commit or refer	Refers the motion to a committee	No	Yes	Yes	Yes	Majority
11. Amend an amendment (secondary amendment)	Proposes a change to an amendments	No	Yes	Yes[4]	No	Majority
12. Amend a motion or resolution (primary amendment)	Proposes a change to a main motion	No	Yes	Yes[4]	Yes	Majority
13. Postpone indefinitely	Kills the motion	No	Yes	Yes	No	Majority
14. Main motion	Brings business before the assembly	No	Yes	Yes	Yes	Majority

1 Is debatable when another meeting is scheduled for the same or next day, or if the motion is made while no question Is pending

2 Unless no question is pending

3 Majority, unless it makes question a special order

4 If the motion it is being applied to is debatable

Discussion Protocols
Board of Governors Meetings

Philosophical Statement:

"We take serious our representational responsibilities and will try to inform ourselves on the subject matter before us by contact with constituents, stakeholders, WSBA staff and committees when possible and appropriate. In all deliberations and actions we will be courageous and keep in mind the need to represent and lead our membership and safeguard the public. In our actions, we will be mindful of both the call to action and the constraints placed upon the WSBA by GR 12 and other standards."

Governor's Commitments:

1. Tackle the problems presented; don't make up new ones.
2. Keep perspective on long-term goals.
3. Actively listen to understand the issues and perspective of others before making the final decision or lobbying for an absolute.
4. Respect the speaker, the input and the Board's decision.
5. Collect your thoughts and speak to the point – sparingly!
6. Foster interpersonal relationships between Board members outside Board events.
7. Listen and be courteous to speakers.
8. Speak only if you can shed light on the subject, don't be repetitive.
9. Consider, respect and trust committee work but exercise the Board's obligation to establish policy and insure that the committee work is consistent with that policy and the Board's responsibility to the WSBA's mission.
10. Seek the best decision through quality discussion and ample time (listen, don't make assumptions, avoid sidebars, speak frankly, allow time before and during meetings to discuss important matters).
11. Don't repeat points already made.
12. Everyone should have a chance to weigh in on discussion topics before persons are given a second opportunity.
13. No governor should commit the board to actions, opinions, or projects without consultation with the whole Board.
14. Use caution with e-mail: it can be a useful tool for debating, but e-mail is not confidential and does not easily involve all interests.
15. Maintain the strict confidentiality of executive session discussions and matters.

BOARD OF GOVERNORS

WSBA VALUES

Through a collaborative process, the WSBA Board of Governors and Staff have identified these core values that shall be considered by the Board, Staff, and WSBA volunteers (collectively, the "WSBA Community") in all that we do.

To serve the public and our members and to promote justice, the WSBA Community values the following:

- Trust and respect between and among Board, Staff, Volunteers, Members, and the public
- Open and effective communication
- Individual responsibility, initiative, and creativity
- Teamwork and cooperation
- Ethical and moral principles
- Quality customer-service, with member and public focus
- Confidentiality, where required
- Diversity and inclusion
- Organizational history, knowledge, and context
- Open exchanges of information

BOARD OF GOVERNORS

GUIDING COMMUNICATION PRINCIPLES

In each communication, I will assume the good intent of my fellow colleagues; earnestly and actively listen; encourage the expression of and seek to affirm the value of their differing perspectives, even where I may disagree; share my ideas and thoughts with compassion, clarity, and where appropriate confidentiality; and commit myself to the unwavering recognition, appreciation, and celebration of the humanity, skills, and talents that each of my fellow colleagues bring in the spirt and effort to work for the mission of the WSBA. Therefore, I commit myself to operating with the following norms:

- I will treat each person with courtesy and respect, valuing each individual.
- I will strive to be nonjudgmental, open-minded, and receptive to the ideas of others.
- I will assume the good intent of others.
- I will speak in ways that encourage others to speak.
- I will respect others' time, workload, and priorities.
- I will aspire to be honest and open in all communications.
- I will aim for clarity; be complete, yet concise.
- I will practice "active" listening and ask questions if I don't understand.
- I will use the appropriate communication method (face-to-face, email, phone, voicemail) for the message and situation.
- When dealing with material of a sensitive or confidential nature, I will seek and confirm that there is mutual agreement to the ground rules of confidentiality at the outset of the communication.
- I will avoid triangulation and go directly to the person with whom I need to communicate. (If there is a problem, I will go to the source for resolution rather than discussing it with or complaining to others.)
- I will focus on reaching understanding and finding solutions to problems.
- I will be mindful of information that affects, or might be of interest or value to, others, and pass it along; err on the side of over-communication.
- I will maintain a sense of perspective and respectful humor.

BOARD OF GOVERNORS

Anthony David Gipe
President

phone: 206.386.4721
e-mail: adgipeWSBA@gmail.com

November 2014

BEST PRACTICES AND EXPECTATIONS

- **Attributes of the Board**
  - Competence
  - Respect
  - Trust
  - Commitment
  - Humor

- **Accountability by Individual Governors**
  - Assume Good Intent
  - Participation/Preparation
  - Communication
  - Relevancy and Reporting

- **Team of Professionals**
  - Foster an atmosphere of teamwork
    - Between Board Members
    - The Board with the Officers
    - The Board and Officers with the Staff
    - The Board, Officers, and Staff with the Volunteers

  - We all have common loyalty to the success of WSBA

- **Work Hard and Have Fun Doing It**

WASHINGTON STATE
BAR ASSOCIATION

Financial Reports

(Unaudited)

Year to Date September 30, 2019

Prepared by Maggie Yu, Controller
Submitted by
Jorge Perez, Chief Financial Officer
November 15, 2019

Washington State Bar Association Financial
Summary Year to Date as of September 30, 2019
100% of Year Compared to Fiscal Year 2019 Budget

Category	Actual Revenues	Budgeted Revenues	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
Access to Justice	7,500	7,500	274,292	271,867	41,777	62,957	316,068	334,824	(308,568)	(327,324)
Administration	329,633	100,000	1,117,474	1,138,769	4,237	4,885	1,121,711	1,143,654	(792,079)	(1,043,654)
Admissions/Bar Exam	1,332,120	1,327,400	849,161	841,048	384,892	416,931	1,234,053	1,257,979	98,067	69,421
Board of Governors	-	-	600,427	530,178	261,225	304,531	861,652	834,709	(861,652)	(834,709)
Communications Strategies	25,318	50,750	545,852	550,782	100,958	104,800	646,811	655,582	(621,492)	(604,832)
Conference & Broadcast Services	-	-	802,253	780,393	8,063	3,500	810,316	783,893	(810,316)	(783,893)
Discipline	90,087	96,200	5,557,915	5,664,008	173,562	220,267	5,731,477	5,884,275	(5,641,390)	(5,788,075)
Diversity	143,774	120,374	545,456	544,641	18,890	21,550	564,346	566,191	(420,572)	(445,817)
Foundation	-	-	151,974	150,663	3,549	14,200	155,523	164,863	(155,523)	(164,863)
Human Resources	-	-	391,398	204,958	-	-	391,398	204,958	(391,398)	(204,958)
Law Clerk Program	168,403	166,000	138,945	142,665	4,789	11,350	143,734	154,015	24,669	11,985
Legislative	-	-	138,260	135,416	12,940	18,650	151,200	154,066	(151,200)	(154,066)
Licensing and Membership Records	404,990	304,350	637,752	636,327	33,782	45,812	671,534	682,139	(266,544)	(377,789)
Licensing Fees	16,217,283	15,958,200	-	-	-	-	-	-	16,217,283	15,958,200
Limited License Legal Technician	25,508	-	207,871	215,591	30,779	25,600	238,650	241,191	(213,142)	(241,191)
Limited Practice Officers	-	-	158,623	168,653	3,049	3,000	161,672	156,182	(161,672)	(171,653)
Mandatory CLE	1,186,632	1,050,000	624,148	620,981	251,648	252,448	875,796	873,429	310,836	176,571
Member Assistance Program	12,719	10,000	140,488	141,224	1,307	1,275	141,795	142,499	(129,076)	(132,499)
Member Benefits	20,249	17,000.00	88,995	92,611	161,206	185,096	250,200	277,707	(229,951)	(260,707)
Member Services & Engagement	168,117	141,200.00	487,039	505,614	30,367	56,065	517,406	561,679	(349,289)	(420,479)
NW Lawyer	561,142	461,350	295,535	302,818	448,787	355,635	744,322	658,453	(183,180)	(197,103)
Office of General Counsel	342	-	794,785	928,680	3,468	13,076	798,253	941,756	(797,911)	(941,756)
OGC-Disciplinary Board	-	-	170,840	187,073	78,554	103,500	249,394	290,573	(249,394)	(290,573)
Outreach and Engagement	-	-	373,135	371,046	24,509	30,852	397,645	401,898	(397,645)	(401,898)
Practice of Law Board	-	-	44,401	74,063	15,272	16,000	59,672	90,063	(59,672)	(90,063)
Professional Responsibility Program	-	-	259,576	258,870	8,556	6,700	268,132	265,570	(268,132)	(265,570)
Public Service Programs	139,504	112,000	126,636	142,504	238,666	232,415	365,302	374,919	(225,798)	(262,919)
Publication and Design Services	-	-	146,765	141,602	4,280	5,263	151,045	146,865	(151,045)	(146,865)
Sections Administration	294,638	300,000	517,337	515,018	8,957	9,297	526,293	524,315	(231,656)	(224,315)
Technology	-	-	1,641,879	1,540,222	-	-	1,641,879	1,540,222	(1,641,879)	(1,540,222)
Subtotal General Fund	**21,127,959**	20,222,324	**17,829,210**	17,798,285	**2,358,070**	2,525,655	**20,187,280**	20,323,940	**940,679**	**(101,616)**
Expenses using reserve funds							**20,187,280**		-	-
Total General Fund - Net Result from Operations									**940,679**	**(101,616)**
Percentage of Budget	**104.48%**		**100.17%**		**93.36%**		**99.33%**			
CLE-Seminars and Products	1,800,477	1,879,500	1,141,140	1,150,797	447,278	393,776	1,588,418	1,544,573	212,059	334,927
CLE - Deskbooks	157,844	160,000	219,876	217,303	227,867	69,390	447,743	286,693	(289,899)	(126,693)
Total CLE	1,958,320	2,039,500	1,361,016	1,368,100	675,145	463,166	2,036,161	1,831,266	(77,840)	208,234
Percentage of Budget	**96.02%**		**99.48%**		**145.77%**		**111.19%**			
Total All Sections	548,382	544,140	-	-	587,501	841,025	587,501	841,025	(39,119)	(296,885)
Client Protection Fund-Restricted	1,119,310	992,500	147,772	164,210	383,382	504,000	531,155	668,210	588,155	324,290
Management of Western States Bar Conference (Nc	67,858	68,200	-	-	57,617	62,800	57,617	62,800	10,241	5,400
Totals	24,821,828	23,866,664	19,337,997.71	19,330,595	4,061,715	4,396,646	23,399,712	23,727,241	1,422,116	139,423
Percentage of Budget	104.00%		100.04%		92.38%		98.62%			

Summary of Fund Balances:	Fund Balances Sept. 30, 2018	2019 Budgeted Fund Balances	Fund Balances Year to date
Restricted Funds:			
Client Protection Fund	3,227,988	3,552,278	3,816,143.11
Western States Bar Conference	8,340	13,740	18,581.01
Board-Designated Funds (Non-General Fund):			
CLE Fund Balance	604,125	812,359	526,285
Section Funds	1,160,343	863,458	1,121,224
Board-Designated Funds (General Fund):			
Operating Reserve Fund	1,500,000	1,500,000	1,500,000
Facilities Reserve Fund	450,000	450,000	550,000
Unrestricted Funds (General Fund):			
Unrestricted General Fund	1,845,858	1,744,242	2,686,537
Total General Fund Balance	**3,795,858**	**3,694,242**	**4,736,536.68**
Net Change in general Fund Balance		**(101,616)**	**940,679**
Total Fund Balance	**8,796,654**	**8,936,077**	**10,218,770**
Net Change In Fund Balance		**139,423**	**1,422,116**

