

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting
Meeting Materials

November 4-5, 2021
Silver Cloud Hotel Tacoma at Point Ruston Waterfront
Ruston, WA
Zoom and Teleconference



**Board of Governors Meeting
Silver Cloud Hotel at Point Ruston, Tacoma, WA
November 4-5, 2021**

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: Join via Zoom or Call 1.888.788.0099

Thursday, November 4th, Meeting ID: 823 3548 0935 Passcode: 082932

<https://wsba.zoom.us/j/82335480935?pwd=d1U3UkFJcHFHS29FNXdsNEMzK0hldz09>

Friday, November 5th, Meeting ID: 846 3707 0720 Passcode: 145954

<https://wsba.zoom.us/j/84637070720?pwd=ZnlpEuttdFc3MkZLYmNvR0xoNS9Hdz09>

THURSDAY, NOVEMBER 4, 2021

9:00 AM – CALL TO ORDER & WELCOME

CONSENT CALENDAR

A governor may request that an item be removed from the consent calendar without providing a reason and it will be discussed immediately after the consent calendar. The remaining items will be voted on *en bloc*.

- Approve September 23-25, 2021 Board of Governors meeting minutes 6
- Approve the addition of Juneteenth to the WSBA holiday calendar 17
- Approve amendments to the Creditor Debtor Section Bylaws 18

MEMBER AND PUBLIC COMMENTS (30 minutes reserved)

Overall public comment is limited to 30 minutes and each speaker is limited to 3 minutes. The President will provide an opportunity for public comment for those in the room and participating remotely. Public comment will also be permitted at the beginning of each agenda item at the President’s discretion.

STANDING REPORTS

PRESIDENT’S REPORT

EXECUTIVE DIRECTOR’S REPORT 31

REPORTS OF STANDING OR ONGOING BOG COMMITTEES

Committees may “pass” if they have nothing to report. Related agenda items will be taken up later on the agenda. Each committee is allocated, on average, 3-4 minutes.

- Executive Committee, Pres. Brian Tollefson, Chair
- APEX Awards Committee, Gov. Hunter Abell, Chair
- Personnel Committee, Gov. Carla Higginson, Chair
- Legislative Committee, Gov. Tom McBride, Chair
- Nominations Review Committee, President-elect Dan Clark, Chair
- Diversity Committee, Gov. Sunitha Anjilvel, Co-Chair
- Long-Range Strategic Planning Council, Pres. Brian Tollefson, Chair
- Member Engagement Workgroup, Treas. Bryn Peterson and Gov. Francis Adewale, Co-Chairs
- Budget & Audit Committee, Treas. Bryn Peterson, Chair
- Equity & Disparity Workgroup, Gov. Alec Stephens, Chair
- Supreme Court Bar Licensure Task Force, Gov. Williams-Ruth, BOG Rep.

AGENDA ITEMS & UNFINISHED BUSINESS

- SECOND READ: SENIOR LAWYERS PROPOSED CHANGE TO THE WSBA BYLAWS**, Eleanor Doermann, Chair of Senior Lawyers Section Executive Committee, Carole Grayson, Senior Lawyers Section Executive Committee Member, Chair from 2014-2017, Brian Comstock, Senior Lawyers Section Emeritus Executive Committee Member, Chair from 2017-2019, Kevin Plachy, Director of Advancement 40
- 2022 LEGISLATIVE PRIORITIES**, BOG Legislative Committee Chair, Tom McBride and Legislative Affairs Manager Sanjay Walvekar 92
- LEGISLATIVE REVIEW COMMITTEE RECOMMENDATIONS**, Chair Brian Considine; Co-Chair Business Law Section’s Corporate Act Revision Committee Eric DeJong; Co-Chair Business Law Section’s Partnership & LLC Law Committee Elisabeth McNeil; Co-Chair Business Law Section’s Partnership & LLC Law Committee Matt LeMaster; and Legislative Affairs Manager Sanjay Walvekar.....94
- FY21 LISTENING TOUR REPORT & RECOMMENDATIONS**, Past Pres. Kyle Sciuchetti and Exec. Dir. Terra Nevitt.....175

12:00 PM – RECESS FOR LUNCH

- REQUEST TO SUPPORT THE LEGAL FOUNDATION OF WASHINGTON’S PROPOSED CHANGES TO RPC 1.15** 178
 - Legal Foundation of Washington, Legal Foundation of Washington Chair, Caitlin Davis and Legal Foundation of Washington Secretary, Sean-Michael Davis
 - Committee on Professional Ethics Chair Pam Anderson and Professor Brooks Holland 179
- PERSONNEL COMMITTEE PROPOSAL TO CLARIFY WSBA GOVERNANCE**, Chair Carla Higginson and Human Resources Director and Chief Culture Officer, Glynnis Klinefelter Sio 272
- CONTINUING THE CONVERSATION ABOUT WSBA’S STRUCTURE**

5:00 PM – RECESS

FRIDAY, NOVEMBER 5, 2021

9:00 AM – RESUME MEETING

TRAINING

- ANNUAL ANTI-HARASSMENT TRAINING**, Fisher Phillips Representative, Nate Bailey 312
- EMAIL SECURITY TRAINING**, IT Director Jon Dawson

SPECIAL REPORTS

- ANNUAL REPORT OF THE WASHINGTON STATE BAR FOUNDATION**, Pres. Tracy Flood.....322
- MCLE BOARD REPORT**, Chair Todd Alberstone.....324

AGENDA ITEMS & UNFINISHED BUSINESS

- COUNCIL ON PUBLIC DEFENSE MATTERS**, Council on Public Defense, Chair Travis Stearns
 - Approve Letter in Support of the Budget Request of the Office of Public Defense 357
 - Approve Comments to the Proposed New GR 41 and Amendments to CR 39..... 359

NEW BUSINESS

- GOVERNOR ROUNDTABLE** (Governors’ issues of interest)

12:00 PM– ADJOURN

INFORMATION

- General Information 364
- Financial Reports..... 380
- Annual Reports of WSBA Committees, Boards, and Councils LM

2021-2022 Board of Governors Meeting Issues

JANUARY (Seattle)

Standing Agenda Items:

- ABA Midyear Meeting Sneak Preview
- Client Protection Fund (CPF) Annual Report
- Access to Justice Board Annual Report
- Legislative Session Report
- FY2021 Audited Financial Statements
- Financials (Information)

MARCH (Lacey)

Standing Agenda Items:

- ABA Mid-Year Meeting Report
- Legislative Report
- Supreme Court Meeting
- Office of Disciplinary Counsel Report (ED Report)
- Financials (Information)

MAY (Spokane)

Standing Agenda Items:

- 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)
- Office of Disciplinary Counsel Report (ED Report)

JULY (Tacoma)

Standing Agenda Items:

- Draft WSBA FY2023 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)

SEPTEMBER (Bellevue)

Standing Agenda Items:

- Final FY2022 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
- Office of Disciplinary Counsel Report (ED Report)
- Financials (Information)

WASHINGTON STATE BAR ASSOCIATION

BOARD OF GOVERNORS MEETING

Minutes

Hilton Hotel, Vancouver, WA

September 23-24, 2021

Call to Order and Welcome ([link](#))

The meeting of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Kyle Sciuchetti on Thursday, September 23, 2021 at 8:05 AM.

Governors in attendance were:

Hunter Abell
Sunitha Anjilvel
Lauren Boyd
Treas. Daniel D. Clark
Matthew Dresden
P.J. Grabicki
Carla Higginson
Serena Sayani
Russell Knight
Tom McBride
Bryn Peterson
Brett Purtzer
Alec Stephens
Brent Williams-Ruth

Also in attendance were President-Elect Brian Tollefson, Immediate Past President Rajeev Majumdar, Gov-Elect Francis Adewale, Gov-Elect Jordan Couch, Executive Director Terra Nevitt, General Counsel Julie Shankland, Executive Administrator Shelly Bynum, Chief Disciplinary Counsel Doug Ende, Chief Communications & Outreach Officer Sara Niegowski, Broadcast Services Manager Rex Nolte, Director of Advancement Kevin Plachy, Chief Equity & Justice Officer Diana Singleton, Chief Financial Officer Jorge Perez, Chief Regulatory Counsel Renata Garcia, Director of Human Resources & Chief Culture Officer Glynnis Klinefelter Sio, Betsylew Miale-Gix (WSAJ), Nancy Hawkins (Family Law Section), James E Macpherson (Washington Defense Trial Lawyers), Kari Petrasek, Chalia Stallings-Ala'ilima, and Michael Cherry (Practice of Law Board).

Pres. Sciuchetti led the Board in observing a moment of silence for former WSBA President Robert Redman. He welcomed participants to Vancouver, WA and announced the health and safety protocols that would be followed, including a vaccination requirement for staff and board members.

Consent Calendar ([link](#))

Pres. Sciuchetti asked if anyone would like to remove an item from the consent calendar. Treas. Clark moved to approve the consent calendar. Motion passed unanimously. Govs. Higginson, Purtzer, and Sayani were not present for the vote.

Member & Public Comments ([link](#))

Pres. Sciuchetti answered questions from Nancy Hawkins regarding public access to certain portions of the meeting.

Resolution of Remembrance and Thanks ([link](#))

Gov. Abell described the resolution distributed in the late materials, noting that it does not make any comment on the US withdrawal from Afghanistan and that the resolution had been improved based on comments from the WSBA Legal Assistance for Military Personnel (LAMP) Section and the Washington State Veterans Bar Association. Discussion followed in support of the resolution. Gov. Williams-Ruth moved for approval. The motion passed unanimously. Govs. Higginson, Purtzer, and Sayani were not present for the vote.

Court Rules Committee Proposed Rule Changes ([link](#))

Court Rules Committee Chair Isham Reavis walked through the proposed changes as set forth in the meeting materials. He highlighted a substantive change to RALJ 6.2 to insert language that would direct the trial court clerk to number the materials in the record from the beginning to the end to avoid parties numbering materials on their own, which leads to inconsistencies and confusion. Chair Reavis noted that the change had received positive feedback from stakeholders and therefore the committee does not anticipate there being implementation challenges. He also highlighted a substantive change to RALJ 8.1 regarding who may present an argument. The proposed change would require represented parties to file a brief before presenting oral argument in order to avoid surprise. He noted that the proposed change was modified in response to comments from the District and Municipal Court Judges Association to clarify that the briefing requirement only applies to represented parties and also to give the courts discretion to grant a continuance to allow for briefing and, ultimately, oral argument. Chair Reavis noted that they had received some stakeholder comment in favor of the briefing requirement applying to all parties, including those that are not represented. Gov. Peterson moved for approval. Discussion followed regarding the committee's decision to only apply the rule to represented parties. Motion passed unanimously. Govs. Purtzer and Sayani were not present for the vote.

Low Bono Section Proposed Comment to Proposed GR 40 ([link](#))

Low Bono Section Chair Jennifer Ortega presented the section's proposed comment on proposed GR 40. Discussion followed regarding whether the comment would be considered a comment of the WSBA or only the section; clarification about the comment itself; and clarification that sections are required to bring proposed comments on court rules to the Board for approval. Gov. Grabicki moved for approval. Motion passed unanimously. Govs. Purtzer and Sayani were not present for the vote.

Washington State Bar Foundation Annual Meeting ([link](#))

Pres. Sciuchetti recessed the Board meeting for the annual meeting of the Washington State Bar Foundation.

Pres. Tracy Flood called to order the annual meeting of the Washington State Bar Foundation noting that the governors sit as the members of the Foundation. She reported that the WSBF has approved distributing a grant of \$315,000 to the WSBA, including direct grants to recipients of the Powerful Communities project. Pres. Flood noted an overall increase in fundraising. She highlighted some of the programs the Foundation supports, including the Moderate Means Program, the Powerful Communities project, and Legal Lunchbox CLEs. She noted that the Board of Trustees is seeking approval of the appointment of Rajeev Majumdar as an at-large member of the Board of Trustees. Gov. Clark moved for approval. There was a brief discussion to clarify the appointments. Motion passed unanimously. Gov. Higginson abstained. Govs. Purtzer and Sayani were not present for the vote.

Pres. Flood adjourned the meeting of the Washington State Bar Foundation. Pres. Sciuchetti resumed the meeting of the Board of Governors.

Proposed Amendments to the Late Fee Waiver Policy ([link](#))

Chief Regulatory Counsel Renata Garcia described the proposed amendments to the Late Fee Waiver Policy and requested approval by the Board. She noted that the changes remove gendered language, clarify the appeal procedures, expand the definition of extraordinary personal circumstances, and allows for waiver of late fees based on financial hardship. Chief Garcia shared feedback received from the Executive Committee and how it was addressed. She noted that she did not anticipate a significant fiscal impact, likely less than \$1,500, with the worst case being less than \$5,000. Clarification was sought as to where the appeal language was replaced. Gov. Grabicki moved for approval. Motion passed unanimously. Gov. Sayani was not present for the vote.

Discussion with Deans Annette Clark, Mario Barnes, and Jacob Rooksby ([link](#))

Pres. Sciuchetti welcomed the deans of the three Washington State law schools and invited opening remarks. Dean Clark noted that applications for law schools around the country were up 25%, with the greatest increase occurring in the Pacific Northwest. She shared demographic information about the entering class at Seattle University. Dean Clark also noted that Seattle University is back in person and is a fully vaccinated university. Dean Clark encouraged the Board to reach out to the University's new president, Eduardo M. Peñalver, most recently serving as the Dean of Cornell Law School. She also noted that this would be her final year as dean of the Seattle University Law School. She also shared that the law schools have been collaborating on a race in the criminal justice system task force and will be releasing their findings next week.

Dean Barnes noted that UW Law just completed orientation this week and has also returned to in-person learning. He noted that they welcomed a class with the strongest credentials of any class in a decade and also the most diverse.

Dean Rooksby noted that the three Washington Law Schools have a high level of collaboration that he does not believe is common amongst law schools in other states. He reported that Gonzaga Law School enrolled its largest class since 2007, the strongest class, and a class tied for the most diverse. He noted that Gonzaga was in-person last year with a hybrid option and that this year they are 100% back in-person. He noted that, like the other schools, Gonzaga has a vaccination mandate with a high rate of compliance.

Gov. Williams-Ruth made remarks honoring Dean Clark's service as dean and her personal impact on his life. Discussion followed including about the changing demographics of the profession and the reasons for the change, including effective recruitment and successful fundraising for financial support; curriculum changes to address bias and racism; appreciation for the University of Washington's work to support access to justice through its work on the technology justice plan; Seattle University's incoming president; access to legal education in central Washington; the need to retain folks from rural areas to come back and practice law in their home communities; efforts to address the cost of law school; diversity of law school faculty; and input on the bar exam, including a recognition that the bar exam is not the gold standard for ensuring competent professionals and that the history of the exam is to be an impediment to attorneys of color and others that were not welcome to the profession, appreciation for WSBA's provision of accommodations and space to take the test, concerns with ExamSoft, and clarification that WSBA does not have the option of offering a remote exam for the upcoming session.

Reaffirming the WSBA Commitment to DEI: Exploring How to Strengthen the Structure of the Diversity Committee ([link](#))

Gov. Anjilvel cited the WSBA's mandate to engage in diversity work and reported the history of the Diversity Committee's structure, which is in need of updating. She clarified that this was not an action item but that an action item would be forthcoming. Discussion followed regarding whether the committee should return to being a standing BOG committee, including public comment from Chalia Stallings-Ala'ilima and Betsylew Miale-Gix in support of the current structure of the committee, which included BOG members and non-BOG members. Gov. Grabicki moved that the Board resolve today that it supports the work being done to resolve the conflicts in the Bylaws and to identify an appropriate structure to be brought back in the future for approval. Discussion followed as to whether there is a conflict in the Bylaws and whether the merger was a result of Board action.

Gov. Stephens moved the question. Motion passed 8-3. Govs. Williams-Ruth abstained from the vote. Govs. Purtzer and Sayani were not present for the vote. The underlying motion passed 10-2. Govs. Purtzer and Sayani were not present for the vote. Discussion followed regarding the committee's intent to include MBAs, Governors and anyone that wishes to engage in the process.

Honoring of Outgoing Governors & Officers ([link](#))

Pres. Sciuchetti made remarks honoring outgoing governors and officers Gov. Russell Knight, Gov. PJ Grabicki, Gov. Jean Kang, and Past Pres. Rajeev Majumdar. He also acknowledged Govs. Sunitha Anjilvel and Dan Clark completed a term and were continuing on to a second term. Exec. Dir. Terra Nevitt made remarks honoring outgoing President Kyle Sciuchetti.

Swearing-In of Governors and WSBA Officers ([link](#))

Washington Supreme Court Chief Justice Steven González swore in incoming and continuing governors Francis Adewale, Sunitha Anjilvel, Dan Clark, Jordan Couch, Serena Sayani, and Alec Stephens; FY22 Treasurer Bryn Peterson; FY22 President-Elect Dan Clark; and FY22 President Brian Tollefson.

Senior Lawyers Proposed Change to the WSBA Bylaws ([link](#))

Pres. Sciuchetti noted that the proposal by the Senior Lawyers Section to change the WSBA Bylaws is presented for first reading and that no action would be taken. Section Chair Eleanor Doermann presented the background for the issue, which is the section's desire to allow honorary and inactive members to be voting members of the section's executive committee. She presented the feedback from other sections, which were largely supportive of the change to the Bylaws that would give sections discretion to allow inactive/honorary members of the WSBA to join a section as a voting member and to serve as a voting member of a section executive

committee. Discussion followed about stakeholder input; the impact of the change on volunteerism; related conflicts and lack of clarity in the Bylaws related to the definition of "inactive member"; that changing the language regarding voting from "are not" to "may be" eligible maybe overly broad; and the different meanings of the term "honorary". The Board took public comment from Jim Macpherson in support of the change. Pres. Sciuchetti noted that the item would return in November.

ABA Annual Meeting Report ([link](#))

Delegate Jaime Hawk reported on the ABA Meeting held virtually and in-person in Chicago on August 9-10, 2021. She reported that the House of Delegates voted on 30-40 resolutions and highlighted some of the topics the resolutions addressed. Delegate Hawk noted that the February 9-13, 2022 meeting will be held in Seattle where Chief Justice Steven González will be receiving the Spirit of Excellence award. Delegate Kari Petrasek highlighted additional topics and noted an upcoming ABA panel for Washington members. Delegate and Past President Rajeev Majumdar reported on his virtual participation and commented on ABA membership and its role.

Meeting with the Washington State Supreme Court ([link](#))

Chief Justice González began the discussion with introductions. Chief González noted that the Court has asked the WSBA to adjust the presentation to avoid the need for an executive session. Pres. Sciuchetti spoke about his goals for the year and recent meetings with the Idaho Board of Commissioners and the Oregon Board of Governors.

Climate and Culture Update. Human Resources Director and Chief Culture Officer Glynnis Klinefelter Sio outlined the recommendations for the Board arising out of the Climate Survey conducted in Fall of 2020 and provided updates regarding the steps the Board has taken to implement them. Gov. Stephens provided more detail about the Board's current work to outline the roles and responsibilities of the Board, officers, and Executive Director. Discussion followed regarding how new employees are on-boarded during the pandemic; plans to reduce the WSBA footprint; the benefits of hybrid meetings; vaccination requirements; frameworks for clarifying governance; and a suggestion to review the Gender & Justice Commission report.

Bar Exam. Associate Director of Regulatory Services Bobby Henry provided updates and information about the summer bar exam, noting an increased passing score and addressing nationwide technical challenges. He also shared information about plans for the winter bar exam, which is to be held in-person. He noted that the LLLT exams will be held separately in January and May due to the sunset of the program.

Treasurer's Report. Pres. Sciuchetti read the Treasurer's Report as provided in the meeting materials. Discussion followed regarding WSBA's approach to staff allocations.

WSBA's Role in Court Rules. Justice Yu shared the work the Court's Rules Committee is doing with law students to address gendered and outdated language. Discussion followed regarding the timing of rule proposals and expectations of WSBA, Justice Johnson shared that in terms in timing the preference is for the cycle, but exceptions are considered on a case by case basis. Justice Yu expressed an interest in hearing from WSBA on everything, even to say "no comment." Discussion followed about the need for consistent language in the final product, which requires clear communication between WSBA and the Court; interest in how the rulemaking process could be evolved; and curiosity about how other states do the work.

Bar Licensure Task Force. Justice Montoya-Lewis provided a brief update about the Task Force which has been meeting monthly to discuss where folks are and what folks want the Task Force to discuss. She noted the groups has formed a number of subcommittees to look at data from Washington and what is being done in other jurisdictions. She highlighted the various and strong viewpoints about the bar exam. She noted that Dean Rooksby had to resign as the co-chair and she is looking for a new co-chair, preferably someone with a different perspective.

Request to Support the Legal Foundation of Washington's Proposed Changes to RPC 1.15A ([link](#))
Legal Foundation of Washington (LFW) board member Sean Davis presented LFW's proposal as presented in the materials, noting that the discretion to designate property as unidentified lies with legal practitioners. Gov. Grabicki expressed support for the proposal and it's potential to raise significant funds for civil legal aid and moved to approve WSBA serving as a co-sponsor of the proposal. Gov. Stephens seconded. Discussion followed regarding the concerns of the Department of Revenue; that the decision regarding the rule sits with the Court and WSBA's appropriate role; that the issue has already been litigated and addressed elsewhere; and the significant distinction between "unclaimed" and "unidentified" property.

Committee on Professional Ethics Chair Pam Anderson and Professor Holland presented the work of the committee to provide recommendations to the Board of Governors regarding the proposal. Professor Holland noted that the work resulted in a briefing memo from the Department of Revenue (DOR) taking the view that this rule would conflict with the Unclaimed Property Act and that there is a potential separation of powers issue. He noted that the DOR may be willing to facilitate a legislative fix to allow the proposal. He noted that the CPE would also be willing to move forward with developing the proposed rule changes if directed by the Board. Discussion followed regarding the lack of a timely response from the Attorney General and the lack of specific rule language for the Board to consider.

Gov. Grabicki withdrew his motion and restated it to support the effort to obtain this rule amendment and request that CPE and WSBA's legal staff work to finalize a rule and get back to

the Board at its November meeting. Gov. Stephens seconded the restated motion. LFW Executive Director Caitlin Davis noted that LFW will be speaking to the Court by the October 15 court rule deadline, but can also continue to work with the WSBA for the November meeting. Former Gov. Davis noted that LFW is seeking support for a concept and that there is significant process yet to come. Discussion followed regarding the constitutional issue and the risk to WSBA as the enforcer of the rules of ethics; support for the concept LFW is proposing; that the Board can't move forward without proposed rule language; questions about who will take on the administrative work the rule contemplates; and that the funds go to civil legal aid already through the State general fund. Executive Director Davis clarified that they LFW would handle the administration and is able to do so. Discussion followed, including the Court is already aware of the proposal in concept; opposition to the motion as unnecessary; and that the October 15 deadline does not seem to be firm. Gov. Grabicki's motion passed 11-2. Gov. Abell was not present for the vote.

Budget & Audit Committee Items ([link](#))

Keller Deduction Schedule. General Counsel Shankland presented the process that was used to calculate the Keller deduction for 2022. She noted that given the litigation discussed earlier in the meeting, which makes the relevant definitions less clear, in following the guidance set forth in the Bylaws, we have taken a conservative approach in arriving at the calculation. She emphasized that it is not our position that these activities are non-germane, only that it seems that they are likely to be subject to disagreement by members. Treas. Clark moved to approve the calculation. The Board heard public comment from Nancy Hawkins regarding the challenge of using last year's expenses and a proxy for moving forward and a concern that the memo does not adequately defend the legislative work of the WSBA. Discussion followed regarding in support of in opposition to the motion. Motion passed unanimously. Gov. Abell was not present for the vote.

Fiscal Year 2022 WSBA Budget Presentation. Chief Financial Officer Jorge Perez presented the FY22 budget as recommended by the Budget & Audit Committee. Gov. Boyd made a motion to amend the budget before approval to include funding for the in-person retreat in October and to change the reimbursement from \$500 back to \$700. Discussion followed, including comments in opposition to the motion due to health concerns; that many counties didn't get reimbursement for work at home; that there is more at stake than the employee reimbursement; a desire for a "balanced budget"; that attorney salaries have remained flat and that we should be decreasing the license fees; that this isn't the year to have an in-person retreat; that the amount of money saved by reducing from \$700 to \$500 should be weighed against the cost of staff turnover; clarification that the \$700 is not a "stipend", but rather a reimbursement; the critical need for an in-person retreat; that the budget should provide the option for an in-person retreat in the event that it can be done safely; and that a balanced budget is not required, unnecessary, and is unwise

with regard to staff relations. Gov. Grabicki moved to amend the amendment to include the additional \$28,000 requested by the LLLT Grabicki. Discussion followed, including that our budget should reflect our priorities and that supporting the staff in a reasonable way, after a difficult year should be a priority; concern that the discussion of balancing the budget often focuses on expenses that impact the employees; that now is the time for organizations like WSBA to be investing, rather than striving for a balanced budget; that the benefit to the members is a very small impact compared to the impact on employees to be fully reimbursed; the need for funding for the LLLT Board given that the program has been sunset; questions about the timing and process for budget requests; that the LLLT Board's work moving forward is to determine what its role will be moving forward; the reason for adding new LLLT Board members; the continuing responsibilities of the LLLT Board post-sunset of the licensure opportunity; whether the budget request by the LLLT Board could be slightly reduced; that members would not likely be shocked by the need to support remote work. Gov. Knight moved to sever the motion. Motion to sever passed 13-1.

CFO Perez that overall the budget produces revenue for the WSBA and not a deficit and also urged that as we develop next year's budget we begin with clear targets. The Board heard public comment from Chair Cherry regarding deficits in the budget process with regard to Supreme Court Boards. Gov. Boyd's motion relating to funding for an in-person retreat and to increase the reimbursement for employees passed 11-3.

The second motion was restated and clarified to add \$28,000 to the LLLT Board's budget, which would take the budget to \$34,000. Discussion followed in opposition to the motion. The motion failed 8-6. Treas. Clark moved to approve the budget as amended. Gov. Sayani moved to increase the budget for the LLLT Board by \$15,000. Discussion followed regarding the appropriate process. The motion was restated as a motion to amend the budget. Gov. Stephens moved the question. The motion to call the question passed unanimously. The motion to amend the budget resulted in a 7-7 tie. Pres. Sciuchetti voted in favor of the motion to amend and it therefore passed. The motion to approve the budget as amended passed 10-4.

Personnel Committee Items ([link](#))

Gov. Stephens presented and moved for approval of the proposal of the Personnel Committee regarding clarifying the governance structure of WSBA and the roles of the Board, officers, individual governors, and the Executive Director. Discussion followed, including the ability to make amendments in order to pass a work product; clarification of the materials; and a concern about rushing the process. Gov. Higginson moved to table the motion to the November meeting. Discussion followed regarding the process to follow if the motion passes; comments in opposition of the motion to table; the value of the participation of outgoing board members vs. incoming board members; whether this should be tabled pending the teambuilding retreat with the

Executive Leadership Team; frustration that feedback was not provided following the prior presentations; and comments in support of motion to table given the importance of the proposal and the issue. The Board heard public comment from Nancy Hawkins in support of the overall proposal with a suggestion that sections be identified as not being subject to the Board's oversight in the same way as other volunteers. The motion to table passed 8-6. Gov. Abell was not present for the vote.

President's Report ([link](#))

Pres. Sciuchetti reported on the conclusion of the 2021 Listening Tour with events with members in Spokane and Asotin counties. He reported that the stops were rewarding and constructive without exception.

Executive Director's Report ([link](#))

Executive Director Nevitt highlighted several items from the written report provided in the materials including the roll out of the volunteer and employee vaccination mandates; revisions to the Letters to the Editor policy for *Bar News*; and that the ATJ Board is seeking input on a revised ATJ Technology Plan. Chief Disciplinary Counsel Doug Ende made remarks honoring 40 years of service by ODC Department Administrator Cindy Jacques. In response to a question, Executive Director Nevitt reported that WSBA had not received any requests for an exception from the vaccination mandate.

Reports of Standing or Ongoing BOG Committees ([link](#))

Executive Committee. Pres. Sciuchetti reported that the most recent committee meeting was focused on discussed scheduling of the September meeting.

APEX Awards Committee. Gov. Knight reported that the awards celebration will be live but virtual and will be held in mid-December.

Personnel Committee. No report.

Legislative Committee. No report.

Nominations Review Committee. Pres. Elect Tollefson reported that the last meeting was held earlier in the week and had filled various roles, which the Board received notice of via email.

Diversity Committee. Co-Chair Anjilvel reported on the last meeting of the fiscal year noting that the committee is continuing to work on the pipeline program, law student mentorship, and its relationship with law schools.

Long Range Strategic Planning Council. Pres. Sciuchetti reported that the Council is working on outreach and engagement.

Member Engagement Workgroup. Gov. Peterson reported that the workgroup completed a template for a quarterly member engagement survey, which is ready to go and a tool for the BOG to use going forward.

Budget & Audit Committee. No additional report.

Equity & Disparity Workgroup. Gov. Stephens updated the Board on the work of its two subcommittees.

Supreme Court Bar Licensure Task Force. Gov. Williams-Ruth shared his perspective on the lack of progress of the task force.

Governor Roundtable ([link](#))

Gov. Stephens made remarks of appreciation for outgoing governors Knight and Grabicki, as well as outgoing president Sciuchetti.

Closing Remarks of Outgoing President Kyle Sciuchetti and Passing the Gavel to Incoming President Brian Tollefson ([link](#))

Pres. Sciuchetti remarked on his year of service and passed the gavel to incoming president Brian Tollefson.

ADJOURNMENT

There being no further business, Pres. Sciuchetti adjourned the meeting at 5:26 PM on Friday, September 24, 2021.

Respectfully submitted,

Terra Nevitt
WSBA Executive Director & Secretary

WASHINGTON STATE BAR ASSOCIATION

TO: Board of Governors
FROM: Glynnis Klinefelter Sio, HR Director & Chief Culture Officer
DATE: November 4th, 2021
RE: WSBA Holiday Calendar – Addition of Juneteenth

ACTION: Addition of Juneteenth Holiday to the WSBA Holiday Calendar

In May 2021, Gov. Inslee officially declared Juneteenth a legal state paid holiday starting in 2022.

<https://apps.leg.wa.gov/RCW/default.aspx?cite=1.16.050>

WSBA’s 2021 holiday calendar aligns with the WA State and Supreme Court’s holiday calendar. Starting in 2022, it will not be.

WSBA is requesting that Juneteenth is added to its holiday calendar, starting in 2022, to remain in alignment.

WSBA Holidays - CURRENT	Observed	WA State & Supreme Court Holidays - 2022	Observed
New Year’s Day	January 1	New Year’s Day	January 1
Martin Luther King Jr. Day	Third Monday in January	Martin Luther King Jr. Day	Third Monday in January
Presidents’ Day	Third Monday in February	President’s Day	Third Monday in February
Memorial Day	Last Monday in May	Memorial Day	Last Monday in May
		Juneteenth	June 19
Independence Day	July 4	Independence Day	July 4
Labor Day	First Monday in September	Labor Day	First Monday in September
Veteran’s Day	November 11	Veteran’s Day	November 11
Thanksgiving Day	Fourth Thursday in November	Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving Day	Fourth Friday in November	Day after Thanksgiving Day	Fourth Friday in November
Christmas Day	December 25	Christmas Day	December 25

The request was supported by unanimous vote in the Budget and Audit Committee meeting held on September 8, 2021.

We respectfully request concurrence with the Budget and Audit Committees decision to approve Juneteenth as an official holiday for WSBA in alignment with the state calendar.

TO: WSBA Board of Governors
FROM: William Malaier, Chair, on behalf of the WSBA Creditor Debtor Rights Section Executive Committee
Julianne Unite, WSBA Member Services and Engagement Manager
Carolyn MacGregor, WSBA Sections Program Specialist
RE: WSBA Creditor Debtor Rights Sections Bylaws Amendments
DATE: September 20, 2021

ACTION: Approve the WSBA Creditor Debtor Rights Section’s Proposed Bylaws Amendments

I write to you in my capacity as Chair of the Executive Committee of the Creditor Debtor Rights Section (the “Section”) to request approval of modification of the Section’s Bylaws. By operation of our current Bylaws, our Section has always provided a Non-Voting (essentially ‘observation’) Seat on the Executive Committee to the duly-elected Editor of our Section’s Newsletter. For the past thirty years or so, that position has been occupied by Mark Northrup of Miller Nash Graham & Dunn LLP. Recently, Mark notified us that he intends to transition his practice to retirement, thereby necessitating the selection of a new Newsletter Editor.

After posting the position on our website, and considering several applications, our Executive Committee decided to appoint an Editorial Board – in lieu of a single Editor. That Editorial board consists of Section members Christopher Young, Steven Reilly, and Steve Linkon. Our current bylaws, however, speak to a single Editor, as opposed to a Board. As such, we have passed the attached revisions for the purpose of accommodating our new Editorial Board position.