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LICENSE FEES					
REVENUE:					
LICENSE FEES	15,778,000.00	1,322,495.21	16,053,477.87	(275,477.87)	101.75%
LLLT LICENSE FEES	5,800.00	479.15	6,491.95	(691.95)	111.93%
LPO LICENSE FEES	174,400.00	14,534.79	157,313.17	17,086.83	90.20%
TOTAL REVENUE:	**15,958,200.00**	**1,337,509.15**	**16,217,282.99**	**(259,082.99)**	**101.62%**

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
ACCESS TO JUSTICE					
REVENUE:					
CONFERENCES & INSTITUTES	7,500.00	7,500.00	7,500.00	-	100.00%
TOTAL REVENUE:	**7,500.00**	**7,500.00**	**7,500.00**	**-**	**100.00%**
DIRECT EXPENSES:					
ATJ BOARD RETREAT	2,000.00	-	1,260.45	739.55	63.02%
LEADERSHIP TRAINING	2,000.00	-	802.75	1,197.25	40.14%
ATJ BOARD EXPENSE	24,000.00	1,832.77	15,813.95	8,186.05	65.89%
STAFF TRAVEL/PARKING	3,500.00	89.26	3,893.21	(393.21)	111.23%
STAFF MEMBERSHIP DUES	120.00	-	100.00	20.00	83.33%
PUBLIC DEFENSE	7,000.00	465.28	2,908.45	4,091.55	41.55%
CONFERENCE/INSTITUTE EXPENSE	14,837.00	-	13,714.56	1,122.44	92.43%
RECEPTION/FORUM EXPENSE	9,500.00	-	3,283.29	6,216.71	34.56%
TOTAL DIRECT EXPENSES:	**62,957.00**	**2,387.31**	**41,776.66**	**21,180.34**	**66.36%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.10 FTE)	160,817.00	12,339.75	162,522.11	(1,705.11)	101.06%
BENEFITS EXPENSE	59,156.00	4,705.00	56,488.03	2,667.97	95.49%
OTHER INDIRECT EXPENSE	51,894.00	4,647.61	55,281.49	(3,387.49)	106.53%
TOTAL INDIRECT EXPENSES:	**271,867.00**	**21,692.36**	**274,291.63**	**(2,424.63)**	**100.89%**
TOTAL ALL EXPENSES:	**334,824.00**	**24,079.67**	**316,068.29**	**18,755.71**	**94.40%**
NET INCOME (LOSS):	**(327,324.00)**	**(16,579.67)**	**(308,568.29)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

ADMINISTRATION

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
INTEREST INCOME	70,000.00	(7,214.29)	231,185.85	(161,185.85)	330.27%
GAIN/LOSS ON INVESTMENTS	30,000.00	-	98,446.79	(68,446.79)	328.16%
TOTAL REVENUE:	**100,000.00**	**(7,214.29)**	**329,632.64**	**(229,632.64)**	**329.63%**
DIRECT EXPENSES:					
CREDIT CARD MERCHANT FEES	-	1,355.89	(1,196.55)	1,196.55	
STAFF TRAVEL/PARKING	4,200.00	805.20	3,605.20	594.80	85.84%
STAFF MEMBERSHIP DUES	685.00	-	599.17	85.83	87.47%
MISCELLANEOUS	-	673.98	1,229.42	(1,229.42)	
TOTAL DIRECT EXPENSES:	**4,885.00**	**2,835.07**	**4,237.24**	**647.76**	**86.74%**
INDIRECT EXPENSES:					
SALARY EXPENSE (7.97 FTE)	700,100.00	40,634.52	680,554.19	19,545.81	97.21%
BENEFITS EXPENSE	241,718.00	17,431.77	226,923.90	14,794.10	93.88%
OTHER INDIRECT EXPENSE	196,951.00	17,654.76	209,995.98	(13,044.98)	106.62%
TOTAL INDIRECT EXPENSES:	**1,138,769.00**	**75,721.05**	**1,117,474.07**	**21,294.93**	**98.13%**
TOTAL ALL EXPENSES:	**1,143,654.00**	**78,556.12**	**1,121,711.31**	**21,942.69**	**98.08%**
NET INCOME (LOSS):	**(1,043,654.00)**	**(85,770.41)**	**(792,078.67)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

ADMISSIONS

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
EXAM SOFT REVENUE	35,000.00	21,875.00	32,760.00	2,240.00	93.60%
BAR EXAM FEES	1,200,000.00	49,460.00	1,226,675.00	(26,675.00)	102.22%
RPC BOOKLETS	-	-	150.00	(150.00)	
SPECIAL ADMISSIONS	60,000.00	3,065.00	38,425.00	21,575.00	64.04%
LLLT EXAM FEES	7,500.00	-	2,910.00	4,590.00	38.80%
LLLT WAIVER FEES	900.00	-	600.00	300.00	66.67%
LPO EXAMINATION FEES	24,000.00	1,200.00	30,600.00	(6,600.00)	127.50%
TOTAL REVENUE:	**1,327,400.00**	**75,600.00**	**1,332,120.00**	**(4,720.00)**	**100.36%**
DIRECT EXPENSES:					
DEPRECIATION	17,776.00	-	-	17,776.00	0.00%
POSTAGE	4,000.00	1,556.28	5,060.44	(1,060.44)	126.51%
STAFF TRAVEL/PARKING	13,000.00	700.00	16,933.94	(3,933.94)	130.26%
STAFF MEMBERSHIP DUES	400.00	(200.00)	300.00	100.00	75.00%
SUPPLIES	2,500.00	-	1,703.19	796.81	68.13%
FACILITY, PARKING, FOOD	70,000.00	-	88,428.48	(18,428.48)	126.33%
EXAMINER FEES	35,000.00	-	26,000.00	9,000.00	74.29%
UBE EXMINATIONS	130,000.00	71,642.00	108,674.00	21,326.00	83.60%
BOARD OF BAR EXAMINERS	25,000.00	4,703.46	30,327.29	(5,327.29)	121.31%
BAR EXAM PROCTORS	31,000.00	-	30,126.50	873.50	97.18%
CHARACTER & FITNESS BOARD	20,000.00	1,740.34	15,699.67	4,300.33	78.50%
DISABILITY ACCOMMODATIONS	20,000.00	-	18,943.16	1,056.84	94.72%
CHARACTER & FITNESS INVESTIGATIONS	900.00	-	-	900.00	0.00%
LAW SCHOOL VISITS	1,000.00	70.40	729.52	270.48	72.95%
EXAM WRITING	28,355.00	-	28,350.00	5.00	99.98%
SPEAKERS & PROGRAM DEVELOP	-	74.43	336.03	(336.03)	
COURT REPORTERS	18,000.00	3,809.58	13,120.88	4,879.12	72.89%
PRINTING & COPYING	-	-	158.75	(158.75)	
TOTAL DIRECT EXPENSES:	**416,931.00**	**84,096.49**	**384,891.85**	**32,039.15**	**92.32%**
INDIRECT EXPENSES:					
SALARY EXPENSE (6.30 FTE)	496,503.00	40,312.11	502,378.70	(5,875.70)	101.18%
BENEFITS EXPENSE	188,862.00	14,990.33	180,566.91	8,295.09	95.61%
OTHER INDIRECT EXPENSE	155,683.00	13,974.10	166,215.68	(10,532.68)	106.77%
TOTAL INDIRECT EXPENSES:	**841,048.00**	**69,276.54**	**849,161.29**	**(8,113.29)**	**100.96%**
TOTAL ALL EXPENSES:	**1,257,979.00**	**153,373.03**	**1,234,053.14**	**23,925.86**	**98.10%**
NET INCOME (LOSS):	**69,421.00**	**(77,773.03)**	**98,066.86**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

BOG/OED

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	5,400.00	364.30	3,497.14	1,902.86	64.76%
STAFF MEMBERSHIP DUES	2,131.00	-	1,125.00	1,006.00	52.79%
TELEPHONE	1,000.00	-	421.19	578.81	42.12%
WASHINGTON LEADERSHIP INSTITUTE	60,000.00	-	60,000.00	-	100.00%
BOG MEETINGS	117,000.00	3,692.48	114,351.30	2,648.70	97.74%
BOG COMMITTEES' EXPENSES	30,000.00	2,696.88	21,052.80	8,947.20	70.18%
BOG CONFERENCE ATTENDANCE	49,000.00	6,668.83	29,292.45	19,707.55	59.78%
BOG TRAVEL & OUTREACH	35,000.00	7,416.78	25,224.39	9,775.61	72.07%
ED TRAVEL & OUTREACH	5,000.00	1,518.67	5,816.38	(816.38)	116.33%
BAR STRUCTURE WORKGROUP	-	-	444.48	(444.48)	
TOTAL DIRECT EXPENSES:	**304,531.00**	**22,357.94**	**261,225.13**	**43,305.87**	**85.78%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.45 FTE)	361,878.00	21,292.60	431,204.63	(69,326.63)	119.16%
BENEFITS EXPENSE	107,757.00	8,480.35	104,665.23	3,091.77	97.13%
OTHER INDIRECT EXPENSE	60,543.00	5,427.44	64,557.01	(4,014.01)	106.63%
TOTAL INDIRECT EXPENSES:	**530,178.00**	**35,200.39**	**600,426.87**	**(70,248.87)**	**113.25%**
TOTAL ALL EXPENSES:	**834,709.00**	**57,558.33**	**861,652.00**	**(26,943.00)**	**103.23%**
NET INCOME (LOSS):	**(834,709.00)**	**(57,558.33)**	**(861,652.00)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

COMMUNICATION STRATEGIES

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
APEX LUNCH/DINNER	50,000.00	24,179.88	24,344.88	25,655.12	48.69%
50 YEAR MEMBER TRIBUTE LUNCH	750.00	-	300.00	450.00	40.00%
WSBA LOGO MERCHANDISE SALES	-	113.53	673.53	(673.53)	
TOTAL REVENUE:	**50,750.00**	**24,293.41**	**25,318.41**	**25,431.59**	**49.89%**
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	4,700.00	786.50	4,636.50	63.50	98.65%
STAFF MEMBERSHIP DUES	1,000.00	-	1,195.00	(195.00)	119.50%
SUBSCRIPTIONS	10,050.00	47.56	7,156.19	2,893.81	71.21%
DIGITAL/ONLINE DEVELOPMENT	1,450.00	-	406.36	1,043.64	28.02%
APEX DINNER	63,000.00	37,295.17	66,301.45	(3,301.45)	105.24%
50 YEAR MEMBER TRIBUTE LUNCH	8,000.00	150.77	8,609.72	(609.72)	107.62%
COMMUNICATIONS OUTREACH	15,000.00	175.59	11,938.13	3,061.87	79.59%
SPEAKERS & PROGRAM DEVELOP	1,600.00	-	-	1,600.00	0.00%
EQUIPMENT, HARDWARE & SOFTWARE	-	-	384.25	(384.25)	
TELEPHONE	-	27.60	294.73	(294.73)	
CONFERENCE CALLS	-	-	36.09	(36.09)	
TOTAL DIRECT EXPENSES:	**104,800.00**	**38,483.19**	**100,958.42**	**3,841.58**	**96.33%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.62 FTE)	312,393.00	23,175.13	309,727.53	2,665.47	99.15%
BENEFITS EXPENSE	124,221.00	9,571.09	114,431.22	9,789.78	92.12%
OTHER INDIRECT EXPENSE	114,168.00	10,231.04	121,693.69	(7,525.69)	106.59%
TOTAL INDIRECT EXPENSES:	**550,782.00**	**42,977.26**	**545,852.44**	**4,929.56**	**99.10%**
TOTAL ALL EXPENSES:	**655,582.00**	**81,460.45**	**646,810.86**	**8,771.14**	**98.66%**
NET INCOME (LOSS):	**(604,832.00)**	**(57,167.04)**	**(621,492.45)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

CONFERENCE & BROADCAST SERVICES

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
TRANSLATION SERVICES	3,500.00	869.00	8,063.20	(4,563.20)	230.38%
TOTAL DIRECT EXPENSES:	**3,500.00**	**869.00**	**8,063.20**	**(4,563.20)**	**230.38%**
INDIRECT EXPENSES:					
SALARY EXPENSE (7.15 FTE)	429,625.00	35,628.53	448,870.14	(19,245.14)	104.48%
BENEFITS EXPENSE	174,080.00	13,873.07	164,906.17	9,173.83	94.73%
OTHER INDIRECT EXPENSE	176,688.00	15,845.59	188,476.67	(11,788.67)	106.67%
TOTAL INDIRECT EXPENSES:	**780,393.00**	**65,347.19**	**802,252.98**	**(21,859.98)**	**102.80%**
TOTAL ALL EXPENSES:	**783,893.00**	**66,216.19**	**810,316.18**	**(26,423.18)**	**103.37%**
NET INCOME (LOSS):	**(783,893.00)**	**(66,216.19)**	**(810,316.18)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