Enclosed for review and approval by the Board of Governors is a redline version of proposed changes to our Section Bylaws, in accordance with Article 8 of the Creditor Debtor Rights Bylaws and as unanimously approved by our Section’s Executive Committee at our duly noticed meeting, held on September 17, 2021.

Thank you, in advance, for your assistance with this matter. To the extent you have any questions or concerns regarding the form or substance of these Amendments, please don’t hesitate to contact me directly.

Regards,

William F. Malaier, Jr.

William F. Malaier Jr.



WASHINGTON STATE B A R A S S O C I A T I O N

CREDITOR DEBTOR RIGHTS SECTION

Bylaws

As last amended and approved by the WSBA Board of Governors on July 27, 2017,
and including 1992 amendments approved in 1993 and 2010 amendments.

ARTICLE 1. IDENTIFICATION

1.1 Creation

The Creditor Debtor Rights Section of the Washington State Bar (the "Section") was established pursuant to the Bylaws of the Washington State Bar Association (the "Bar").

1.2 Purpose

The purpose of the Section shall be to seek the participation of all interested members of the Bar and of the state and local bar associations, in order to benefit the general public, members of the Section and their clients:

- a. By encouraging research and study and initiating proposals for changes and reforms and aiding and educating the bar and the public in the Section's areas of interest;
- b. By review of pending legislation and development of proposed statutory enactments to improve and to facilitate the administration of justice within the Section's area; and
- c. By undertaking such other service as may be of benefit to the public and members and the legal profession.

1.3 Limitations

These bylaws have been adopted subject to the applicable Washington statutes and the Bylaws of the Bar.

1.4 Principal Office

The Principal Office of the Section shall be maintained in the offices of the Bar.

1.5 Fiscal Year

The fiscal year of the Section shall coincide with that of the Bar.

ARTICLE 2. MEMBERSHIP

2.1 Enrollment

Any Active member in good standing of the Bar may be enrolled as a member of the Section upon request and payment of annual Section dues in the amount and for the purpose approved by the Board of Governors of the Bar. Legal professionals who are not Active members of the Bar, law students, and members of the public may be enrolled as a non-voting member (“subscriber”) by paying the annual dues established by the Section. Subscribers may not hold a Section office.

2.2 The Membership

Members enrolled as provided in Section 2.1 shall constitute the membership of the Section.

2.3 Dues

Dues in the amount determined by the Section and approved by the Board of Governors of the Bar shall be paid annually in advance. Any person who shall have failed to pay the annual dues shall cease to be a member of the Section. With the exception of law students, the Section dues fee for subscriber members shall be the same amount as that established for voting members. The Section dues fee for law students shall be set at a standard amount annually determined by the Board of Governors.

ARTICLE 3. MEETINGS OF THE MEMBERSHIP

3.1 Meetings

Meetings of the Section membership may be called upon seven days’ prior written notice to the members by any officer at such time and place as the officers may determine. Such notice shall state the business to be transacted at the special meeting.

3.2 Controlling Vote

Action of the Section shall be by majority vote of the members present at a duly called meeting.

ARTICLE 4. THE EXECUTIVE COMMITTEE

4.1 Powers And Duties

The executive committee shall be vested with the powers and duties necessary for the administration of the affairs of the Section and shall perform duties assigned to it by the Board of Governors.

4.2 Composition

The executive committee shall be composed of the following persons:

- a. Voting Members
 - i. The four officers; and
 - ii. Nine (9) At-Large members elected to the executive committee.

- b. Non-voting Members
- i. Each Section Newsletter Editor appointed under Section Bylaw §4.5; and
- ii. Young Lawyer Liaison

4.3 Controlling Vote

A majority of the executive committee present in person, by telephone or by videoconference shall constitute a quorum. Action of the executive committee shall be determined by a majority vote once a quorum is established. Executive committee members may vote by email in accordance with the Bar’s Bylaws.

4.4 Meetings

The first quarterly meeting of the executive committee shall be held in September of each calendar year. Special meetings shall be held at the time and place as may be designated by the Chair or a majority of the executive committee, provided advance notice of the meeting has been posted on the WSBA Event Calendar. The executive committee shall be expected to conduct a minimum of four meetings annually.

4.5 Section Newsletter Editor

The executive committee is authorized to appoint a up to three members of the Section to act as section newsletter editor(s). The term of ~~the a~~ section newsletter editor shall be two (2) years.

4.6 Young Lawyer Liaison

The executive committee shall appoint a member of the the Washington Young Lawyers Committee as the Young Lawyer liaison. The term of the Young Lawyer liaison shall be two (2) years. The purpose of this appointment is to authorize the executive committee to appoint to the executive committee a young lawyer who, in the opinion of the executive committee, shall make a unique contribution to the work and activities of the executive committee.

ARTICLE 5. OFFICERS

5.1 Officers

The officers of the Section shall be the Chair, the Chair-elect, the Secretary/Treasurer and the Immediate Past Chair. Each officer shall be appointed initially as the Secretary/Treasurer from among the elected executive committee members and then rotate into the other officer positions as set forth in Article 6.

5.2 The Chair

The Chair shall preside at all meetings of the Section and of the executive committee. The Chair shall formulate and submit an annual report required by the Bar of the work of the Section for the then past year. The Chair shall perform such other duties as usually pertain to that office or as may be delegated by the executive committee.

5.3 Chair-elect

Upon the death, resignation, or during the disability of the Chair, or upon the Chair’s refusal to act, the Chair-elect shall perform the duties of the Chair for the remainder of the Chair’s term, except in case of the Chair’s disability and then only during so much of the term as the disability continues.

5.4 Secretary/Treasurer

The Secretary/Treasurer will take minutes at each meeting of the Section and executive committee, and provide approved minutes to the Bar for publication and record retention. The Secretary/Treasurer will work with the Bar to ensure that the Section complies with Bar fiscal policies and procedures, work with the Bar to prepare the Section's annual budget, and review the Section's monthly financial statements for accuracy and comparison to budget. In conjunction with the Chair and as authorized by the executive committee, the Secretary/Treasurer shall attend generally to the business of the Section.

5.5 The Immediate Past Chair

If asked by the Chair or Chair-elect, the Immediate Past Chair may perform the duties of the Chair at any given time upon request. In addition, the Immediate Past Chair may perform such other duties as are delegated by the Chair or the executive committee.

ARTICLE 6. ELECTIONS AND APPOINTMENTS

6.1 Elected Executive Committee Members

- a. In addition to the officers referenced above, in Article 5, the executive committee shall also include nine(9) elected members representing the State of Washington in nine positions as follows:

Position 1 and Position 2: The Eastern District of Washington;

Position 3: The Western District of Washington, Northern Division, excluding King County;

Positions 4 and 5: King County;

Positions 6 and 7: The Southern Division of the Western District of Washington;

Positions 8 and 9: Can be elected from any area.

A section member who wishes to be elected to a particular position must have his or her office of primary practice in the locale indicated for that particular position unless such member chooses to run for a non-geographically defined position.

Each elected executive committee member shall serve a period of two years. No individual may serve more than two (2) consecutive terms as an elected member of the executive committee.

The Chair shall submit to the nominating committee each year a list of the present executive committee members, the date of their appointment and the expiration of their term so that the nominating committee can put forth those names of qualified members from appropriate geographical locales for the upcoming executive committee vacancies.

- b. Officers

Upon the expiration of the Secretary/Treasurer's two year term or in the event of a vacancy, a new Secretary/Treasurer shall be appointed by the executive committee to begin his/her term on October 1 or earlier if a vacancy has arisen. As provided below, thereafter, the former Secretary/Treasurer shall proceed to automatically and consecutively serve as Chair-elect, Chair and Immediate Past Chair. The term of office for each officer position shall be two years. In order to ensure continuity and to maintain institutional knowledge, each person appointed initially as Secretary/Treasurer shall be an elected member of the executive committee when first appointed. Upon appointment, the new Secretary/Treasurer shall cease to be an elected member of the executive committee and a new elected member shall be elected for such officer's prior position.

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Upon completion of the term of office or in the event of a vacancy, the Chair-elect shall automatically succeed to the office of the Chair.

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6.4 Nominations

The Chair shall annually appoint a nominating committee of not less than three members of the Section, not members of the executive committee, who shall make nominations of not less than two candidates for each open position not less than two months prior to the scheduled election for the members of the executive committee to succeed those whose terms will expire at the close of the fiscal year. The persons nominated for the executive committee may place a statement on the ballot (or in their online application) of not more than 100 words summarizing their qualifications to serve on the executive committee prior to the election. The executive committee will approve a list of nominees for each open position, provided that the ballots for the election shall also contain blanks for "write in" candidates by the section members.

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6.6 Term Of Office

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ARTICLE 7. SUBSTANTIVE RESPONSIBILITIES

7.1 Committees

The Chair may appoint committees to perform such duties and exercise such powers as the executive committee may direct.

ARTICLE 8. AMENDMENTS

These bylaws may be amended at any duly called meeting of the Section by a majority vote of the members of the Section present, or at an executive committee meeting by a majority vote of the voting executive committee members once a quorum is established, provided that no amendment shall become effective until approved by the Board of Governors of the Bar.

I, Thomas S. Linde, as the present Chair of the Creditor Debtor Rights Section of the Washington State Bar Association, attest that the above is a true copy of the bylaws of the Creditor Debtor Rights Section of the Washington State Bar Association as of June 16, 2017.

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I, Thomas S. Linde, as the present Chair of the Creditor Debtor Rights Section of the Washington State Bar Association, attest that the above is a true copy of the bylaws of the Creditor Debtor Rights Section of the Washington State Bar Association as of June 16, 2017.

TO: WSBA Board of Governors
FROM: Executive Director Terra Nevitt
DATE: October 22, 2021
RE: Executive Director's Report

2022 Licensing

License renewal will begin next month and must be completed by February 1, 2022. Members in the extended 2018-2021 or 2019-2021 reporting period must complete required MCLE credits by December 31, 2021 and certify by February 1, 2022. In addition to mailing license packets to those who are not signed up for paperless license, we will send an email to all members when licensing begins. Online certification has opened early this year so members may now certify their credits online via the [MCLE online system](#).

As a security measure, we will no longer include a credit card payment option on paper license renewal forms. Those who renew using a paper form that wish to make a credit card payment must do so online. Our online system also accepts EFT payments and members can always print an invoice and mail in with a check. We continue to encourage members to renew online and will soon be exploring moving toward a paperless process for all.

Task Force on Race and Washington's Criminal Justice System's Research Working Group Presents Findings

The Research Workgroup Group of Task Force 2.0 – which was convened by the deans of Washington's three law school to pick-up where Task Force 1.0 left off in 2011 – has issued a report to the Washington Supreme Court providing an updated and more complete picture of race disproportionality in Washington's criminal justice system, including disproportionalities experienced by Indigenous people, which were not examined in the 2011 report. While the data shows some improvement, the persistence and significance of disproportionality is a sobering call to action. "[R]ace and racial bias continue to matter in ways that are not fair, that do not advance legitimate public safety objectives, that produce disparities in the criminal justice system, and that undermine public confidence in our legal system." You can find additional information about the Task Force, links to the September 2021 report, and the recorded presentation to the Court at <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/task-force-20-x24772>. I commend you to read it and consider our role as we answer the call of the Washington Supreme Court to undo the on-going injustice of racism. Recommendations are expected later this year after additional stakeholder vetting. If you have questions, you contact WSBA's representative to the Task Force, Gov. Sunitha Anjilvel.

Gender & Justice Commission Report Explores the Intersection of Gender, Race and Poverty

In September, the Washington State Supreme Court Gender and Justice Commission issued its report, *2021: How Gender and Race Affect Justice Now*. In part, this study evaluates the status of recommendations from the 1989 Study, *Gender and Justice in the Courts*. The 2021 study reveals persistent inequities, noting that “The costs of accessing Washington courts has the greatest impact on single mothers; Black, Indigenous, and women of color; LGBTQ+ people; and those with disabilities. The study also finds that women and particularly Black, Indigenous, and other women of color face bias and pay disparities in the legal profession. The report includes recommendations working toward five goals: (1) improving data collection, (2) improving access to the courts, (3) addressing the impacts of the vast increase in convictions and detentions, (4) reducing reliance on revenue from court users, and (5) determining what evidence-based curricula work for judicial education. You can find additional information at <https://www.courts.wa.gov/?fa=home.sub&org=gjc&page=exploreStudy&layout=2&parent=study>. I have also attached a fact sheet summarizing some of the study’s findings. As with the Task Force 2.0 report, this study provides important data for our consideration as we seek to carry out the WSBA mission and our strategic goals.

Roll Out of Volunteer & Employee Vaccination Mandate

The volunteer COVID-19 vaccination verification process is underway and running smoothly. Since the Board’s approval of the policy requiring vaccination for all volunteers attending in-person events, we have published a [webpage](#) with instructions to upload proof of vaccination or submit an exemption request to a confidential folder in Box. Once verified, the file in Box is deleted. This webpage also contains helpful FAQs and links. For any questions, please contact Volunteer Engagement Advisor Paris Eriksen.

We are also requiring that all employees are fully vaccinated by November 1, 2021. All employees are required to present proof of vaccination status to the HR Department by this date unless they qualify for a medical or religious exemption.

Member Survey

The Member Engagement Work Group has spent a considerable amount of time and good thinking over the past year to shape a member perception survey that will provide meaningful feedback for leadership decisions and priorities and we have contracted with the National Business Research Institute (NBRI) to oversee and administer the survey and provide action-oriented results. The questions are now finalized (the core questions; we always have the option to add specific questions each quarter, depending on issues/initiatives we need to hear from members about) and we are almost ready to launch! Before starting the survey, we plan to notify the entire membership about the new partnership with NBRI to give them confidence that the survey is legitimate, anonymous, and meaningful. We will continue to post ongoing results at [wsba.org/survey](https://www.wsba.org/survey), and the Member Engagement Work Group will receive both quarterly updates and an annual report.

WSBA Career Center

We have been exploring how to best balance operation of the [WSBA Career Center](#) so that it both continues as a source of revenue for the organization while being available/flexible to further our mission and to serve members and the public. As we have mentioned, we have had a running 50% discount throughout the pandemic available to nonprofit and government organizations and solo/small practice firms; we have increased our efforts (working directly with relevant sections, for example) to advertise that discount. We have also begun a special offer for public defenders and prosecutors: Now through the end of the year, they have a special code to post jobs for free. We started this campaign because of the feedback we have gotten from public defenders and prosecutors across the state about their significant workload increase due to the pandemic and *Blake* decision. The Board in May supported a resolution calling for jurisdictions to use available federal funding to add public defender resources, and we see the Career Center campaign as a nice compliment. We have already received appreciation for this effort, including from counties that are posting jobs made available from federal funds.

We are also looking at exploring how to best use the Career Center as a resource for our Practice Management Advisor program and rural outreach initiative. Our partner that operates the Career Center, YM Careers, notes that we have one of the most robust job boards in the country, and our overall goal is to make the WSBA Career Center the first stop for job posters and seekers looking for JD-required applicants.

Bar News: New Online Platform, New Advertising Opportunities

We are excited to announce the successful launch of a new online platform for *Bar News*. The site now functions like a typical modern online newspaper or magazine, with articles individually embedded. [Check out the upgraded features](#). As previously reported, this format provides many benefits: It's easier for users to search for individual articles and columns, we can update/add media to articles (video?!), and we can integrate all of our news (including blog posts, etc.) into one main hub eventually. The new format also allows us to sell online ads, which is an added boon since we have ended our contract with our former hosting platform, GTxcel. We are currently working with our ad sales rep to finalize online ad details and shore up 2022 ad pricing. Please note: Each issue can still be viewed in a "flipbook" fashion as one PDF. We are also working to find the right platform (the platform we planned to use serves up questionable outside advertisements in its flipbook feature) and resources to get our entire archive of magazines online.

Attachments

Media Report
Litigation Update
WSBA Demographics Report

WASHINGTON STATE BAR ASSOCIATION

MEMO

To: WSBA Board of Governors

From: Jennifer Olegario, Communication Strategies Manager

CC: Sara Niegowski, Chief Communications and Outreach Officer

Date: Oct. 28, 2021

RE: **Summary of Media Contacts**, Aug. 9 – Oct. 28, 2021

Date	Journalist and Media Outlet	Inquiry
Aug. 18	Kip Hill, <i>The Spokesman-Review</i>	Per Supreme Court Order, inquired whether WSBA will require vaccines for its staff.
Aug. 19	Denver Pratt, <i>Bellingham Herald</i>	Had questions regarding caseload limits for public defenders, offices who hit their limits, how it impacts the people served by public defense offices, etc. Referred to Council on Public Defense.
Oct. 7	Chris Ingalls, KING5	Inquired about Robert R. Cole and Gregory L. Gilday, Law Office of Cole & Gilday P.C. Sent standard media response for inquiries regarding grievances/discipline.
Oct. 21	Delaney Gray, KREM (Spokane)	Sought legal expert to discuss WSU former coach Nick Rolovich's lawsuit against WSU for firing him for refusing to get the vaccine.

Media Coverage

- *The Spokesman-Review*, Aug. 19: [Washington Supreme Court mandates COVID-19 vaccine for workers, encourages lower courts to do same](#)

News Releases

- [484 Candidates Pass July 2021 Washington State Bar Exam \(Sept. 11, 2021\)](#)
- [Hon. Brian Tollefson Sworn in as Washington State Bar President \(Sept. 23, 2021\)](#)

WASHINGTON STATE BAR ASSOCIATION

Office of General Counsel

To: The President, President-elect, Immediate Past-President, and Board of Governors
 From: Julie Shankland, General Counsel
 Lisa Amatangel, Associate Director, OGC
 Date: October 18, 2021
 Re: Litigation Update

No.	Name	Brief Description	Status
1.	<i>Sangha v. Knapp et al</i> , No. 21-2-00-769-37 (Whatcom Sup. Ct.)	Addresses handling of letters of complaint.	Complaint filed 08/02/21; WSBA filed motion to dismiss on 08/24/21. Motion to dismiss granted 09/24/21.
2.	<i>Block v. Scott et al</i> , No. 21-2-01394-31 (Snohomish Sup. Ct.) (" <i>Block IV</i> ")	Alleges civil rights and public records violations.	Complaint filed 03/26/21. This matter was dismissed in part as of 08/12/21.
3.	<i>Block v. WSBA et al.</i> , No. 18-cv-00907 (W.D. Wash.) (" <i>Block II</i> ")	See <i>Block I</i> (below).	<p>On 03/21/19, the Ninth Circuit stayed <i>Block II</i> pending further action by the district court in <i>Block I</i>. On 12/17/19, Block filed a status report with the Ninth Circuit informing the Court of the <i>Block I</i> Court's reimposition of the vexatious litigant pre-filing order against Block. On 06/18/20, the Ninth Circuit lifted the stay order and ordered the appellees who have not yet filed their answering briefs to do so by 08/17/20 (WSBA filed its answer brief before the stay order was entered). Block's reply was due 10/09/20, then extended to 12/28/20.</p> <p>Block filed a reply brief four months late along with a motion for extension of time. The Ninth Circuit Court denied Block's motion for an extension and declined to accept the reply brief. Block has filed a Motion for Reconsideration of the Order denying her motion for an extension. The Ninth Circuit set this matter for consideration without oral argument on 06/08/21. On 07/02/21, the Ninth Circuit affirmed the dismissal of Block II pursuant to the original vexatious litigant order.</p>



			<p>Block filed in the district court a Motion to Issue Indicative ruling and an amended version of the same motion, which was denied.</p> <p>Block filed a second notice of appeal in this matter (21-35261). Block’s opening brief and excerpts of record were due 06/07/21. On 08/27/21, the Ninth Circuit denied the appellees’ requests for dismissal of the appeal for failure to prosecute and set a new briefing schedule; Block’s opening brief was due 09/22/21. On 09/29/21 Block filed a motion to stay the appeal or extend the deadline for her to file the opening brief by 90 days.</p> <p>On 09/09/21, Block filed a motion to vacate all decisions in this matter; WSBA filed an opposition on 09/20/21. This motion was denied on 09/28/21.</p>
4.	<i>Eugster v. WSBA, et al.</i> , No. 18201561-2, (Spokane Sup. Ct.)	Challenges dismissal of <i>Spokane County 1</i> (case no. 15-2-04614-9).	Dismissal order signed 01/06/20. On 01/16/20, WSBA filed a supplemental brief on fees under CR 11 and RCW 4.84.185. Fee award of \$28,586 granted on 02/14/20; Eugster filed a notice of appeal on 03/02/20. WSBA filed its response brief on 12/14/20. Appeals briefing is complete; fees on appeal requested. On 06/07/21 the Court of Appeals affirmed and awarded fees on appeal for frivolity. Mandate to superior court issued on 08/16/21, directing that fees and costs of \$12,465.53 be awarded against Eugster as judgment debtor.
5.	<i>Block v. WSBA, et al.</i> , No. 15-cv-02018-RSM (W.D. Wash.) (“ <i>Block I</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 12/09/19, the United States Supreme Court denied plaintiff’s Petition of Writ of Certiorari.

		<p>On 12/13/19, the District Court reimposed the vexatious litigant pre-filing order against Block; Block filed a notice of appeal regarding this order on 01/14/20. Block filed an opening brief on 11/06/20; WSBA filed its answering brief on 01/07/21. Block's optional Reply Brief was due on 01/28/21. Block filed a reply brief on 04/26/21 along with a motion for extension. The Ninth Circuit set this matter for consideration without oral argument on 06/08/21. On 07/02/21 the Ninth Circuit affirmed the dismissal of Block II pursuant to the original vexatious litigant order.</p> <p>On 09/10/20, Block moved to vacate the vexatious litigant order; WSBA opposed the motion and it was denied. In response to the district court's denial of Block's motion to vacate, on 10/01/20, Block filed a motion for an indicative ruling on whether the district court would vacate the vexatious litigant order if the appellate court remanded the case for that purpose. WSBA opposed the motion. Block filed a reply on 10/16/20. This motion was denied.</p> <p>On 09/09/21, Block filed a motion to vacate all decisions in this matter; WSBA filed an opposition on 09/20/21. This motion was denied on 09/28/21.</p>
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WSBA Member* Licensing Counts 10/1/21 9:03:58 AM GMT-07:00

Member Type	In WA State	All
Attorney - Active	26,640	33,784
Attorney - Emeritus	113	121
Attorney - Honorary	321	369
Attorney - Inactive	2,522	5,577
Judicial	635	665
LLLT - Active	51	51
LLLT - Inactive	4	4
LPO - Active	783	796
LPO - Inactive	146	164
	31,215	41,531

By District		
	All	Active
0	5,701	4,686
1	2,823	2,343
2	2,089	1,677
3	2,059	1,716
4	1,346	1,145
5	3,196	2,607
6	3,297	2,761
7N	4,916	4,207
7S	6,281	5,185
8	2,205	1,881
9	4,774	4,044
10	2,844	2,379
	41,531	34,631

Misc Counts	
All License Types **	41,902
All WSBA Members	41,531
Members in Washington	31,215
Members in western Washington	27,129
Members in King County	17,457
Members in eastern Washington	3,979
Active Attorneys in western Washington	23,224
Active Attorneys in King County	15,359
Active Attorneys in eastern Washington	3,337
New/Young Lawyers	6,956
MCLE Reporting Group 1	10,911
MCLE Reporting Group 2	11,623
MCLE Reporting Group 3	11,736
Foreign Law Consultant	18
House Counsel	343
Indigent Representative	10

By Section ***		
	All	Previous Year
Administrative Law Section	237	232
Alternative Dispute Resolution Section	319	314
Animal Law Section	81	88
Antitrust, Consumer Protection and Unfair Business Practice	197	199
Business Law Section	1,244	1,236
Cannabis Law Section	94	108
Civil Rights Law Section	179	165
Construction Law Section	520	509
Corporate Counsel Section	1,086	1,092
Creditor Debtor Rights Section	459	449
Criminal Law Section	381	369
Elder Law Section	625	643
Environmental and Land Use Law Section	799	767
Family Law Section	986	960
Health Law Section	391	391
Indian Law Section	330	322
Intellectual Property Section	865	867
International Practice Section	226	243
Juvenile Law Section	145	138
Labor and Employment Law Section	985	981
Legal Assistance to Military Personnel Section	74	66
Lesbian, Gay, Bisexual, Transgender (LGBT) Law Section	107	115
Litigation Section	1,040	1,004
Low Bono Section	83	120
Real Property Probate and Trust Section	2,313	2,267
Senior Lawyers Section	242	237
Solo and Small Practice Section	893	893
Taxation Section	625	615
World Peace Through Law Section	145	129

* 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 year (Jan 1). The Previous Year column is the total from the last day of the prior year (Dec 31). WSBA staff with complimentary membership are not included in the counts.

By State and Province	
Alabama	28
Alaska	202
Alberta	10
Arizona	367
Arkansas	18
Armed Forces Americas	2
Armed Forces Europe, Middle East	24
Armed Forces Pacific	12
British Columbia	99
California	1,914
Colorado	268
Connecticut	50
Delaware	7
District of Columbia	343
Florida	280
Georgia	88
Guam	14
Hawaii	133
Idaho	486
Illinois	165
Indiana	46
Iowa	29
Kansas	30
Kentucky	34
Louisiana	48
Maine	13
Maryland	117
Massachusetts	88
Michigan	73
Minnesota	105
Mississippi	5
Missouri	68
Montana	172
Nebraska	19
Nevada	158
New Hampshire	12
New Jersey	67
New Mexico	78
New York	247
North Carolina	84
North Dakota	11
Northern Mariana Islands	6
Nova Scotia	1
Ohio	82
Oklahoma	31
Ontario	16
Oregon	2,759
Pennsylvania	83
Puerto Rico	6
Quebec	2
Rhode Island	14
South Carolina	29
South Dakota	9
Tennessee	59
Texas	396
Utah	187
Vermont	16
Virginia	281
Virgin Islands	2
Washington	31,215
Washington Limited License	1
West Virginia	7
Wisconsin	47
Wyoming	21

By WA County		By Admit Yr	
Adams	15	1946	1
Asotin	26	1947	2
Benton	412	1948	2
Chelan	258	1949	1
Clallam	166	1950	4
Clark	975	1951	13
Columbia	8	1952	18
Cowlitz	155	1953	15
Douglas	41	1954	21
Ferry	10	1955	9
Franklin	58	1956	32
Garfield	3	1957	20
Grant	137	1958	25
Grays Harbor	118	1959	28
Island	164	1960	28
Jefferson	119	1961	23
King	17,457	1962	29
Kitsap	844	1963	29
Kittitas	99	1964	32
Klickitat	29	1965	46
Lewis	118	1966	57
Lincoln	15	1967	54
Mason	105	1968	79
Okanogan	97	1969	88
Pacific	29	1970	90
Pend Oreille	14	1971	96
Pierce	2,433	1972	151
San Juan	91	1973	236
Skagit	292	1974	223
Skamania	20	1975	286
Snohomish	1,714	1976	340
Spokane	2,055	1977	347
Stevens	57	1978	383
Thurston	1,703	1979	411
Wahkiakum	12	1980	437
Walla Walla	119	1981	470
Whatcom	614	1982	453
Whitman	79	1983	493
Yakima	447	1984	1,091
		1985	555
		1986	755
		1987	725
		1988	632
		1989	693
		1990	869
		1991	841
		1992	817
		1993	914
		1994	870
		1995	817
		1996	797
		1997	907
		1998	888
		1999	903
		2000	903
		2001	909
		2002	993
		2003	1,055
		2004	1,084
		2005	1,116
		2006	1,188
		2007	1,262
		2008	1,095
		2009	976
		2010	1,073
		2011	1,057
		2012	1,086
		2013	1,221
		2014	1,360
		2015	1,594
		2016	1,312
		2017	1,392
		2018	1,315
		2019	1,369
		2020	1,563
		2021	835

By Years Licensed	
Under 6	8,293
6 to 10	6,265
11 to 15	5,520
16 to 20	4,880
21 to 25	4,077
26 to 30	3,729
31 to 35	2,917
36 to 40	2,468
41 and Over	3,382
Total:	41,531

By Age	All	Active
21 to 30	1,703	1,654
31 to 40	9,126	8,293
41 to 50	10,180	8,570
51 to 60	9,090	7,225
61 to 70	7,586	5,684
71 to 80	3,247	2,180
Over 80	599	178
Total:	41,531	33,784

By Gender	
Female	12,250
Male	16,379
Non-Binary	21
Not Listed	25
Selected Mult Gender	26
Transgender	1
Two-spirit	4
Respondents	28,706
No Response	12,825
All Member Types	41,531

By Disability	
Yes	1,226
No	19,864
Respondents	21,090
No Response	20,441
All Member Types	41,531

By Sexual Orientation	
Asexual	22
Gay, Lesbian, Bisexual, Pansexual, or Queer	525
Heterosexual	4,831
Not Listed	110
Selected multiple orientations	20
Two-spirit	5
Respondents	5,513
No Response	36,018
All Member Types	41,531

By Ethnicity	
American Indian / Native American / Alaskan Native	230
Asian-Central Asian	26
Asian-East Asian	256
Asian-South Asian	67
Asian-Southeast Asian	74
Asian—unspecified	1,064
Black / African American / African Descent	658
Hispanic / Latinx	701
Middle Eastern Descent	21
Multi Racial / Bi Racial	1,038
Not Listed	214
Pacific Islander / Native Hawaiian	63
White / European Descent	23,043
Respondents	27,455
No Response	14,076
All Member Types	41,531

Members in Firm Type	
Bank	35
Escrow Company	59
Government/ Public Sector	5,115
House Counsel	3,124
Non-profit	454
Title Company	114
Solo	5,089
Solo In Shared Office Or	1,256
2-5 Members in Firm	4,227
6-10 Members in Firm	1,671
11-20 Members in Firm	1,268
21-35 Members in Firm	763
36-50 Members In Firm	557
51-100 Members in Firm	618
100+ Members in Firm	1,858
Not Actively Practicing	1,852
Respondents	28,060
No Response	13,471
All Member Types	41,531

By Practice Area	
Administrative-regulator	2,255
Agricultural	243
Animal Law	112
Antitrust	314
Appellate	1,639
Aviation	179
Banking	430
Bankruptcy	860
Business-commercial	5,225
Cannabis	132
Civil Litigation	505
Civil Rights	1,080
Collections	498
Communications	210
Constitutional	659
Construction	1,350
Consumer	746
Contracts	4,247
Corporate	3,562
Criminal	3,695
Debtor-creditor	902
Disability	586
Dispute Resolution	1,249
Education	469
Elder	847
Employment	2,786
Entertainment	307
Environmental	1,250
Estate Planning-probate	3,309
Family	2,583
Foreclosure	456
Forfeiture	100
General	2,541
Government	2,841
Guardianships	794
Health	941
Housing	320
Human Rights	307
Immigration-naturaliza	1,006
Indian	571
Insurance	1,636
Intellectual Property	2,282
International	893
Judicial Officer	425
Juvenile	805
Labor	1,119
Landlord-tenant	1,238
Land Use	861
Legal Ethics	286
Legal Research-writing	834
Legislation	434
Lgbtq	88
Litigation	4,731
Lobbying	171
Malpractice	732
Maritime	309
Military	381
Municipal	896
Non-profit-tax Exempt	631
Not Actively Practicing	2,044
Oil-gas-energy	238
Patent-trademark-copyr	1,330
Personal Injury	3,212
Privacy And Data Securit	354
Real Property	2,632
Real Property-land Use	2,107
Securities	765
Sports	175
Subrogation	125
Tax	1,283
Torts	2,058
Traffic Offenses	585
Workers Compensation	702

By Languages Spoken	
Afrikaans	5
Akan /twi	5
Albanian	2
American Sign Language	18
Amharic	22
Arabic	51
Armenian	8
Bengali	12
Bosnian	14
Bulgarian	12
Burmese	2
Cambodian	5
Cantonese	107
Cebuano	7
Chamorro	5
Chaozhou/chiu Chow	1
Chin	1
Croatian	20
Czech	7
Danish	19
Dari	4
Dutch	23
Egyptian	3
Farsi/persian	66
Finnish	8
French	696
French Creole	1
Fukienese	3
Ga/kwa	2
German	411
Gikuyu/kikuyu	1
Greek	30
Gujarati	15
Haitian Creole	3
Hebrew	42
Hindi	102
Hmong	1
Hungarian	17
Ibo	4
Icelandic	2
Ilocano	9
Indonesian	12
Italian	166
Japanese	206
Javanese	1
Kannada/canares	5
Kapampangan	2
Khmer	2
Korean	237
Lao	5
Latvian	6
Lithuanian	3
Malay	4
Malayalam	8
Mandarin	389
Marathi	6
Mien	1
Mongolian	2
Navajo	1
Nepali	5
Norwegian	35
Not_listed	44
Oromo	4
Persian	20
Polish	34
Portuguese	127
Portuguese Creole	1
Punjabi	68
Romanian	22
Russian	235
Samoan	7
Serbian	17
Serbo-croatian	13
Sign Language	20
Singhalese	2
Slovak	3
Spanish	1,826
Spanish Creole	4
Swahili	8
Swedish	51
Tagalog	71
Taishanese	4
Taiwanese	21
Tamil	11
Telugu	4
Thai	10
Tigrinya	4
Tongan	1
Turkish	15
Ukrainian	46
Urdu	46
Vietnamese	90
Yoruba	10
Yugoslavian	4

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

TO: WSBA Board of Governors

CC: Terra Nevitt, Executive Director

FROM: Eleanor Doermann, Chair of Senior Lawyers Section Executive Committee
Carole Grayson, Senior Lawyers Section Executive Committee Member, Chair from 2014-2017
Brian Comstock, Senior Lawyers Section Emeritus Executive Committee Member, Chair from 2017-2019

DATE: October 18, 2021

RE: Second Reading/ Action to Approve Request to Amend WSBA Bylaws to Allow Inactive/Honorary Members to Join Sections as Voting Members

This is the Second Reading/For Possible Action of a request by the Senior Lawyers Section to amend the WSBA Bylaws to allow Sections the option of permitting inactive/honorary members of the WSBA to join a section as a voting member and to serve as a voting member of a section executive committee.

Action Taken Based on Board of Governors Feedback From First Reading

During first read, the Board of Governors asked for clarification on the following:

- Article III verbiage stating inactive members “may be eligible to vote” seems broader than the section’s request.
- Article XI, more clearly define eligible Inactive member types.

The Board of Governors asked us to go back and tighten up the language in the areas listed above. We worked with Advancement staff and the Office of General Counsel in addressing both concerns.

In the meeting materials, we are including the original redlines of the WSBA Bylaws from the first reading along with the revised redlines for second reading that address the concerns raised by the Board during first reading.

For Article III, the revised redline makes it clear that Inactive members may not vote or join WSBA boards and committees with the exception that Inactive members would be eligible to vote or hold office in a section, but only if permitted under the section bylaws.

In Article XI, the revised redline more clearly defines what status types fall within the definition of Inactive. It has been clearly articulated that inactive WSBA members includes inactive, disability inactive, and honorary members. We have also included the memo from the first reading, which provides the background and full analysis of our request along with the summary results of the section leaders survey referenced in the memo from first read.

We thank the Board of Governors for your time in providing the feedback regarding the proposed Bylaws revisions and for reviewing the revisions on second read. We respectfully ask that the proposed Bylaws amendments be approved.

Sincerely,

Eleanor Doermann, Chair of Senior Lawyers Section Executive Committee
Carole Grayson, Senior Lawyers Section Executive Committee Member
Brian Comstock, Senior Lawyers Section Emeritus Executive Committee Member

Attachments

Memo to the Board of Governors from First Read
Redlines of applicable WSBA Bylaws from First Read
Redlines of applicable WSBA Bylaws for Second Read
Summary Results of Section Leaders Survey

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

CC: Terra Nevitt, Executive Director

FROM: Eleanor Doermann, Chair of Senior Lawyers Section Executive Committee
Carole Grayson, Senior Lawyers Section Executive Committee Member, Chair from 2014-2017
Brian Comstock, Senior Lawyers Section Emeritus Executive Committee Member, Chair from 2017-2019

DATE: September 8, 2021

RE: Request to Modify WSBA Bylaws to Allow Inactive/Honorary Members to Join Sections as Voting Members

This is the First Read of a request by the Senior Lawyers Section to modify the WSBA Bylaws to allow Sections the option of allowing inactive/honorary members of the WSBA to join a section as a voting member and to serve as a voting member of a section executive committee.

By its nature, the WSBA Senior Lawyers Section attracts members who are advanced in age and, consequently, closer to retirement. This prompts members of the Section to switch their license status from active to inactive or honorary. The Senior Lawyers Section currently has three members of its executive committee who have switched to inactive or honorary status. They are serving on the executive committee as Emeritus members with no voting rights because the WSBA Bylaws prohibit inactive/honorary members from joining sections as voting members and serving on section executive committees as voting members.

We are requesting that the WSBA Bylaw provisions preventing inactive/honorary members from joining sections and serving on section executive committees as voting members be modified so that any section may opt to allow inactive/honorary members of WSBA to join as voting members of that section. See the proposed redline of the WSBA Bylaws attached. The proposed modifications were also reviewed by the WSBA Office of General Counsel.

Background

The proposed WSBA Bylaws amendments would not require sections to allow inactive/honorary members, but would give a section the option to do so by modifying its own section bylaws. Currently, the WSBA Bylaws allow the sections to have discretion in adding all member types (Judicial status is questionable because there is an apparent conflict in the Bylaws regarding Judicial status and sections) as voting members with the exclusion of inactive/honorary members.

In research of other bar associations in close proximity to Washington, we found that the [Idaho State Bar Bylaws](#) do not allow inactive members to participate as voting members generally, but they do allow the sections to make exceptions to active membership in their own bylaws. Similarly, the [Utah State Bar Bylaws](#) do not allow inactive members to vote in general bar matters, but do allow them to join sections as voting members. The [Oregon State Bar Bylaws](#) allow those of inactive status to be members of the section, but not serve as officers of the section. The [Nevada State Bar Bylaws](#) allow any member of the State Bar to be a member of the section unless otherwise provided in the section bylaws.

This research demonstrates that the act of allowing sections discretion in determining who shall be a voting member of their section is not unique. In fact, three of the state bars above (Idaho, Utah, and Nevada) allow the option we are asking the Board to approve in the WSBA Bylaws.

Stakeholder Input

We sought input from section leaders from August 9th through August 30th on the WSBA Section Leaders List Serve. We received thirteen responses from seven sections. Responses indicate that 92% of Section Leaders agree with the request to change the Bylaws and 8% disagree.

When asked whether a section would affirmatively take action to modify its bylaws to allow inactive members to join as voting members 46% said they would and 8% said they would not. 46% said they would consider changing their bylaws.

Fiscal Impact

From our perspective, the potential fiscal impacts are deemed minimal. Extending the option for sections to include inactive/honorary members as voting members would not negatively impact the WSBA unless members in Active status transfer their license to Inactive status because they are only maintaining an Active license to retain a voting status in a section. The assumption is that members maintain an Active license to practice law or for other career purposes rather than to serve as a voting member in sections. This proposal was run through the CFO's office of the WSBA and there is agreement that the potential fiscal impact is minimal.

Given that this request is in alignment with the way other bar associations handle section members, that a vast majority of WSBA section leaders who took the survey approve of these proposed changes, and that the fiscal impact is negligible, we ask the Board to approve the proposed Bylaws amendments.

Sincerely,

Eleanor Doermann, Chair of Senior Lawyers Section Executive Committee
Carole Grayson, Senior Lawyers Section Executive Committee Member
Brian Comstock, Senior Lawyers Section Emeritus Executive Committee Member

Attachments

Redlines of applicable WSBA Bylaws
Summary Results of Section Leaders Survey

III. MEMBERSHIP

A. MEMBER LICENSE TYPES

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

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

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

B. STATUS CLASSIFICATIONS

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

1. Active

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

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

- c. All persons who become members of the Bar must first do so as an Active member.

2. Inactive

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

- a. Inactive members may:

- 1) Join Bar sections ~~as non-voting members,~~
- 2) Continue their affiliation with the Bar;
- 3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;
- 4) Request a free subscription to the Bar's official publication; and
- 5) Receive member benefits available to Inactive members.

- b. Types of Inactive membership:

- 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
- 2) Disability: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
- 3) Honorary: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, a Pro Bono member.

3. Judicial

- a. A member may qualify to become a Judicial member if the member is one of the following:

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

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

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

4. Pro Bono

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

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

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

5. Suspended

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

C. REGISTER OF MEMBERS

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

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

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

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

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

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

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

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

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

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

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

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

b. Transfer from Judicial to Active.

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

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

c. Transfer from Pro Bono to Active

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

d. Referral to Character and Fitness Board

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

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

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE

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

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

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

F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL

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

G. CHANGE OF MEMBERSHIP STATUS TO PRO BONO

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

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

H. VOLUNTARY RESIGNATION

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

I. ANNUAL LICENSE FEES AND ASSESSMENTS

1. License Fees

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

a. Active Members

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

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

b. Inactive Members

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

c. Judicial Members [Effective January 1, 2012]

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

d. Pro Bono Members

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

2. Assessments

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

3. Deadline and Late Payment Fee

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

4. Rebates /Apportionments

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

5. License Fee and Assessment Exemptions Due to Hardship

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

6. License Fee Referendum

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

J. SUSPENSION

1. Interim Suspension

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

2. Disciplinary Suspension

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

3. Administrative Suspension

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

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

4. Multiple Suspensions

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

K. CHANGING STATUS AFTER SUSPENSION

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

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

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

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

L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION

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

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

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

N. READMISSION AFTER VOLUNTARY RESIGNATION

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

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

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

O. EXAMINATION REQUIRED

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

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

Proposed

XI. SECTIONS

A. DESIGNATION AND CONTINUATION

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

B. ESTABLISHING SECTIONS

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

C. MEMBERSHIP

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

D. DUES

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

E. BYLAWS AND POLICIES

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

F. SECTION EXECUTIVE COMMITTEE

1. Each section will have a section executive committee consisting of, at minimum, the following Officer positions: Chair, Secretary and Treasurer (or Secretary/Treasurer); and may have At-Large members. Unless otherwise permitted by a section's bylaws, voting members of a section executive committee must be Active members of the Bar and a member of the section for their entire term of office on the executive committee. Additionally, a section executive committee may have non-voting members. The section executive committee is empowered to act on behalf of the section unless it chooses to take a vote of the section membership.
2. Due to the section executive committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between executive committee meetings during a legislative session, upon notice to all section executive committee members, the section executive committee may discuss and vote on issues relating to the section's position on pending or proposed legislation by email. However, if any section executive committee member objects to using an email process for any particular issues, the section executive committee instead will take up that issue at its next section executive committee meeting.
3. Officers. Unless otherwise permitted by a section's bylaws, officers of a section executive committee must be Active members of the Bar and elected by the section membership to complete the one-year term of office.
 - a. Chair. The chair of the section presides at all meetings of the section and section executive committee, and will have such other executive powers and perform such other duties as are consistent with the Bar and section bylaws.
 - b. Secretary. The Secretary will take minutes at each meeting of the section and section executive committee, and provide approved minutes to the Bar for publication and record retention.
 - c. Treasurer. The Treasurer will work with the Bar to ensure that the section complies with Bar fiscal policies and procedures, work with the Bar to prepare the section's annual budget, and review the section's monthly financial statements for accuracy and comparison to budget.
 - d. A section may have additional officer positions as defined in its sections bylaws.
4. At-Large Members. At-large members of the section executive committee will be voting members. At-large members will be elected by the section membership for terms of up to

three-years. A section executive committee may appoint its Young Lawyer Liaison (if any) as a voting member of the section's executive committee.

5. Non-voting Members. Voting members of the section executive committee may appoint non-voting members from among the current members of the section to further the work of the Bar and section. Non-voting members serve at the discretion of the section executive committee.
6. Executive committee members are not subject to a limit on the number of the consecutive terms they may serve unless stated in a section's bylaws.
7. All section executive committee positions will begin October 1 each year.

G. NOMINATIONS AND ELECTIONS

1. Nominations

- a. Nominating Committee. Each section will have a nominating committee consisting of no less than three section members appointed annually by the Chair or executive committee. At least one member of the nominating committee should not be a current member of the section executive committee.
- b. The executive committee should reflect diverse perspectives. To assist this, all applicants will apply through an electronic application process administered by the Bar. The application form will, on a voluntary basis, solicit information including, but not limited to, the person's ethnicity, gender, sexual orientation, disability status, area of practice, years of practice, employer, number of lawyers in law firm, previous involvement in section activities, and skills or knowledge relevant to the position. The nominating committee should actively take factors of diversity into account when making recommendations.
- c. Alternate Nomination Process. The executive committee will also have an alternative process to allow for nominations to occur outside of the nominating committee process.
- d. Executive Committee Approval. The executive committee will approve a list of nominees for each open position. Persons nominated through an alternative nomination process will be included on the final list of approved nominees.

2. Elections

- a. Only voting members of the section may participate in section elections.
- b. The Bar will administer the elections by electronic means and certify results, unless the section develops its own equivalent electronic election process. For sections that administer elections through an alternate equivalent electronic election process, the section must provide the Bar with the total number of votes cast and the number of votes received for each candidate immediately following the close of the election.
- c. In the event of a tie, the section executive committee will implement a random tie-breaker of its choice, such as a coin toss or a drawing of lots, to determine the winner.
- d. All election processes must comply with the Bar record retention policies.

3. Timing. Nominations and elections for open section executive committee positions will be held no later than June 30th of each year.

H. VACANCIES AND REMOVAL

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

I. OTHER COMMITTEES

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

J. BUDGET

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

K. SECTION REPORTS

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

L. TERMINATING SECTIONS

1. The BOG may consider terminating a section when it appears the section is no longer carrying on the work of the Bar as defined in these Bylaws. The issue will be raised (a) on motion, (b) on petition, or (c) at a "viability review" as defined in these Bylaws.
2. A section that has less than 75 voting members for two consecutive years will be automatically placed on the BOG agenda for a "viability review." The BOG has the discretion to retain a section despite what might otherwise be considered to be a lack of viability when in the BOG's opinion the section is carrying on the work of the Bar as defined in these Bylaws, and the work is of value to the legal profession.
3. Any section subject to a motion, petition, or viability review pursuant to paragraph (1) above will be given notice and an opportunity to be heard by the BOG. Notice must be sent by the Bar to the current section officers and/or executive committee and posted on the Bar website at least one BOG meeting prior to the meeting at which the Board plans to vote on the proposal.

4. A section subject to potential termination may petition the BOG to be combined with another section, with that section's written approval, and will be given reasonable opportunity to present that petition to the BOG before the BOG votes on the section's termination.
5. If a section is terminated pursuant to these Bylaws, section members will be allowed to transfer to another section of their choosing, without payment of additional fees, for that remainder of the section dues year.
6. A section terminated pursuant to these Bylaws may apply for reactivation if they meet qualifications for establishing a new section.
7. Any funds remaining in the treasury of a section at the time of termination will be transferred to the Bar's general operating fund unless otherwise designated by the BOG. Funds in the treasury of combined sections will be combined.

Proposed

III. MEMBERSHIP

A. MEMBER LICENSE TYPES

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

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

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

B. STATUS CLASSIFICATIONS

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

1. Active

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

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

- c. All persons who become members of the Bar must first do so as an Active member.

2. Inactive

Inactive members must not practice law in Washington, nor engage in employment or duties that constitute the practice of law. Inactive members are not eligible to vote or hold office therein, or serve on any committee or board, except an inactive member may vote and hold office in a Bar section if a section's bylaws permit.

- a. Inactive members may:

- 1) Join Bar sections ~~as non-voting members,~~
- 2) Continue their affiliation with the Bar;
- 3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;
- 4) Request a free subscription to the Bar's official publication; and
- 5) Receive member benefits available to Inactive members.

- b. Types of Inactive membership:

- 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
- 2) Disability: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
- 3) Honorary: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, a Pro Bono member.

3. Judicial

- a. A member may qualify to become a Judicial member if the member is one of the following:

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

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

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

4. Pro Bono

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

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

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

5. Suspended

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

C. REGISTER OF MEMBERS

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

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

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

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

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

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

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

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

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

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

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

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

b. Transfer from Judicial to Active.

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

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

c. Transfer from Pro Bono to Active

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

d. Referral to Character and Fitness Board

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

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

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE

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

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

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

F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL

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

G. CHANGE OF MEMBERSHIP STATUS TO PRO BONO

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

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

H. VOLUNTARY RESIGNATION

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

I. ANNUAL LICENSE FEES AND ASSESSMENTS

1. License Fees

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

a. Active Members

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

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

b. Inactive Members

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

c. Judicial Members [Effective January 1, 2012]

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

d. Pro Bono Members

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

2. Assessments

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

3. Deadline and Late Payment Fee

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

4. Rebates /Apportionments

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

5. License Fee and Assessment Exemptions Due to Hardship

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

6. License Fee Referendum

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

J. SUSPENSION

1. Interim Suspension

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

2. Disciplinary Suspension

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

3. Administrative Suspension

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

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

4. Multiple Suspensions

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

K. CHANGING STATUS AFTER SUSPENSION

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

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

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

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

L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION

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

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

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

N. READMISSION AFTER VOLUNTARY RESIGNATION

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

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

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

O. EXAMINATION REQUIRED

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

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

Proposed

XI. SECTIONS

A. DESIGNATION AND CONTINUATION

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

B. ESTABLISHING SECTIONS

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

C. MEMBERSHIP

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

D. DUES

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

E. BYLAWS AND POLICIES

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

F. SECTION EXECUTIVE COMMITTEE

1. Each section will have a section executive committee consisting of, at minimum, the following Officer positions: Chair, Secretary and Treasurer (or Secretary/Treasurer); and may have At-Large members. Unless otherwise permitted by a section's bylaws, voting members of a section executive committee must be Active members of the Bar and a member of the section for their entire term of office on the executive committee. Additionally, a section executive committee may have non-voting members. The section executive committee is empowered to act on behalf of the section unless it chooses to take a vote of the section membership.
2. Due to the section executive committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between executive committee meetings during a legislative session, upon notice to all section executive committee members, the section executive committee may discuss and vote on issues relating to the section's position on pending or proposed legislation by email. However, if any section executive committee member objects to using an email process for any particular issues, the section executive committee instead will take up that issue at its next section executive committee meeting.
3. Officers. Unless otherwise permitted by a section's bylaws, officers of a section executive committee must be Active members of the Bar and elected by the section membership to complete the one-year term of office.
 - a. Chair. The chair of the section presides at all meetings of the section and section executive committee, and will have such other executive powers and perform such other duties as are consistent with the Bar and section bylaws.
 - b. Secretary. The Secretary will take minutes at each meeting of the section and section executive committee, and provide approved minutes to the Bar for publication and record retention.
 - c. Treasurer. The Treasurer will work with the Bar to ensure that the section complies with Bar fiscal policies and procedures, work with the Bar to prepare the section's annual budget, and review the section's monthly financial statements for accuracy and comparison to budget.
 - d. A section may have additional officer positions as defined in its sections bylaws.
4. At-Large Members. At-large members of the section executive committee will be voting members. At-large members will be elected by the section membership for terms of up to

three-years. A section executive committee may appoint its Young Lawyer Liaison (if any) as a voting member of the section's executive committee.

5. Non-voting Members. Voting members of the section executive committee may appoint non-voting members from among the current members of the section to further the work of the Bar and section. Non-voting members serve at the discretion of the section executive committee.
6. Executive committee members are not subject to a limit on the number of the consecutive terms they may serve unless stated in a section's bylaws.
7. All section executive committee positions will begin October 1 each year.

G. NOMINATIONS AND ELECTIONS

1. Nominations

- a. Nominating Committee. Each section will have a nominating committee consisting of no less than three section members appointed annually by the Chair or executive committee. At least one member of the nominating committee should not be a current member of the section executive committee.
- b. The executive committee should reflect diverse perspectives. To assist this, all applicants will apply through an electronic application process administered by the Bar. The application form will, on a voluntary basis, solicit information including, but not limited to, the person's ethnicity, gender, sexual orientation, disability status, area of practice, years of practice, employer, number of lawyers in law firm, previous involvement in section activities, and skills or knowledge relevant to the position. The nominating committee should actively take factors of diversity into account when making recommendations.
- c. Alternate Nomination Process. The executive committee will also have an alternative process to allow for nominations to occur outside of the nominating committee process.
- d. Executive Committee Approval. The executive committee will approve a list of nominees for each open position. Persons nominated through an alternative nomination process will be included on the final list of approved nominees.

2. Elections

- a. Only voting members of the section may participate in section elections.
 - b. The Bar will administer the elections by electronic means and certify results, unless the section develops its own equivalent electronic election process. For sections that administer elections through an alternate equivalent electronic election process, the section must provide the Bar with the total number of votes cast and the number of votes received for each candidate immediately following the close of the election.
 - c. In the event of a tie, the section executive committee will implement a random tie-breaker of its choice, such as a coin toss or a drawing of lots, to determine the winner.
 - d. All election processes must comply with the Bar record retention policies.
3. Timing. Nominations and elections for open section executive committee positions will be held no later than June 30th of each year.

H. VACANCIES AND REMOVAL

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

I. OTHER COMMITTEES

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

J. BUDGET

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

K. SECTION REPORTS

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

L. TERMINATING SECTIONS

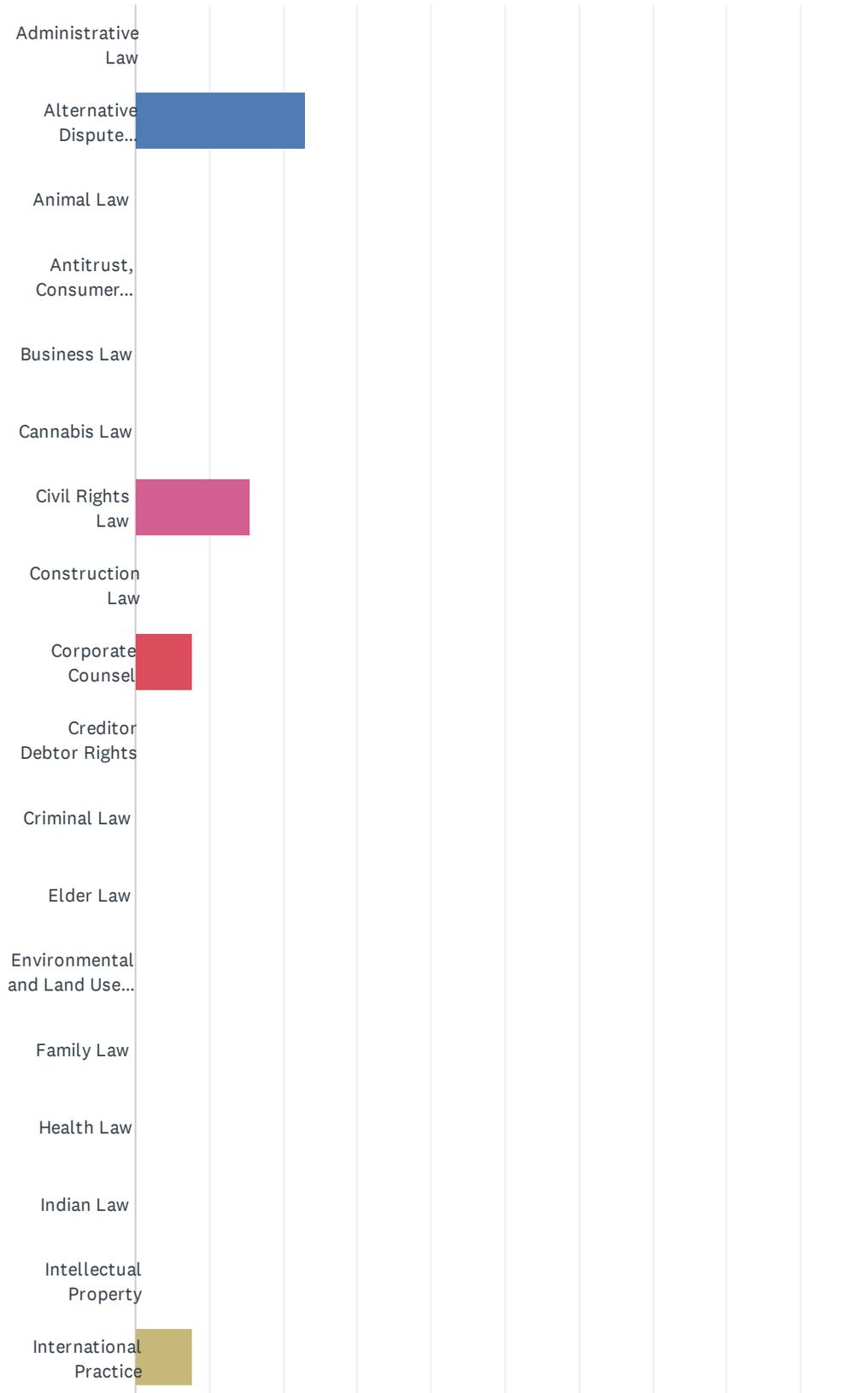
1. The BOG may consider terminating a section when it appears the section is no longer carrying on the work of the Bar as defined in these Bylaws. The issue will be raised (a) on motion, (b) on petition, or (c) at a "viability review" as defined in these Bylaws.
2. A section that has less than 75 voting members for two consecutive years will be automatically placed on the BOG agenda for a "viability review." The BOG has the discretion to retain a section despite what might otherwise be considered to be a lack of viability when in the BOG's opinion the section is carrying on the work of the Bar as defined in these Bylaws, and the work is of value to the legal profession.
3. Any section subject to a motion, petition, or viability review pursuant to paragraph (1) above will be given notice and an opportunity to be heard by the BOG. Notice must be sent by the Bar to the current section officers and/or executive committee and posted on the Bar website at least one BOG meeting prior to the meeting at which the Board plans to vote on the proposal.

4. A section subject to potential termination may petition the BOG to be combined with another section, with that section's written approval, and will be given reasonable opportunity to present that petition to the BOG before the BOG votes on the section's termination.
5. If a section is terminated pursuant to these Bylaws, section members will be allowed to transfer to another section of their choosing, without payment of additional fees, for that remainder of the section dues year.
6. A section terminated pursuant to these Bylaws may apply for reactivation if they meet qualifications for establishing a new section.
7. Any funds remaining in the treasury of a section at the time of termination will be transferred to the Bar's general operating fund unless otherwise designated by the BOG. Funds in the treasury of combined sections will be combined.

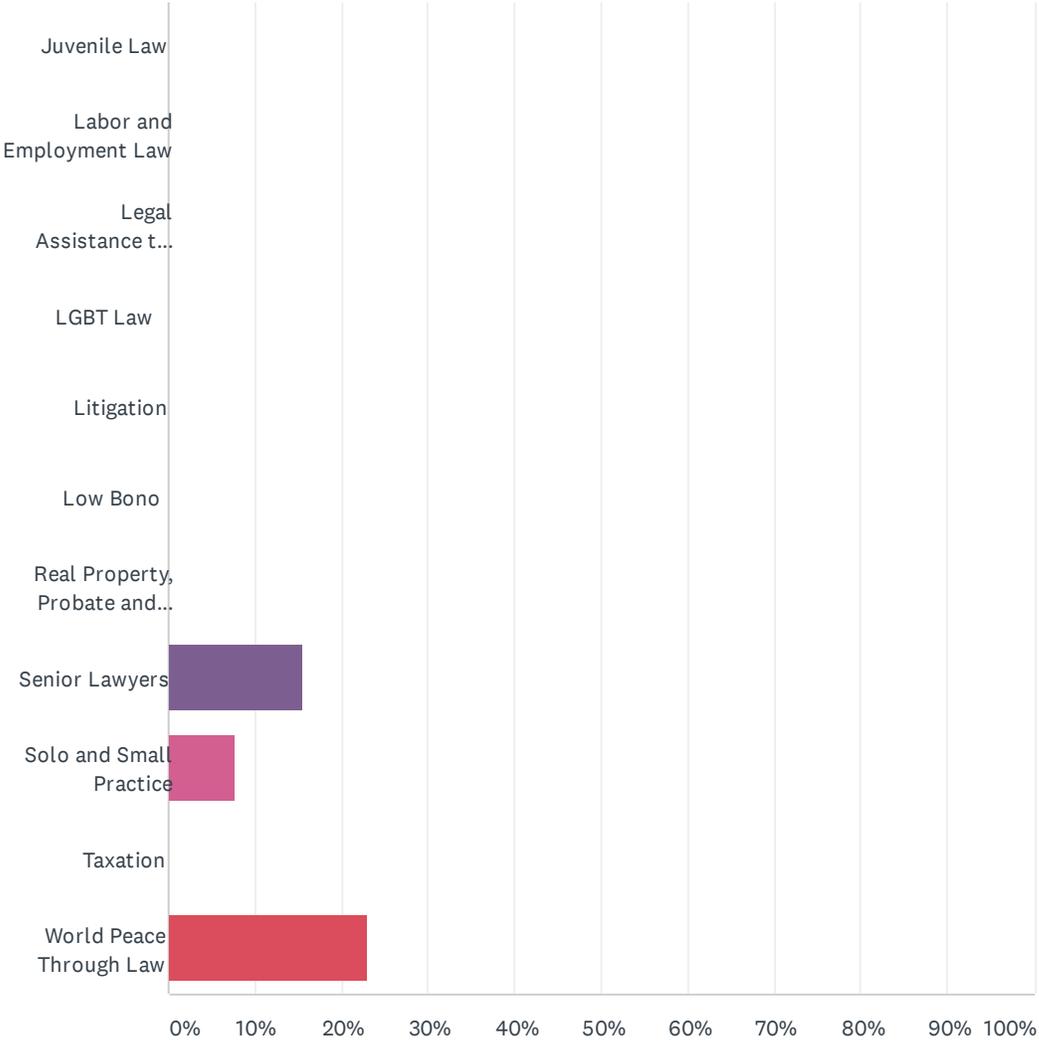
Proposed

Q1 On which section's executive committee do you currently serve on (please select all that apply)?

Answered: 13 Skipped: 0



Proposed WSBA Sections Bylaws Amendments Regarding Membership Status Eligibility

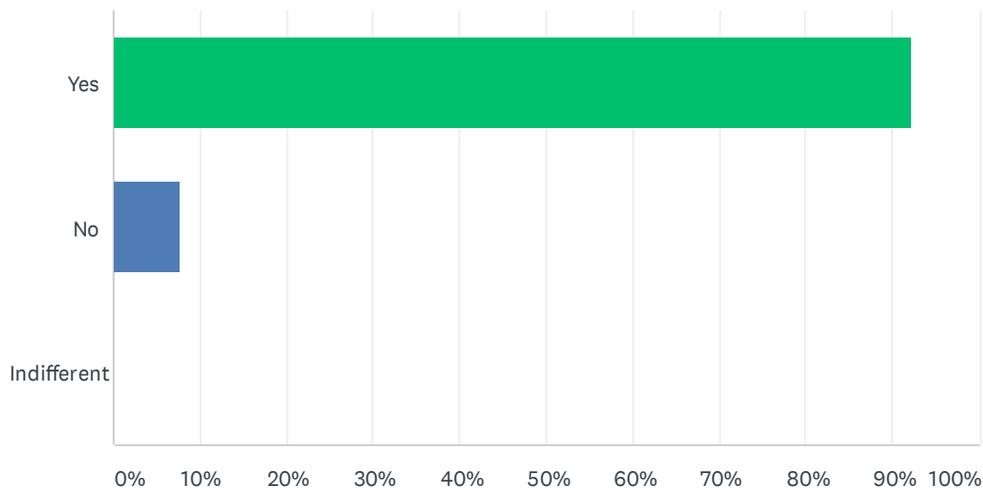


Proposed WSBA Sections Bylaws Amendments Regarding Membership Status Eligibility

ANSWER CHOICES	RESPONSES	
Administrative Law	0.00%	0
Alternative Dispute Resolution	23.08%	3
Animal Law	0.00%	0
Antitrust, Consumer Protection & Unfair Business Practices	0.00%	0
Business Law	0.00%	0
Cannabis Law	0.00%	0
Civil Rights Law	15.38%	2
Construction Law	0.00%	0
Corporate Counsel	7.69%	1
Creditor Debtor Rights	0.00%	0
Criminal Law	0.00%	0
Elder Law	0.00%	0
Environmental and Land Use Law	0.00%	0
Family Law	0.00%	0
Health Law	0.00%	0
Indian Law	0.00%	0
Intellectual Property	0.00%	0
International Practice	7.69%	1
Juvenile Law	0.00%	0
Labor and Employment Law	0.00%	0
Legal Assistance to Military Personnel	0.00%	0
LGBT Law	0.00%	0
Litigation	0.00%	0
Low Bono	0.00%	0
Real Property, Probate and Trust	0.00%	0
Senior Lawyers	15.38%	2
Solo and Small Practice	7.69%	1
Taxation	0.00%	0
World Peace Through Law	23.08%	3
Total Respondents: 13		

Q2 Do you generally support a WSBA Bylaws amendment as proposed by the Senior Lawyers Section to allow for those with inactive and honorary membership statuses to be voting members of a section?