DISCIPLINE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
AUDIT REVENUE	3,200.00	212.50	1,851.25	1,348.75	57.85%
RECOVERY OF DISCIPLINE COSTS	80,000.00	8,042.30	72,283.51	7,716.49	90.35%
DISCIPLINE HISTORY SUMMARY	13,000.00	1,608.65	15,952.14	(2,952.14)	122.71%
TOTAL REVENUE:	**96,200.00**	**9,863.45**	**90,086.90**	**6,113.10**	**93.65%**
DIRECT EXPENSES:					
DEPRECIATION-SOFTWARE	7,123.00	328.00	7,649.56	(526.56)	107.39%
PUBLICATIONS PRODUCTION	444.00	194.10	405.35	38.65	91.30%
STAFF TRAVEL/PARKING	35,000.00	4,957.60	31,920.49	3,079.51	91.20%
STAFF MEMBERSHIP DUES	3,900.00	-	2,985.05	914.95	76.54%
TELEPHONE	2,300.00	196.18	2,400.52	(100.52)	104.37%
COURT REPORTERS	55,000.00	5,298.30	30,221.81	24,778.19	54.95%
OUTSIDE COUNSEL/AIC	2,000.00	-	37.49	1,962.51	1.87%
LITIGATION EXPENSES	25,000.00	1,743.96	20,707.22	4,292.78	82.83%
DISABILITY EXPENSES	7,500.00	-	5,475.00	2,025.00	73.00%
ONLINE LEGAL RESEARCH	68,000.00	185.90	62,014.67	5,985.33	91.20%
LAW LIBRARY	12,500.00	862.08	9,483.86	3,016.14	75.87%
TRANSLATION SERVICES	1,500.00	-	247.89	1,252.11	16.53%
CONFERENCE CALLS	-	-	12.84	(12.84)	
TOTAL DIRECT EXPENSES:	**220,267.00**	**13,766.12**	**173,561.75**	**46,705.25**	**78.80%**
INDIRECT EXPENSES:					
SALARY EXPENSE (36.88 FTE)	3,556,329.00	250,348.31	3,449,703.31	106,625.69	97.00%
BENEFITS EXPENSE	1,196,316.00	93,838.40	1,136,517.65	59,798.35	95.00%
OTHER INDIRECT EXPENSE	911,363.00	81,692.24	971,694.35	(60,331.35)	106.62%
TOTAL INDIRECT EXPENSES:	**5,664,008.00**	**425,878.95**	**5,557,915.31**	**106,092.69**	**98.13%**
TOTAL ALL EXPENSES:	**5,884,275.00**	**439,645.07**	**5,731,477.06**	**152,797.94**	**97.40%**
NET INCOME (LOSS):	**(5,788,075.00)**	**(429,781.62)**	**(5,641,390.16)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
DIVERSITY					
REVENUE:					
DONATIONS	110,000.00	-	137,500.00	(27,500.00)	125.00%
WORK STUDY GRANTS	10,374.00	-	6,273.75	4,100.25	60.48%
TOTAL REVENUE:	**120,374.00**	**-**	**143,773.75**	**(23,399.75)**	**119.44%**
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	6,000.00	481.52	5,628.58	371.42	93.81%
STAFF MEMBERSHIP DUES	350.00	-	150.00	200.00	42.86%
COMMITTEE FOR DIVERSITY	5,000.00	538.61	5,863.64	(863.64)	117.27%
DIVERSITY EVENTS & PROJECTS	10,000.00	230.92	7,177.09	2,822.91	71.77%
INTERNAL DIVERSITY OUTREACH	200.00	-	70.24	129.76	35.12%
TOTAL DIRECT EXPENSE:	**21,550.00**	**1,251.05**	**18,889.55**	**2,660.45**	**87.65%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.05 FTE)	328,835.00	24,607.91	327,814.35	1,020.65	99.69%
BENEFITS EXPENSE	115,724.00	9,206.79	110,788.72	4,935.28	95.74%
OTHER INDIRECT EXPENSE	100,082.00	8,983.33	106,853.08	(6,771.08)	106.77%
TOTAL INDIRECT EXPENSES:	**544,641.00**	**42,798.03**	**545,456.15**	**(815.15)**	**100.15%**
TOTAL ALL EXPENSES:	**566,191.00**	**44,049.08**	**564,345.70**	**1,845.30**	**99.67%**
NET INCOME (LOSS):	**(445,817.00)**	**(44,049.08)**	**(420,571.95)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
FOUNDATION					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
CONSULTING SERVICES	3,000.00	-	2,000.00	1,000.00	66.67%
PRINTING & COPYING	800.00	-	649.96	150.04	81.25%
STAFF TRAVEL/PARKING	1,400.00	-	43.79	1,356.21	3.13%
SUPPLIES	500.00	14.29	14.29	485.71	2.86%
SPECIAL EVENTS	5,000.00	250.00	250.00	4,750.00	5.00%
BOARD OF TRUSTEES	3,000.00	193.48	542.45	2,457.55	18.08%
POSTAGE	500.00	-	48.93	451.07	9.79%
TOTAL DIRECT EXPENSES:	**14,200.00**	**457.77**	**3,549.42**	**10,650.58**	**25.00%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.15 FTE)	89,538.00	6,323.98	90,605.44	(1,067.44)	101.19%
BENEFITS EXPENSE	32,707.00	2,465.99	30,944.86	1,762.14	94.61%
OTHER INDIRECT EXPENSE	28,418.00	2,557.76	30,423.26	(2,005.26)	107.06%
TOTAL INDIRECT EXPENSES:	**150,663.00**	**11,347.73**	**151,973.56**	**(1,310.56)**	**100.87%**
TOTAL ALL EXPENSES:	**164,863.00**	**11,805.50**	**155,522.98**	**9,340.02**	**94.33%**
NET INCOME (LOSS):	**(164,863.00)**	**(11,805.50)**	**(155,522.98)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
HUMAN RESOURCES					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	150.00	53.60	273.60	(123.60)	182.40%
STAFF MEMBERSHIP DUES	1,250.00	251.65	1,029.65	220.35	82.37%
SUBSCRIPTIONS	2,100.00	-	2,531.52	(431.52)	120.55%
STAFF TRAINING- GENERAL	30,000.00	149.73	10,719.76	19,280.24	35.73%
RECRUITING AND ADVERTISING	7,000.00	-	13,416.43	(6,416.43)	191.66%
PAYROLL PROCESSING	49,000.00	3,860.03	45,155.99	3,844.01	92.16%
SALARY SURVEYS	2,900.00	-	2,510.30	389.70	86.56%
CONSULTING SERVICES	10,000.00	-	28,206.20	(18,206.20)	282.06%
TRANSFER TO INDIRECT EXPENSE	(102,400.00)	(4,315.01)	(103,843.45)	1,443.45	101.41%
TOTAL DIRECT EXPENSES:	-	-	-	-	
INDIRECT EXPENSES:					
SALARY EXPENSE (2.45 FTE)	260,398.00	17,519.55	248,914.17	11,483.83	95.59%
ALLOWANCE FOR OPEN POSITIONS	(200,000.00)	-	-	(200,000.00)	0.00%
BENEFITS EXPENSE	84,017.00	5,837.24	77,926.97	6,090.03	92.75%
OTHER INDIRECT EXPENSE	60,543.00	5,427.42	64,556.98	(4,013.98)	106.63%
TOTAL INDIRECT EXPENSES:	**204,958.00**	**28,784.21**	**391,398.12**	**(186,440.12)**	**190.97%**
TOTAL ALL EXPENSES:	**204,958.00**	**28,784.21**	**391,398.12**	**(186,440.12)**	**190.97%**
NET INCOME (LOSS):	**(204,958.00)**	**(28,784.21)**	**(391,398.12)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

LAW CLERK PROGRAM

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
LAW CLERK FEES	162,000.00	(1,336.00)	164,603.00	(2,603.00)	101.61%
LAW CLERK APPLICATION FEES	4,000.00	600.00	3,800.00	200.00	95.00%
TOTAL REVENUE:	**166,000.00**	**(736.00)**	**168,403.00**	**(2,403.00)**	**101.45%**
DIRECT EXPENSES:					
SUBSCRIPTIONS	250.00	-	250.00	-	100.00%
CHARACTER & FITNESS INVESTIGATIONS	100.00	-	-	100.00	0.00%
LAW CLERK BOARD EXPENSE	6,000.00	20.91	4,363.77	1,636.23	72.73%
STAFF TRAVEL/PARKING	-	-	33.33	(33.33)	
LAW CLERK OUTREACH	5,000.00	-	142.01	4,857.99	2.84%
TOTAL DIRECT EXPENSES:	**11,350.00**	**20.91**	**4,789.11**	**6,560.89**	**42.19%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.10 FTE)	84,449.00	6,356.75	80,456.95	3,992.05	95.27%
BENEFITS EXPENSE	31,033.00	2,455.82	29,548.30	1,484.70	95.22%
OTHER INDIRECT EXPENSE	27,183.00	2,433.00	28,939.38	(1,756.38)	106.46%
TOTAL INDIRECT EXPENSES:	**142,665.00**	**11,245.57**	**138,944.63**	**3,720.37**	**97.39%**
TOTAL ALL EXPENSES:	**154,015.00**	**11,266.48**	**143,733.74**	**10,281.26**	**93.32%**
NET INCOME (LOSS):	**11,985.00**	**(12,002.48)**	**24,669.26**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LEGISLATIVE					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	4,550.00	18.00	2,034.46	2,515.54	44.71%
STAFF MEMBERSHIP DUES	450.00	-	130.00	320.00	28.89%
SUBSCRIPTIONS	2,000.00	-	1,981.80	18.20	99.09%
TELEPHONE	400.00	-	-	400.00	0.00%
OLYMPIA RENT	2,500.00	-	1,353.12	1,146.88	54.12%
CONTRACT LOBBYIST	5,000.00	-	5,000.00	-	100.00%
LOBBYIST CONTACT COSTS	1,000.00	-	-	1,000.00	0.00%
LEGISLATIVE COMMITTEE	2,500.00	-	2,440.63	59.37	97.63%
BOG LEGISLATIVE COMMITTEE	250.00	-	-	250.00	0.00%
TOTAL DIRECT EXPENSES:	**18,650.00**	**18.00**	**12,940.01**	**5,709.99**	**69.38%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.10 FTE)	80,340.00	6,051.18	80,440.04	(100.04)	100.12%
BENEFITS EXPENSE	27,893.00	2,394.56	28,880.32	(987.32)	103.54%
OTHER INDIRECT EXPENSE	27,183.00	2,433.00	28,939.35	(1,756.35)	106.46%
TOTAL INDIRECT EXPENSES:	**135,416.00**	**10,878.74**	**138,259.71**	**(2,843.71)**	**102.10%**
TOTAL ALL EXPENSES:	**154,066.00**	**10,896.74**	**151,199.72**	**2,866.28**	**98.14%**
NET INCOME (LOSS):	**(154,066.00)**	**(10,896.74)**	**(151,199.72)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

LICENSING & MEMBERSHIP RECORDS

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
STATUS CERTIFICATE FEES	22,000.00	2,286.53	19,053.19	2,946.81	86.61%
RULE 9/LEGAL INTERN FEES	11,000.00	850.00	13,500.00	(2,500.00)	122.73%
INVESTIGATION FEES	22,000.00	1,200.00	28,600.00	(6,600.00)	130.00%
PRO HAC VICE	230,000.00	22,650.00	332,071.00	(102,071.00)	144.38%
MEMBER CONTACT INFORMATION	19,000.00	1,555.00	11,358.26	7,641.74	59.78%
PHOTO BAR CARD SALES	350.00	12.00	408.00	(58.00)	116.57%
TOTAL REVENUE:	**304,350.00**	**28,553.53**	**404,990.45**	**(100,640.45)**	**133.07%**
DIRECT EXPENSES:					
DEPRECIATION	13,812.00	1,150.00	13,806.00	6.00	99.96%
POSTAGE	29,000.00	-	17,535.32	11,464.68	60.47%
LICENSING FORMS	3,000.00	-	2,441.11	558.89	81.37%
TOTAL DIRECT EXPENSES:	**45,812.00**	**1,150.00**	**33,782.43**	**12,029.57**	**73.74%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.35 FTE)	395,080.00	29,350.56	395,248.27	(168.27)	100.04%
BENEFITS EXPENSE	133,752.00	10,594.56	127,858.97	5,893.03	95.59%
OTHER INDIRECT EXPENSE	107,495.00	9,638.37	114,644.33	(7,149.33)	106.65%
TOTAL INDIRECT EXPENSES:	**636,327.00**	**49,583.49**	**637,751.57**	**(1,424.57)**	**100.22%**
TOTAL ALL EXPENSES:	**682,139.00**	**50,733.49**	**671,534.00**	**10,605.00**	**98.45%**
NET INCOME (LOSS):	**(377,789.00)**	**(22,179.96)**	**(266,543.55)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LIMITED LICENSE LEGAL TECHNICIAN PROGRAM					
REVENUE:					
SEMINAR REGISTRATIONS	-	-	25,508.00	(25,508.00)	
TOTAL REVENUE:	**-**	**-**	**25,508.00**	**(25,508.00)**	
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	600.00	-	431.49	168.51	71.92%
LLLT BOARD	17,000.00	1,863.33	14,648.53	2,351.47	86.17%
LLLT OUTREACH	8,000.00	-	2,652.24	5,347.76	33.15%
LLLT EDUCATION	-	324.80	13,047.18	(13,047.18)	
TOTAL DIRECT EXPENSES:	**25,600.00**	**2,188.13**	**30,779.44**	**(5,179.44)**	**120.23%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.55 FTE)	135,526.00	9,072.22	121,991.10	13,534.90	90.01%
BENEFITS EXPENSE	41,762.00	3,748.94	45,067.54	(3,305.54)	107.92%
OTHER INDIRECT EXPENSE	38,303.00	3,431.17	40,811.93	(2,508.93)	106.55%
TOTAL INDIRECT EXPENSES:	**215,591.00**	**16,252.33**	**207,870.57**	**7,720.43**	**96.42%**
TOTAL ALL EXPENSES:	**241,191.00**	**18,440.46**	**238,650.01**	**2,540.99**	**98.95%**
NET INCOME (LOSS):	**(241,191.00)**	**(18,440.46)**	**(213,142.01)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

LIMITED PRACTICE OFFICERS

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
LPO BOARD	3,000.00	278.48	3,049.49	(49.49)	101.65%
TOTAL DIRECT EXPENSES:	**3,000.00**	**278.48**	**3,049.49**	**(49.49)**	**101.65%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.17 FTE)	99,089.00	7,352.56	94,543.91	4,545.09	95.41%
BENEFITS EXPENSE	40,651.00	2,763.89	33,284.57	7,366.43	81.88%
OTHER INDIRECT EXPENSE	28,913.00	2,588.96	30,794.47	(1,881.47)	106.51%
TOTAL INDIRECT EXPENSES:	**168,653.00**	**12,705.41**	**158,622.95**	**10,030.05**	**94.05%**
TOTAL ALL EXPENSES:	**171,653.00**	**12,983.89**	**161,672.44**	**9,980.56**	**94.19%**
NET INCOME (LOSS):	**(171,653.00)**	**(12,983.89)**	**(161,672.44)**		

Washington State Bar Association

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For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MANDATORY CONTINUING LEGAL EDUCATION					
REVENUE:					
ACCREDITED PROGRAM FEES	540,000.00	44,800.00	621,845.00	(81,845.00)	115.16%
FORM 1 LATE FEES	150,000.00	14,250.00	201,437.50	(51,437.50)	134.29%
MEMBER LATE FEES	203,000.00	750.00	194,625.00	8,375.00	95.87%
ANNUAL ACCREDITED SPONSOR FEES	43,000.00	-	43,000.00	-	100.00%
ATTENDANCE LATE FEES	85,000.00	4,000.00	92,280.00	(7,280.00)	108.56%
COMITY CERTIFICATES	29,000.00	225.00	33,444.06	(4,444.06)	115.32%
TOTAL REVENUE:	**1,050,000.00**	**64,025.00**	**1,186,631.56**	**(136,631.56)**	**113.01%**
DIRECT EXPENSES:					
DEPRECIATION	249,948.00	20,843.00	249,935.00	13.00	99.99%
STAFF MEMBERSHIP DUES	500.00	-	500.00	-	100.00%
MCLE BOARD	2,000.00	102.04	1,212.88	787.12	60.64%
TOTAL DIRECT EXPENSES:	**252,448.00**	**20,945.04**	**251,647.88**	**800.12**	**99.68%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.90 FTE)	374,898.00	34,489.27	375,385.72	(487.72)	100.13%
BENEFITS EXPENSE	124,996.00	9,953.08	119,648.11	5,347.89	95.72%
OTHER INDIRECT EXPENSE	121,087.00	10,854.87	129,114.01	(8,027.01)	106.63%
TOTAL INDIRECT EXPENSES:	**620,981.00**	**55,297.22**	**624,147.84**	**(3,166.84)**	**100.51%**
TOTAL ALL EXPENSES:	**873,429.00**	**76,242.26**	**875,795.72**	**(2,366.72)**	**100.27%**
NET INCOME (LOSS):	**176,571.00**	**(12,217.26)**	**310,835.84**		

Washington State Bar Association
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For the Period from September 1, 2019 to September 30, 2019
100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MEMBER ASSISTANCE PROGRAM					
REVENUE:					
DIVERSIONS	10,000.00	1,875.00	10,891.80	(891.80)	108.92%
SEMINAR REGISTRATIONS	-	-	1,372.00	(1,372.00)	
LAP GROUPS REVENUE	-	175.00	455.00	(455.00)	
TOTAL REVENUE:	**10,000.00**	**2,050.00**	**12,718.80**	**(2,718.80)**	**127.19%**
DIRECT EXPENSES:					
PUBLICATIONS PRODUCTION	200.00	-	256.26	(56.26)	128.13%
STAFF MEMBERSHIP DUES	225.00	-	226.00	(1.00)	100.44%
PROF LIAB INSURANCE	850.00	-	825.00	25.00	97.06%
TOTAL DIRECT EXPENSES:	**1,275.00**	**-**	**1,307.26**	**(32.26)**	**102.53%**
INDIRECT EXPENSES:					
SALARY EXPENSE (0.90 FTE)	84,582.00	6,324.60	84,214.93	367.07	99.57%
BENEFITS EXPENSE	34,402.00	2,633.20	32,527.62	1,874.38	94.55%
OTHER INDIRECT EXPENSE	22,240.00	1,996.29	23,745.19	(1,505.19)	106.77%
TOTAL INDIRECT EXPENSES:	**141,224.00**	**10,954.09**	**140,487.74**	**736.26**	**99.48%**
TOTAL ALL EXPENSES:	**142,499.00**	**10,954.09**	**141,795.00**	**704.00**	**99.51%**
NET INCOME (LOSS):	**(132,499.00)**	**(8,904.09)**	**(129,076.20)**		

Washington State Bar Association

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100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MEMBER SERVICES & ENGAGEMENT					
REVENUE:					
ROYALTIES	30,000.00	88.60	47,875.11	(17,875.11)	159.58%
NMP PRODUCT SALES	70,000.00	6,208.99	88,427.69	(18,427.69)	126.33%
SPONSORSHIPS	1,200.00	-	725.00	475.00	60.42%
SEMINAR REGISTRATIONS	30,000.00	-	16,134.06	13,865.94	53.78%
TRIAL ADVOCACY PROGRAM	10,000.00	-	14,955.00	(4,955.00)	149.55%
TOTAL REVENUE:	**141,200.00**	**6,297.59**	**168,116.86**	**(26,916.86)**	**119.06%**
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	4,500.00	577.59	1,776.68	2,723.32	39.48%
SUBSCRIPTIONS	480.00	15.00	846.60	(366.60)	176.38%
CONFERENCE CALLS	200.00	32.34	132.31	67.69	66.16%
YLL SECTION PROGRAM	1,100.00	103.36	843.36	256.64	76.67%
WYLC CLE COMPS	1,000.00	-	250.00	750.00	25.00%
WYLC OUTREACH EVENTS	2,500.00	1,327.76	1,844.69	655.31	73.79%
WYL COMMITTEE	15,000.00	1,088.24	6,180.73	8,819.27	41.20%
OPEN SECTIONS NIGHT	4,400.00	-	2,999.64	1,400.36	68.17%
RURAL PLACEMENT PROGRAM	10,500.00	9.42	9.42	10,490.58	0.09%
TRIAL ADVOCACY EXPENSES	2,500.00	-	2,347.00	153.00	93.88%
RECEPTION/FORUM EXPENSE	4,000.00	90.93	3,777.74	222.26	94.44%
WYLC SCHOLARSHIPS/DONATIONS/GRANT	2,500.00	799.50	2,081.27	418.73	83.25%
STAFF MEMBERSHIP DUES	385.00	(75.00)	109.00	276.00	28.31%
LENDING LIBRARY	5,500.00	1,879.57	4,979.61	520.39	90.54%
NMP SPEAKERS & PROGRAM DEVELOPMENT	1,500.00	24.04	2,188.52	(688.52)	145.90%
TOTAL DIRECT EXPENSES:	**56,065.00**	**5,872.75**	**30,366.57**	**25,698.43**	**54.16%**
INDIRECT EXPENSES:					
SALARY EXPENSE (3.98 FTE)	296,941.00	22,932.79	276,550.83	20,390.17	93.13%
BENEFITS EXPENSE	110,321.00	8,763.99	105,490.28	4,830.72	95.62%
OTHER INDIRECT EXPENSE	98,352.00	8,827.36	104,997.82	(6,645.82)	106.76%
TOTAL INDIRECT EXPENSES:	**505,614.00**	**40,524.14**	**487,038.93**	**18,575.07**	**96.33%**
TOTAL ALL EXPENSES:	**561,679.00**	**46,396.89**	**517,405.50**	**44,273.50**	**92.12%**
NET INCOME (LOSS):	**(420,479.00)**	**(40,099.30)**	**(349,288.64)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MEMBERSHIP BENEFITS					
REVENUE:					
SPONSORSHIPS	8,000.00	-	5,500.00	2,500.00	68.75%
INTERNET SALES	9,000.00	490.00	14,749.00	(5,749.00)	163.88%
TOTAL REVENUE:	**17,000.00**	**490.00**	**20,249.00**	**(3,249.00)**	**119.11%**
DIRECT EXPENSES:					
LEGAL LUNCHBOX COURSEBOOK PRODUCTION	500.00	-	-	500.00	0.00%
LEGAL LUNCHBOX SPEAKERS & PROGRAM	1,700.00	-	531.69	1,168.31	31.28%
WSBA CONNECTS	46,560.00	-	31,040.00	15,520.00	66.67%
CASEMAKER & FASTCASE	136,336.00	6.54	129,363.49	6,972.51	94.89%
CONFERENCE CALLS	-	-	270.41	(270.41)	
TOTAL DIRECT EXPENSES:	**185,096.00**	**6.54**	**161,205.59**	**23,890.41**	**87.09%**
INDIRECT EXPENSES:	54,366.00	4,579.62	50,239.13	4,126.87	92.41%
SALARY EXPENSE (0.73 FTE)	20,206.00	1,630.30	19,462.58	743.42	96.32%
BENEFITS EXPENSE	18,039.00	1,622.02	19,293.14	(1,254.14)	106.95%
OTHER INDIRECT EXPENSE					
TOTAL INDIRECT EXPENSES:	**92,611.00**	**7,831.94**	**88,994.85**	**3,616.15**	**96.10%**
TOTAL ALL EXPENSES:	**277,707.00**	**7,838.48**	**250,200.44**	**27,506.56**	**90.10%**
NET INCOME (LOSS):	**(260,707.00)**	**(7,348.48)**	**(229,951.44)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
NORTHWEST LAWYER					
REVENUE:					
ROYALTIES	-	-	1,267.59	(1,267.59)	
DISPLAY ADVERTISING	297,500.00	48,643.00	325,488.10	(27,988.10)	109.41%
SUBSCRIPT/SINGLE ISSUES	350.00	-	165.18	184.82	47.19%
CLASSIFIED ADVERTISING	12,500.00	1,798.50	16,414.30	(3,914.30)	131.31%
GEN ANNOUNCEMENTS	17,500.00	2,704.00	10,088.00	7,412.00	57.65%
PROF ANNOUNCEMENTS	21,000.00	2,300.00	20,765.60	234.40	98.88%
JOB TARGET ADVERSTISING	112,500.00	19,890.19	186,953.60	(74,453.60)	166.18%
TOTAL REVENUE:	**461,350.00**	**75,335.69**	**561,142.37**	**(99,792.37)**	**121.63%**
DIRECT EXPENSES:					
BAD DEBT EXPENSE	2,000.00	-	(2,950.00)	4,950.00	-147.50%
POSTAGE	89,000.00	20,674.45	90,564.92	(1,564.92)	101.76%
PRINTING, COPYING & MAILING	250,000.00	26,307.47	255,097.76	(5,097.76)	102.04%
DIGITAL/ONLINE DEVELOPMENT	10,200.00	800.00	7,050.00	3,150.00	69.12%
GRAPHICS/ARTWORK	3,500.00	-	-	3,500.00	0.00%
OUTSIDE SALES EXPENSE	-	16,094.10	98,480.90	(98,480.90)	
EDITORIAL ADVISORY COMMITTEE	800.00	39.68	525.52	274.48	65.69%
STAFF MEMBERSHIP DUES	135.00	-	-	135.00	0.00%
SUPPLIES	-	-	17.79	(17.79)	
TOTAL DIRECT EXPENSES:	**355,635.00**	**63,915.70**	**448,786.89**	**(93,151.89)**	**126.19%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.25 FTE)	177,211.00	13,667.74	177,838.23	(627.23)	100.35%
BENEFITS EXPENSE	70,006.00	5,555.88	58,334.04	11,671.96	83.33%
OTHER INDIRECT EXPENSE	55,601.00	4,990.76	59,362.86	(3,761.86)	106.77%
TOTAL INDIRECT EXPENSES:	**302,818.00**	**24,214.38**	**295,535.13**	**7,282.87**	**97.59%**
TOTAL ALL EXPENSES:	**658,453.00**	**88,130.08**	**744,322.02**	**(85,869.02)**	**113.04%**
NET INCOME (LOSS):	**(197,103.00)**	**(12,794.39)**	**(183,179.65)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