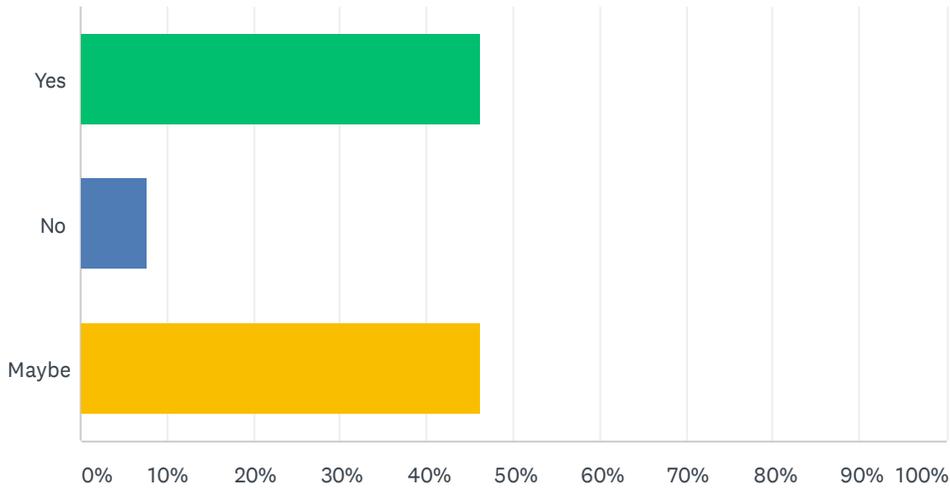
Answered: 13 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	92.31%	12
No	7.69%	1
Indifferent	0.00%	0
TOTAL		13

Q3 If the WSBA Bylaws were amended to permit Sections to allow inactive and honorary members to be voting members of the section, would your Section's executive committee consider amending the Section's bylaws to allow inactive and/or honorary members to be voting members of the Section?

Answered: 13 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	46.15%	6
No	7.69%	1
Maybe	46.15%	6
TOTAL		13

Q4 Any comments or questions?

Answered: 6 Skipped: 7

#	RESPONSES	DATE
1	The above is my personal opinion and does not represent IPS Executive Committee's opinion. IPS EC will need further discussion whether to make any changes to our section bylaws.	8/15/2021 10:13 AM
2	I speak only for myself, not our Executive Committee, but I am confident it would support the proposal because (A) the wisdom and energy of elder lawyers is valuable and (B) the interests of retired lawyers do not diverge from those of currently active members of our Section,IMO. We shall discuss at our next meeting.	8/13/2021 2:38 PM
3	We have 3 honorary members on our EC. None of them have been attorneys in their career, even though they have worked with attorneys. I don't think non-attorneys should be allowed to vote on issues related to attorney members.	8/12/2021 2:54 PM
4	Voting is important but so is being up to date and educated on the law. If a lawyer is still active as in engaged in education to further the administration of justice, then they should be afforded the right to vote.	8/12/2021 12:31 PM
5	This is particularly relevant to the ADR Section, as we have members practicing solely ADR services and therefore not required to be active members of the Bar.	8/12/2021 9:59 AM
6	This is ridiculous that retired members of the WSBA cannot participate. They basically have more time and effort to keep the sections moving and going. The BOG should consider that the fact that they are retired but are interested in giving back in some manner as a gift. Considering people who are active never can spend time doing anything of quality for the WSBA.	8/12/2021 7:32 AM

TO: WSBA Board of Governors
CC: Terra Nevitt, Executive Director
FROM: Tom McBride, BOG Legislative Committee Chair; Sanjay Walvekar, WSBA Legislative Affairs Manager
DATE: November 4, 2021
RE: 2022 WSBA Legislative Priorities

ACTION: Approve the 2022 Legislative Priorities for the upcoming legislative session.

Background

Each year, the BOG Legislative Committee Chair and the WSBA Legislative Affairs team propose legislative priorities for consideration and approval by the BOG. These priorities are longstanding, and the priorities document is primarily used to inform legislators of the WSBA's focus areas during the legislative session. 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 12.2). The 2022 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 and GR 12.2. These include supporting access to justice, increasing public understanding of Washington's justice system, and supporting a fair and impartial judiciary.

Attachments

2022 WSBA Legislative Priorities

Attorney Client Privileged and Confidential Memo from General Counsel Julie Shankland (available in Box)

2022 WSBA Legislative Priorities

- 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.

TO: WSBA Board of Governors
CC: Terra Nevitt, Executive Director
FROM: Brian Considine, WSBA Legislative Review Committee Chair; Sanjay Walvekar, WSBA Legislative Affairs Manager
DATE: November 4, 2021
RE: 2022 WSBA Legislative Review Committee Recommendations

ACTION: Sponsor two proposals for 2022 Bar-request legislation as recommended by the WSBA Legislative Review Committee.

Background

The WSBA Legislative Review Committee serves as the vetting ground for legislative proposals that are presented to the Board of Governors each November. The Committee is composed of up to 35 members of the WSBA and 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 7, 2021 to discuss two legislative proposals. First, the Committee voted unanimously that proposed amendments regarding record dates, merger and share exchanges, and other miscellaneous provisions in Washington's Business Corporation Act (WBCA) presented by the Business Law Section's Corporate Act Revision Committee (CARC) met the requirements of GR 12.2. Then, the Committee voted unanimously to recommend sponsorship of this proposal to the Board of Governors.

Next, the Committee voted unanimously that the proposed revisions to the Washington Limited Liability Company Act presented by the Business Law Section's Partnership & LLC Law Committee met the requirements of GR 12.2. Then, the Committee voted unanimously to recommend sponsorship of this proposal to the Board of Governors, provided that the Partnership & LLC Law Committee consider proposed amended language from the Legislative Review Committee to a specific section of the proposed bill.

Overview:

The WSBA Legislative Review Committee (Committee) recommends the Board of Governors (BOG) sponsor the following proposals for Bar-request legislation during the 2022 legislative session.

Returning and new legislation - Action Requested

- Proposed amendments regarding record dates, merger and share exchanges, and miscellaneous provisions in the WBCA. (Committee approved unanimously)
- Proposed revisions to the Washington Limited Liability Company Act. (Committee approved unanimously)

Proposed amendments to Washington’s 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 changes were originally drafted by CARC members and presented to the committee for its consideration in early 2021. Draft development took into consideration recently adopted changes to the Delaware General Corporation Law and the latest version of the Model Business Corporation Act. After deliberations and multiple revisions, CARC approved the proposed changes in the summer of 2021. The Executive Committee of the Business Law Section approved the proposed changes in its meeting held on August 19, 2021.

Background and Summary:

CARC’s proposed changes to the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (WBCA), relate to two general topics: record dates and mergers and share exchanges.

The proposed amendments would:

- Amend 23B.07.070 to clarify rules for fixing record dates, to remove the subsections governing records dates for share dividends and distributions to shareholders, moving those provisions to 23B.06.230 and 06.400 (the provisions governing share dividends and distributions generally), and to make correlative changes in other sections;
- Amend Chapter 11 of the WBCA to add a “medium form” merger provision and make correlative changes in other sections;
- Amend 23B.11.010 expressly to (1) permit the “amendment and restatement” of the surviving corporation’s articles of incorporation through the plan of merger, and (2) authorize the cancellation of some shares in connection with a plan of merger;
- Amend 23B.11.050 and 11.090 to eliminate the plan of merger or share exchange as a required element of the articles of merger or share exchange;
- Amend 23B.07.020 to add a deadline for delivery of sufficient demands for special meetings that corresponds with deadlines for delivery of shareholder consents generally; and
- Amend 23B.07.200 expressly to permit a corporation to make the shareholder list required in connection with shareholder meetings available on an electronic network.

Proposed revisions to the Washington Limited Liability Company Act.

Section draft development:

The Business Law Section’s Partnership & LLC Law Committee drafted and developed these changes for consideration between 2018 to 2020. After deliberations and multiple revisions, the Committee approved the proposed changes in the summer of 2020. The Business Law Section Executive Committee approved the proposed changes in its meeting held in November 2019.

Background and Summary:

The Partnership & LLC Law Committee believes the proposed changes creates clarity in the statute, removes ambiguity and further clarifies the statute after the major revisions from 2016.

The proposed amendments would:

- Amend 25.15.441: action on a plan of conversion must be unanimously approved or in accordance with the operating agreement.
- RCW 25.15.116: addition to cause admission of new member is automatic upon transfer if sole transferor is sole owner.
- RCW 25.15.006: revision adds a definition of withdrawal making withdrawal effective upon notice from a member that the transferee is surrendering all of its rights in the LLC.
- RCW 25.15.121(2)(h) removes duplicative provision.
- RCW 25.15.131(1)(a) removes the concept of a voluntary act to withdraw.
- RCW 25.15.131(2) provides that a member may withdraw at any time, but does not entitle withdrawing member to return of capital.
- RCW 25.15.006: adds definition of “Foreign professional limited liability company”.
- RCW 25.15.046(6): allows a foreign professional LLC to be a member of a professional LLC.
- RCW 25.15.116: allows for the admission of a member without acquiring certain interests.
- RCW 25.15.456: makes approval requirement applicable to mergers.
- RCW 25.15.121: references approval to a plan of conversion.

Stakeholder Input

Stakeholder response to CARC Proposal

Senator Jamie Pedersen, Chair, Senate Law & Justice Committee - Support
Association of Washington Business – Ongoing
WA Secretary of State’s office – Ongoing
WA Department of Financial Institutions - Ongoing
WSBA Sections – Ongoing

Stakeholder response to Partnership & LLC Law Committee Proposal

Senator Jamie Pedersen, Chair, Senate Law & Justice Committee – Support
WA Secretary of State’s office – Support
Association of Washington Business – Ongoing
WA Department of Financial Institutions - Ongoing
WSBA Sections – Ongoing

Attachments

CARC Cover Sheet and Proposal
Partnership & LLC Law Committee Cover Sheet and Proposal
Code Reviser’s Draft of Proposed Omnibus Bill (for introduction in the 2022 legislative session)
Privileged and Confidential Memo from General Counsel Julie Shankland (available in Box)

WSBA Legislative Review Committee

Proposed Bar-Request Legislation Cover Sheet

PURPOSE: Completion of the information in this cover sheet will help expedite the WSBA Legislative Review Committee’s review and approval process of potential Bar-request legislation. Of particular importance is information related to draft development and stakeholder work.

Short title of proposal: Proposed Amendments to Provisions of Washington Business Corporation Act regarding record dates, merger and share exchanges, and miscellaneous provisions

Submitted by (Section¹): Corporate Act Revision Committee of Business Law Section (“CARC”)

Designated Section representative and contact information (phone and email):
Michael Hutchings (Co-Chair) - phone: 206-839-4824; email: michael.hutchings@us.dlapiper.com
Eric DeJong (Co-Chair) - phone: 206-359-3793; email: edejong@perkinscoie.com

Brief summary of bill and anticipated fiscal impact:

The proposed amendments would:

- Amend 23B.07.070 to clarify rules for fixing record dates, to remove the subsections governing records dates for share dividends and distributions to shareholders, moving those provisions to 23B.06.230 and 06.400 (the provisions governing share dividends and distributions generally), and to make correlative changes in other sections;
- Amend Chapter 11 of the WBCA to add a “medium form” merger provision and make correlative changes in other sections;
- Amend 23B.11.010 expressly to (1) permit the “amendment and restatement” of the surviving corporation’s articles of incorporation through the plan of merger, and (2) authorize the cancellation of some shares in connection with a plan of merger;
- Amend 23B.11.050 and 11.090 to eliminate the plan of merger or share exchange as a required element of the articles of merger or share exchange;
- Amend 23B.07.020 to add a deadline for delivery of sufficient demands for special meetings that corresponds with deadlines for delivery of shareholder consents generally; and
- Amend 23B.07.200 expressly to permit a corporation to make the shareholder list required in connection with shareholder meetings available on an electronic network.

More detail on the proposed changes is included in CARC’s memo to the Committee.

CARC believes there will be no fiscal impact will result from the proposed changes.

¹ For purposes of this document, “Section” means any WSBA Section, Committee, Division, or Council.
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WSBA Legislative Review Committee Proposed Bar-Request Legislation Cover Sheet

Brief statement of need:

CARC continues to review the WBCA and propose changes designed to both modernize the WBCA where appropriate and to align the WBCA with the Model Business Corporation Act (2016 Revision) and desirable changes to the Delaware General Corporation Law. CARC believes the proposed changes would (1) help achieve this objective, (2) clarify ambiguous or eliminate unnecessary provisions, and (3) help Washington business practitioners in advising Washington corporations.

Description of draft development: (please provide detail)

The changes were originally drafted by CARC members and presented to the committee for its consideration in early 2021. Draft development took into consideration recently adopted changes to the Delaware General Corporation Law and the latest version of the Model Business Corporation Act. After deliberations and multiple revisions, CARC approved the proposed changes in the summer of 2021. The Executive Committee of the Business Law Section approved the proposed changes in its meeting held on August 19, 2021.

How does the proposal meet requirements under GR 12.2? (please explain)

CARC believes the proposal contributes to the WSBA’s objective of promoting an effective legal system and allows the bar to maintain a legislative presence to ensure that the Washington Business Corporation Act continues to effectively serve the needs of the state’s business community.

Submittal Status:

1. Has this proposal been submitted to the Committee before? Yes No

(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)

2. If yes, when was this proposal initially submitted to the Committee?

3. Briefly, please provide the following:

(a) What concerns or questions were raised (including requests for additional information) by the Committee previously?

(b) How this proposal addresses those concerns, questions, or additional information requests made by the Committee?

(d) Is there additional information relevant to the status of the proposal?

Summary of Stakeholder Work

*Please describe completed and ongoing activity with internal and external partners

Referred to:

Feedback:

Please include stakeholder positions on the proposal (e.g. support; oppose; concerns; neutral; or no response) and explain.

WSBA Legislative Review Committee Proposed Bar-Request Legislation Cover Sheet

Association of Washington Business (AWB)	No response
WA Secretary of State's Office	No response
WA Department of Financial Institutions	No response
All 29 WSBA Sections	No response
Senator Jamie Pedersen, Chair, Senate Law & Justice Committee	Support

Summary of Additional Stakeholder Input

*Please describe other anticipated stakeholder feedback regarding the proposal.

TO: WSBA Legislative Review Committee

FROM: Corporate Act Revision Committee

DATE: September 1, 2021

RE: Proposed Changes to Washington Business Corporation Act for 2022 Legislative Session (Record Dates; Merger/Share Exchange)

This memorandum summarizes CARC's proposed changes to the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (WBCA), relating to two general topics:

- Record dates (summarized in Section A of this memorandum); and
- Mergers and share exchanges (summarized in Section B of this memorandum).

CARC is also proposing some additional changes to the WBCA that are unrelated to these topics (summarized in Section C of this memorandum).

The changes were approved by the Executive Committee of the Business Law Section at its meeting on August 19, 2021. ***CARC requests that the Legislative Review Committee consider the proposed changes described in this memorandum and recommend these changes to the WSBA's Board of Governors as WSBA-request legislation.***

The specific changes proposed are shown in Appendix A and are marked against the current version of the relevant sections of the WBCA.

A. Record Dates.

Record dates for purposes of determining shareholders of record entitled to notice of meetings, to approve corporate actions by written consent in lieu of meetings, and for other purposes are currently governed by Section 23B.07.070. Chapter 7 of the WBCA generally governs shareholder meetings, shareholder approval by written consent and other matters relating to shareholder voting. Somewhat awkwardly, Section 23B.07.070 includes rules governing the fixing of record dates for corporate actions that are generally governed by sections in other chapters of the WBCA (e.g., share dividends and distributions, which are governed by Sections 23B.06.230 and 06.400, respectively). In contrast, the Model Business Corporation Act (2016 Revision) (MBCA) locates provisions for establishing record dates for those matters within the sections that substantively govern those corporate actions (i.e., Sections 6.23 and 6.40).

Consistent with the approach taken in the MBCA, CARC proposes that (1) Section 23B.07.070 be amended to remove the subsections governing record dates for share dividends and distributions, and (2) Sections 23B.06.230 and 06.400 (governing share dividends and distributions to shareholders, respectively) be amended to include the rules governing the fixing of record dates for those corporate actions within those chapters. This would also require a minor related change to the definition of "record date" in Section 23B.01.400(33).

Section 23B.07.070 also includes the requirement that a record date must be a “future date.” This phrase introduces some ambiguity about whether a record date can be fixed as of the date the board adopts the resolution fixing the record date (although CARC believes most practitioners are comfortable setting a record date as of the date the board resolution is adopted). In contrast, the operative provisions of the MBCA state that a record date “*may not be retroactive*” and Section 213 of the Delaware General Corporation Law (DGCL) states that a record date “*shall not precede the date on which the resolution fixing the record date is adopted by the board of directors,*” each of which eliminates that ambiguity. CARC recommends that we follow Delaware’s approach and amend Section 23B.07.070 to clarify this ambiguity.

B. Mergers and Share Exchanges.

CARC is proposing a number of changes to Chapter 11 of the WBCA, which governs mergers and share exchanges, and some related changes to Chapter 13 of the WBCA, which governs dissenters’ rights.

The most significant change to Chapter 11 would be to add a so-called “medium-form” merger provision similar to Section 251(h) of the DGCL. Currently, the WBCA generally requires that shareholders of a Washington corporation that is a party to a merger approve the plan of merger. A “medium-form” merger provision dispenses with the requirement of shareholder approval of a merger in the case of two-step transactions that involve a front-end tender offer followed by a back-end merger to squeeze out shareholders who do not tender their shares in the tender offer. The MBCA also includes a medium-form merger provision in Section 11.04(j) (which also applies to share exchanges). Although there are few significant substantive variations between Section 251(h) of the DGCL and Section 11.04(j) of the MBCA, CARC believes the MBCA approach feathers seamlessly into Section 23B.11.030 (the WBCA provision that is analogous to Section 11.04 of the MBCA). Accordingly, CARC is proposing to add a new subsection (9) to Section 23B.11.030 that authorizes medium-form mergers (as well as a new subsection (10) that includes associated definitions).

As proposed, to avoid the requirement of shareholder approval of a plan of merger under subsection (9) of Section 23B.11.030:

- the plan of merger must permit or require the merger to be effected under the new subsection;
- the offeror must make an offer (which must remain open at least 10 days) to purchase all of the target corporation’s outstanding shares (other than shares owned by the target or the offeror) on the terms and conditions stated in the plan of merger;
- the plan of merger must provide, and the offer information must disclose, that the merger will be effected as soon as practicable after the offer is consummated;
- the offeror must purchase all shares properly tendered in the offer;
- on consummation of the offer, the offeror must own enough shares to approve the merger (through shares already owned, shares purchased in the offer, and shares owned by third parties who have agreed to contribute their shares to the offeror¹);
- the offeror (or a subsidiary) must merge with or into the target after the offer is consummated; and
- the merger consideration payable in respect of shares not tendered in the offer must be the same (in amount and type) that is paid or exchanged for shares tendered in the offer.

¹ The latter facilitates transactions by private equity funds and other financial buyers in which management or other key shareholders agree to roll over their equity in the target.

The MBCA provision applies both to mergers and statutory share exchanges. However, CARC has limited proposed subsection (9) of Section 23B.11.030 to mergers on the basis that share exchanges are rarely if ever used in M&A transactions. The MBCA provision does not limit the medium-form provision to public companies. However, Section 251(h) of the DGCL does, and CARC believes it is appropriate to include that limitation in Washington's statute. As a practical matter, CARC felt it would be very unlikely that a two-step structure would make much sense for an acquisition of a non-public company. CARC concluded that the best course of action is to limit medium-form mergers to public companies and not to apply the medium-form provisions to share exchanges.

As the medium-form merger would be an entirely new type of merger transaction under the WBCA, changes to various sections of Chapter 13 of the WBCA (governing dissenters' rights) are also needed. Accordingly, CARC has proposed changes to Sections 23B.13.020, .200, .210, .220 and .230 to layer medium-form mergers into the dissenters' rights chapter. These are largely based on analogous provisions in the MBCA chapter governing appraisal rights.

In addition to the proposed amendments described above, CARC has proposed changes to Section 23B.11.010 that expressly permits the "amendment and restatement" of the surviving corporation's articles of incorporation through the plan of merger. Currently, that section only contemplates "amendments." In the past, this has led the Secretary of State to reject merger filings when the post-closing articles of incorporation attached to the filing are styled as "amended and restated." CARC believes that Washington practitioners have routinely used awkward means to work around this limitation (e.g., by including a full set of new articles as an exhibit to the filing but referring to them as "amended articles of incorporation" rather than "amended and restated"). To avoid that technically awkward designation, CARC is proposing that Section 23B.11.010 be revised to expressly permit restatements that include amendments. This change would also require certain corresponding changes to Sections 23B.11.060, .11.050 and .11.090.

CARC is also proposing revisions to address one problem with the WBCA that Washington practitioners occasionally confront - that is, when the amount of consideration that an acquirer is willing to pay is less than needed to satisfy liquidation preferences on preferred stock, leaving nothing remaining for common shareholders or junior preferred stock (which is not unusual in distressed sales of VC-backed companies). Practitioners currently are left to wonder whether a plan of merger for such a transaction can validly provide for the cancellation the junior stock of the target corporation. In contrast, there is explicit authorization in DGCL § 251(b)(5) for the cancellation of shares in an agreement of merger governed by Delaware law. To eliminate any ambiguity that a plan of merger governed by the WBCA can provide for the cancellation of some shares, CARC has proposed a modest but important modification to Section 23B.11.010(2)(c) that would expressly authorize cancellation of some shares in connection with a plan of merger.

CARC is also proposing changes to sections of Chapter 11 that govern requirements for articles of merger and share exchange (Sections 23B.11.050 and .11.090). These sections currently require that the articles of merger or share exchange filed with the Secretary of State to effect a merger or share exchange include the plan of merger or share exchange itself. This requirement has been a frequent source of concern for Washington practitioners when the parties to a merger do not want the plan of merger to be a matter of public record.² The concern arises mostly in the context of private

² The same concern would apply to share exchanges, but in CARC's experience that structure is rarely used in M&A transactions.

company M&A transactions, particularly for financial buyers, private strategic buyers and public strategic buyers for whom the transaction is not material enough to require the merger agreement to be filed with the SEC. These parties are typically reluctant to file the long-form merger agreement as part of the articles of merger. The customary work around has been to prepare a “short-form” plan of merger that incorporates only the bare minimum of statutory requirements from the long-form merger agreement for purposes of the filing.

In contrast to the WBCA provisions, the MBCA provisions governing the required content of articles of merger and share exchange do not require the plan of merger or share exchange to be included in the filing that effects the transaction.³ Instead, these provisions require only the identification of the parties to the merger or share exchange (and the surviving corporation in the case of a merger), certain other information relating to satisfaction of shareholder approval requirements and, in the case of mergers, amendments to the surviving corporation’s articles of incorporation. CARC is proposing changes to Sections 23B.11.050 and .11.090 that would largely align these provisions to the analogous provisions in the MBCA. This would eliminate the plan of merger or share exchange as a required element of the articles of merger or share exchange.

C. Miscellaneous.

CARC is proposing that some other changes to sections of Chapter 7 of the WBCA that it believes should be made at this time.

The first proposed change would amend Section 23B.07.020 to add a requirement that, when multiple shareholders aggregate their holdings to satisfy the ownership threshold required to call a special meeting, demands for a special meeting must be received within 60 days of the first demand delivered to the corporation. This would align this section with the corresponding section of the MBCA.

The second proposed change would amend Section 23B.07.200 to expressly permit a corporation to maintain the shareholders list required to be prepared and made available to shareholders before and during shareholders meeting on an electronic network. The WBCA is currently ambiguous whether an electronic shareholders list is permissible. A related proposed change would affirmatively require the list to be made available on an electronic network in the case of virtual meetings. These changes are not reflected in the MBCA⁴ but are similar to provisions included in the DGCL.

* * * *

³ This is also the case under Sections 251(c) and 252(c) of the DGCL.

⁴ However, the language in the MBCA provision is more general and the MBCA commentary specifically states that an electronic list is permissible.

APPENDIX A

Proposed changes to the WBCA related to record dates, merger and share exchanges, and related provisions and miscellaneous changes.

The specific amendments proposed by CARC are shown below, marked to show changes compared to the WBCA provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by ~~strikeout~~]

RCW 23B.01.400 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(33) "Record date" means the date fixed for determining ~~established under chapter 23B.07 RCW on which a corporation determines~~ the identity of ~~its~~ a corporation's shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

RCW 23B.06.230 Share dividends.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

RCW 23B.06.400 Distributions to shareholders.

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix a record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), the record date is the date the board of directors authorizes the distribution.

~~(23)~~ No distribution may be made if, after giving it effect:

(34) For purposes of determinations under subsection (23) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (23) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(45) The effect of a distribution under subsection (23) of this section is measured:

(b) In the case of any other distribution:

(ii) If the distribution is of indebtedness other than that described in subsection (45) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(56) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(67) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

(78) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (23) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders.

RCW 23B.07.020 Special meeting.

(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the first date on which an executed shareholder demand is delivered to the corporation. No written demand for a special meeting will be effective unless, within sixty days after the earliest date on which a demand delivered to the corporation as required by this section was executed, written demands executed by shareholders holding at least the percentage of votes specified in subsection (1)(b) of this section or, if applicable, fixed in accordance with subsection (2) or (3) of this section, have been delivered to the corporation.

RCW 23B.07.070 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix ~~a future date as~~ the record date, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors.

~~(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.~~

~~(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.~~

~~(5)~~ (3) A record date fixed under this section may not be more than seventy days before the meeting of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

~~(6)~~ (4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

~~(7)~~ (5) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

RCW 23B.07.200 Shareholders' list for meeting.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, (a) on a reasonably accessible electronic network, on condition that the information necessary to gain access to the list is provided in or accompanies the notice of the meeting, or (b) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. If the corporation elects to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders or their agents or attorneys. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation ~~must shall~~ make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is held solely by means of remote

communication in accordance with RCW 23B.07.010(4) or RCW 23B.07.020(6), then the list must be available for inspection by any shareholder, the shareholder's agent, or the shareholder's attorney during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided with the notice of the meeting.

RCW 23B.11.010 Merger.

(2) The plan of merger must include:

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part, or of cancelling some or all of such shares.

(3) The plan of merger may include:

(a) Amendments to the articles of incorporation of the surviving corporation, or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and

RCW 23B.11.030 Approval of plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy ~~or summary~~ of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders.

(9) Unless the articles of incorporation provide otherwise, approval by the shareholders of a public company is not required for a plan of merger if:

(a) The plan of merger expressly (i) permits or requires the merger to be effected under this subsection and (ii) provides that, if the merger is to be effected under this subsection, the merger will be effected as soon as practicable following the satisfaction of the requirements of subsection (9)(f) of this section;

(b) Another party to the merger or a parent of another party to the merger makes an offer to purchase, on the terms stated in the plan of merger, any and all of the outstanding shares of the

corporation that, absent this subsection, would be entitled to vote on the plan of merger, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger states that the merger will be effected as soon as practicable following the satisfaction of the requirements of subsection (9)(f) of this section and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in subsection (9)(h) of this section;

(d) The offer remains open for at least ten days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The (i) shares purchased by the offeror in accordance with the offer, (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing, and (iii) shares subject to an agreement that they are to be transferred, contributed or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or other interests in that offeror, parent or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger that, absent this subsection, would be required by chapter 23B.11 RCW for the approval of the merger by the shareholders entitled to vote on the merger at a meeting at which all shares entitled to vote on the approval were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in clause (ii) or (iii) of subsection (9)(f) of this section need not be converted into or exchanged for the consideration described in this subsection (9)(h).

(10) As used in subsection (9) of this section:

(a) "Offer" means the offer referred to in subsection (9)(b) of this section;

(b) "Offeror" means the person making the offer;

(c) "Parent" of an entity means a person that owns, directly or indirectly (through one or more wholly owned subsidiaries), all of the outstanding shares of or other interests in that entity;

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earlier time as of which (i) the offeror has irrevocably accepted those shares for payment, and (ii) either (A) in the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing

those shares, or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly (through one or more wholly owned subsidiaries), all of the outstanding shares or other interests.

(911) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

RCW 23B.11.050 Articles of merger or share exchange.

(1) After a plan of merger ~~or share exchange~~ is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving ~~or acquiring corporation~~ entity shall deliver to the secretary of state for filing articles of merger ~~stating or share exchange setting forth:~~

~~(1a)~~ The ~~plan of merger or share exchange~~ name and jurisdiction of organization of each party to the merger;

(b) The name and jurisdiction of organization of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to the surviving entity's articles of incorporation or the amended and restated articles of incorporation of the surviving entity;

~~(2d)~~ If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect; ~~or~~

~~(3e)~~ If approval of the shareholders of one or more domestic corporations party to the merger ~~or share exchange~~ was required, a statement that the merger ~~or share exchange~~ was duly approved by the shareholders of such domestic corporation pursuant to RCW 23B.11.030; and

(f) If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was duly approved by the interest holders of such other entity in accordance with the organic law of such other entity.

(2) After a plan of share exchange has been approved by the shareholders of the corporation whose shares will be acquired in the share exchange, the acquiring corporation shall deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired in the share exchange, stating:

(a) The name of the corporation whose shares will be acquired in the share exchange;

(b) The name of the acquiring corporation; and

(c) A statement that the plan of share exchange was duly approved by the shareholders of the corporation whose shares will be acquired in the share exchange pursuant to RCW 23B.11.030.

(3) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.11.060 Effect of merger or share exchange.

(1) When a merger takes effect:

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ~~plan of merger~~ articles of merger; and

RCW 23B.11.090 Articles of merger.

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The ~~plan of merger~~ name and jurisdiction of organization of each party to the merger;

(b) The name of the surviving corporation;

(c) If the surviving corporation's articles of incorporation are amended or amended and restated, the amendments to the surviving corporation's articles of incorporation or the amended and restated articles of incorporation of the surviving corporation;

(b~~d~~) A statement that the merger was duly approved by the shareholders of each corporation that is a party to the merger pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(e~~e~~) A statement that the merger was duly approved as required by the organic law of each other party that is a party to the merger ~~by the partners of each limited partnership pursuant to RCW 25.10.781.~~

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.

(5) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.11.100 Merger—Corporation is surviving entity.

When a merger of one or more corporations, or one or more other entities ~~limited partnerships, one or more partnerships, or one or more limited liability companies~~ takes effect, and a corporation is the surviving entity:

(1) Every other corporation and, every other entity ~~limited partnership, every partnership, and every limited liability company~~ party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every other entity ~~limited partnership, partnership, and limited liability company~~, ceases;

(2) The title to all real estate and other property owned by each entity ~~corporation, limited partnership, partnership, and limited liability company~~ party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each entity ~~corporation, limited partnership, partnership, and limited liability company~~ party to the merger;

(4) A proceeding pending against any entity ~~corporation, limited partnership, partnership, or limited liability company~~ party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the entity ~~corporation, limited partnership, partnership, or limited liability company~~ whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ~~plan of merger~~ articles of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former interest holders of ~~partnership interests~~ of every other entity ~~limited partnership or partnership party to the merger and the former holders of member interests of every limited liability company~~ party to the merger are entitled only to the rights provided in the plan of merger or to their rights under the organic law of that other entity ~~chapter 25.10 RCW~~.

(8) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.13.020 Right to dissent.

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was, or but for the provisions of RCW 23B.11.030(9) would have been, entitled to vote on

the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

RCW 23B.13.200 Notice of dissenters' rights.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 would be submitted for approval by a vote at a shareholders' meeting but for the provisions of RCW 23B.11.030(9), the offer made pursuant to RCW 23B.11.030(9) must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

~~(23)~~ If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

RCW 23B.13.210 Notice of intent to demand payment.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 does not require shareholder approval pursuant to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters' rights with respect to any class or series of shares (a) shall deliver to the corporation before the shares are purchased pursuant to the offer under RCW 23B.11.030(9) written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (ii) shall not tender, or cause to be tendered, any shares of such class or series in response to such offer.

~~(23)~~ If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

~~(34)~~ A shareholder who does not satisfy the requirements of subsection (1), ~~or~~ (2), or (3) of this section is not entitled to payment for the shareholder's shares under this chapter.

RCW 23B.13.220 Dissenters' rights—Notice.

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection ~~(56)~~ of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.11.030(9), the corporation shall within ten

days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(2) a notice in compliance with subsection (6) of this section.

(~~23~~) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(~~23~~) shall comply with subsection (~~56~~) of this section.

(~~34~~) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (~~56~~) of this section.

(~~45~~) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (~~56~~) of this section.

(~~56~~) Any notice under subsection (1), (2), (3), ~~or~~ (4), or (5) of this section must:

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), ~~or~~ (4), or (5) of this section is delivered; and

RCW 23B.13.230 Duty to demand payment.

(1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(~~56~~)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.