OFFICE OF GENERAL COUNSEL

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
COPY FEES	-	1.26	342.27	(342.27)	
TOTAL REVENUE:	**-**	**1.26**	**342.27**	**(342.27)**	
DIRECT EXPENSES:					
DEPRECIATION	3,336.00	-	-	3,336.00	0.00%
STAFF TRAVEL/PARKING	3,240.00	-	-	3,240.00	0.00%
STAFF MEMBERSHIP DUES	1,500.00	-	725.00	775.00	48.33%
COURT RULES COMMITTEE	2,000.00	541.46	2,345.29	(345.29)	117.26%
DISCIPLINE ADVISORY ROUNDTABLE	500.00	-	-	500.00	0.00%
CUSTODIANSHIPS	2,500.00	51.66	84.66	2,415.34	3.39%
LITIGATION EXPENSES	-	-	313.29	(313.29)	
TOTAL DIRECT EXPENSES:	**13,076.00**	**593.12**	**3,468.24**	**9,607.76**	**26.52%**
INDIRECT EXPENSES:					
SALARY EXPENSE (5.75 FTE)	588,978.00	33,645.45	465,336.13	123,641.87	79.01%
BENEFITS EXPENSE	197,610.00	14,821.28	177,703.03	19,906.97	89.93%
OTHER INDIRECT EXPENSE	142,092.00	12,757.57	151,746.04	(9,654.04)	106.79%
TOTAL INDIRECT EXPENSES:	**928,680.00**	**61,224.30**	**794,785.20**	**133,894.80**	**85.58%**
TOTAL ALL EXPENSES:	**941,756.00**	**61,817.42**	**798,253.44**	**143,502.56**	**84.76%**
NET INCOME (LOSS):	**(941,756.00)**	**(61,816.16)**	**(797,911.17)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

OFFICE OF GENERAL COUNSEL - DISCIPLINARY BOARD

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSE:					
STAFF MEMBERSHIP DUES	500.00	-	150.00	350.00	30.00%
DISCIPLINARY BOARD EXPENSES	10,000.00	130.15	3,911.63	6,088.37	39.12%
CHIEF HEARING OFFICER	33,000.00	5,000.00	30,000.00	3,000.00	90.91%
HEARING OFFICER EXPENSES	3,000.00	3,733.59	3,868.02	(868.02)	128.93%
HEARING OFFICER TRAINING	2,000.00	-	-	2,000.00	0.00%
OUTSIDE COUNSEL	55,000.00	7,000.00	40,000.00	15,000.00	72.73%
DISCIPLINARY SELECTION PANEL	-	-	624.53	(624.53)	
TOTAL DIRECT EXPENSES:	**103,500.00**	**15,863.74**	**78,554.18**	**24,945.82**	**75.90%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.45 FTE)	110,578.00	6,934.23	94,341.42	16,236.58	85.32%
BENEFITS EXPENSE	40,663.00	3,183.12	38,283.79	2,379.21	94.15%
OTHER INDIRECT EXPENSE	35,832.00	3,212.80	38,214.84	(2,382.84)	106.65%
TOTAL INDIRECT EXPENSES:	**187,073.00**	**13,330.15**	**170,840.05**	**16,232.95**	**91.32%**
TOTAL ALL EXPENSES:	**290,573.00**	**29,193.89**	**249,394.23**	**41,178.77**	**85.83%**
NET INCOME (LOSS):	**(290,573.00)**	**(29,193.89)**	**(249,394.23)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
OUTREACH & ENGAGEMENT					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSE:					
STAFF TRAVEL/PARKING	1,400.00	-	39.92	1,360.08	2.85%
STAFF MEMBERSHIP DUES	1,152.00	-	-	1,152.00	0.00%
CONFERENCE CALLS	200.00	-	-	200.00	0.00%
ABA DELEGATES	4,500.00	1,911.78	4,882.62	(382.62)	108.50%
ANNUAL CHAIR MEETINGS	600.00	-	496.74	103.26	82.79%
JUDICIAL RECOMMENDATIONS COMMITTEE	4,500.00	9.54	2,329.86	2,170.14	51.77%
BOG ELECTIONS	6,500.00	-	4,900.00	1,600.00	75.38%
BAR OUTREACH	10,000.00	711.26	11,860.26	(1,860.26)	118.60%
PROFESSIONALISM	2,000.00	-	-	2,000.00	0.00%
TOTAL DIRECT EXPENSES:	**30,852.00**	**2,632.58**	**24,509.40**	**6,342.60**	**79.44%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.73 FTE)	224,397.00	16,909.95	224,383.29	13.71	99.99%
BENEFITS EXPENSE	79,186.00	6,361.93	76,774.50	2,411.50	96.95%
OTHER INDIRECT EXPENSE	67,463.00	6,051.25	71,977.36	(4,514.36)	106.69%
TOTAL INDIRECT EXPENSES:	**371,046.00**	**29,323.13**	**373,135.15**	**(2,089.15)**	**100.56%**
TOTAL ALL EXPENSES:	**401,898.00**	**31,955.71**	**397,644.55**	**4,253.45**	**98.94%**
NET INCOME (LOSS):	**(401,898.00)**	**(31,955.71)**	**(397,644.55)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

PRACTICE OF LAW BOARD

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
PRACTICE OF LAW BOARD	16,000.00	1,084.75	15,271.57	728.43	95.45%
TOTAL DIRECT EXPENSES:	**16,000.00**	**1,084.75**	**15,271.57**	**728.43**	**95.45%**
INDIRECT EXPENSES:					
SALARY EXPENSE (0.40 FTE)	50,676.00	1,411.07	21,143.78	29,532.22	41.72%
BENEFITS EXPENSE	13,502.00	1,072.18	12,868.25	633.75	95.31%
OTHER INDIRECT EXPENSE	9,885.00	873.37	10,388.55	(503.55)	105.09%
TOTAL INDIRECT EXPENSES:	**74,063.00**	**3,356.62**	**44,400.58**	**29,662.42**	**59.95%**
TOTAL ALL EXPENSES:	**90,063.00**	**4,441.37**	**59,672.15**	**30,390.85**	**66.26%**
NET INCOME (LOSS):	**(90,063.00)**	**(4,441.37)**	**(59,672.15)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

PROFESSIONAL RESPONSIBILITY PROGRAM

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	2,000.00	484.19	3,027.79	(1,027.79)	151.39%
STAFF MEMBERSHIP DUES	500.00	-	250.00	250.00	50.00%
CPE COMMITTEE	4,200.00	514.46	5,278.54	(1,078.54)	125.68%
TOTAL DIRECT EXPENSES:	**6,700.00**	**998.65**	**8,556.33**	**(1,856.33)**	**127.71%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.65 FTE)	160,192.00	12,196.23	160,861.63	(669.63)	100.42%
BENEFITS EXPENSE	57,904.00	4,582.88	55,305.50	2,598.50	95.51%
OTHER INDIRECT EXPENSE	40,774.00	3,649.48	43,408.92	(2,634.92)	106.46%
TOTAL INDIRECT EXPENSES:	**258,870.00**	**20,428.59**	**259,576.05**	**(706.05)**	**100.27%**
TOTAL ALL EXPENSES:	**265,570.00**	**21,427.24**	**268,132.38**	**(2,562.38)**	**100.96%**
NET INCOME (LOSS):	**(265,570.00)**	**(21,427.24)**	**(268,132.38)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
PUBLIC SERVICE PROGRAMS					
REVENUE:					
DONATIONS & GRANTS	110,000.00	-	137,500.00	(27,500.00)	125.00%
PSP PRODUCT SALES	2,000.00	29.00	2,004.00	(4.00)	100.20%
TOTAL REVENUE:	**112,000.00**	**29.00**	**139,504.00**	**(27,504.00)**	**124.56%**
DIRECT EXPENSES:					
DONATIONS/SPONSORSHIPS/GRANTS	207,915.00	56,642.50	216,939.75	(9,024.75)	104.34%
STAFF TRAVEL/PARKING	2,000.00	54.74	1,044.67	955.33	52.23%
PRO BONO & PUBLIC SERVICE COMMITTEE	2,000.00	454.36	1,725.50	274.50	86.28%
PUBLIC SERVICE EVENTS AND PROJECTS	20,500.00	5,308.46	18,956.21	1,543.79	92.47%
TOTAL DIRECT EXPENSES:	**232,415.00**	**62,460.06**	**238,666.13**	**(6,251.13)**	**102.69%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.03 FTE)	87,057.00	6,130.87	70,905.14	16,151.86	81.45%
BENEFITS EXPENSE	29,994.00	2,372.52	28,646.43	1,347.57	95.51%
OTHER INDIRECT EXPENSE	25,453.00	2,277.04	27,084.40	(1,631.40)	106.41%
TOTAL INDIRECT EXPENSES:	**142,504.00**	**10,780.43**	**126,635.97**	**15,868.03**	**88.86%**
TOTAL ALL EXPENSES:	**374,919.00**	**73,240.49**	**365,302.10**	**9,616.90**	**97.43%**
NET INCOME (LOSS):	**(262,919.00)**	**(73,211.49)**	**(225,798.10)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

PUBLICATION & DESIGN SERVICES

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
STAFF MEMBERSHIP DUES	500.00	-	-	500.00	0.00%
SUBSCRIPTIONS	83.00	-	79.98	3.02	96.36%
IMAGE LIBRARY	4,680.00	-	4,200.00	480.00	89.74%
TOTAL DIRECT EXPENSES:	**5,263.00**	**-**	**4,279.98**	**983.02**	**81.32%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.22 FTE)	80,074.00	5,946.84	84,784.25	(4,710.25)	105.88%
BENEFITS EXPENSE	31,380.00	2,487.29	29,702.04	1,677.96	94.65%
OTHER INDIRECT EXPENSE	30,148.00	2,713.72	32,278.39	(2,130.39)	107.07%
TOTAL INDIRECT EXPENSES:	**141,602.00**	**11,147.85**	**146,764.68**	**(5,162.68)**	**103.65%**
TOTAL ALL EXPENSES:	**146,865.00**	**11,147.85**	**151,044.66**	**(4,179.66)**	**102.85%**
NET INCOME (LOSS):	**(146,865.00)**	**(11,147.85)**	**(151,044.66)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

SECTIONS ADMINISTRATION

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
REIMBURSEMENTS FROM SECTIONS	300,000.00	1,143.75	294,637.50	5,362.50	98.21%
TOTAL REVENUE:	**300,000.00**	**1,143.75**	**294,637.50**	**5,362.50**	**98.21%**
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	1,200.00	30.00	2,118.57	(918.57)	176.55%
SUBSCRIPTIONS	372.00	-	372.00	-	100.00%
CONFERENCE CALLS	300.00	23.24	290.41	9.59	96.80%
MISCELLANEOUS	300.00	-	-	300.00	0.00%
SECTION/COMMITTEE CHAIR MTGS	1,000.00	-	590.39	409.61	59.04%
DUES STATEMENTS	6,000.00	-	5,585.18	414.82	93.09%
STAFF MEMBERSHIP DUES	125.00	-	-	125.00	0.00%
TOTAL DIRECT EXPENSES:	**9,297.00**	**53.24**	**8,956.55**	**340.45**	**96.34%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.25 FTE)	297,955.00	22,417.06	298,133.15	(178.15)	100.06%
BENEFITS EXPENSE	112,039.00	8,912.95	107,156.26	4,882.74	95.64%
OTHER INDIRECT EXPENSE	105,024.00	9,420.02	112,047.17	(7,023.17)	106.69%
TOTAL INDIRECT EXPENSES:	**515,018.00**	**40,750.03**	**517,336.58**	**(2,318.58)**	**100.45%**
TOTAL ALL EXPENSES:	**524,315.00**	**40,803.27**	**526,293.13**	**(1,978.13)**	**100.38%**
NET INCOME (LOSS):	**(224,315.00)**	**(39,659.52)**	**(231,655.63)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
TECHNOLOGY					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
CONSULTING SERVICES	85,000.00	11,297.07	76,614.60	8,385.40	90.13%
STAFF TRAVEL/PARKING	2,500.00	81.64	425.03	2,074.97	17.00%
STAFF MEMBERSHIP DUES	110.00	-	-	110.00	0.00%
TELEPHONE	24,000.00	2,501.51	21,198.31	2,801.69	88.33%
COMPUTER HARDWARE	29,000.00	12,697.88	27,192.98	1,807.02	93.77%
COMPUTER SOFTWARE	29,000.00	(3,297.50)	14,867.13	14,132.87	51.27%
HARDWARE SERVICE & WARRANTIES	60,000.00	-	42,149.45	17,850.55	70.25%
SOFTWARE MAINTENANCE & LICENSING	270,000.00	2,870.09	215,665.68	54,334.32	79.88%
TELEPHONE HARDWARE & MAINTENANCE	10,000.00	3,859.56	4,193.99	5,806.01	41.94%
COMPUTER SUPPLIES	15,000.00	1,130.45	8,241.75	6,758.25	54.95%
THIRD PARTY SERVICES	143,000.00	(7,898.50)	108,560.72	34,439.28	75.92%
TRANSFER TO INDIRECT EXPENSES	(667,610.00)	(23,242.20)	(519,109.64)	(148,500.36)	77.76%
TOTAL DIRECT EXPENSES:	-	-	-	-	
INDIRECT EXPENSES:					
SALARY EXPENSE (12.10 FTE)	1,059,680.00	83,029.87	1,093,486.90	(33,806.90)	103.19%
BENEFITS EXPENSE	370,332.00	29,339.64	349,725.20	20,606.80	94.44%
CAPITAL LABOR & OVERHEAD	(188,800.00)	(8,363.16)	(120,408.06)	(68,391.94)	63.78%
OTHER INDIRECT EXPENSE	299,010.00	26,825.23	319,074.91	(20,064.91)	106.71%
TOTAL INDIRECT EXPENSES:	**1,540,222.00**	**130,831.58**	**1,641,878.95**	**(101,656.95)**	**106.60%**
TOTAL ALL EXPENSES:	**1,540,222.00**	**130,831.58**	**1,641,878.95**	**(101,656.95)**	**106.60%**
NET INCOME (LOSS):	**(1,540,222.00)**	**(130,831.58)**	**(1,641,878.95)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
CONTINUING LEGAL EDUCATION (CLE)					
REVENUE:					
SEMINAR REGISTRATIONS	876,000.00	97,338.50	850,383.40	25,616.60	97.08%
SEMINAR-EXHIB/SPNSR/ETC	41,500.00	17,300.00	28,300.00	13,200.00	68.19%
SHIPPING & HANDLING	1,000.00	45.00	538.14	461.86	53.81%
COURSEBOOK SALES	11,000.00	864.00	10,819.00	181.00	98.35%
MP3 AND VIDEO SALES	950,000.00	37,503.52	910,436.02	39,563.98	95.84%
TOTAL REVENUE:	**1,879,500.00**	**153,051.02**	**1,800,476.56**	**79,023.44**	**95.80%**
DIRECT EXPENSES:					
COURSEBOOK PRODUCTION	3,000.00	162.26	1,356.89	1,643.11	45.23%
POSTAGE - FLIERS/CATALOGS	10,685.00	635.31	11,591.63	(906.63)	108.49%
POSTAGE - MISC./DELIVERY	2,500.00	70.00	651.50	1,848.50	26.06%
DEPRECIATION	5,540.00	485.00	6,846.12	(1,306.12)	123.58%
ONLINE EXPENSES	40,000.00	5,292.66	46,005.37	(6,005.37)	115.01%
ACCREDITATION FEES	4,696.00	(110.00)	1,812.00	2,884.00	38.59%
SEMINAR BROCHURES	20,770.00	179.25	19,993.15	776.85	96.26%
FACILITIES	223,500.00	29,197.66	213,688.78	9,811.22	95.61%
SPEAKERS & PROGRAM DEVELOP	68,100.00	2,842.47	47,518.83	20,581.17	69.78%
SPLITS TO SECTIONS	-	72,500.00	76,284.24	(76,284.24)	
CLE SEMINAR COMMITTEE	500.00	-	143.82	356.18	28.76%
BAD DEBT EXPENSE	600.00	-	(474.00)	1,074.00	-79.00%
STAFF TRAVEL/PARKING	5,675.00	4,709.31	15,899.11	(10,224.11)	280.16%
STAFF MEMBERSHIP DUES	1,260.00	-	1,007.00	253.00	79.92%
SUPPLIES	3,650.00	-	1,039.97	2,610.03	28.49%
TELEPHONE	-	6.05	19.93	(19.93)	
COST OF SALES - COURSEBOOKS	1,200.00	77.92	1,478.86	(278.86)	123.24%
A/V DEVELOP COSTS (RECORDING)	1,500.00	1,500.00	1,966.82	(466.82)	131.12%
SHIPPING SUPPLIES	100.00	-	-	100.00	0.00%
POSTAGE & DELIVERY-COURSEBOOKS	500.00	36.11	448.14	51.86	89.63%
TOTAL DIRECT EXPENSES:	**393,776.00**	**117,584.00**	**447,278.16**	**(53,502.16)**	**113.59%**
INDIRECT EXPENSES:					
SALARY EXPENSE (9.72 FTE)	656,422.00	46,929.36	649,474.88	6,947.12	98.94%
BENEFITS EXPENSE	254,178.00	19,354.00	235,292.03	18,885.97	92.57%
OTHER INDIRECT EXPENSE	240,197.00	21,553.72	256,372.91	(16,175.91)	106.73%
TOTAL INDIRECT EXPENSES:	**1,150,797.00**	**87,837.08**	**1,141,139.82**	**9,657.18**	**99.16%**
TOTAL ALL EXPENSES:	**1,544,573.00**	**205,421.08**	**1,588,417.98**	**(43,844.98)**	**102.84%**
NET INCOME (LOSS):	**334,927.00**	**(52,370.06)**	**212,058.58**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

DESKBOOKS

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
SHIPPING & HANDLING	2,000.00	135.00	4,177.86	(2,177.86)	208.89%
DESKBOOK SALES	80,000.00	2,544.00	110,780.18	(30,780.18)	138.48%
SECTION PUBLICATION SALES	3,000.00	225.00	3,765.00	(765.00)	125.50%
CASEMAKER ROYALTIES	75,000.00	2,085.42	39,120.84	35,879.16	52.16%
TOTAL REVENUE:	**160,000.00**	**4,989.42**	**157,843.88**	**2,156.12**	**98.65%**
DIRECT EXPENSES:					
COST OF SALES - DESKBOOKS	50,000.00	4,113.58	104,803.87	(54,803.87)	209.61%
COST OF SALES - SECTION PUBLICATION	750.00	42.66	635.24	114.76	84.70%
SPLITS TO SECTIONS	1,000.00	164.19	1,242.96	(242.96)	124.30%
DESKBOOK ROYALTIES	1,000.00	-	1,131.87	(131.87)	113.19%
SHIPPING SUPPLIES	150.00	-	-	150.00	0.00%
POSTAGE & DELIVER-DESKBOOKS	2,000.00	180.76	5,728.28	(3,728.28)	286.41%
FLIERS/CATALOGS	3,000.00	-	1,932.18	1,067.82	64.41%
POSTAGE - FLIERS/CATALOGS	1,500.00	-	746.95	753.05	49.80%
COMPLIMENTARY BOOK PROGRAM	2,000.00	-	3,024.84	(1,024.84)	151.24%
OBSOLETE INVENTORY	-	92,401.61	100,377.40	(100,377.40)	
BAD DEBT EXPENSE	100.00	-	-	100.00	0.00%
RECORDS STORAGE - OFF SITE	7,440.00	675.00	8,045.00	(605.00)	108.13%
STAFF MEMBERSHIP DUES	250.00	-	198.00	52.00	79.20%
MISCELLANEOUS	200.00	-	-	200.00	0.00%
TOTAL DIRECT EXPENSES:	**69,390.00**	**97,577.80**	**227,866.59**	**(158,476.59)**	**328.39%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.05 FTE)	117,663.00	9,045.19	118,893.58	(1,230.58)	101.05%
BENEFITS EXPENSE	48,981.00	3,895.22	46,813.81	2,167.19	95.58%
OTHER INDIRECT EXPENSE	50,659.00	4,554.08	54,168.56	(3,509.56)	106.93%
TOTAL INDIRECT EXPENSES:	**217,303.00**	**17,494.49**	**219,875.95**	**(2,572.95)**	**101.18%**
TOTAL ALL EXPENSES:	**286,693.00**	**115,072.29**	**447,742.54**	**(161,049.54)**	**156.17%**
NET INCOME (LOSS):	**(126,693.00)**	**(110,082.87)**	**(289,898.66)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