WSBA Legislative Review Committee

Proposed Bar-Request Legislation Cover Sheet

PURPOSE: Completion of the information in this cover sheet will help expedite the WSBA Legislative Review Committee’s review and approval process of potential Bar-request legislation. Of particular importance is information related to draft development and stakeholder work.

Short title of proposal: Concerning Business Entities
Submitted by (Section¹): Partnership and LLC Law Committee (the “Committee”)
Designated Section representative and contact information (phone and email): Elizabeth Yandell McNeil 206.370.7824 elizabethmcneil@klgates.com Matt LeMaster 206.757.8077 matthewlemaster@dwt.com
Brief summary of bill and anticipated fiscal impact: The proposed amendments would: <ul style="list-style-type: none">• Amend 25.15.441: action on a plan of conversion must be unanimously approved or in accordance with the operating agreement.• RCW 25.15.116: addition to cause admission of new member is automatic upon transfer if sole transferor is sole owner.• RCW 25.15.006: revision adds a definition of withdrawal making withdrawal effective upon notice from a member that the transferee is surrendering all of its rights in the LLC.• RCW 25.15.121(2)(h) removes duplicative provision.• RCW 25.15.131(1)(a) removes the concept of a voluntary act to withdraw.• RCW 25.15.131(2) provides that a member may withdraw at any time, but does not entitle withdrawing member to return of capital.• RCW 25.15.006: adds definition of “Foreign professional limited liability company”.• RCW 25.15.046(6): allows a foreign professional LLC to be a member of a professional LLC.• RCW 25.15.116: allows for the admission of a member without acquiring certain interests.• RCW 25.15.456: makes approval requirement applicable to mergers.• RCW 25.15.121: references approval to a plan of conversion.
Brief statement of need: The Committee believes the proposed changes creates clarity in the statute, removes ambiguity and further clarify the statute after the major revisions from 2016.
Description of draft development: (please provide detail) The changes were originally drafted by Committee members and developed for consideration between 2018 to 2020. After deliberations and multiple revisions, the Committee approved the proposed changes in the summer of 2020. The Business Law Section approved the proposed changes in its meeting held in November 2019.
How does the proposal meet requirements under GR 12.2? (please explain)

¹ For purposes of this document, “Section” means any WSBA Section, Committee, Division, or Council.
4836-8922-3933v.2 -

WSBA Legislative Review Committee Proposed Bar-Request Legislation Cover Sheet

The Committee believes the proposal contributes to the WSBA’s objective of promoting an effective legal system and allows the bar to maintain a legislative presence to ensure the Limited Liability Company Act serves the needs of the state’s business community.

Submittal Status:

1. Has this proposal been submitted to the Committee before? Yes No
(If no, skip the remainder of this section, and move to the Stakeholder Work on the next page.)

2. If yes, when was this proposal initially submitted to the Committee?

3. Briefly, please provide the following:

(a) What concerns or questions were raised (including requests for additional information) by the Committee previously?

(b) How this proposal addresses those concerns, questions, or additional information requests made by the Committee?

(d) Is there additional information relevant to the status of the proposal?

Summary of Stakeholder Work

*Please describe completed and ongoing activity with internal and external partners

Referred to:	Feedback:
WA Secretary of State’s Office	Please include stakeholder positions on the proposal (e.g. support; oppose; concerns; neutral; or no response) and explain. Support - Patrick Reed from the SOS office is a member of the Committee and participated in the drafting.
Business Law Executive Committee	Support – Approved by Business Law Executive Committee October, 2020.
Senator Jamie Pedersen, Chair, Senate Law & Justice Committee	Support – Approved by Senator Pederson September 23, 2021.
Association of Washington Business (AWB)	No response
WA Department of Financial Institutions	No response
All 29 WSBA Sections	No response

**WSBA Legislative Review Committee
Proposed Bar-Request Legislation Cover Sheet**

Summary of Additional Stakeholder Input

*Please describe other anticipated stakeholder feedback regarding the proposal.

MEMORANDUM

To: Executive Committee, Business Law Section, Washington State Bar Association
From: Partnership and LLC Law Committee
Date: October 13, 2020
Re: Revisions to Limited Liability Company Act

This Memorandum describes a set of proposed amendments to Washington’s Limited Liability Company Act, RCW ch. 25.15 (the “Act”). The amendments are recommended by the Partnership and LLC Law Committee. The texts of the proposed amendments are attached to this Memorandum.

The reasoning behind each of the amendments is as follows.

1. Conversion Approval. The Act currently requires unanimous member approval of conversions as its default rule. Conversions can implement material changes to the rights of an LLC member, but dissenters’ rights are not available to the members of a converting LLC because of the unanimous-member approval requirement. However, like almost all of the Act’s default rules, the requirement for unanimous member approval of conversions can be modified by the LLC agreement. RCW 25.15.018.

An LLC agreement can be oral or written. RCW 25.15.006(7). Thus, an oral LLC agreement could authorize a less-than-unanimous threshold for member approval of a conversion. Because dissenters’ rights are available only to members who dissent from the consummation of a merger, dissenters’ rights would not be available for minority dissenting members in the event of a conversion. The proposed amendment to RCW 25.15.441 therefore states that an LLC conversion must be approved by all the members or as otherwise specified by a *written* LLC agreement. This change would prevent situations in which an oral LLC agreement could function to authorize approval of a conversion without providing for the remedy of dissenters’ rights for a minority member, which would be available to such a member in the case of a merger.

2. Admission of Transferee Upon Death of Single LLC Member. The Act’s default rule is that a person acquiring the interest of an LLC member (transferee) will hold all the economic rights of the transferor, and will be admitted as a member (and therefore hold management and voting rights) upon the consent of all members. RCW 25.15.116(2)(b).

When a single individual member dies, there are no members to approve the admission of the transferee as a member. If fewer than 90 days have passed since the death of the sole member, under RCW 25.15.265, the transferee could vote to admit itself as a member. In practice, however, it is often the case that the 90-day grace period elapses before any action is taken under this section. Under RCW 25.15.265, the expiration of this period without admission of transferee as a member could lead to the inadvertent dissolution and winding down of an operating entity, with the potential for breach of existing contracts and other unintended consequences.

The amendment to RCW 25.116 therefore provides that if a transferee acquires all of the transferor's LLC interest, when the transferor is the only member of the LLC, the transferee is admitted as a member of LLC.

3. Member Withdrawal. The Act's default rule is that a member may not "withdraw" from an LLC without the written consent of all other members. RCW 25.15.131(2). The withdrawal of a member is an event of dissociation, and the withdrawn member loses the right to participate as a member but retains its economic rights as a transferee. RCW 25.15.131(1)(a).

The Committee is aware of three problems with the Act's current withdrawal provisions: (1) the lack of a definition of "withdrawal," (2) an internal conflict between separate provisions of the Act, and (3) the policy behind the bar on a member's withdrawal from an LLC.

Definition. There is no definition in the Act of "withdraw," and the Act does not indicate which acts of a member would constitute withdrawal from an LLC. The Washington courts have not provided clarity as to which acts constitute an LLC member's withdrawal. Can a member withdraw by resigning as a manager? What result if a member simply stops providing services to the LLC? Decisions on this issue from courts of other states have varied widely.

Conflicting Provisions. A member may transfer its transferable interest (economic rights), including its entire transferable interest, without member consent. RCW 25.15.251(1). Unless admitted as a member by unanimous member consent, the transferee is not a member and has no management rights. RCW 25.15.116(2)(b). By transferring its entire transferable interest, the transferring member is dissociated from the LLC and has no management rights. In effect, the transferring member has paradoxically withdrawn from the LLC in compliance with the Act, but without member consent, in violation of the Act.

Policy: Reversing the Bar on Withdrawal. The Committee is aware that circumstances not infrequently arise when an LLC member has determined that it should withdraw from the LLC, but member consent is not available. For example, other members may be mismanaging the LLC or failing to remit withheld income taxes to the government. Many small, closely held businesses formed as LLCs have no LLC agreement, and the default rule disallowing withdrawal without member consent applies.

The Committee has determined that the better policy would be to allow member withdrawals as the default rule, provided the withdrawing member cannot demand any return of its capital and is not released from any contractual commitments it has made to the LLC. An LLC agreement that bars member withdrawal would override a permissive default rule.

Amendment. The proposed amendment addresses these three issues by adding a definition of withdrawal and by changing the default rule to allow withdrawal.

The amendment modifies RCW 25.15.006 by adding a definition of withdrawal: "withdrawal" is effective upon notice from a member or from the holder of a transferable interest that the member or transferee is surrendering to the LLC all of its economic rights and all of its management and other rights as a member.

The amendment to RCW 25.15.131(2) states that a member may withdraw from a limited liability company at any time, and that the member's withdrawal does not entitle it to a return of its capital from the LLC. The Act currently states at RCW 25.15.131(4) that a member's dissociation does not, of itself, discharge the member from any liability to the LLC or other members that the member incurred while a member of the LLC, and no amendment is proposed to that section.

4. Foreign Professional LLCs. The Act defines a "professional limited liability company" as a Washington LLC that is formed under RCW 25.15.046 for the purpose of rendering professional services. "Foreign professional limited liability company" is not defined, but RCW 25.15.051 authorizes a foreign professional limited liability company to render professional services in this state if it complies with the Act and each individual rendering professional services in Washington is legally authorized to do so. There is a conflict, because a professional LLC, which is by definition a Washington LLC, cannot at the same time be a foreign professional LLC.

The amendment resolves the conflict by adding a definition of "foreign professional limited liability company" to RCW 25.15.006.

The amendment also eliminates a gap in the types of LLCs authorized to be members of a professional LLC. The Act allows a professional LLC to be a member of another professional LLC, so long as the members and managers of both professional LLCs are licensed or legally authorized to render the same professional services. RCW 25.15.046(6)(b). The amendment would similarly allow a foreign professional LLC to be a member of a professional LLC, so long as the members and managers of the foreign professional LLC are licensed or legally authorized to render the same professional services in any jurisdiction other than Washington as the members and managers of the professional LLC.

This is similar to the approach used for limited liability partnerships. Foreign entities may become members of a Washington limited liability partnership organized for the purpose of rendering professional services, so long as the foreign entity is duly licensed to render the same professional services in any other jurisdiction. RCW 25.05.510(1).

5. Members With No Economic Interests. There are certain types of financing transactions where it is desirable to have an LLC member with no economic interests, but which nonetheless has other member rights, such as voting under certain conditions. The Act is presently unclear as to whether a Washington LLC can have such a member. The Delaware LLC Act has for a number of years authorized non-economic members, which in some cases results in Delaware being chosen as the state of formation for LLCs in such transactions.

The Committee has determined, consistent with the principle of maximizing freedom of contract, that the Washington Act should be amended to authorize LLC members without an economic interest in the LLC. The amendment states that a person may be admitted as a member of an LLC without acquiring a transferable interest and without making or being obligated to make a capital contribution.

HOUSEKEEPING CHANGES. The following amendments correct minor, nonsubstantive defects in the Act.

6. Heading Change. RCW 25.15.456 sets forth an approval requirement that applies to both mergers and conversions. The heading incorrectly refers only to conversions; the correction includes mergers in the heading.

7. List of Unanimous Voting Requirements. RCW 25.15.121(2) lists the LLC actions that require unanimous member approval, and cross-references each to the applicable statutory section. A reference to approval of a plan of conversion is added.

Proposed Revisions to Washington Limited Liability Company Act

Approved by Partnership and LLC Law Committee, WSBA Business Law Section
2018 – 2020

No.	Revisions
1.	<p>Approved at Committee meeting, November 14, 2018.</p> <p>25.15.441 Action on plan of conversion by converting limited liability company.</p> <p>(1) Subject to RCW <u>25.15.456</u>, a plan of conversion must be consented to <u>approved either</u> by all the members of a converting limited liability company <u>or as provided in a written limited liability company agreement</u>.</p> <p>(2) Subject to RCW <u>25.15.456</u> and any contractual rights, after a conversion is approved, and at any time before a filing is made under RCW <u>25.15.446</u>, a converting limited liability company may amend the plan or abandon the planned conversion:</p> <p style="padding-left: 40px;">(a) As provided in the plan; and</p> <p style="padding-left: 40px;">(b) Except as prohibited by the plan, by the same approval as was required to approve the plan.</p>
2.	<p>Approved at Committee meeting, April 9, 2019.</p> <p>RCW 25.15.116 Admission of members.</p> <p>(1) In connection with the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:</p> <p style="padding-left: 40px;">(a) The formation of the limited liability company; or</p> <p style="padding-left: 40px;">(b) The time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.</p> <p>(2) After the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:</p> <p style="padding-left: 40px;">(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;</p> <p style="padding-left: 40px;">(b) In the case of a transferee of a limited liability company interest, upon compliance with any procedure for admission provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company agreement; or</p>

	<p>(c) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or conversion approved in accordance with this chapter, as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or plan of merger or conversion, and in the event of any inconsistency, the terms of the agreement of merger or plan of merger or conversion control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or conversion in which such limited liability company is not the surviving or resulting limited liability company in the merger or conversion, as provided in the limited liability company agreement of such limited liability company.; or</p> <p><u>(d) In the case of a transferee acquiring all of the transferor’s limited liability company interest from a transferor that is the only member of the limited liability company, upon the effectiveness of the transfer.</u></p>
<p>3.</p>	<p>Approved at Committee meetings, February 11, March 10, and April 14, 2020.</p> <p>Revisions relating to member withdrawal.</p> <p>1. Add the following definition to RCW 25.15.006:</p> <p><u>(21) “Withdraw” or “withdrawal” means, with respect to a member of a limited liability company or a holder of a transferable interest in a limited liability company, that the member or holder of the transferable interest provides written notice to the limited liability company of its intent to surrender all of its transferable interest and rights as a member to the limited liability company. A withdrawal is effective as of the later of the date the limited liability company receives the written notice of withdrawal or the date specified in such notice.</u></p> <p>2. Delete the following from RCW 25.15.121(2)(h):</p> <p><u>(h) Authorize the withdrawal of a member from the limited liability company as provided in RCW 25.15.131(2);</u></p> <p>3. Change RCW 25.15.131(1)(a) as follows:</p> <p>(a) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (2) of this section;</p> <p>4. Change RCW 25.15.131(2) to read as follows:</p> <p><u>(2) A member may withdraw from a limited liability company at any time. The withdrawn member or transferee shall have no right to payment from the limited liability company as a consequence of its withdrawal. the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw from the limited liability company without the written</u></p>

	consent of all other members.
4.	<p>Approved at Committee meeting, July 14, 2020.</p> <p>1. Add the following definition to RCW 25.15.006:</p> <p><u>“Foreign professional limited liability company” means a foreign limited liability company formed for the purpose of rendering professional services.</u></p> <p>2. Modify RCW 25.15.046(6) by adding new subparagraph (c):</p> <p><u>(c) A foreign professional limited liability company, if the managers and members of the foreign professional limited liability company are duly licensed or otherwise legally authorized to render the same specific professional services in any jurisdiction other than this state as the managers and members of the professional limited liability company.</u></p>
5.	<p>Approved at Committee meeting, July 14, 2020.</p> <p>Add the following new paragraph (3) to RCW 25.15.116:</p> <p><u>(3) A person may be admitted as a member of a limited liability company without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.</u></p>
6.	<p>Approved at Committee meeting, January 8, 2019</p> <p>RCW 25.15.456 Restrictions on approval of <u>mergers and conversions</u>. If a member of a converting limited liability company or constituent limited liability company will have personal liability with respect to a converted organization or surviving organization, then, in addition to the applicable approval requirements in RCW 25.15.441(1) or 25.15.421(1)(a), approval of a plan of conversion or plan of merger must also require the execution, by each such member, of a separate written consent to become subject to such personal liability.</p>
7.	<p>Approved at Committee meeting, January 8, 2019.</p> <p>RCW 25.15.121 Voting and classes of membership. (1) Except as otherwise provided by this chapter, the affirmative vote, approval, or consent of a majority of the members is necessary for actions requiring member approval.</p>

(2) The affirmative vote, approval, or consent of all members is required to:

- (a) Amend the certificate of formation, except as provided in RCW 25.15.076(2);
- (b) Amend the limited liability company agreement;
- (c) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision that expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof;
- (d) Admit as a member of the limited liability company a person acquiring a limited liability company interest directly from the limited liability company as provided in RCW 25.15.116(2)(a);
- (e) Admit as a member of the limited liability company a transferee of a limited liability company interest as provided in RCW 25.15.116(2)(b);
- (f) Authorize a member's removal as a member of the limited liability company as provided in RCW 25.15.131(1)(e);
- (g) Waive a member's dissociation as a member of the limited liability company as provided in RCW 25.15.131(1) (f), (g), or (h);
- (h) Authorize the withdrawal of a member from the limited liability company as provided in RCW 25.15.131(2);
- (i) Compromise any member's obligation to make a contribution or return cash or other property paid or distributed to the member in violation of this chapter as provided in RCW 25.15.196(2);
- (j) Amend the certificate of formation and extend the date of dissolution, if a dissolution date is specified in the certificate of formation, as provided in RCW 25.15.265(1);
- (k) Dissolve the limited liability company as provided in RCW 25.15.265(3);
- (l) Approve a plan of conversion as provided in RCW 25.15.441(1);
- ~~(m)~~ Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, other than in the ordinary course of the limited liability company's activities or activities of the kind carried on by the limited liability company; or
- ~~(n)~~ Undertake any other act outside the ordinary course of the limited liability company's activities.

(3) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members do not have voting rights.

(4) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with

	<p>all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, profit share, class, group, or any other basis.</p> <p>(5) A limited liability company agreement may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.</p>
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MEMORANDUM

To: Executive Committee, Business Law Section, Washington State Bar Association

From: Partnership and LLC Law Committee

Date: October 15, 2020

Re: Revisions to Uniform Limited Partnership Act

This Memorandum describes a set of proposed amendments to Washington’s Uniform Limited Partnership Act, RCW ch. 25.10 (the “Act”). The amendments are recommended by the Partnership and LLC Law Committee. The texts of the proposed amendments are attached to this Memorandum.

The reasoning behind each of the amendments is as follows.

- 1. Definition of “Partnership Agreement.”** The Act currently defines a partnership agreement to include the agreement “as amended.” Restatements of partnership agreements are in fact treated as partnership agreements. This change makes the definition more accurate and complete by adding “or restated”. It also makes the language consistent with the definition of “limited liability company agreement” in Washington’s Limited Liability Company Act (the “LLC Act”).
- 2. Definition of “Person.”** The Act’s definition of “Person” currently includes both a “corporation” and a “public corporation.” “Corporation” is normally understood to include all corporations, whether publicly or privately owned. The inclusion of a separate reference to a “public corporation” is therefore redundant and therefore does not add anything to the definition. The proposed amendment would remove that redundancy and make the language consistent with the definition of “Person” in the LLC Act.
- 3. Partner Transactions with Partnership.** The Act currently provides that a partner has the same rights and obligations with respect to transactions with the partnership as a person not a partner. A partner, however, is or may be subject to other applicable law that would limit his or her rights and obligations in comparison with those of an unrelated party. The proposed amendment therefore adds the clause “subject to other applicable law” to make clear that a partner’s rights may not, in all circumstances, be as clear as those of a non-partner. It also makes the language consistent with the corresponding provision of the LLC Act.
- 4. Right to Distribution.** The Act currently provides that a partnership’s obligation to make distributions is subject to offset for any amount owed to the partnership by the partner or dissociated partner on whose account the distribution is made. Because the “amount owed” may be greater than the “amount due and payable” on the date of any distribution, the “amount due and payable” is more appropriate as the amount to be offset. In addition, “any amount due and payable” makes the language consistent with the corresponding provision of the LLC Act.

5. Limitation on Distribution at time of Distribution. The Act imposes limits on a partnership's ability to make distributions, based on the partnership's ability to pay its debts and the relation of its total assets to total liabilities *after* a distribution. RCW 25.10.496. The proposed amendment to RCW 25.10.496(2) replaces the word "after" with the phrases "to the extent that at the time of" the distribution, and "after giving effect to the distribution." The proposed amendment clarifies the limitation and makes the language consistent with the corresponding provision of the LLC Act.

6. Limitation on Distribution of Indebtedness. The Act limits the ability of a partnership to make distributions, based on the partnership's solvency and its ability to pay its debts in the ordinary course. RCW 25.10.496. The current language of RCW 25.10.496(7) requires that when a partnership's indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made. The corresponding provision in the LLC Act, however, distinguishes between two types of LLC indebtedness: (i) indebtedness whose terms provide that payments can be made only to the extent that a distribution could then be made, and (ii) all other indebtedness. The effect of the LLC's indebtedness in the first category (payments are limited) is measured when payments are made. But the effect of all other LLC indebtedness is measured when the indebtedness is distributed, rather than later when payments on the indebtedness are made.

The proposed amendment to subsection (7) adopts the LLC Act's two-tiered approach to distributions of partnership debt. Paragraph 7(a) of the amendment provides that a distribution of partnership indebtedness for which payments are limited to the extent that a distribution could then be made, is treated as a distribution whose effect is measured on the date payment is actually made. Paragraph 7(b) provides that, with respect to distributions of any other partnership indebtedness, the effect is to be measured as of the date the indebtedness is distributed.

The Committee believes that the approach of the LLC Act, i.e. to determine the legality of a distribution of partnership indebtedness when distributed rather than when payments on the debt are made, unless the terms of the indebtedness limit payment to the extent a distribution could then be made, is better policy. This policy is also reflected in the Business Corporation Act, RCW 23B.06.400. The proposed amendment will also make the language of this section consistent with the LLC Act.

7. Partner's Transferable Interest. The current provision of the Act makes no statement concerning whether a partner's transferable interest includes an interest in specific partnership property. The addition of a statement that it does not is good public policy and underscores the modern view that the entity is the owner of partnership property, and not the partners. The change is consistent with the corresponding provision in the LLC Act.

8. Effect of Conversion. The Act currently states that "[a]ll property owned by the converting organization remains vested in the converted organization". Attorneys in real estate practice are more comfortable with language that refers specifically to title in real estate and all other property. Such language is also consistent with the expectations of corporate lawyers. Finally, it is consistent with the language in the corresponding provision of the LLC Act.

9. Effect of Merger. The current provision of the Act states that "[a]ll property owned by each constituent organization that ceases to exist vests in the surviving organization". As is the

case with respect to the effect of conversions, attorneys in real estate practice are more comfortable with language that refers specifically to title in real estate and all other property. Such language is also consistent with the expectations of corporate lawyers. Finally, it is consistent with the language in the corresponding provision of the LLC Act.

Proposed Revisions to Washington Uniform Limited Partnership Act

Approved by Partnership and LLC Law Committee, WSBA Business Law Section
November 2019

No.	Revisions
1.	<p>RCW 25.10.011 Definitions – Partnership Agreement</p> <p>(13) “Partnership agreement” means the partners’ agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. “Partnership agreement” includes the agreement as amended <u>or restated</u>.</p>
2.	<p>RCW 25.10.011 Definitions - Person</p> <p>(14) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.</p>
3.	<p>RCW 25.10.101 Partner Transactions with Partnership</p> <p>A partner may lend money to and transact other business with the limited partnership and, <u>subject to other applicable law</u>, has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.</p>
4.	<p>RCW 25.10.491 Right to Distribution</p> <p>When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership’s obligation to make a distribution is subject to offset for any amount owed <u>due and payable</u> to the limited partnership by the partner or dissociated partner on whose account the distribution is made.</p>

5.	<p>RCW 25.10.496(2): Limitation on Distribution at time of Distribution</p> <p>(2) A limited partnership may not make a distribution if after <u>to the extent that at the time of the distribution, after giving effect to the distribution:</u></p> <p>(a) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership’s activities; or</p> <p>(b) The limited partnership’s total assets would be less than the sum of its total liabilities other than liabilities to partners on account of their partnership interests and liabilities for which recourse of creditors is limited to specified property of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.</p>
6.	<p>RCW 25.10.496(7) Limitation on Distribution of Indebtedness</p> <p>(7) If indebtedness is issued as <u>The effect of</u> a distribution <u>of indebtedness under subsection (2) of this section is measured:</u></p> <p>(a) <u>In the case of a distribution of indebtedness described in subsection (6) of this section,</u> each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is <u>actually</u> made; <u>and</u></p> <p>(b) <u>In the case of a distribution of any other indebtedness, the effect of the distribution is measured as of the date the indebtedness is distributed.</u></p>
7.	<p>RCW 25.10.546 Partner’s Transferable Interest</p> <p>The only interest of a partner that is transferable is the partner’s transferable interest. A transferable interest is personal property. <u>A partner has no interest in specific partnership property.</u></p>
8.	<p>RCW 25.10.771 Effect of Conversion</p> <p>(2) When a conversion takes effect:</p> <p>(a) All <u>The title to all real estate and other</u> property owned by the converting</p>

	<p>organization remains vested in the converted organization <u>without reversion or impairment</u>;</p>
<p>9.</p>	<p>RCW 25.10.791 Effect of Merger</p> <p>(1) When a merger becomes effective: ... (c) All <u>The title to all real estate and other</u> property owned by each constituent organization that ceases to exist vests in the surviving organization <u>without reversion or impairment</u>;</p>

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0351.2/22 2nd draft

ATTY/TYPIST: KS:jlb

BRIEF DESCRIPTION: Concerning business entities.

1 AN ACT Relating to business entities; and amending RCW
2 23B.01.400, 23B.06.230, 23B.06.400, 23B.07.020, 23B.07.070,
3 23B.07.200, 23B.11.010, 23B.11.030, 23B.11.050, 23B.11.060,
4 23B.11.090, 23B.11.100, 23B.13.020, 23B.13.200, 23B.13.210,
5 23B.13.220, 23B.13.230, 25.10.011, 25.10.101, 25.10.491, 25.10.496,
6 25.10.546, 25.10.771, 25.10.791, 25.15.006, 25.15.046, 25.15.116,
7 25.15.121, 25.15.131, and 25.15.441.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **PART I**

10 **BUSINESS CORPORATIONS**

11 **Sec. 101.** RCW 23B.01.400 and 2021 c 84 s 1 are each amended to
12 read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this title.

15 (1) "Articles of incorporation" include amended and restated
16 articles of incorporation and articles of merger.

17 (2) "Authorized shares" means the shares of all classes a
18 domestic or foreign corporation is authorized to issue.

19 (3) "Conspicuous" means so prepared that a reasonable person
20 against whom the writing is to operate should have noticed it. For

1 example, text in italics, boldface, contrasting color, capitals, or
2 underlined is conspicuous.

3 (4) "Controlling interest" means ownership of an entity's
4 outstanding shares or interests in such number as to entitle the
5 holder at the time to elect a majority of the entity's directors or
6 other governors without regard to voting power which may thereafter
7 exist upon a default, failure, or other contingency.

8 (5) "Corporate action" means any resolution, act, policy,
9 contract, transaction, plan, adoption or amendment of articles of
10 incorporation or bylaws, or other matter approved by or submitted for
11 approval to a corporation's incorporators, board of directors or a
12 committee thereof, or shareholders.

13 (6) "Corporation" or "domestic corporation" means a corporation
14 for profit, including a social purpose corporation, which is not a
15 foreign corporation, incorporated under or subject to the provisions
16 of this title.

17 (7) "Deliver" or "delivery" means any method of delivery used in
18 conventional commercial practice, including delivery by hand, mail,
19 commercial delivery, and, if authorized in accordance with RCW
20 23B.01.410, by electronic transmission.

21 (8) "Distribution" means a direct or indirect transfer of money
22 or other property, except its own shares, or incurrence of
23 indebtedness by a corporation to or for the benefit of its
24 shareholders in respect to any of its shares. A distribution may be
25 in the form of a declaration or payment of a dividend; a distribution
26 in partial or complete liquidation, or upon voluntary or involuntary
27 dissolution; a purchase, redemption, or other acquisition of shares;
28 a distribution of indebtedness; or otherwise.

29 (9) "Document" means:

30 (a) Any tangible medium on which information is inscribed, and
31 includes handwritten, typed, printed, or similar instruments or
32 copies of such instruments; and

33 (b) An electronic record.

34 (10) "Electronic" means relating to technology having electrical,
35 digital, magnetic, wireless, optical, electromagnetic, or similar
36 capabilities.

37 (11) "Electronic mail" means an electronic transmission directed
38 to a unique electronic mail address, which electronic mail will be
39 deemed to include any files attached thereto and any information
40 hyperlinked to a website if the electronic mail includes the contact

1 information of an officer or agent of the corporation who is
2 available to assist with accessing such files and information.

3 (12) "Electronic mail address" means a destination, commonly
4 expressed as a string of characters, consisting of a unique user name
5 or mailbox, commonly referred to as the "local part" of the address,
6 and a reference to an internet domain, commonly referred to as the
7 "domain part" of the address, whether or not displayed, to which
8 electronic mail can be sent or delivered.

9 (13) "Electronic record" means information that is stored in an
10 electronic or other nontangible medium and: (a) Is retrievable in
11 paper form by the recipient through an automated process used in
12 conventional commercial practice; or (b) if not retrievable in paper
13 form by the recipient through an automated process used in
14 conventional commercial practice, is otherwise authorized in
15 accordance with RCW 23B.01.410(10).

16 (14) "Electronic transmission" or "electronically transmitted"
17 means internet transmission, telephonic transmission, electronic mail
18 transmission, transmission of a telegram, cablegram, or datagram, the
19 use of, or participation in, one or more electronic networks or
20 databases including one or more distributed electronic networks or
21 databases, or any other form or process of communication, not
22 directly involving the physical transfer of paper or another tangible
23 medium, which:

24 (a) Is suitable for the retention, retrieval, and reproduction of
25 information by the recipient; and

26 (b) Is retrievable in paper form by the recipient through an
27 automated process used in conventional commercial practice, or, if
28 not retrievable in paper form by the recipient through an automated
29 process used in conventional commercial practice, is otherwise
30 authorized in accordance with RCW 23B.01.410(10).

31 (15) "Employee" includes an officer but not a director. A
32 director may accept duties that make the director also an employee.

33 (16) "Entity" includes a corporation and foreign corporation,
34 not-for-profit corporation, business trust, estate, trust,
35 partnership, limited liability company, association, joint venture,
36 two or more persons having a joint or common economic interest, the
37 state, United States, and a foreign governmental subdivision, agency,
38 or instrumentality, or any other legal or commercial entity.

39 (17) "Execute," "executes," or "executed" means, with present
40 intent to authenticate or adopt a document:

1 (a) To sign or adopt a tangible symbol to the document, and
2 includes any manual, facsimile, or conformed signature;

3 (b) To attach or logically associate with an electronic
4 transmission an electronic sound, symbol, or process, and includes an
5 electronic signature; or

6 (c) With respect to a document to be filed with the secretary of
7 state, in compliance with the standards for filing with the office of
8 the secretary of state as prescribed by the secretary of state.

9 (18) "Foreign corporation" means a corporation for profit
10 incorporated under a law other than the law of this state.

11 (19) "Foreign limited partnership" means a partnership formed
12 under laws other than of this state and having as partners one or
13 more general partners and one or more limited partners.

14 (20) "General social purpose" means the general social purpose
15 for which a social purpose corporation is organized as set forth in
16 the articles of incorporation of the corporation in accordance with
17 RCW 23B.25.040(1)(c).

18 (21) "Governmental subdivision" includes authority, county,
19 district, and municipality.

20 (22) "Governor" has the meaning given that term in RCW 23.95.105.

21 (23) "Includes" denotes a partial definition.

22 (24) "Individual" includes the estate of an incompetent or
23 deceased individual.

24 (25) "Limited partnership" or "domestic limited partnership"
25 means a partnership formed by two or more persons under the laws of
26 this state and having one or more general partners and one or more
27 limited partners.

28 (26) "Means" denotes an exhaustive definition.

29 (27) "Notice" has the meaning provided in RCW 23B.01.410.

30 (28) "Person" means an individual, corporation, business trust,
31 estate, trust, partnership, limited liability company, association,
32 joint venture, government, governmental subdivision, agency, or
33 instrumentality, or any other legal or commercial entity.

34 (29) "Principal office" means the office, in or out of this
35 state, so designated in the annual report where the principal
36 executive offices of a domestic or foreign corporation are located.

37 (30) "Proceeding" includes civil suit and criminal,
38 administrative, and investigatory action.

39 (31) "Public company" means a corporation that has a class of
40 shares registered with the federal securities and exchange commission. 136

1 pursuant to section 12 or 15 of the securities exchange act of 1934,
2 or section 8 of the investment company act of 1940, or any successor
3 statute.