CLIENT PROTECTION FUND

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
DONATIONS	-	-	200.00	(200.00)	
CPF RESTITUTION	3,000.00	635.41	8,346.56	(5,346.56)	278.22%
CPF MEMBER ASSESSMENTS	982,000.00	6,150.00	1,030,782.50	(48,782.50)	104.97%
INTEREST INCOME	7,500.00	7,160.70	79,980.88	(72,480.88)	1066.41%
TOTAL REVENUE:	**992,500.00**	**13,946.11**	**1,119,309.94**	**(126,809.94)**	**112.78%**
DIRECT EXPENSES:					
BANK FEES - WELLS FARGO	1,000.00	154.69	2,410.02	(1,410.02)	241.00%
GIFTS TO INJURED CLIENTS	500,000.00	225,419.00	379,818.00	120,182.00	75.96%
CPF BOARD EXPENSES	3,000.00	170.16	1,154.42	1,845.58	38.48%
TOTAL DIRECT EXPENSES:	**504,000.00**	**225,743.85**	**383,382.44**	**120,617.56**	**76.07%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.25 FTE)	97,740.00	6,421.91	81,269.13	16,470.87	83.15%
BENEFITS EXPENSE	35,581.00	2,782.32	33,482.62	2,098.38	94.10%
OTHER INDIRECT EXPENSE	30,889.00	2,776.11	33,020.64	(2,131.64)	106.90%
TOTAL INDIRECT EXPENSES:	**164,210.00**	**11,980.34**	**147,772.39**	**16,437.61**	**89.99%**
TOTAL ALL EXPENSES:	**668,210.00**	**237,724.19**	**531,154.83**	**137,055.17**	**79.49%**
NET INCOME (LOSS):	**324,290.00**	**(223,778.08)**	**588,155.11**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MANAGEMENT OF WESTERN STATES BAR CONFERENCE (NO WSBA FUNDS)					
REVENUE:					
REGISTRATION REVENUE	33,000.00	-	34,632.50	(1,632.50)	104.95%
OTHER ACTIVITIES REGISTRATION REVENUE	20,000.00	-	22,525.00	(2,525.00)	112.63%
WESTERN STATES BAR MEMBERSHIP DUES	3,200.00	-	3,000.00	200.00	93.75%
SPONSORSHIPS	12,000.00	-	7,700.00	4,300.00	64.17%
TOTAL REVENUE:	**68,200.00**	**-**	**67,857.50**	**342.50**	**99.50%**
DIRECT EXPENSES:					
FACILITIES	55,000.00	-	47,383.58	7,616.42	86.15%
SPEAKERS & PROGRAM DEVELOPMENT	1,000.00	-	501.23	498.77	50.12%
BANK FEES	-	-	1.00	(1.00)	
WSBC PRESIDENT TRAVEL	500.00	-	-	500.00	0.00%
OPTIONAL ACTIVITIES EXPENSE	3,500.00	-	6,952.30	(3,452.30)	198.64%
MARKETING EXPENSE	800.00	-	601.05	198.95	75.13%
STAFF TRAVEL/PARKING	2,000.00	-	2,177.35	(177.35)	108.87%
TOTAL DIRECT EXPENSES:	**62,800.00**	**-**	**57,616.51**	**5,183.49**	**91.75%**
INDIRECT EXPENSES:					
TOTAL INDIRECT EXPENSES:	**-**	**-**	**-**	**-**	
TOTAL ALL EXPENSES:	**62,800.00**	**-**	**57,616.51**	**5,183.49**	**91.75%**
NET INCOME (LOSS):	**5,400.00**	**-**	**10,240.99**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

SECTIONS OPERATIONS

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
SECTION DUES	472,490.00	1,770.00	447,289.37	25,200.63	94.67%
SEMINAR PROFIT SHARE	15,000.00	1,500.00	28,977.55	(13,977.55)	193.18%
INTEREST INCOME	1,900.00	26,692.77	26,692.77	(24,792.77)	1404.88%
PUBLICATIONS REVENUE	4,000.00	164.19	3,832.02	167.98	95.80%
OTHER	50,750.00	4,700.00	41,590.22	9,159.78	81.95%
TOTAL REVENUE:	**544,140.00**	**34,826.96**	**548,381.93**	**(4,241.93)**	**100.78%**
DIRECT EXPENSES:					
DIRECT EXPENSES OF SECTION ACTIVITIES	531,505.00	39,199.91	292,863.28	238,641.72	55.10%
REIMBURSEMENT TO WSBA FOR INDIRECT EXPENSES	309,019.50	1,143.75	294,637.50	14,382.00	95.35%
TOTAL DIRECT EXPENSES:	**840,524.50**	**40,343.66**	**587,500.78**	**253,023.72**	**69.90%**
NET INCOME (LOSS):	**(296,384.50)**	**(5,516.70)**	**(39,118.85)**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
INDIRECT EXPENSES:					
SALARIES	11,868,980.00	849,963.21	11,564,502.04	304,477.96	97.43%
ALLOWANCE FOR OPEN POSITIONS	(200,000.00)	-	-	(200,000.00)	0.00%
TEMPORARY SALARIES	141,330.00	13,414.50	187,714.92	(46,384.92)	132.82%
CAPITAL LABOR & OVERHEAD	(188,800.00)	(8,363.16)	(120,408.06)	(68,391.94)	63.78%
EMPLOYEE ASSISTANCE PLAN	4,800.00	3,880.00	8,680.00	(3,880.00)	180.83%
EMPLOYEE SERVICE AWARDS	2,230.00	-	2,129.12	100.88	95.48%
FICA (EMPLOYER PORTION)	879,000.00	70,379.15	849,504.62	29,495.38	96.64%
L&I INSURANCE	47,250.00	9,956.74	40,405.18	6,844.82	85.51%
WA STATE FAMILY MEDICAL LEAVE (EMPLOYER PORTION)	-	1,374.98	12,720.22	(12,720.22)	
MEDICAL (EMPLOYER PORTION)	1,590,000.00	121,875.46	1,465,008.89	124,991.11	92.14%
RETIREMENT (EMPLOYER PORTION)	1,494,000.00	118,749.43	1,439,569.78	54,430.22	96.36%
TRANSPORTATION ALLOWANCE	119,250.00	415.00	108,983.20	10,266.80	91.39%
UNEMPLOYMENT INSURANCE	87,500.00	3,428.82	69,014.44	18,485.56	78.87%
STAFF DEVELOPMENT-GENERAL	6,900.00	2,178.63	4,686.64	2,213.36	67.92%
TOTAL SALARY & BENEFITS EXPENSE:	**15,852,440.00**	**1,187,252.76**	**15,632,510.99**	**219,929.01**	**98.61%**
WORKPLACE BENEFITS	39,000.00	3,177.09	44,073.97	(5,073.97)	113.01%
HUMAN RESOURCES POOLED EXP	102,400.00	4,315.01	103,843.45	(1,443.45)	101.41%
MEETING SUPPORT EXPENSES	12,500.00	1,676.02	13,916.07	(1,416.07)	111.33%
RENT	1,802,000.00	144,047.70	1,878,238.88	(76,238.88)	104.23%
PERSONAL PROP TAXES-WSBA	14,000.00	900.84	12,949.35	1,050.65	92.50%
FURNITURE, MAINT, LH IMP	35,200.00	6,120.68	26,353.30	8,846.70	74.87%
OFFICE SUPPLIES & EQUIPMENT	46,000.00	977.77	47,501.69	(1,501.69)	103.26%
FURN & OFFICE EQUIP DEPRECIATION	51,300.00	4,283.00	50,628.78	671.22	98.69%
COMPUTER HARDWARE DEPRECIATION	51,800.00	3,960.90	46,686.90	5,113.10	90.13%
COMPUTER SOFTWARE DEPRECIATION	162,700.00	10,552.00	119,141.00	43,559.00	73.23%
INSURANCE	143,000.00	17,639.19	154,440.18	(11,440.18)	108.00%
PROFESSIONAL FEES-AUDIT	35,000.00	-	31,669.20	3,330.80	90.48%
PROFESSIONAL FEES-LEGAL	50,000.00	70,455.85	446,760.87	(396,760.87)	893.52%
TELEPHONE & INTERNET	47,000.00	6,652.14	42,760.00	4,240.00	90.98%
POSTAGE - GENERAL	36,000.00	2,295.73	24,841.35	11,158.65	69.00%
RECORDS STORAGE	40,000.00	3,672.88	44,478.99	(4,478.99)	111.20%
STAFF TRAINING	95,245.00	4,322.10	59,306.09	35,938.91	62.27%
BANK FEES	35,400.00	1,325.03	30,660.04	4,739.96	86.61%
PRODUCTION MAINTENANCE & SUPPLIES	12,000.00	126.72	8,126.97	3,873.03	67.72%
COMPUTER POOLED EXPENSES	667,610.00	23,242.20	519,109.64	148,500.36	77.76%
TOTAL OTHER INDIRECT EXPENSES:	**3,478,155.00**	**309,742.85**	**3,705,486.72**	**(227,331.72)**	**106.54%**
TOTAL INDIRECT EXPENSES:	**19,330,595.00**	**1,496,995.61**	**19,337,997.71**		

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2019 to September 30, 2019

100.00% OF YEAR COMPLETE

	FISCAL 2019 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE
SUMMARY PAGE				
LICENSE FEES	15,958,200.00	1,337,509.15	16,217,282.99	(259,082.99)
ACCESS TO JUSTICE	(327,324.00)	(16,579.67)	(308,568.29)	(18,755.71)
ADMINISTRATION	(1,043,654.00)	(85,770.41)	(792,078.67)	(251,575.33)
ADMISSIONS/BAR EXAM	69,421.00	(77,773.03)	98,066.86	(28,645.86)
BOARD OF GOVERNORS	(834,709.00)	(57,558.33)	(861,652.00)	26,943.00
COMMUNICATIONS	(604,832.00)	(57,167.04)	(621,492.45)	16,660.45
CONFERENCE & BROADCAST SERVICES	(783,893.00)	(66,216.19)	(810,316.18)	26,423.18
DISCIPLINE	(5,788,075.00)	(429,781.62)	(5,641,390.16)	(146,684.84)
DIVERSITY	(445,817.00)	(44,049.08)	(420,571.95)	(25,245.05)
FOUNDATION	(164,863.00)	(11,805.50)	(155,522.98)	(9,340.02)
HUMAN RESOURCES	(204,958.00)	(28,784.21)	(391,398.12)	186,440.12
LAP	(132,499.00)	(8,904.09)	(129,076.20)	(3,422.80)
LEGISLATIVE	(154,066.00)	(10,896.74)	(151,199.72)	(2,866.28)
LICENSING AND MEMBERSHIP	(377,789.00)	(22,179.96)	(266,543.55)	(111,245.45)
LIMITED LICENSE LEGAL TECHNICIAN	(241,191.00)	(18,440.46)	(213,142.01)	(28,048.99)
LIMITED PRACTICE OFFICERS	(171,653.00)	(12,983.89)	(161,672.44)	(9,980.56)
MANDATORY CLE ADMINISTRATION	176,571.00	(12,217.26)	310,835.84	(134,264.84)
MEMBER BENEFITS	(260,707.00)	(7,348.48)	(229,951.44)	(30,755.56)
MEMBER SERVICES & ENGAGEMENT	(420,479.00)	(40,099.30)	(349,288.64)	(71,190.36)
NW LAWYER	(197,103.00)	(12,794.39)	(183,179.65)	(13,923.35)
OFFICE OF GENERAL COUNSEL	(941,756.00)	(61,816.16)	(797,911.17)	(143,844.83)
OGC-DISCIPLINARY BOARD	(290,573.00)	(29,193.89)	(249,394.23)	(41,178.77)
OUTREACH & ENGAGEMENT	(401,898.00)	(31,955.71)	(397,644.55)	(4,253.45)
PRACTICE OF LAW BOARD	(90,063.00)	(4,441.37)	(59,672.15)	(30,390.85)
PROFESSIONAL RESPONSIBILITY PROGRAM	(265,570.00)	(21,427.24)	(268,132.38)	2,562.38
PUBLICATION & DESIGN SERVICES	(146,865.00)	(11,147.85)	(151,044.66)	4,179.66
PUBLIC SERVICE PROGRAMS	(262,919.00)	(73,211.49)	(225,798.10)	(37,120.90)
LAW CLERK PROGRAM	11,985.00	(12,002.48)	24,669.26	(12,684.26)
SECTIONS ADMINISTRATION	(224,315.00)	(39,659.52)	(231,655.63)	7,340.63
TECHNOLOGY	(1,540,222.00)	(130,831.58)	(1,641,878.95)	101,656.95
CLE - PRODUCTS	733,919.00	15,565.39	675,121.12	58,797.88
CLE - SEMINARS	(398,992.00)	(67,935.45)	(463,062.54)	64,070.54
SECTIONS OPERATIONS	(296,384.50)	(5,516.70)	(39,118.85)	(257,265.65)
DESKBOOKS	(126,693.00)	(110,082.87)	(289,898.66)	163,205.66
CLIENT PROTECTION FUND	324,290.00	(223,778.08)	588,155.11	(263,865.11)
WESTERN STATES BAR CONFERENCE **(No WSBA Funds)**	5,400.00	-	10,240.99	(4,840.99)
INDIRECT EXPENSES	(19,330,595.00)	(1,496,995.61)	(19,337,997.71)	7,402.71
TOTAL OF ALL	**19,190,671.50**	**1,988,271.11**	**17,915,881.86**	**1,274,789.64**
NET INCOME (LOSS)	**139,923.50**	**(491,275.50)**	**1,422,115.85**	

Washington State Bar Association
Analysis of Cash Investments
As of September 30, 2019

Checking & Savings Accounts

General Fund

Checking

Bank	Account		Amount
Wells Fargo	General	$	1,049,780
		Total	

Investments	Rate		Amount
Wells Fargo Money Market	2.10%	$	2,197,243
UBS Financial Money Market	2.10%	$	835,346
Morgan Stanley Money Market	2.09%	$	3,326,791
Merrill Lynch Money Market	2.20%	$	1,959,529
Short Term Investments	Varies	$	990,000
	General Fund Total	**$**	**10,358,689**

Client Protection Fund

Checking

Bank		Amount
Wells Fargo	$	348,164

Investments	Rate		Amount
Wells Fargo Money Market	2.10%	$	3,961,422
Morgan Stanley Money Market	2.09%	$	106,204
Wells Fargo Investments	Varies	$	-
	Client Protection Fund Total	**$**	**4,415,790**

Grand Total Cash & Investments	**$**	**14,774,479**

Washington State Bar Association
Analysis of Cash Investments
As of September 30, 2019

Short Term Investments- General Fund

Bank	Interest Rate	Yield	Term	Maturity Date	Amount
Bank of NY Mellon	2.45%	2.45%	9 months	10/15/2019	250,000.00
UBS Bank	2.50%	2.50%	9 months	10/16/2019	240,000.00
Investors Bank	2.55%	2.55%	9 months	10/18/2019	250,000.00
US Bank National Association	2.45%	2.45%	9 months	11/6/2019	250,000.00
				Total Short Term Investments- General Fund	**990,000.00**

Client Protection Fund

Bank	Interest Rate	Yield	Term Mths	Maturity Date	Amount
				Total CPF	**-**

WASHINGTON STATE
BAR ASSOCIATION

MEMO

To: The President, President-elect, and Governors

From: Don Curran, Chair, Committee on Professional Ethics

Jeanne Marie Clavere, Professional Responsibility Counsel and Staff Liaison

Date: November 6, 2019

Re: New Advisory Opinions 201902 and 201903

FOR INFORMATION:

On October 23, 2019, the Committee of Professional Ethics approved two new advisory opinions.

Advisory Opinion 201902 concerns the ethical duties of a Special Assistant Attorney General (SAAG) in representing the Department of Labor and Industries (L&I) in recovering its subrogation claim from a negligent third party.

Advisory Opinion 201903 concerns the ethics of a retiring lawyer maintaining a trust account on behalf of a former client who receives proceeds from a structured settlement.

WASHINGTON STATE
BAR ASSOCIATION

Advisory Opinion: 201902
Date: October 23, 2019

Special Assistant Attorney General (SAAG) Representing Government Department in Claim Against Third Party

Facts:

A person is injured during the course of employment by the negligence of a third party. The injured worker files for and receives worker's compensation benefits. Eventually, the claim is closed after L&I pays all medical bills, lost wages, and permanent partial disability benefits, totaling $50,000.00. Under the Washington Industrial Insurance Act, RCW 51.24, covered workers are compensated for on-the-job injuries, without regard to fault, and participating employers are generally immune to lawsuits seeking additional compensation. However, responsible third parties may be liable to the injured worker and to L&I for compensation paid from the industrial insurance fund. RCW 51.24.030.

The injured worker signs a Third Party Election Form pursuant to RCW 51.24.050, which states:

> I give up my right to take legal action against the third party to recover damages, both economic and non-economic, on my own or with an attorney. I give this right to L&I, and I understand that L&I may choose not to take legal action. . . .

L&I hires a private attorney, per RCW 51.24.110, to be a SAAG to pursue the third party claim, pursuant to an agreement which states:

> Attorney-Client Relationship. For the claims/actions pursued under this agreement, L&I is the client and is afforded such rights as are attendant on an attorney-client relationship.
>
> As a SAAG, the attorney shall abide by all terms of this contract and act in the best interest of its client, which is the Department, at all times. In the event any potential conflict of interest arises, e.g., the injured worker asserts an attorney-client relationship, etc., the attorney must notify the Department in writing of the existence and nature of the potential conflict within 20 calendar days.

Issue and Analysis:

The committee received an inquiry with the following questions:

1. When an attorney is contracted as a special assistant attorney general pursuant to RCW 51.24.110, may the contracted attorney ethically pursue damages for pain and suffering on behalf of the injured worker without the consent of L&I?

Answer: No. The terms of the agreement are explicit that L&I, not the injured worker, is the sole client. The worker has assigned to the client, L&I, all claims for economic and non-economic damages. As the owner of such claims, the consent of L&I is an ethical prerequisite to representing the injured worker to recover damages for pain and suffering, and any recovery is to be distributed per RCW 51.24.060. *Tobin v. Dep't of Labor & Indus.,* 169 Wn. 2d 396 (2010), *Carrera v. Olmstead,* 189 Wn. 2d 297 (2017). The *Carrera* court stated the "assignment puts L&I in the shoes of the injured worker . . ." for the purpose of making a claim and does not create any attorney-client relationship with the worker.

In representing the client, the lawyer must be guided by RPC 1.4, which provides:

> (a) A lawyer shall:
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> > (1) promptly inform the client of any decision of circumstance with respect to which the client's informed consent, . . . is required . . .;
> >
> > (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
> >
> > (3) keep the client reasonably informed about the status of the matter;
> >
> > (4) promptly comply with reasonable requests for information; and
> >
> > (5) . . . .
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

2. Is the contracted attorney ethically obligated to obtain the consent of the injured worker due to the significant risk that the contracted attorney's representation of L&I may be directly adverse to the injured worker?

Answer: No. An attorney-client relationship does not exist with the worker. L&I may assert, on behalf of the worker, a claim for non-economic damages. The worker has given up the right to take legal action. Since there is no attorney-client relationship, RPC 1.7, dealing with conflicts of interest, is inapplicable. *Burnett v. Dept. of Corrections,* 187 Wn.App. 159, 349 P.42 (2015).

RPC 1.2 provides:

> (a) . . . [A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client as to the means

by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. . . .

Comment [1] to RPC 1.2 provides:

> [1] [Washington revision] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. . . .

The committee has based its analysis on the typical written agreement between L&I and the SAAG. Examination of the scope of any particular alleged attorney-client relationship would be a fact-specific analysis or require a legal analysis that is beyond the purview of the committee. Similarly, examination of other duties and responsibilities to a specific injured worker that could materially limit the representation of L&I in a particular situation would be a fact-specific analysis or require a legal analysis that is beyond the purview of the committee.

In dealing with the injured worker, the attorney must be mindful of RPC 4.3, which provides:

> In dealing on behalf of a client with a person who is not represented by a lawyer, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure the services of another legal practitioner, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.
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> Comment
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> [1] [Washington revision] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. . . .

WASHINGTON STATE
BAR ASSOCIATION

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Retired Lawyer Maintaining Trust Account To Receive Client Settlement Funds

Inquiry: The inquiring lawyer is a senior practitioner in a one-person office who plans to retire on December 31, 2019. He indicates that he will be an inactive member of the WSBA after his retirement. The inquirer previously settled a client's damage claims against negligent insureds with a structured settlement. Over the past several years, the defendant's insurance company has periodically issued single checks payable jointly to the client and the attorney and mailed them to the attorney for deposit in his trust account and disbursement to the client and attorney pursuant to a written fee agreement. These payments will continue to be made for several years after the inquirer's retirement.

After retirement, the lawyer wants to continue to receive the settlement payments, process the funds into a "trust account," issue a check to the client for the client's share and retain the balance pursuant to a written fee agreement. According to the inquirer, the "trust" account will not be an IOLTA account.

The former lawyer does not intend to give post-retirement advice to the client or otherwise engage in the unauthorized practice of law. The attorney will limit his dealings with the former client to processing the insurer's check, which he believes does not involve the practice of law.

Query: May an inactive lawyer ethically own and operate a "trust" checking account for the sole purpose of processing settlement checks received after retirement in connection with representation of a former client?

Answer: No. An inactive lawyer may not ethically own or operate a trust account for the receipt of client funds. A lawyer who has an ongoing obligation to administer a trust account for a client's benefit should consult with the client about the means by which that obligation will be satisfied when the lawyer decides to take inactive status.

Analysis: RPC 1.15A is applicable to all property of a client or a third person "in a lawyer's possession in connection with representation." RPC 1.15A(a). Proceeds from a structured settlement are in the lawyer's possession in connection with representation and therefore, subject to RPC 1.15A. The RPCs do not authorize a lawyer to place client property in a trust account that does not comply with RPC 1.15A.

RPC 1.15A safeguards client funds and third parties by imposing procedural and substantive requirements upon the lawyer who holds client property in trust. For instance, a lawyer must provide the client with an annual accounting of funds held in trust. RPC 1.15A (e). A lawyer must promptly disburse funds to a client or other third party entitled to such funds. RPC 1.15A (f). If two or more persons claim an interest in the funds, the lawyer must disburse the undisputed portions of the funds and take reasonable actions to resolve a dispute with a third party over the funds, including, where appropriate, interpleading the disputed funds. RPC 1.15A(g). The extent of the efforts a lawyer must take to resolve a dispute depend on the amount in dispute, the availability of alternative dispute resolution and the likelihood of informal resolution. Comment 9 to RPC 1.15A.[1] Only a lawyer admitted to practice law may be an authorized signatory on the account. RPC 1.15A(h)(9). Comment 7 to RPC 5.5 provides that the word "admitted" excludes a lawyer " who while technically admitted is not authorized to practice, because for example, the lawyer is on inactive status."

Because an inactive lawyer cannot be the signatory on an RPC 1.15A trust account, an inactive lawyer cannot set up an RPC compliant account to receive funds related to his representation of a party. This restriction is consistent with the fact that, while many duties imposed by RPC 1.15A are ministerial in nature, other responsibilities require the exercise of legal judgment and the ability to take legal actions. For instance, the lawyer has the responsibility to resolve third party claims to the funds and more particularly, to select and use legal processes to resolve disputes about the funds. This may require the lawyer to interplead the funds. Taking action on behalf of a client to resolve a dispute constitutes the practice of law. *See* GR 24(a)(4), (practice of law includes "[n]egotiation of legal rights or responsibilities on behalf of another entity or person(s)."). Because an inactive lawyer may not engage in the practice of law, an inactive lawyer cannot satisfy the requirements of RPC 1.15A.

Additionally, the inquirer does not indicate that the client will be consulted about the future disposition of settlement proceeds. The inquirer seems to assume that the client representation ended at the time the parties entered into the settlement agreement. The Committee believes that a question arises as to whether the representation of the client in the matter continues until the last payment is received from the insurer and disbursed to the client. *See* RPC 1.3, Comment 4[2]. *See also* RPC 1.16(a), Comment 1[3]. Assuming the existence of an attorney client relationship, the attorney remains subject to RPC 1.4, requiring the attorney to keep the client reasonably informed about the status of the matter and to explain matters to

[1] Comment 9 to RPC 1.15A states:
Under paragraph (g) the extent of the efforts that a lawyer is obligated to take to resolve a dispute depend on the amount in dispute, the availability of methods for alternative dispute resolution, and the likelihood of informal resolution.

[2] RPC 1.3, Comment 4 states in part:
Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. . . . Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. . .

[3] RPC 1.16(a), Comment 1 states in part:
A lawyer should not accept representation in a matter unless it can be performed competently . . . to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded.

the extent reasonably necessary to permit the client to make informed decisions regarding the representation. RPC 1.4. *See also* RPC 1.7(a)(2).

In sum, the Committee believes that any lawyer who unilaterally decides to open a "trust" account outside the parameters of RPC 1.15A for the purpose of continuing to receive funds related to representation is at risk of violating the RPCs. ELC 1.2 provides: "[A]ny lawyer admitted . . . to practice law in this state . . . is subject to the Rules for Enforcement of Lawyer Conduct. Jurisdiction exists regardless of the lawyer's residency or authority to practice law in this state."

The Committee does not intend to suggest that a lawyer with a fee arrangement such as the one described in the inquiry may not take inactive status. However, before doing so, the lawyer should, after consultation with the client, explore alternatives for receiving and disbursing to future payments in a manner that complies with the RPCs.