4 (32) "Qualified director" means (a) with respect to a director's
5 conflicting interest transaction as defined in RCW 23B.08.700, any
6 director who does not have either (i) a conflicting interest
7 respecting the transaction, or (ii) a familial, financial,
8 professional, or employment relationship with a second director who
9 does have a conflicting interest respecting the transaction, which
10 relationship would, in the circumstances, reasonably be expected to
11 exert an influence on the first director's judgment when voting on
12 the transaction; (b) with respect to RCW 23B.08.735, a qualified
13 director under (a) of this subsection if the business opportunity
14 were a director's conflicting interest transaction; and (c) with
15 respect to RCW 23B.02.020(2)(g), a director who is not a director (i)
16 to whom the limitation or elimination of the duty of an officer to
17 offer potential business opportunities to the corporation would
18 apply, or (ii) who has a familial, financial, professional, or
19 employment relationship with another officer to whom the limitation
20 or elimination would apply, which relationship would, in the
21 circumstances, reasonably be expected to exert an influence on the
22 director's judgment when voting on the limitation or elimination.

23 (33) "Record date" means the date (~~established under chapter~~
24 ~~23B.07 RCW on which a corporation determines~~) fixed for determining
25 the identity of ~~(its)~~ a corporation's shareholders and their
26 shareholdings for purposes of this title. The determinations shall be
27 made as of the close of business on the record date unless another
28 time for doing so is specified when the record date is fixed.

29 (34) "Registered office" means the address of the corporation's
30 registered agent.

31 (35) "Secretary" means the corporate officer to whom the board of
32 directors has delegated responsibility under RCW 23B.08.400(3) for
33 custody of the minutes of the meetings of the board of directors and
34 of the shareholders and for authenticating records of the
35 corporation.

36 (36) "Shareholder" means the person in whose name shares are
37 registered in the records of a corporation or the beneficial owner of
38 shares to the extent of the rights granted by a nominee certificate
39 on file with a corporation.

1 (37) "Shares" means the units into which the proprietary
2 interests in a corporation are divided.

3 (38) "Social purpose" includes any general social purpose and any
4 specific social purpose.

5 (39) "Social purpose corporation" means a corporation that has
6 elected to be governed as a social purpose corporation under chapter
7 23B.25 RCW.

8 (40) "Specific social purpose" means the specific social purpose
9 or purposes for which a social purpose corporation is organized as
10 set forth in the articles of incorporation of the corporation in
11 accordance with RCW 23B.25.040(2)(a).

12 (41) "State," when referring to a part of the United States,
13 includes a state and commonwealth, and their agencies and
14 governmental subdivisions, and a territory and insular possession,
15 and their agencies and governmental subdivisions, of the United
16 States.

17 (42) "Subscriber" means a person who subscribes for shares in a
18 corporation, whether before or after incorporation.

19 (43) "Subsidiary" means an entity in which the corporation has,
20 directly or indirectly, a controlling interest.

21 (44) "United States" includes a district, authority, bureau,
22 commission, department, and any other agency of the United States.

23 (45) "Voting group" means all shares of one or more classes or
24 series that under the articles of incorporation or this title are
25 entitled to vote and be counted together collectively on a matter at
26 a meeting of shareholders. All shares entitled by the articles of
27 incorporation or this title to vote generally on the matter are for
28 that purpose a single voting group.

29 (46) "Writing" or "written" means any information in the form of
30 a document.

31 **Sec. 102.** RCW 23B.06.230 and 1989 c 165 s 51 are each amended to
32 read as follows:

33 (1) Unless the articles of incorporation provide otherwise,
34 shares may be issued pro rata and without consideration to the
35 corporation's shareholders or to the shareholders of one or more
36 classes or series. An issuance of shares under this subsection is a
37 share dividend.

38 (2) Shares of one class or series may not be issued as a share
39 dividend in respect to shares of another class or series unless (a)¹³⁸

1 the articles of incorporation so authorize, (b) a majority of the
2 votes entitled to be cast by the class or series to be issued approve
3 the issue, or (c) there are no outstanding shares of the class or
4 series to be issued.

5 (3) The board of directors may fix the record date for
6 determining shareholders entitled to a share dividend, which date may
7 not precede the date on which the resolution fixing the record date
8 is approved by the board of directors. If the board of directors does
9 not fix the record date for determining shareholders entitled to a
10 share dividend, the record date is the date the board of directors
11 authorizes the share dividend.

12 **Sec. 103.** RCW 23B.06.400 and 2009 c 189 s 12 are each amended to
13 read as follows:

14 (1) A board of directors may approve and the corporation may make
15 distributions to its shareholders subject to restriction by the
16 articles of incorporation and the limitation in subsection ~~((2))~~
17 (3) of this section.

18 (2) The board of directors may fix the record date for
19 determining shareholders entitled to a distribution, which date may
20 not precede the date on which the resolution fixing the record date
21 is approved by the board of directors. If the board of directors does
22 not fix a record date for determining shareholders entitled to a
23 distribution, other than one involving a purchase, redemption, or
24 other acquisition of the corporation's shares, the record date is the
25 date the board of directors authorizes the distribution.

26 (3) No distribution may be made if, after giving it effect:

27 (a) The corporation would not be able to pay its liabilities as
28 they become due in the usual course of business; or

29 (b) The corporation's total assets would be less than the sum of
30 its total liabilities plus, unless the articles of incorporation
31 permit otherwise, the amount that would be needed, if the corporation
32 were to be dissolved at the time of the distribution, to satisfy the
33 preferential rights upon dissolution of shareholders whose
34 preferential rights are superior to those receiving the distribution.

35 ~~((3))~~ (4) For purposes of determinations under subsection
36 ~~((2))~~ (3) of this section:

37 (a) The board of directors may base a determination that a
38 distribution is not prohibited under subsection ~~((2))~~ (3) of this
39 section either on financial statements prepared on the basis of

1 accounting practices and principles that are reasonable in the
2 circumstances or on a fair valuation or other method that is
3 reasonable in the circumstances; and

4 (b) Indebtedness of a corporation, including indebtedness issued
5 as a distribution, is not considered a liability if its terms provide
6 that payment of principal and interest are made only if and to the
7 extent that payment of a distribution to shareholders could then be
8 made under this section.

9 ~~((4))~~ (5) The effect of a distribution under subsection ~~((2))~~
10 (3) of this section is measured:

11 (a) In the case of a distribution of indebtedness, the terms of
12 which provide that payment of principal and interest are made only if
13 and to the extent that payment of a distribution to shareholders
14 could then be made under this section, each payment of principal or
15 interest is treated as a distribution, the effect of which is
16 measured on the date the payment is actually made; or

17 (b) In the case of any other distribution:

18 (i) If the distribution is by purchase, redemption, or other
19 acquisition of the corporation's shares, the effect of the
20 distribution is measured as of the earlier of the date any money or
21 other property is transferred or debt incurred by the corporation, or
22 the date the shareholder ceases to be a shareholder with respect to
23 the acquired shares;

24 (ii) If the distribution is of indebtedness other than that
25 described in ~~((subsection—(4))~~ (a) and (b)(i) of this subsection,
26 the effect of the distribution is measured as of the date the
27 indebtedness is distributed; and

28 (iii) In all other cases, the effect of the distribution is
29 measured as of the date the distribution is approved if payment
30 occurs within one hundred twenty days after the date of approval, or
31 the date the payment is made if it occurs more than one hundred
32 twenty days after the date of approval.

33 ~~((5))~~ (6) A corporation's indebtedness to a shareholder
34 incurred by reason of a distribution made in accordance with this
35 section is at parity with the corporation's indebtedness to its
36 general, unsecured creditors except to the extent provided otherwise
37 by agreement.

38 ~~((6))~~ (7) In circumstances to which this section and related
39 sections of this title are applicable, such provisions supersede the

1 applicability of any other statutes of this state with respect to the
2 legality of distributions.

3 ~~((7))~~ (8) A transfer of the assets of a dissolved corporation
4 to a trust or other successor entity of the type described in RCW
5 23B.14.030(4) constitutes a distribution subject to subsection
6 ~~((2))~~ (3) of this section only when and to the extent that the
7 trust or successor entity distributes assets to shareholders.

8 **Sec. 104.** RCW 23B.07.020 and 2020 c 57 s 48 are each amended to
9 read as follows:

10 (1) A corporation shall hold a special meeting of shareholders:

11 (a) On call of its board of directors or the person or persons
12 authorized to do so by the articles of incorporation or bylaws; or

13 (b) Except as set forth in subsections (2) and (3) of this
14 section, if shareholders holding at least ten percent of all the
15 votes entitled to be cast on any issue proposed to be considered at
16 the proposed special meeting execute, date, and deliver to the
17 corporation one or more written demands for the meeting describing
18 the purpose or purposes for which it is to be held.

19 (2) The right of shareholders of a public company to call a
20 special meeting may be limited or denied to the extent provided in
21 the articles of incorporation.

22 (3) If the corporation is other than a public company, the
23 articles of incorporation or bylaws may require the demand specified
24 in subsection (1)(b) of this section be made by a greater percentage,
25 not in excess of twenty-five percent, of all the votes entitled to be
26 cast on any issue proposed to be considered at the proposed special
27 meeting.

28 (4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070,
29 the record date for determining shareholders entitled to demand a
30 special meeting is the first date on which an executed shareholder
31 demand is delivered to the corporation. No written demand for a
32 special meeting will be effective unless, within 60 days after the
33 earliest date on which a demand delivered to the corporation as
34 required by this section was executed, written demands executed by
35 shareholders holding at least the percentage of votes specified in
36 subsection (1)(b) of this section or, if applicable, fixed in
37 accordance with subsection (2) or (3) of this section, have been
38 delivered to the corporation.

39 (5) Subject to subsection (6) of this section:

1 (a) Special shareholders' meetings may be held in or out of this
2 state at the place stated in or fixed in accordance with the bylaws;
3 and

4 (b) If no place is stated or fixed in accordance with the bylaws,
5 special meetings shall be held at the corporation's principal office.

6 (6) Unless the articles of incorporation or bylaws provide
7 otherwise, if the board of directors or another person is authorized
8 in the bylaws to determine the place of special meetings, the board
9 of directors or such other person may, in the sole discretion of the
10 board of directors or such other person, determine that a special
11 meeting will not involve a physical assembly of shareholders at a
12 particular geographic location, but instead will be held solely by
13 means of remote communication, in accordance with RCW 23B.07.080.

14 (7) Only business within the purpose or purposes described in the
15 meeting notice required by RCW 23B.07.050(3) may be conducted at a
16 special shareholders' meeting.

17 **Sec. 105.** RCW 23B.07.070 and 2009 c 189 s 16 are each amended to
18 read as follows:

19 (1) The bylaws may fix or provide the manner of fixing the record
20 date for one or more voting groups in order to determine the
21 shareholders entitled to notice of a shareholders' meeting, to demand
22 a special meeting, to vote, or to approve any other corporate action.
23 If the bylaws do not fix or provide for fixing a record date, the
24 board of directors of the corporation may fix ~~((a future date as))~~
25 the record date, which date may not precede the date on which the
26 resolution fixing the record date is approved.

27 (2) If not otherwise fixed under subsection (1) of this section
28 or RCW 23B.07.030, the record date for determining shareholders
29 entitled to notice of and to vote at an annual or special
30 shareholders' meeting is the day before the first notice is delivered
31 to shareholders.

32 ~~((If the board of directors does not fix the record date for~~
33 ~~determining shareholders entitled to a share dividend, it is the date~~
34 ~~the board of directors authorizes the share dividend.~~

35 ~~(4) If the board of directors does not fix the record date for~~
36 ~~determining shareholders entitled to a distribution, other than one~~
37 ~~involving a purchase, redemption, or other acquisition of the~~
38 ~~corporation's shares, it is the date the board of directors~~
39 ~~authorizes the distribution.~~

1 ~~(5))~~) A record date fixed under this section may not be more than
2 seventy days before the meeting of shareholders or more than ten days
3 prior to the date on which the first shareholder consent is executed
4 under RCW 23B.07.040(1)(b).

5 ~~((6))~~) (4) A determination of shareholders entitled to notice of
6 or to vote at a shareholders' meeting is effective for any
7 adjournment of the meeting unless the board of directors fixes a new
8 record date, which it must do if the meeting is adjourned to a date
9 more than one hundred twenty days after the date fixed for the
10 original meeting.

11 ~~((7))~~) (5) If a court orders a meeting adjourned to a date more
12 than one hundred twenty days after the date fixed for the original
13 meeting, it may provide that the original record date continues in
14 effect or it may fix a new record date.

15 **Sec. 106.** RCW 23B.07.200 and 2020 c 57 s 52 are each amended to
16 read as follows:

17 (1) After fixing a record date for a meeting, a corporation shall
18 prepare an alphabetical list of the names of all its shareholders on
19 the record date who are entitled to notice of a shareholders'
20 meeting. The list must be arranged by voting group, and within each
21 voting group by class or series of shares, and show the address of
22 and number of shares held by each shareholder. Nothing contained in
23 this section requires the corporation to include on such list the
24 electronic mail address or other electronic contact information of a
25 shareholder.

26 (2) The shareholders' list must be available for inspection by
27 any shareholder, beginning ten days prior to the meeting and
28 continuing through the meeting~~((7))~~) either: (a) On a reasonably
29 accessible electronic network, on condition that the information
30 necessary to gain access to the list is provided in or accompanies
31 the notice of the meeting; or (b) at the corporation's principal
32 office or at a place identified in the meeting notice in the city
33 where the meeting will be held. If the corporation elects to make the
34 list available on an electronic network, the corporation may take
35 reasonable steps to ensure that such information is available only to
36 shareholders or their agents or attorneys. A shareholder, the
37 shareholder's agent, or the shareholder's attorney is entitled to
38 inspect the list, during regular business hours and at the

1 shareholder's expense, during the period it is available for
2 inspection.

3 (3) The corporation (~~shall~~) must make the shareholders' list
4 available at the meeting, and any shareholder, the shareholder's
5 agent, or the shareholder's attorney is entitled to inspect the list
6 at any time during the meeting or any adjournment. If the meeting is
7 held solely by means of remote communication in accordance with RCW
8 23B.07.010(4) or 23B.07.020(6), then the list must be available for
9 inspection by any shareholder, the shareholder's agent, or the
10 shareholder's attorney during the whole time of the meeting on a
11 reasonably accessible electronic network, and the information
12 required to access the list must be provided with the notice of the
13 meeting.

14 (4) If the corporation refuses to allow a shareholder, the
15 shareholder's agent, or the shareholder's attorney to inspect the
16 shareholders' list before or at the meeting, the superior court of
17 the county where a corporation's principal office, or, if none in
18 this state, its registered office, is located, on application of the
19 shareholder, may summarily order the inspection at the corporation's
20 expense and may postpone the meeting for which the list was prepared
21 until the inspection is complete.

22 (5) A shareholder's right to copy the shareholders' list, and a
23 shareholder's right to otherwise inspect and copy the record of
24 shareholders, is governed by RCW 23B.16.020(3).

25 (6) Refusal or failure to prepare or make available the
26 shareholders' list does not affect the validity of corporate action
27 approved at the meeting.

28 **Sec. 107.** RCW 23B.11.010 and 2020 c 194 s 11 are each amended to
29 read as follows:

30 (1) One or more corporations may merge into another corporation
31 if the board of directors of each corporation adopts and its
32 shareholders, if required by RCW 23B.11.030, approve a plan of
33 merger.

34 (2) The plan of merger must include:

35 (a) The name of each corporation planning to merge and the name
36 of the surviving corporation into which each other corporation plans
37 to merge;

38 (b) The terms and conditions of the merger; and

1 (c) The manner and basis of converting the shares of each
2 corporation into shares, obligations, or other securities of the
3 surviving or any other corporation or into cash or other property in
4 whole or part, or of canceling some or all of such shares.

5 (3) The plan of merger may include:

6 (a) Amendments to the articles of incorporation of the surviving
7 corporation, or a restatement that includes one or more amendments to
8 the surviving corporation's articles of incorporation; and

9 (b) Other provisions relating to the merger.

10 (4) The terms of a plan of merger may be made dependent on facts
11 objectively ascertainable outside the plan in accordance with RCW
12 23B.01.200(3).

13 **Sec. 108.** RCW 23B.11.030 and 2011 c 328 s 6 are each amended to
14 read as follows:

15 (1) After adopting a plan of merger or share exchange, the board
16 of directors of each corporation party to the merger, and the board
17 of directors of the corporation whose shares will be acquired in the
18 share exchange, shall submit the plan of merger, except as provided
19 in subsection (7) of this section, or share exchange for approval by
20 its shareholders.

21 (2) For a plan of merger or share exchange to be approved:

22 (a) The board of directors must recommend the plan of merger or
23 share exchange to the shareholders unless (i) the board of directors
24 determines that because of conflict of interest or other special
25 circumstances it should make no recommendation or (ii) RCW 23B.08.245
26 applies, and in either case the board of directors communicates the
27 basis for so proceeding to the shareholders; and

28 (b) The shareholders entitled to vote must approve the plan,
29 except as provided in subsection (7) of this section.

30 (3) The board of directors may condition its submission of the
31 proposed plan of merger or share exchange on any basis, including the
32 affirmative vote of holders of a specified percentage of shares held
33 by any group of shareholders not otherwise entitled under this title
34 or the articles of incorporation to vote as a separate voting group
35 on the proposed plan of merger or share exchange.

36 (4) The corporation shall notify each shareholder, whether or not
37 entitled to vote, of the proposed shareholders' meeting in accordance
38 with RCW 23B.07.050. The notice must also state that the purpose, or
39 one of the purposes, of the meeting is to consider the plan of merger.

1 or share exchange and must contain or be accompanied by a copy (~~of a~~
2 ~~summary~~) of the plan or a summary of the material terms and
3 conditions of the proposed merger or share exchange and the
4 consideration to be received by shareholders.

5 (5) In addition to any other voting conditions imposed by the
6 board of directors under subsection (3) of this section, the plan of
7 merger must be approved by two-thirds of the voting group comprising
8 all the votes entitled to be cast on the plan, and of each other
9 voting group entitled under RCW 23B.11.035 or the articles of
10 incorporation to vote separately on the plan, unless shareholder
11 approval is not required under subsection (7) of this section. The
12 articles of incorporation may require a greater or lesser vote than
13 that provided in this subsection, or a greater or lesser vote by
14 separate voting groups, so long as the required vote is not less than
15 a majority of all the votes entitled to be cast on the plan of merger
16 and of each other voting group entitled to vote separately on the
17 plan. Separate voting by additional voting groups is required on a
18 plan of merger under the circumstances described in RCW 23B.11.035.

19 (6) In addition to any other voting conditions imposed by the
20 board of directors under subsection (3) of this section, the plan of
21 share exchange must be approved by two-thirds of the voting group
22 comprising all the votes entitled to be cast on the plan, and of each
23 other voting group entitled under RCW 23B.11.035 or the articles of
24 incorporation to vote separately on the plan. The articles of
25 incorporation may require a greater or lesser vote than that provided
26 in this subsection, or a greater or lesser vote by separate voting
27 groups, so long as the required vote is not less than a majority of
28 all the votes entitled to be cast on the plan of share exchange and
29 of each other voting group entitled to vote separately on the plan.
30 Separate voting by additional voting groups is required on a plan of
31 share exchange under the circumstances described in RCW 23B.11.035.

32 (7) Approval by the shareholders of the surviving corporation on
33 a plan of merger is not required if:

34 (a) The articles of incorporation of the surviving corporation
35 will not differ, except for amendments enumerated in RCW 23B.10.020,
36 from its articles of incorporation before the merger;

37 (b) Each shareholder of the surviving corporation whose shares
38 were outstanding immediately before the effective date of the merger
39 will hold the same number of shares, with identical designations,

1 preferences, limitations, and relative rights, immediately after the
2 merger;

3 (c) The number of voting shares outstanding immediately after the
4 merger, plus the number of voting shares issuable as a result of the
5 merger, either by the conversion of securities issued pursuant to the
6 merger or the exercise of rights and warrants issued pursuant to the
7 merger, will not exceed the total number of voting shares of the
8 surviving corporation authorized by its articles of incorporation
9 immediately before the merger; and

10 (d) The number of participating shares outstanding immediately
11 after the merger, plus the number of participating shares issuable as
12 a result of the merger, either by the conversion of securities issued
13 pursuant to the merger or the exercise of rights and warrants issued
14 pursuant to the merger, will not exceed the total number of
15 participating shares authorized by its articles of incorporation
16 immediately before the merger.

17 (8) As used in subsection (7) of this section:

18 (a) "Participating shares" means shares that entitle their
19 holders to participate without limitation in distributions.

20 (b) "Voting shares" means shares that entitle their holders to
21 vote unconditionally in elections of directors.

22 (9) Unless the articles of incorporation provide otherwise,
23 approval by the shareholders of a public company is not required for
24 a plan of merger if:

25 (a) The plan of merger expressly: (i) Permits or requires the
26 merger to be effected under this subsection; and (ii) provides that,
27 if the merger is to be effected under this subsection, the merger
28 will be effected as soon as practicable following the satisfaction of
29 the requirements of (f) of this subsection;

30 (b) Another party to the merger or a parent of another party to
31 the merger makes an offer to purchase, on the terms stated in the
32 plan of merger, any and all of the outstanding shares of the
33 corporation that, absent this subsection, would be entitled to vote
34 on the plan of merger, except that the offer may exclude shares of
35 the corporation that are owned at the commencement of the offer by
36 the corporation, the offeror, or any parent of the offeror, or by any
37 wholly owned subsidiary of any of the foregoing;

38 (c) The offer discloses that the plan of merger states that the
39 merger will be effected as soon as practicable following the
40 satisfaction of the requirements of (f) of this subsection and that¹⁴⁷

1 the shares of the corporation that are not tendered in response to
2 the offer will be treated as provided in (h) of this subsection;

3 (d) The offer remains open for at least 10 days;

4 (e) The offeror purchases all shares properly tendered in
5 response to the offer and not properly withdrawn;

6 (f) The: (i) Shares purchased by the offeror in accordance with
7 the offer; (ii) shares otherwise owned by the offeror or by any
8 parent of the offeror or any wholly owned subsidiary of any of the
9 foregoing; and (iii) shares subject to an agreement that they are to
10 be transferred, contributed, or delivered to the offeror, any parent
11 of the offeror, or any wholly owned subsidiary of any of the
12 foregoing in exchange for shares or other interests in that offeror,
13 parent, or subsidiary, are collectively entitled to cast at least the
14 minimum number of votes on the merger that, absent this subsection,
15 would be required by this chapter for the approval of the merger by
16 the shareholders entitled to vote on the merger at a meeting at which
17 all shares entitled to vote on the approval were present and voted;

18 (g) The offeror or a wholly owned subsidiary of the offeror
19 merges with or into the corporation; and

20 (h) Each outstanding share of each class or series of shares of
21 the corporation that the offeror is offering to purchase in
22 accordance with the offer, and which is not purchased in accordance
23 with the offer, is to be converted in the merger into, or into the
24 right to receive, the same amount and kind of securities, eligible
25 interests, obligations, rights, cash, or other property to be paid or
26 exchanged in accordance with the offer for each share of that class
27 or series of shares that is tendered in response to the offer, except
28 that shares of the corporation that are owned by the corporation or
29 that are described in (f)(ii) or (iii) of this subsection need not be
30 converted into or exchanged for the consideration described in this
31 subsection (9)(h).

32 (10) As used in subsection (9) of this section:

33 (a) "Offer" means the offer referred to in subsection (9)(b) of
34 this section.

35 (b) "Offeror" means the person making the offer.

36 (c) "Parent" of an entity means a person that owns, directly or
37 indirectly, through one or more wholly owned subsidiaries, all of the
38 outstanding shares of or other interests in that entity.

1 (d) Shares tendered in response to the offer will be deemed to
2 have been "purchased" in accordance with the offer at the earlier
3 time as of which:

4 (i) The offeror has irrevocably accepted those shares for
5 payment; and

6 (ii) Either: (A) In the case of shares represented by
7 certificates, the offeror, or the offeror's designated depository or
8 other agent, has physically received the certificates representing
9 those shares; or (B) in the case of shares without certificates,
10 those shares have been transferred into the account of the offeror or
11 its designated depository or other agent, or an agent's message
12 relating to those shares has been received by the offeror or its
13 designated depository or other agent.

14 (e) "Wholly owned subsidiary" of a person means an entity of or
15 in which that person owns, directly or indirectly, through one or
16 more wholly owned subsidiaries, all of the outstanding shares or
17 other interests.

18 (11) After a merger or share exchange is approved, and at any
19 time before articles of merger or share exchange are filed, the
20 planned merger or share exchange may be abandoned, subject to any
21 contractual rights, without further shareholder approval, in
22 accordance with the procedure set forth in the plan of merger or
23 share exchange or, if none is set forth, in the manner determined by
24 the board of directors.

25 **Sec. 109.** RCW 23B.11.050 and 1989 c 165 s 135 are each amended
26 to read as follows:

27 (1) After a plan of merger (~~or share exchange~~) is approved by
28 the shareholders, or adopted by the board of directors if shareholder
29 approval is not required, the surviving (~~or acquiring corporation~~)
30 entity shall deliver to the secretary of state for filing articles of
31 merger (~~or share exchange setting forth~~) stating:

32 (~~(1)~~) (a) The (~~plan of merger or share exchange~~) name and
33 jurisdiction of organization of each party to the merger;

34 (b) The name and jurisdiction of organization of the surviving
35 entity;

36 (c) If the surviving entity of the merger is a domestic
37 corporation and its articles of incorporation are amended or amended
38 and restated, the amendments to the surviving entity's articles of

1 incorporation or the amended and restated articles of incorporation
2 of the surviving entity;

3 ~~((2))~~ (d) If shareholder approval of any domestic corporation
4 party to the merger was not required, a statement to that effect;
5 ~~((or~~

6 ~~(3))~~ (e) If approval of the shareholders of one or more domestic
7 corporations party to the merger ((or share exchange)) was required,
8 a statement that the merger ((or share exchange)) was duly approved
9 by the shareholders of such domestic corporation pursuant to RCW
10 23B.11.030; and

11 (f) If approval of the shareholders of one or more other entities
12 party to the merger was required, a statement that the merger was
13 duly approved by the interest holders of such other entity in
14 accordance with the organic law of such other entity.

15 (2) After a plan of share exchange has been approved by the
16 shareholders of the corporation whose shares will be acquired in the
17 share exchange, the acquiring corporation shall deliver to the
18 secretary of state for filing articles of share exchange, executed by
19 the acquiring corporation and the corporation whose shares will be
20 acquired in the share exchange, stating:

21 (a) The name of the corporation whose shares will be acquired in
22 the share exchange;

23 (b) The name of the acquiring corporation; and

24 (c) A statement that the plan of share exchange was duly approved
25 by the shareholders of the corporation whose shares will be acquired
26 in the share exchange pursuant to RCW 23B.11.030.

27 (3) The definitions in RCW 23B.09.005 apply to this section
28 unless the context clearly requires otherwise.

29 **Sec. 110.** RCW 23B.11.060 and 1989 c 165 s 136 are each amended
30 to read as follows:

31 (1) When a merger takes effect:

32 (a) Every other corporation party to the merger merges into the
33 surviving corporation and the separate existence of every corporation
34 except the surviving corporation ceases;

35 (b) The title to all real estate and other property owned by each
36 corporation party to the merger is vested in the surviving
37 corporation without reversion or impairment;

38 (c) The surviving corporation has all liabilities of each
39 corporation party to the merger;

1 (d) A proceeding pending against any corporation party to the
2 merger may be continued as if the merger did not occur or the
3 surviving corporation may be substituted in the proceeding for the
4 corporation whose existence ceased;

5 (e) The articles of incorporation of the surviving corporation
6 are amended, or amended and restated, to the extent provided in the
7 (~~plan~~) articles of merger; and

8 (f) The former holders of the shares of every corporation party
9 to the merger are entitled only to the rights provided in the
10 articles of merger or to their rights under chapter 23B.13 RCW.

11 (2) When a share exchange takes effect, the shares of each
12 acquired corporation are exchanged as provided in the plan, and the
13 former holders of the shares are entitled only to the exchange rights
14 provided in the articles of share exchange or to their rights under
15 chapter 23B.13 RCW.

16 **Sec. 111.** RCW 23B.11.090 and 2015 c 188 s 111 are each amended
17 to read as follows:

18 After a plan of merger for one or more corporations and one or
19 more limited partnerships, one or more partnerships, or one or more
20 limited liability companies is approved by the shareholders of each
21 corporation (or adopted by the board of directors of any corporation
22 for which shareholder approval is not required), is approved by the
23 partners for each limited partnership as required by RCW 25.10.781,
24 is approved by the partners of each partnership as required by RCW
25 25.05.380, or is approved by the members of each limited liability
26 company as required by RCW 25.15.421, the surviving entity must:

27 (1) If the surviving entity is a corporation, file with the
28 secretary of state articles of merger setting forth:

29 (a) The (~~plan of merger~~) name and jurisdiction of organization
30 of each party to the merger;

31 (b) The name of the surviving corporation;

32 (c) If the surviving corporation's articles of incorporation are
33 amended or amended and restated, the amendments to the surviving
34 corporation's articles of incorporation or the amended and restated
35 articles of incorporation of the surviving corporation;

36 (~~(b)~~) (d) A statement that the merger was duly approved by the
37 shareholders of each corporation that is a party to the merger
38 pursuant to RCW 23B.11.030 (or a statement that shareholder approval
39 was not required for a merging corporation); and

1 ~~((e))~~ (e) A statement that the merger was duly approved ~~((by~~
2 ~~the partners of each limited partnership pursuant to RCW 25.10.781))~~
3 as required by the organic law of each other party that is a party to
4 the merger.

5 (2) If the surviving entity is a limited partnership, comply with
6 the requirements in RCW 25.10.786.

7 (3) If the surviving entity is a partnership, comply with the
8 requirements in RCW 25.05.380.

9 (4) If the surviving entity is a limited liability company,
10 comply with the requirements in RCW 25.15.426.

11 (5) The definitions in RCW 23B.09.005 apply to this section
12 unless the context clearly requires otherwise.

13 **Sec. 112.** RCW 23B.11.100 and 1998 c 103 s 1312 are each amended
14 to read as follows:

15 (1) When a merger of one or more corporations~~((r))~~ or one or more
16 ~~((limited partnerships, one or more partnerships, or one or more~~
17 ~~limited liability companies))~~ other entities takes effect, and a
18 corporation is the surviving entity:

19 ~~((1))~~ (a) Every other corporation~~((r))~~ and every ~~((limited~~
20 ~~partnership, every partnership, and every limited liability company))~~
21 other entity party to the merger merges into the surviving
22 corporation and the separate existence of every corporation except
23 the surviving corporation, and every ~~((limited partnership,~~
24 ~~partnership, and limited liability company))~~ other entity, ceases;

25 ~~((2))~~ (b) The title to all real estate and other property owned
26 by each ~~((corporation, limited partnership, partnership, and limited~~
27 ~~liability company))~~ entity party to the merger is vested in the
28 surviving corporation without reversion or impairment;

29 ~~((3))~~ (c) The surviving corporation has all the liabilities of
30 each ~~((corporation, limited partnership, partnership, and limited~~
31 ~~liability company))~~ entity party to the merger;

32 ~~((4))~~ (d) A proceeding pending against any ~~((corporation,~~
33 ~~limited partnership, partnership, or limited liability company))~~
34 entity party to the merger may be continued as if the merger did not
35 occur or the surviving corporation may be substituted in the
36 proceeding for the ~~((corporation, limited partnership, partnership,~~
37 ~~or limited liability company))~~ entity whose existence ceased;

1 ~~((5))~~ (e) The articles of incorporation of the surviving
2 corporation are amended, or amended and restated, to the extent
3 provided in the ~~((plan))~~ articles of merger;

4 ~~((6))~~ (f) The former holders of the shares of every corporation
5 party to the merger are entitled only to the rights provided in the
6 plan of merger or to their rights under chapter 23B.13 RCW; and

7 ~~((7))~~ (g) The former interest holders of ~~((partnership~~
8 ~~interests of))~~ every ~~((limited partnership or partnership party to~~
9 ~~the merger and the former holders of member interests of every~~
10 ~~limited liability company))~~ other entity party to the merger are
11 entitled only to the rights provided in the plan of merger or to
12 their rights under ~~((chapter 25.10 RCW))~~ the organic law of that
13 other entity.

14 (2) The definitions in RCW 23B.09.005 apply to this section
15 unless the context clearly requires otherwise.

16 **Sec. 113.** RCW 23B.13.020 and 2017 c 28 s 14 are each amended to
17 read as follows:

18 (1) A shareholder is entitled to dissent from, and obtain payment
19 of the fair value of the shareholder's shares in the event of, any of
20 the following corporate actions:

21 (a) A plan of merger, which has become effective, to which the
22 corporation is a party (i) if shareholder approval was required for
23 the merger by RCW 23B.11.030, 23B.11.080, or the articles of
24 incorporation, or would have been required but for the provisions of
25 RCW 23B.11.030(9), and the shareholder was, or but for the provisions
26 of RCW 23B.11.030(9) would have been, entitled to vote on the merger,
27 or (ii) if the corporation was a subsidiary and the plan of merger
28 provided for the merger of the subsidiary with its parent under RCW
29 23B.11.040;

30 (b) A plan of share exchange, which has become effective, to
31 which the corporation is a party as the corporation whose shares have
32 been acquired, if the shareholder was entitled to vote on the plan;

33 (c) A sale, lease, exchange, or other disposition, which has
34 become effective, of all, or substantially all, of the property and
35 assets of the corporation other than in the usual and regular course
36 of business, if the shareholder was entitled to vote on the sale,
37 lease, exchange, or other disposition, including a disposition in
38 dissolution, but not including a disposition pursuant to court order
39 or a disposition for cash pursuant to a plan by which all or

1 substantially all of the net proceeds of the disposition will be
2 distributed to the shareholders within one year after the date of the
3 disposition;

4 (d) An amendment of the articles of incorporation, whether or not
5 the shareholder was entitled to vote on the amendment, if the
6 amendment effects a redemption or cancellation of all of the
7 shareholder's shares in exchange for cash or other consideration
8 other than shares of the corporation;

9 (e) Any action described in RCW 23B.25.120;

10 (f) Any corporate action approved pursuant to a shareholder vote
11 to the extent the articles of incorporation, bylaws, or a resolution
12 of the board of directors provides that voting or nonvoting
13 shareholders are entitled to dissent and obtain payment for their
14 shares; or

15 (g) A plan of entity conversion in the case of a conversion of a
16 domestic corporation to a foreign corporation, which has become
17 effective, to which the domestic corporation is a party as the
18 converting entity, if: (i) The shareholder was entitled to vote on
19 the plan; and (ii) the shareholder does not receive shares in the
20 surviving entity that have terms as favorable to the shareholder in
21 all material respects and that represent at least the same percentage
22 interest of the total voting rights of the outstanding shares of the
23 surviving entity as the shares held by the shareholder before the
24 conversion.

25 (2) A shareholder entitled to dissent and obtain payment for the
26 shareholder's shares under this chapter may not challenge the
27 corporate action creating the shareholder's entitlement unless the
28 action fails to comply with the procedural requirements imposed by
29 this title, RCW 25.10.831 through 25.10.886, the articles of
30 incorporation, or the bylaws, or is fraudulent with respect to the
31 shareholder or the corporation.

32 (3) The right of a dissenting shareholder to obtain payment of
33 the fair value of the shareholder's shares shall terminate upon the
34 occurrence of any one of the following events:

35 (a) The proposed corporate action is abandoned or rescinded;

36 (b) A court having jurisdiction permanently enjoins or sets aside
37 the corporate action; or

38 (c) The shareholder's demand for payment is withdrawn with the
39 written consent of the corporation.

1 **Sec. 114.** RCW 23B.13.200 and 2009 c 189 s 42 are each amended to
2 read as follows:

3 (1) If proposed corporate action creating dissenters' rights
4 under RCW 23B.13.020 is submitted for approval by a vote at a
5 shareholders' meeting, the meeting notice must state that
6 shareholders are or may be entitled to assert dissenters' rights
7 under this chapter and be accompanied by a copy of this chapter.

8 (2) If proposed corporate action creating dissenters' rights
9 under RCW 23B.13.020 would be submitted for approval by a vote at a
10 shareholders' meeting but for the provisions of RCW 23B.11.030(9),
11 the offer made pursuant to RCW 23B.11.030(9) must state that
12 shareholders are or may be entitled to assert dissenters' rights
13 under this chapter and be accompanied by a copy of this chapter.

14 (3) If corporate action creating dissenters' rights under RCW
15 23B.13.020 is submitted for approval without a vote of shareholders
16 in accordance with RCW 23B.07.040, the shareholder consent described
17 in RCW 23B.07.040(1)(b) and the notice described in RCW
18 23B.07.040(3)(a) must include a statement that shareholders are or
19 may be entitled to assert dissenters' rights under this chapter and
20 be accompanied by a copy of this chapter.

21 **Sec. 115.** RCW 23B.13.210 and 2020 c 57 s 69 are each amended to
22 read as follows:

23 (1) If proposed corporate action creating dissenters' rights
24 under RCW 23B.13.020 is submitted to a vote at a shareholders'
25 meeting, a shareholder who wishes to assert dissenters' rights must
26 (a) deliver to the corporation before the vote is taken written
27 notice of the shareholder's intent to demand payment for the
28 shareholder's shares if the proposed corporate action is effected,
29 and (b) not vote such shares in favor of the proposed corporate
30 action.

31 (2) If proposed corporate action creating dissenters' rights
32 under RCW 23B.13.020 does not require shareholder approval pursuant
33 to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters'
34 rights with respect to any class or series of shares:

35 (a) Shall deliver to the corporation before the shares are
36 purchased pursuant to the offer under RCW 23B.11.030(9) written
37 notice of the shareholder's intent to demand payment for the
38 shareholder's shares if the proposed corporate action is effected;
39 and

1 (b) Shall not tender, or cause to be tendered, any shares of such
2 class or series in response to such offer.

3 (3) If proposed corporate action creating dissenters' rights
4 under RCW 23B.13.020 is submitted for approval without a vote of
5 shareholders in accordance with RCW 23B.07.040, a shareholder who
6 wishes to assert dissenters' rights must not execute the consent or
7 otherwise vote such shares in favor of the proposed corporate action.

8 ~~((3))~~ (4) A shareholder who does not satisfy the requirements
9 of subsection (1) ~~((1))~~, (2), or (3) of this section is not entitled
10 to payment for the shareholder's shares under this chapter.

11 **Sec. 116.** RCW 23B.13.220 and 2013 c 97 s 2 are each amended to
12 read as follows:

13 (1) If proposed corporate action creating dissenters' rights
14 under RCW 23B.13.020 is approved at a shareholders' meeting, the
15 corporation shall within ten days after the effective date of the
16 corporate action deliver to all shareholders who satisfied the
17 requirements of RCW 23B.13.210(1) a notice in compliance with
18 subsection ~~((5))~~ (6) of this section.

19 (2) If proposed corporate action creating dissenters' rights
20 under RCW 23B.13.020 is approved without a vote of shareholders in
21 accordance with RCW 23B.11.030(9), the corporation shall within 10
22 days after the effective date of the corporate action deliver to all
23 shareholders who satisfied the requirements of RCW 23B.13.210(2) a
24 notice in compliance with subsection (6) of this section.

25 (3) If proposed corporate action creating dissenters' rights
26 under RCW 23B.13.020 is approved without a vote of shareholders in
27 accordance with RCW 23B.07.040, the notice delivered pursuant to RCW
28 23B.07.040(3)(b) to shareholders who satisfied the requirements of
29 RCW 23B.13.210~~((2))~~ (3) shall comply with subsection ~~((5))~~ (6) of
30 this section.

31 ~~((3))~~ (4) In the case of proposed corporate action creating
32 dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation
33 shall within ten days after the effective date of the corporate
34 action deliver to all shareholders of the subsidiary other than the
35 parent a notice in compliance with subsection ~~((5))~~ (6) of this
36 section.

37 ~~((4))~~ (5) In the case of proposed corporate action creating
38 dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW
39 23B.10.020(4)(b), is not required to be approved by the shareholders 156

1 of the corporation, the corporation shall within ten days after the
2 effective date of the corporate action deliver to all shareholders
3 entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance
4 with subsection ~~((5))~~ (6) of this section.

5 ~~((5))~~ (6) Any notice under subsection (1), (2), (3), ~~((4))~~
6 (4), or (5) of this section must:

7 (a) State where the payment demand must be sent and where and
8 when certificates for certificated shares must be deposited;

9 (b) Inform holders of uncertificated shares to what extent
10 transfer of the shares will be restricted after the payment demand is
11 received;

12 (c) Supply a form for demanding payment that includes the date of
13 the first announcement to news media or to shareholders of the terms
14 of the proposed corporate action and requires that the person
15 asserting dissenters' rights certify whether or not the person
16 acquired beneficial ownership of the shares before that date;

17 (d) Set a date by which the corporation must receive the payment
18 demand, which date may not be fewer than thirty nor more than sixty
19 days after the date the notice in subsection (1), (2), (3), ~~((4))~~
20 (4), or (5) of this section is delivered; and

21 (e) Be accompanied by a copy of this chapter.

22 **Sec. 117.** RCW 23B.13.230 and 2013 c 97 s 3 are each amended to
23 read as follows:

24 (1) A shareholder sent a notice described in RCW 23B.13.220 must
25 demand payment, certify whether the shareholder acquired beneficial
26 ownership of the shares before the date required to be set forth in
27 the notice pursuant to RCW 23B.13.220~~((5))~~ (6)(c), and deposit the
28 shareholder's certificates, all in accordance with the terms of the
29 notice.

30 (2) The shareholder who demands payment and deposits the
31 shareholder's share certificates under subsection (1) of this section
32 retains all other rights of a shareholder until the proposed
33 corporate action is effected.

34 (3) A shareholder who does not demand payment or deposit the
35 shareholder's share certificates where required, each by the date set
36 in the notice, is not entitled to payment for the shareholder's
37 shares under this chapter.

PART II
LIMITED PARTNERSHIPS

Sec. 201. RCW 25.10.011 and 2020 c 57 s 81 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certificate of limited partnership" means the certificate required by RCW 25.10.201, including the certificate as amended or restated.

(2) "Contribution," except in the term "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(4) "Designated office" means the principal office indicated in the limited partnership's most recent annual report, or, if the principal office is not located within this state, the office of the limited partnership's registered agent.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to RCW 25.10.401(3).

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. "Foreign limited partnership" includes a foreign limited liability limited partnership.

(8) "General partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a general partner under RCW 25.10.371; or

1 (ii) Was a general partner in a limited partnership when the
2 limited partnership became subject to this chapter under RCW
3 25.10.911 (1) or (2); and

4 (b) With respect to a foreign limited partnership, a person that
5 has rights, powers, and obligations similar to those of a general
6 partner in a limited partnership.

7 (9) "Limited liability limited partnership," except in the term
8 "foreign limited liability limited partnership," means a limited
9 partnership whose certificate of limited partnership states that the
10 limited partnership is a limited liability limited partnership.

11 (10) "Limited partner" means:

12 (a) With respect to a limited partnership, a person that:

13 (i) Becomes a limited partner under RCW 25.10.301; or

14 (ii) Was a limited partner in a limited partnership when the
15 limited partnership became subject to this chapter under RCW
16 25.10.911 (1) or (2); and

17 (b) With respect to a foreign limited partnership, a person that
18 has rights, powers, and obligations similar to those of a limited
19 partner in a limited partnership.

20 (11) "Limited partnership," except in the terms "foreign limited
21 partnership" and "foreign limited liability limited partnership,"
22 means an entity, having one or more general partners and one or more
23 limited partners, that is formed under this chapter by two or more
24 persons or becomes subject to this chapter under article 11 of this
25 chapter or RCW 25.10.911 (1) or (2). "Limited partnership" includes a
26 limited liability limited partnership.

27 (12) "Partner" means a limited partner or general partner.

28 (13) "Partnership agreement" means the partners' agreement,
29 whether oral, implied, in a record, or in any combination, concerning
30 the limited partnership. "Partnership agreement" includes the
31 agreement as amended or restated.

32 (14) "Person" means an individual, corporation, business trust,
33 estate, trust, partnership, limited liability company, association,
34 joint venture, government; governmental subdivision, agency, or
35 instrumentality; (~~(public corporation,~~) or any other legal or
36 commercial entity.

37 (15) "Person dissociated as a general partner" means a person
38 dissociated as a general partner of a limited partnership.

39 (16) "Principal office" means the office where the principal
40 executive office of a limited partnership or foreign limited ¹⁵⁹

1 partnership is located, whether or not the office is located in this
2 state.

3 (17) "Record" means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and is
5 retrievable in perceivable form.

6 (18) "Required information" means the information that a limited
7 partnership is required to maintain under RCW 25.10.091.

8 (19) "Sign" means, with present intent to authenticate or adopt a
9 record:

10 (a) To execute or adopt a tangible symbol;

11 (b) To attach to or logically associate with the record an
12 electronic symbol, sound, or process; or

13 (c) With respect to a record to be filed with the secretary of
14 state, to comply with the standard for filing with the office of the
15 secretary of state as prescribed by the secretary of state.

16 (20) "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.

20 (21) "Tangible medium" means a writing, copy of a writing,
21 facsimile, or a physical reproduction, each on paper or on other
22 tangible material.

23 (22) "Transfer" includes an assignment, conveyance, deed, bill of
24 sale, lease, mortgage, security interest, encumbrance, gift, and
25 transfer by operation of law.

26 (23) "Transferable interest" means a partner's right to receive
27 distributions.

28 (24) "Transferee" means a person to which all or part of a
29 transferable interest has been transferred, whether or not the
30 transferor is a partner.

31 **Sec. 202.** RCW 25.10.101 and 2009 c 188 s 112 are each amended to
32 read as follows:

33 A partner may lend money to and transact other business with the
34 limited partnership and, subject to other applicable law, has the
35 same rights and obligations with respect to the loan or other
36 transaction as a person that is not a partner.

37 **Sec. 203.** RCW 25.10.491 and 2009 c 188 s 507 are each amended to
38 read as follows:

1 When a partner or transferee becomes entitled to receive a
2 distribution, the partner or transferee has the status of, and is
3 entitled to all remedies available to, a creditor of the limited
4 partnership with respect to the distribution. However, the limited
5 partnership's obligation to make a distribution is subject to offset
6 for any amount (~~owed~~) due and payable to the limited partnership by
7 the partner or dissociated partner on whose account the distribution
8 is made.

9 **Sec. 204.** RCW 25.10.496 and 2009 c 188 s 508 are each amended to
10 read as follows:

11 (1) A limited partnership may not make a distribution in
12 violation of the partnership agreement.

13 (2) A limited partnership may not make a distribution (~~if~~
14 ~~after~~) to the extent that at the time of the distribution, after
15 giving effect to the distribution:

16 (a) The limited partnership would not be able to pay its debts as
17 they become due in the ordinary course of the limited partnership's
18 activities; or

19 (b) The limited partnership's total assets would be less than the
20 sum of its total liabilities other than liabilities to partners on
21 account of their partnership interests and liabilities for which
22 recourse of creditors is limited to specified property of the limited
23 partnership, except that the fair value of property that is subject
24 to a liability for which the recourse of creditors is limited shall
25 be included in the assets of the limited partnership only to the
26 extent that the fair value of that property exceeds that liability.

27 (3) A limited partnership may base a determination that a
28 distribution is not prohibited under subsection (2) of this section
29 on financial statements prepared on the basis of accounting practices
30 and principles that are reasonable in the circumstances or on a fair
31 valuation or other method that is reasonable in the circumstances.

32 (4) Except as otherwise provided in subsection (7) of this
33 section, the effect of a distribution under subsection (2) of this
34 section is measured:

35 (a) In the case of distribution by purchase, redemption, or other
36 acquisition of a transferable interest in the limited partnership, as
37 of the date money or other property is transferred or debt incurred
38 by the limited partnership; and

39 (b) In all other cases, as of the date:

1 (i) The distribution is authorized, if the payment occurs within
2 one hundred twenty days after that date; or

3 (ii) The payment is made, if payment occurs more than one hundred
4 twenty days after the distribution is authorized.

5 (5) A limited partnership's indebtedness to a partner incurred by
6 reason of a distribution made in accordance with this section is at
7 parity with the limited partnership's indebtedness to its general,
8 unsecured creditors.

9 (6) A limited partnership's indebtedness, including indebtedness
10 issued in connection with or as part of a distribution, is not
11 considered a liability for purposes of subsection (2) of this section
12 if the terms of the indebtedness provide that payment of principal
13 and interest are made only to the extent that a distribution could
14 then be made to partners under this section.

15 (7) (~~If indebtedness is issued as~~) The effect of a distribution
16 of indebtedness under subsection (2) of this section is measured:

17 (a) In the case of a distribution of indebtedness described in
18 subsection (6) of this section, each payment of principal or interest
19 (~~on the indebtedness~~) is treated as a distribution, the effect of
20 which is measured on the date the payment is actually made; and

21 (b) In the case of a distribution of any other indebtedness, the
22 effect of the distribution is measured as of the date the
23 indebtedness is distributed.

24 **Sec. 205.** RCW 25.10.546 and 2009 c 188 s 701 are each amended to
25 read as follows:

26 The only interest of a partner that is transferable is the
27 partner's transferable interest. A transferable interest is personal
28 property. A partner has no interest in specific partnership property.

29 **Sec. 206.** RCW 25.10.771 and 2015 c 176 s 6127 are each amended
30 to read as follows:

31 (1) An organization that has been converted pursuant to this
32 article is for all purposes the same entity that existed before the
33 conversion.

34 (2) When a conversion takes effect:

35 (a) (~~All~~) The title to all real estate and other property owned
36 by the converting organization remains vested in the converted
37 organization without reversion or impairment;

1 (b) All debts, liabilities, and other obligations of the
2 converting organization continue as obligations of the converted
3 organization;

4 (c) An action or proceeding pending by or against the converting
5 organization may be continued as if the conversion had not occurred;

6 (d) Except as prohibited by other law, all of the rights,
7 privileges, immunities, powers, and purposes of the converting
8 organization remain vested in the converted organization;

9 (e) Except as otherwise provided in the plan of conversion, the
10 terms and conditions of the plan of conversion take effect; and

11 (f) Except as otherwise agreed, the conversion does not dissolve
12 a converting limited partnership for the purposes of article 8 of
13 this chapter.

14 (3) A converted organization that is a foreign organization
15 consents to the jurisdiction of the courts of this state to enforce
16 any obligation owed by the converting limited partnership, if before
17 the conversion the converting limited partnership was subject to suit
18 in this state on the obligation. A converted organization that is a
19 foreign organization and not registered to transact business in this
20 state may be served with process pursuant to RCW 23.95.450 for
21 purposes of enforcing an obligation under this subsection.

22 **Sec. 207.** RCW 25.10.791 and 2015 c 176 s 6129 are each amended
23 to read as follows:

24 (1) When a merger becomes effective:

25 (a) The surviving organization continues;

26 (b) Each constituent organization that merges into the surviving
27 organization ceases to exist as a separate entity;

28 (c) ~~((All))~~ The title to all real estate and other property owned
29 by each constituent organization that ceases to exist vests in the
30 surviving organization without reversion or impairment;

31 (d) All debts, liabilities, and other obligations of each
32 constituent organization that ceases to exist continue as obligations
33 of the surviving organization;

34 (e) An action or proceeding pending by or against any constituent
35 organization that ceases to exist may be continued as if the merger
36 had not occurred;

37 (f) Except as prohibited by other law, all of the rights,
38 privileges, immunities, powers, and purposes of each constituent
39 organization that ceases to exist vest in the surviving organization;

1 (g) Except as otherwise provided in the plan of merger, the terms
2 and conditions of the plan of merger take effect;

3 (h) Except as otherwise agreed, if a constituent limited
4 partnership ceases to exist, the merger does not dissolve the limited
5 partnership for the purposes of article 8 of this chapter; and

6 (i) Any amendments provided for in the articles of merger for the
7 organizational document that created the surviving organization
8 become effective.

9 (2) A surviving organization that is a foreign organization
10 consents to the jurisdiction of the courts of this state to enforce
11 any obligation owed by a constituent organization, if before the
12 merger the constituent organization was subject to suit in this state
13 on the obligation. A surviving organization that is a foreign
14 organization and not registered to transact business in this state
15 may be served with process pursuant to RCW 23.95.450 for the purposes
16 of enforcing an obligation under this subsection.

17 **PART III**

18 **LIMITED LIABILITY COMPANIES**

19 **Sec. 301.** RCW 25.15.006 and 2020 c 57 s 82 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Agreed value" means the value of the contributions made by a
24 member to the limited liability company. Such value shall equal the
25 amount agreed upon in a limited liability company agreement or, if no
26 value is agreed upon, the value shall be determined based on the
27 records of the limited liability company.

28 (2) "Certificate of formation" means the certificate of formation
29 required by RCW 25.15.071 and such certificate as amended or
30 restated.

31 (3) "Distribution" means a transfer of money or other property
32 from a limited liability company to a member in the member's capacity
33 as a member or to a transferee on account of a transferable interest
34 owned by the transferee.

35 (4) "Execute," "executes," or "executed" means with present
36 intent to authenticate or adopt a record:

37 (a) To sign or adopt a tangible symbol; or

1 (b) To attach to or logically associate with the record an
2 electronic symbol, sound, or process.

3 (5) "Foreign limited liability company" means an unincorporated
4 entity formed under the law of a jurisdiction other than this state
5 and denominated by that law as a limited liability company.

6 (6) "Foreign professional limited liability company" means a
7 foreign limited liability company formed for the purpose of rendering
8 professional services.

9 (7) "Limited liability company" or "domestic limited liability
10 company" means a limited liability company having one or more members
11 or transferees that is formed under this chapter.

12 (~~(7)~~) (8) "Limited liability company agreement" means the
13 agreement, including the agreement as amended or restated, whether
14 oral, implied, in a record, or in any combination, of the member or
15 members of a limited liability company concerning the affairs of the
16 limited liability company and the conduct of its business.

17 (~~(8)~~) (9) "Manager" means a person, or a board, committee, or
18 other group of persons, named as a manager of a limited liability
19 company in, or designated as a manager of a limited liability company
20 pursuant to, a limited liability company agreement.

21 (~~(9)~~) (10) "Manager-managed" means, with respect to a limited
22 liability company, that the limited liability company agreement vests
23 management of the limited liability company in one or more managers.

24 (~~(10)~~) (11) "Member" means a person who has been admitted to a
25 limited liability company as a member as provided in RCW 25.15.116
26 and who has not been dissociated from the limited liability company.

27 (~~(11)~~) (12) "Member-managed" means, with respect to a limited
28 liability company, that the limited liability company is not manager-
29 managed.

30 (~~(12)~~) (13) "Person" means an individual, corporation, business
31 trust, estate, trust, partnership, limited partnership, limited
32 liability company, association, joint venture, government,
33 governmental subdivision, agency, or instrumentality or any other
34 legal or commercial entity.

35 (~~(13)~~) (14) "Principal office" means the office, in or out of
36 this state, so designated in the annual report, where the principal
37 executive offices of a domestic or foreign limited liability company
38 are located.

1 (~~(14)~~) (15) "Professional limited liability company" means a
2 limited liability company that is formed in accordance with RCW
3 25.15.046 for the purpose of rendering professional service.

4 (~~(15)~~) (16) "Professional service" means the same as defined
5 under RCW 18.100.030.

6 (~~(16)~~) (17) "Record" means information that is inscribed on a
7 tangible medium or that is stored in an electronic or other medium
8 and is retrievable in perceivable form.

9 (~~(17)~~) (18) "State" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin Islands,
11 or any territory or insular possession subject to the jurisdiction of
12 the United States.

13 (~~(18)~~) (19) "Tangible medium" means a writing, copy of a
14 writing, facsimile, or a physical reproduction, each on paper or on
15 other tangible material.

16 (~~(19)~~) (20) "Transfer" includes an assignment, conveyance,
17 deed, bill of sale, lease, gift, and transfer by operation of law,
18 except as otherwise provided in RCW 25.15.251(6).

19 (~~(20)~~) (21) "Transferable interest" means a member's or
20 transferee's right to receive distributions of the limited liability
21 company's assets.

22 (~~(21)~~) (22) "Transferee" means a person to which all or part of
23 a transferable interest has been transferred, whether or not the
24 transferor is a member.

25 (23) "Withdraw" or "withdrawal" means, with respect to a member
26 of a limited liability company or a holder of a transferable interest
27 in a limited liability company, that the member or holder of the
28 transferable interest provides written notice to the limited
29 liability company of its intent to surrender all of its transferable
30 interest and rights as a member to the limited liability company. A
31 withdrawal is effective as of the later of the date the limited
32 liability company receives the written notice of withdrawal or the
33 date specified in such notice.

34 **Sec. 302.** RCW 25.15.046 and 2015 c 176 s 7105 are each amended
35 to read as follows:

36 (1) A person or group of persons duly licensed or otherwise
37 legally authorized to render the same professional services within
38 this state may form and become a member or members of a professional

1 limited liability company under the provisions of this chapter for
2 the purposes of rendering professional service.

3 (2) A professional limited liability company is subject to all
4 the provisions of chapter 18.100 RCW that apply to a professional
5 corporation. A professional limited liability company's managers,
6 members, agents, and employees are subject to all the provisions of
7 chapter 18.100 RCW that apply to the directors, officers,
8 shareholders, agents, or employees of a professional corporation,
9 except as provided otherwise in this section and RCW 25.15.048.

10 (3) If the limited liability company's members are required to be
11 licensed to practice such profession, and the limited liability
12 company fails to maintain for itself and for its members practicing
13 in this state a policy of professional liability insurance, bond, or
14 other evidence of financial responsibility of a kind designated by
15 rule by the state insurance commissioner and in the amount of at
16 least one million dollars or a greater amount as the state insurance
17 commissioner may establish by rule for a licensed profession or for
18 any specialty within a profession, taking into account the nature and
19 size of the business, then the limited liability company's members
20 are personally liable to the extent that, had the insurance, bond, or
21 other evidence of responsibility been maintained, it would have
22 covered the liability in question.

23 (4) For purposes of applying chapter 18.100 RCW to a professional
24 limited liability company, the terms "director" or "officer" means
25 manager, "shareholder" means member, "corporation" means professional
26 limited liability company, "articles of incorporation" means
27 certificate of formation, "shares" or "capital stock" means a limited
28 liability company interest, "incorporator" means the person who
29 executes the certificate of formation, and "bylaws" means the limited
30 liability company agreement.

31 (5) The name of a professional limited liability company must
32 comply with RCW 23.95.305.

33 (6) Subject to Article VII of this chapter, the following may be
34 a member of a professional limited liability company and may be the
35 transferee of the interest of an ineligible person or deceased member
36 of the professional limited liability company:

37 (a) A professional corporation, if its shareholders, directors,
38 and its officers, other than the secretary and the treasurer, are
39 licensed or otherwise legally authorized to render the same specific

1 professional services as the professional limited liability company;
2 ((and))

3 (b) Another professional limited liability company, if the
4 managers and members of both professional limited liability companies
5 are licensed or otherwise legally authorized to render the same
6 specific professional services; and

7 (c) A foreign professional limited liability company, if the
8 managers and members of the foreign professional limited liability
9 company are duly licensed or otherwise legally authorized to render
10 the same specific professional services in any jurisdiction other
11 than this state as the managers and members of the professional
12 limited liability company.

13 (7) Formation of a limited liability company under this section
14 does not restrict the application of the uniform disciplinary act
15 under chapter 18.130 RCW, or any applicable health care professional
16 statutes under Title 18 RCW, including but not limited to
17 restrictions on persons practicing a health profession without being
18 appropriately credentialed and persons practicing beyond the scope of
19 their credential.

20 **Sec. 303.** RCW 25.15.116 and 2015 c 188 s 25 are each amended to
21 read as follows:

22 (1) In connection with the admission of the initial member or
23 members of a limited liability company, a person acquiring a limited
24 liability company interest is admitted as a member of the limited
25 liability company upon the later to occur of:

26 (a) The formation of the limited liability company; or

27 (b) The time provided in the limited liability company agreement
28 or, if the limited liability company agreement does not so provide or
29 does not exist, when the person's admission is reflected in the
30 records of the limited liability company.

31 (2) After the admission of the initial member or members of a
32 limited liability company, a person acquiring a limited liability
33 company interest is admitted as a member of the limited liability
34 company:

35 (a) In the case of a person acquiring a limited liability company
36 interest directly from the limited liability company, at the time
37 provided in the limited liability company agreement or, if the
38 limited liability company agreement does not so provide or does not
39 exist, upon the consent of all members and when the person's

1 admission is reflected in the records of the limited liability
2 company;

3 (b) In the case of a transferee of a limited liability company
4 interest, upon compliance with any procedure for admission provided
5 in the limited liability company agreement or, if the limited
6 liability company agreement does not so provide or does not exist,
7 upon the consent of all members and when the person's admission is
8 reflected in the records of the limited liability company agreement;
9 ((~~or~~))

10 (c) In the case of a person being admitted as a member of a
11 surviving or resulting limited liability company pursuant to a merger
12 or conversion approved in accordance with this chapter, as provided
13 in the limited liability company agreement of the surviving or
14 resulting limited liability company or in the agreement of merger or
15 plan of merger or conversion, and in the event of any inconsistency,
16 the terms of the agreement of merger or plan of merger or conversion
17 control; and in the case of a person being admitted as a member of a
18 limited liability company pursuant to a merger or conversion in which
19 such limited liability company is not the surviving or resulting
20 limited liability company in the merger or conversion, as provided in
21 the limited liability company agreement of such limited liability
22 company; or

23 (d) In the case of a transferee acquiring all of the transferor's
24 limited liability company interest from a transferor that is the only
25 member of the limited liability company, upon the effectiveness of
26 the transfer.

27 (3) A person may be admitted as a member of a limited liability
28 company without acquiring a transferable interest and without making
29 or being obligated to make a contribution to the limited liability
30 company.

31 **Sec. 304.** RCW 25.15.121 and 2015 c 188 s 26 are each amended to
32 read as follows:

33 (1) Except as otherwise provided by this chapter, the affirmative
34 vote, approval, or consent of a majority of the members is necessary
35 for actions requiring member approval.

36 (2) The affirmative vote, approval, or consent of all members is
37 required to:

38 (a) Amend the certificate of formation, except as provided in RCW
39 25.15.076(2);

- 1 (b) Amend the limited liability company agreement;
- 2 (c) Authorize a manager, member, or other person to do any act on
3 behalf of the limited liability company that contravenes the limited
4 liability company agreement, including any provision that expressly
5 limits the purpose, business, or affairs of the limited liability
6 company or the conduct thereof;
- 7 (d) Admit as a member of the limited liability company a person
8 acquiring a limited liability company interest directly from the
9 limited liability company as provided in RCW 25.15.116(2) (a);
- 10 (e) Admit as a member of the limited liability company a
11 transferee of a limited liability company interest as provided in RCW
12 25.15.116(2) (b);
- 13 (f) Authorize a member's removal as a member of the limited
14 liability company as provided in RCW 25.15.131(1) (e);
- 15 (g) Waive a member's dissociation as a member of the limited
16 liability company as provided in RCW 25.15.131(1) (f), (g), or (h);
- 17 (h) ~~((Authorize the withdrawal of a member from the limited
18 liability company as provided in RCW 25.15.131(2));~~
- 19 ~~(i))~~ Compromise any member's obligation to make a contribution
20 or return cash or other property paid or distributed to the member in
21 violation of this chapter as provided in RCW 25.15.196(2);
- 22 ~~((j))~~ (i) Amend the certificate of formation and extend the
23 date of dissolution, if a dissolution date is specified in the
24 certificate of formation, as provided in RCW 25.15.265(1);
- 25 ~~((k))~~ (j) Dissolve the limited liability company as provided in
26 RCW 25.15.265(3);
- 27 (k) Approve a plan of conversion as provided in RCW 25.15.441(1);
- 28 (l) Sell, lease, exchange, or otherwise dispose of all, or
29 substantially all, of the limited liability company's property, other
30 than in the ordinary course of the limited liability company's
31 activities or activities of the kind carried on by the limited
32 liability company; or
- 33 (m) Undertake any other act outside the ordinary course of the
34 limited liability company's activities.
- 35 (3) A limited liability company agreement may provide for classes
36 or groups of members having such relative rights, powers, and duties
37 as the limited liability company agreement may provide, and may make
38 provision for the future creation in the manner provided in the
39 limited liability company agreement of additional classes or groups
40 of members having such relative rights, powers, and duties as may

1 from time to time be established, including rights, powers, and
2 duties senior to existing classes and groups of members. A limited
3 liability company agreement may provide for the taking of an action,
4 including the amendment of the limited liability company agreement,
5 without the vote or approval of any member or class or group of
6 members, including an action to create under the provisions of the
7 limited liability company agreement a class or group of limited
8 liability company interests that was not previously outstanding. A
9 limited liability company agreement may provide that any member or
10 class or group of members do not have voting rights.

11 (4) A limited liability company agreement may grant to all or
12 certain identified members or a specified class or group of the
13 members the right to vote separately or with all or any class or
14 group of the members or managers, on any matter. If the limited
15 liability company agreement so provides, voting by members may be on
16 a per capita, profit share, class, group, or any other basis.

17 (5) A limited liability company agreement may set forth
18 provisions relating to notice of the time, place, or purpose of any
19 meeting at which any matter is to be voted on by any members, waiver
20 of any such notice, action by consent without a meeting, the
21 establishment of a record date, quorum requirements, voting in person
22 or by proxy, or any other matter with respect to the exercise of any
23 such right to vote.

24 **Sec. 305.** RCW 25.15.131 and 2020 c 312 s 727 are each amended to
25 read as follows:

26 (1) A person is dissociated as a member of a limited liability
27 company upon the occurrence of one or more of the following events:

28 (a) The member dies or withdraws (~~((by voluntary act))~~) from the
29 limited liability company as provided in subsection (2) of this
30 section;

31 (b) The transfer of all of the member's transferable interest in
32 the limited liability company;

33 (c) The member is removed as a member in accordance with the
34 limited liability company agreement;

35 (d) The occurrence of an event upon which the member ceases to be
36 a member under the limited liability company agreement;

37 (e) The person is a corporation, limited liability company,
38 general partnership, or limited partnership, and the person is

1 removed as a member by the unanimous consent of the other members,
2 which may be done under this subsection (1)(e) only if:

3 (i) The person has filed articles of dissolution, a certificate
4 of dissolution or the equivalent, or the person has been
5 administratively or judicially dissolved, or its right to conduct
6 business has been suspended or revoked by the jurisdiction of its
7 incorporation, or the person has otherwise been dissolved; and

8 (ii) The dissolution has not been revoked or the person or its
9 right to conduct business has not been reinstated within ninety days
10 after the limited liability company notifies the person that it will
11 be removed as a member for any reason identified in (e)(i) of this
12 subsection;

13 (f) Unless all other members otherwise agree at the time, the
14 member (i) makes a general assignment for the benefit of creditors;

15 (ii) files a voluntary petition in bankruptcy; (iii) becomes the
16 subject of an order for relief in bankruptcy proceedings; (iv) files
17 a petition or answer seeking for the member any reorganization,
18 arrangement, composition, readjustment, liquidation, dissolution, or
19 similar relief under any statute, law, or regulation; (v) files an
20 answer or other pleading admitting or failing to contest the material
21 allegations of a petition filed against the member in any proceeding
22 of the nature described in (f)(i) through (iv) of this subsection; or
23 (vi) seeks, consents to, or acquiesces in the appointment of a
24 trustee, receiver, or liquidator of the member or of all or any
25 substantial part of the member's properties;

26 (g) Unless all other members otherwise agree at the time, if
27 within one hundred twenty days after the commencement of any
28 proceeding against the member seeking reorganization, arrangement,
29 composition, readjustment, liquidation, dissolution, or similar
30 relief under any statute, law, or regulation, the proceeding has not
31 been dismissed, or if within ninety days after the appointment
32 without his or her consent or acquiescence of a trustee, receiver, or
33 liquidator of the member or of all or any substantial part of the
34 member's properties, the appointment is not vacated or stayed, or
35 within ninety days after the expiration of any stay, the appointment
36 is not vacated; or

37 (h) Unless all other members otherwise agree at the time, in the
38 case of a member who is an individual, the entry of an order by a
39 court of competent jurisdiction adjudicating the member as being
40 subject to a conservatorship under RCW 11.130.360.

1 (2) A member may withdraw from a limited liability company at
2 (~~the time or upon the happening of events specified in and in~~
3 ~~accordance with the limited liability company agreement. If the~~
4 ~~limited liability company agreement does not specify the time or the~~
5 ~~events upon the happening of which a member may withdraw, a member~~
6 ~~may not withdraw from the limited liability company without the~~
7 ~~written consent of all other members)) any time. The withdrawn member
8 or transferee shall have no right to payment from the limited
9 liability company as a consequence of its withdrawal.~~

10 (3) When a person is dissociated as a member of a limited
11 liability company:

12 (a) The person's right to participate as a member in the
13 management and conduct of the limited liability company's activities
14 terminates;

15 (b) If the limited liability company is member-managed, the
16 person's fiduciary duties as a member end with regard to matters
17 arising and events occurring after the person's dissociation; and

18 (c) Subject to subsection (5) of this section, any transferable
19 interest owned by the person immediately before dissociation in the
20 person's capacity as a member is owned by the person solely as a
21 transferee.

22 (4) A person's dissociation as a member of a limited liability
23 company does not of itself discharge the person from any debt,
24 obligation, or other liability to the limited liability company or
25 the other members which the person incurred while a member.

26 (5) If a member dies, the deceased member's personal
27 representative or other legal representative may exercise the rights
28 of a transferee provided in RCW 25.15.251 and, for the purposes of
29 settling the estate, the rights of a current member under RCW
30 25.15.136.

31 **Sec. 306.** RCW 25.15.441 and 2015 c 188 s 85 are each amended to
32 read as follows:

33 (1) Subject to RCW 25.15.456, a plan of conversion must be
34 (~~consented to~~) approved either by all the members of a converting
35 limited liability company or as provided in a written limited
36 liability company agreement.

37 (2) Subject to RCW 25.15.456 and any contractual rights, after a
38 conversion is approved, and at any time before a filing is made under

1 RCW 25.15.446, a converting limited liability company may amend the
2 plan or abandon the planned conversion:

3 (a) As provided in the plan; and

4 (b) Except as prohibited by the plan, by the same approval as was
5 required to approve the plan.

--- **END** ---

TO: WSBA Board of Governors
FROM: Immediate Past President Kyle Sciuchetti
Executive Director Terra Nevitt
DATE: October 22, 2021
RE: 2021 Listening Tour Report & Recommendations

The WSBA Listening Tour is an annual opportunity for the WSBA President and Executive Director, joined by local Governors and any available At-Large Governors, to travel across the state to listen and engage with WSBA members. Due to the COVID-19 pandemic, there was no Listening Tour in 2020, but with things opening up, and masks in hand, we were able to connect in-person with WSBA members in Kitsap, Snohomish, Island, Skagit, Pacific, Mason, and Spokane counties between July and September. We also conducted a remote session for members in Asotin, Columbia, and Garfield counties. Several officers and governors were able to participate in the tour, and I am sure they join in our enthusiasm for the opportunity to connect with colleagues across the state over a meal and shared desire to further WSBA's mission to serve the public and the members, to ensure the integrity of the profession, and to champion justice.

These conversations can plant seeds that shape the future of WSBA and the profession, such as the Small Town and Rural Practice Committee, which grew out of a conversation that took place during the 2019 Listening Tour in the offices MDKJ Law firm in Davenport, WA. Below is a summary of what we shared with members on the tour, what we heard from them, and our recommendations arising out of those conversations.

What We Shared

In each county we shared updates and information, including the opportunity to comment on proposed rules for discipline and incapacity; the new malpractice insurance disclosure; the new required ethics credit in the category of equity, inclusion, and the mitigation of bias; the expansion of our member wellness program; the bar exam and the Washington State Supreme Court's Bar Licensure Task Force; strategic planning at WSBA, including discussions about the future of WSBA's physical space; the impact of the COVID-19 pandemic; and litigation impacting integrated bar associations.

What We Heard

Many of conversations related to the challenges of rural practice. Everyone agreed that recruiting and retaining legal professionals is a challenge for rural communities, including for public positions, which are often underfunded and low paying – especially for attorneys with substantial law school debt. Some people we talked to cited depressed local economies as a recruiting challenge. We also heard challenges related to hanging out a shingle and having to maintain a broad set of practice areas with none of the support staff and resources that new attorneys can be offered in a law firm environment. In terms of the benefits of having a rural practice, many cited flexibility and the relationships that can form with judges and colleagues that you know well. So what would help? Suggestions included, recognizing and acknowledging excellence in rural practice, higher compensation, help with student loans, having a supportive and energized local bar association, and addressing mental health challenges. We also heard that the cost of WSBA's job posting service is out of reach for small practices, government, and

nonprofits. On that last point, we were able to share the availability of discounts for those groups and followed with special promotions for job postings that further access to justice, including a current push to hire public defenders to comply with the recent *Blake* decision.

We also talked quite a bit about Washington's Rule 6, which provides a pathway to licensure, without attending law school. We had rich discussions about what it might look like to focus on developing homegrown lawyers, rather than exclusively on recruiting from right out of law school.

These conversations also touched on access to justice. In some places we heard, "pro bono isn't happening." In other places we heard the opposite, that in a small community, everyone gets taken care of one way or another. We talked a bit about the opportunities that remote lawyer might provide to provide legal services in areas with fewer legal resources. While there is agreement that remote access is a benefit, we learned that lack of reliable cell service is challenge, as is lack of access to e-filing and electronic court records. In addition, in at least one community we heard a concern that an increase in long distance lawyering might take business away from local practitioners.

The future of the WSBA office is always a hot topic and we heard from several folks about moving the WSBA's headquarters out of downtown Seattle. The pros and cons of the WSBA owning its own building were discussed and suggestions for a new location included, somewhere less expensive but on the light rail and Olympia. We also heard frustration over the Court's decision to grant diploma privilege and the experience of being the subject of a random audit and a grievance. The conversation about the latter did give rise to an interesting conversation about the role of WSBA's Office of Disciplinary Counsel and the possibility of providing support to WSBA members through some other part of the bar association such as the Advancement Department where many of our member services are administered. This might look like providing appointed counsel or perhaps support, education, and information about the process.

We did hear a number of appreciations as well, and topping the list is the Legal Lunchbox, which is a monthly free CLE program that members can use to meet all of their required credits in a reporting period. We also heard appreciation for the insurance marketplace, being able to volunteer remotely, practice management resources that are "so comprehensive. I would feel comfortable starting my own practice with these resources," and WSBA's Practice Primer series.

Recommendations

- 1. Prioritize the Listening Tour as a year-long and ongoing activity.** Scheduling and promotion for the Listening Tour should begin early in the fiscal year. Reaching every county annually or, at least biannually, will strengthen relationships and provide one avenue for ongoing feedback and information sharing. Note that this should not be the exclusive avenue! District and At-Large Governors should also attend bar events and meetings regularly.
- 2. Support Local Bar Associations.** Thriving local bar associations can help support thriving local legal communities. WSBA can support these efforts by regularly providing access to free CLEs and CLE speakers as well as proactively sharing resources for attorney well-being and law office management. WSBA should also consider providing paid membership to local bar associations for the President, President-Elect, Executive Director, and At-Large and district Governors to further engagement, participation, and relationship-building.

- 3. Continue Exploring the Future of WSBA's Physical Space.** Some WSBA members hold strong feelings about the location of WSBA's office. As the Long Range Strategic Planning Council explores our options, it will seek input and gather data about the costs and benefits of every option. Members are encouraged to reach out to the Long Range Strategic Planning Council and share their views on the subject.
- 4. Consider Some of the Feedback About Supporting Rural Practice.** As the STAR Committee gets up and running we encourage it to consider how to acknowledge and celebrate excellence in rural practice. We also encourage exploration of how to support and promote the law clerk program, how to partner with the Pro Bono and Public Service committee to promote pro bono in areas where it isn't already thriving, and partnering with the Access to Justice Board and the Alliance for Equal Justice on innovative approaches to increasing access to justice in rural areas.
- 5. Explore the Providing Support to Members in the Discipline System through Member Services.** We encourage WSBA leadership to examine models for providing assistance and/or representation for members who are the subject of a regulatory action, such as discipline, a random audit, a reinstatement hearing, or a character and fitness matter. Any potential solution must maintain the independence and integrity of WSBA's regulatory processes and public protection objectives.

MEMORANDUM

TO: WSBA Board of Governors
FROM: Terra Nevitt, Executive Director
DATE: October 25, 2021
RE: Materials related to the Legal Foundation of Washington's Proposed Amendment to RPC 1.15A

At its meeting on September 23-25, 2021, the Board of Governors heard from the [Legal Foundation of Washington](#) (LFW) and the WSBA Committee on Professional Ethics regarding LFW's request that WSBA join in proposing an amendment to RPC 1.15A to require lawyers to remit any unidentified funds in their trusts account to LFW. By majority vote, the Board expressed support for the effort to obtain this rule amendment and requested that the Committee on Professional Ethics and WSBA staff work to finalize a proposed rule change for the Board's consideration at the November meeting. You can review a recording of the discussion [here](#).

The Committee on Professional Ethics has now submitted proposed amendments to RPC 1.15A and 1.15B. In addition, Chief Disciplinary Counsel Doug Ende is suggesting a companion amendment to ELC 15.7. The Legal Foundation of Washington has not submitted any additional materials.

Please find the following materials:

1. Memo from the Committee on Professional Ethics, October 20, 2021
 - a. Committee on Professional Ethics Suggested Amendments to RPC 1.15A and B
 - b. Department of Revenue Director's Briefing Document, July 26, 2021
 - c. Clarifying Email from Don Curran, September 7, 2021
2. Memo from Chief Disciplinary Counsel Doug Ende, October 18, 2021
3. Attorney Client Privileged and Confidential Memo from General Counsel Julie Shankland, October 19, 2021 (available in Box)
4. BOG Meeting Materials from the September 23-25, 2021 meeting.

MEMORANDUM

TO: WSBA Board of Governors
President, Judge Brian Tollefson, Retired
WSBA Executive Director, Terra Nevitt

FROM: Pam Anderson, Chair, Committee on Professional Ethics
Jeanne Marie Clavere, Professional Responsibility Counsel

DATE: October 20, 2021

RE: Unidentifiable Funds in Lawyers' Trust Account

Action/Discussion: A recommendation in response to the Board of Governor's directive on September 24, 2021 that the Committee on Professional Ethics (CPE) prepare a proposed amendment to RPC 1.15A pursuant to an amendment proposed by the Legal Foundation of Washington (LFW).

A. Introduction

This memorandum provides a recommendation in response to the Board of Governor's directive (September 24, 2021 meeting) that the Committee on Professional Ethics (CPE) prepare a proposed amendment to RPC 1.15A. This directive follows a request of October 23, 2020 to Pamela Anderson, Chair of the WSBA Committee on Professional Ethics (CPE) from Kyle Sciuchetti, WSBA President, and Terra Nevitt, WSBA Interim Executive Director that the CPE make a recommendation as to whether WSBA should support, and potentially serve as a co-proponent of, an amendment to RPC 1.15A proposed by the Legal Foundation of Washington (LFW).

LFW has proposed that lawyers be required to remit any unidentified funds in their trusts account to the LFW, rather than to the Department of Revenue (DOR) as unclaimed property under the Uniform Unclaimed Property Act (UPA), RCW 63.29. The LFW distinguishes unidentified funds that cannot be traced to an owner from unclaimed property, the owner of which is known but cannot be located. The LFW believes that, in the aggregate, these unidentifiable trust account funds could supply meaningful revenue for access-to-justice programs.

Currently Washington's Comment [6] to RPC 1.15A addresses funds held by a lawyer when the owner cannot be located:

A lawyer has a duty to take reasonable steps to locate a client or third person for whom the lawyer is holding funds or property. If after taking reasonable steps, the lawyer is still unable to locate the client or third person, the lawyer should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29.

The comment does not specifically address situations when the owner cannot be identified.

B. Activities Undertaken by CPE After the Initial Request for a Recommendation

The CPE formed a subcommittee, which undertook the following activities:

1. Review of the materials provided by LFW with its memorandum of September 15, 2020, including background concerning RPC amendments in Illinois and Louisiana.
2. Review of the decision in a Massachusetts case, *In re Olchowski*, which interpreted a similar Massachusetts statute as not applicable to unidentified funds in lawyer trust accounts.
3. Telephone conversations with representatives of the Illinois Trust Fund and Louisiana Bar Foundation, which are analogous in mission to the LFW, and review of additional information provided by them. These representatives recommended reaching out to all stakeholders, which the subcommittee understood to include relevant state agencies such as DOR and the Attorney General's Office (AGO).
4. Preparation of a discussion draft of a potential amendment to Washington RPC 1.15A, modeled on the Illinois language quoted above.
5. Consultation with Mr. Ende regarding ethics issues presented by the discussion draft, which issues the CPE believes can be appropriately addressed.
6. Multiple consultations with, or reports to, Ms. Davis, including on April 4, May 5, May 12, June 7, and September 3, 2021, regarding the discussion draft, the LFW refund policy, the issues raised by Mr. Ende, approaches for addressing those issues, and the status of discussions with the AGO and DOR.

7. Multiple telephone conferences with Rosann Fitzpatrick, Assistant Attorney General for the Revenue Division, one of which occurred on August 10, 2021 and included Gil Brewer, Senior Assistant Director of Tax Policy for the DOR.
8. Review of "Director's Briefing Document" prepared by Rex Munger on DOR letterhead dated July 26, 2021, which was received following the August 10, 2021 conference and which is attached hereto.¹
9. Telephone conference on September 3, 2021, with Ms. Nevitt and Ms. Davis.

C. Discussion at September 24, 2021 BOG Meeting

The CPE presented four options to the BOG, which can be briefly summarized as follows:

- The BOG could defer taking action until after receipt of information about the position of the AGO and DOR concerning the LFW proposal
- The BOG could direct the WSBA Legislative Review Committee to explore collaboration with the DOR on an amendment to the UPA. Assistance with legislative matters is outside the purview of the CPE.
- The Board could decide to support the LFW proposal to amend RPC 1.15A (which should also include amending Comment [6] thereto).
- The Board could go further and act as a co-proponent of the LFW proposal, subject to the same condition, and with the same offer, as Option 3.

The CPE did not view these options as mutually exclusive.

Because no draft amendment was before the BOG at the September meeting, the BOG directed the CPE to work with the LFW to submit a proposed amendment for decision at the November 4-5 meeting.

D. Actions Since the September meeting

The CPE subcommittee has worked with Chief Disciplinary Counsel, Doug Ende to draft a proposed amendment to RPC 1.15A. The proposed amendment was approved by the CPE for submission to the BOG and has been shared with the Office of General Counsel and the LFW. In summary, the proposed rule would amend RPC 1.15A to require

¹ Mr. Munger's document incorrectly refers to a proposal by the WSBA, rather than the LFW. He has been notified of this misstatement and asked to attach our clarifying email to his document to avoid confusion.

a lawyer who knows of the existence of *unidentified client funds* in a trust account to take diligent steps to ascertain the identity of the client for a period of twelve months and thereafter remit the funds to the LFW. If the identity of the client is later discovered, or the remittance to LFW is determined to be an error, the lawyer must take reasonable steps to assure the funds are returned to the client. The amended comment anticipates LFW will adopt procedures for handling claims that funds were erroneously remitted.

The provisions related to the remittance of *unclaimed funds* to the Department of Revenue are not amended.

An amendment to RPC 1.15B is proposed to clarify that a lawyer is required to maintain current and accurate records that identify the client and matter for which trust funds were received, disbursed or transferred and that the remittance of funds to LFW is not a defense to a recordkeeping violation under the Rules.

The DOR Director's Briefing Document dated July 26, 2021, and a subsequent clarifying email are attached. At the September BOG meeting, it was suggested that the GR 9 for the proposed amended rule include a comment noting the DOR's interest in the amendment and potentially conflicting interpretation of the UPA.

Attachment:

Proposed Amendments

DOR Director's Briefing Document dated July 26, 2021

Clarifying Email Dated September 7, 2021

Suggested Amendments to RPC 1.15A and RPC 1.15B

New subsections (k) and (l) to RPC 1.15A

(k) If a lawyer knows of the existence of unidentified funds in a trust account established under this Rule, the lawyer must take periodic and reasonably diligent steps to identify the person entitled to receive the funds and return the funds to that person. If after learning of the existence of unidentified funds the lawyer is unable to ascertain the identity of the person entitled to receive the funds, after a period of twelve months the lawyer must promptly remit the funds to the Legal Foundation of Washington. A lawyer's reasonable judgment, made in good faith, about whether to remit the funds to the Legal Foundation of Washington, does not constitute a violation of this paragraph, even if subsequently determined to have been erroneous. If unidentified funds subject to this paragraph are remitted in error or if the person entitled to receive the funds is subsequently ascertained, the lawyer shall submit a claim to the Legal Foundation of Washington, unless the person entitled to receive the funds has already done so. After verification of the claim, the Legal Foundation of Washington will return the funds.

(l) "Unidentified funds" are amounts accumulated in a trust account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

Amendment to Comment [6] to RPC 1.15A

[6] If a lawyer is holding fund or property for an identifiable client or third person, the lawyer has a duty to take reasonable steps to locate ~~at the~~ client or third person ~~for whom the lawyer is holding funds or property~~. If after taking reasonable steps, the lawyer is still unable to locate the client or third person, the lawyer should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29. ~~If, after twelve months of reasonably diligent effort, the lawyer cannot identify the client or third person entitled to receive funds held in a trust account, the lawyer must promptly remit the funds to the Legal Foundation of Washington. Verification of the ownership of remitted funds under paragraph (k) of this Rule, as well as the processes under which claims are submitted and decided, is reserved solely to the Legal Foundation of Washington. The Legal Foundation of Washington may also consider claims submitted by the lawyer, lawyer's client, lawyer's former client, or a third party seeking a return of funds from the Legal Foundation of Washington, provided the claimant can verify the claim of entitlement to receive the funds remitted by a lawyer. A lawyer's duty concerning unidentified funds terminates on remittance of the funds to the Legal Foundation of Washington, except that if it is determined that funds were remitted in error or if the person entitled to receive the funds is subsequently~~

ascertained, the lawyer shall take reasonably prompt and practicable steps to assure that the funds are returned to the lawyer or directly to the person entitled to receive them, which may include submission of a claim to the Legal Foundation of Washington or assistance in the verification of such a claim. Paragraph (k) of this Rule shall also apply to the actions of a custodian appointed under Rule 7.7 of the Rules for Enforcement of Lawyer Conduct.

New Comment [4] to RPC 1.15B

[4] This Rule requires a lawyer to maintain current and accurate records that identify the client and matter for which trust funds were received, disbursed or transferred, the payor or payee, as well as other information set forth in the Rule. Rule 1.15B(a). If there are unidentified funds in a lawyer's trust account, the lawyer is required to comply with Rule 1.15A(k), but remittance of the unidentified funds to the Legal Foundation of Washington is not a defense to a charge of recordkeeping violations under this Rule. If a lawyer remits funds to, or submits a claim for return of funds to, the Legal Foundation of Washington under Rule 1.15A(k), records relating to the remittance or claim are subject to the recordkeeping requirements of this Rule.

The deliberative process exemption from public records disclosure applies to the development of an agency decision or position up to the point where a final decision or position is made.

Once complete, send this document as a link to the Director's Executive Assistant

UCP: Can "unidentified property" be diverted from being reported as UCP by rule of the WSBA?

Date	July 26, 2021
From	Rex N. Munger, ITA (360) 534-1554
Purpose	<input type="checkbox"/> Information <input type="checkbox"/> Decision
Issue	Can the WSBA by rule require that IOLTA funds described as "unidentified property" be turned over to the Legal Foundation of Washington for their use, rather than being remitted to the Department as unclaimed property as required by statute?

Executive Summary	<p><i>This section contains opinions, recommendations, or deliberations that may be subject to the deliberative process exemption.</i></p> <p>The WSBA proposal is contrary to the law because it is in conflict with existing UCP statutes. Having attorneys remit "unidentified property" in their IOLTA accounts to the Foundation is not permitted under the UCP statutes.</p>
Executive Decision	<p><i>This section should be used if the Director has been asked to make a decision regarding the information in this briefing. If the purpose of the briefing is only informational, please delete this section.</i></p>

Background	<p><i>Provide solely facts in this section. Do not include any opinions, recommendations, or deliberations.</i></p> <p>The WSBA (The Washington State Bar Association) has approached the Attorney General's office seeking their comment about a proposed WSBA rule.¹ The WSBA proposal is to require attorneys (who are regulated by the WSBA) to turn over "unidentified property" to the Legal Foundation of Washington. (The Foundation.)</p>
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¹ The concept of the rule is described in the October 23, 2020 WSBA correspondence. The WSBA does not yet have a specific draft rule.

The Foundation is a nonprofit organization created at the direction of the Washington Supreme Court. The proposal is designed to raise funds for the Foundation in a manner similar to what has been done in a few other states.

The Attorney General's office has sought the Department's input as this appears to impact the application of Washington's Unclaimed Property laws (UCP), which are administered by the Department. [1b]

The key issue is identified in the Foundation's memo, attached to the WSBA's letter. It makes the following distinction and comments on the UCP law:

Unidentified vs Unclaimed Property

- Unidentified property are funds or assets that cannot be traced to a specific owner.
- Unclaimed property are funds or assets that can be traced to a specific owner who cannot be located.

Currently in Washington State, all unclaimed property must be turned over to the State Department of Revenue after a period of due diligence in which the holder of the property attempts to locate the owner. Washington law is silent on how unidentified property should be disposed. However, in the Washington State Bar Association's publication called "Managing Client Trust Accounts," lawyers are advised to handle unidentified funds in their trust account as unclaimed property and remit them to the Department of Revenue.

The Foundation's memo makes no citation to any of the Washington state UCP statutes. The funds in question would be in attorney's IOLTA accounts. (These are trust accounts attorneys must maintain for their client's funds, and are regulated by the WSBA.)

Analysis

RCW Chapter 63.29 contains Washington State's Uniform Unclaimed Property Act. Nowhere in the Washington State UCP law, is there a distinction between "Unidentified Property" and Unclaimed Property. The Foundation's claim that the UCP Act is silent on Unidentified property is an incorrect statement of the law. In at least two sections of the UCP act, the statutes clearly refer to circumstances where the owner of the property is not known. In neither circumstance is the holder of the property allowed to keep the property, rather than remit it along with all other abandoned property.

Initially, the property in question would be "intangible property" as defined in RCW 63.29.010(12):

"Intangible property" does not include contract claims which are unliquidated but does include:

- (a) Moneys, checks, drafts, deposits, interest, dividends, and income;
- (b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

All abandoned intangible property must be remitted to the Department. RCW 63.29.020 and RCW 63.29.170.

RCW 63.29.030 provides "General rules for taking custody of intangible unclaimed property." This is property to be turned over to the State (the Department). RCW 63.29.030(2), lists property to be turned over to the state and includes intangible property that:

The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(Emphasis added.) Additionally, RCW 63.29.170(2)(a) describes the abandoned property report that the property holder must make to the Department. Among the requirements is that the report must:

- (a) Except with respect to travelers checks and money orders, *the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;*

(Emphasis added.)

The "if known" reference is a clear statutory statement that unclaimed property may include property where the owner is not known. Finally, unused abandoned gift cards are an area where the holder of the funds routinely does not know who the owner is. RCW 63.29.140 and RCW chapter 19.240 address the statutory treatment of gift cards. This is another area of the UCP Act demonstrating that there is no legal distinction between UCP where the owner is known or unknown.

Decision

This section contains opinions, recommendations, or deliberations that may be subject to the deliberative process exemption. Note: any statements of the law should not be redacted from this section.

Recommendation

This section contains opinions, recommendations, or deliberations that may be subject to the deliberative process exemption.

[1b]

The UCP Act applies to "unidentified property." The WSBA proposal is contrary to the law because it is in conflict with existing UCP statutes. The change suggested by the WSBA would need to be accomplished by legislative changes to RCW Chapter 63.29. The WSBA's current instructions to attorneys to remit such funds to the Department as unclaimed property are correct.

Code	Description of Exemption	Brief Explanation (how the record meets the criteria of the exemption)	Statute
[1b]	Attorney-Client Privilege	This record contains communication from attorney to client for the purpose of providing legal advice	RCW 42.56.070(1) & RCW 5.60.060(2)(a)

From: [Megan Chappell](mailto:Megan.Chappell)
To: rexm@dor.wa.gov
Cc: gilbertb@dor.wa.gov; rosann.fitzpatrick@atg.wa.gov; [J. Donald Curran](mailto:J.Donald.Curran); [Pamela H. Anderson](mailto:Pamela.H.Anderson) (pandapara@comcast.net); [Jeanne Marie Clavere](mailto:Jeanne.Marie.Clavere); [Cinda Fernald](mailto:Cinda.Fernald); [Brooks R. Holland](mailto:Brooks.R.Holland) (bholland@lawschool.gonzaga.edu); [Doug Ende](mailto:Doug.Ende)
Subject: Director's Briefing Document dated July 26, 2021
Date: Tuesday, September 7, 2021 2:13:23 PM

This email is being sent by my assistant, Megan.

Please direct all responses to me at jdcvlc@dctp.wa.gov

Dear Mr. Munger:

I am a member of a three-person subcommittee of the Committee on Professional Ethics of the Washington State Bar Association, as indicated in my email to Rosann Fitzpatrick dated May 12, 2021.

Your Director's Briefing Document dated July 26, 2021 states: "The Washington State Bar Association (WSBA) has approached the Attorney General's office seeking their comment about a proposed WSBA rule." A footnote indicates "The WSBA does not yet have a specific draft rule." The WSBA has never proposed a Rule, and the reference that it did has caused confusion. Let me explain.

The WSBA is an over forty-thousand member organization with many committees, one of which is the CPE. The CPE is a nine-volunteer-lawyer committee that issues advisory opinions and recommendations of possible changes to the Rules of Professional Conduct. The CPE reports to the Board of Governors. The BOG reports to the Supreme Court.

In the "Issue" paragraph of the Director's Briefing Document, it is stated:

Can the WSBA by rule require that IOLTA funds described as "unidentified property" be turned over to the Legal Foundation of Washington for their use, rather than being remitted to the Department as unclaimed property as required by statute?

It is important to understand that the WSBA can't do this or anything "by rule." It is the Supreme Court that has the rulemaking authority.

The discussion draft mentioned in my email to Rosann Fitzpatrick is just that and has never been approved by the Board of Governors.

The CPE would appreciate your appending a copy of this email to the Director's Briefing Document so that the WSBA's role is clearly understood, and no one misconstrues the CPE's inquiry as expressing the position of the WSBA.

Thank you for your cooperation and assistance.

Don Curran

Delay, Curran, Thompson, Pontarolo & Walker, P.S.

601 West Main Ave., Ste. 1212

Spokane, WA 99201

(509) 455-9500

(509) 623-1446 (fax)

jdcvlc@dctp.wa.gov

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electronic mail and delete or destroy all copies of this communication.

MEMORANDUM

To: WSBA President Brian Tollefson, WSBA Officers, and the Board of Governors
From: Douglas J. Ende, Chief Disciplinary Counsel
cc: Caitlin Davis, Executive Director, Legal Foundation of Washington
Pamela Anderson, Chair, WSBA Committee on Professional Ethics
Julie Shankland, General Counsel, Washington State Bar Association
Date: October 18, 2021
Re: CPE Draft Amendment to RPC 1.15A

At its October 15, 2021 meeting, the WSBA Committee on Professional Ethics approved a draft suggested amendment to Washington RPC 1.15A for presentation to the Board of Governors at its November 4-5 2021 meeting. That amendment relates to an initiative and request of the Legal Foundation of Washington (LFW) to require Washington lawyers to remit “unidentified funds” in lawyer trusts account to the LFW, rather than to the Department of Revenue as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29.

During my review of the CPE’s draft language and WSBA’s ongoing analysis of the issue, I have concluded that if such an amendment to RPC 1.15A were to be adopted, it ought to be accompanied by another rule change to ensure the confidentiality of attorney-client privileged information submitted to the LFW in connection with remittances of unidentified funds.

To that end, I recommend a companion amendment to Rule 15.7 of the Rules for Enforcement of Lawyer Conduct (ELC) governing trust accounts and the Legal Foundation of Washington. The recommended companion amendment, set forth below, is modeled on similar language found in ELC 5.4(b), which preserves the confidential and privileged nature of information submitted to disciplinary counsel in the course review or investigation of a disciplinary matter.

Suggested Amendment to ELC 15.7

(f) Duties Governing Unidentified Funds. As the recipient of unidentified funds under the authority of RPC 1.15A(k), the Legal Foundation is governed by the provisions set forth in this section.

(1) Privileged Information. The Legal Foundation receives and holds attorney-client privileged and other confidential client information under and in furtherance of the Supreme Court’s authority to regulate the practice of law. Disclosure of information to the Legal Foundation is not prohibited by RPC 1.6 or 1.9, and such disclosure does not waive any

attorney-client privilege. If a lawyer or a claimant identifies specific information that is privileged or confidential and requests that it be treated as confidential, the Legal Foundation must maintain the confidentiality of information the information provided.

(2) Procedures. The Legal Foundation must promulgate procedures to implement the remittance and claim processes governed by RPC 1.15A(k) and ensure compliance with section (1) of this rule. The Legal Foundation shall publish those procedures, along with sufficient information to adequately inform the public and members of the Association about the process of remitting unidentified funds and submitting claims for return of funds.

Suggested Amendments to RPC 1.15A and RPC 1.15B

New subsections (k) and (l) to RPC 1.15A

(k) If a lawyer knows of the existence of unidentified funds in a trust account established under this Rule, the lawyer must take periodic and reasonably diligent steps to identify the person entitled to receive the funds and return the funds to that person. If after learning of the existence of unidentified funds the lawyer is unable to ascertain the identity of the person entitled to receive the funds, after a period of twelve months the lawyer must promptly remit the funds to the Legal Foundation of Washington. A lawyer's reasonable judgment, made in good faith, about whether to remit the funds to the Legal Foundation of Washington, does not constitute a violation of this paragraph, even if subsequently determined to have been erroneous. If unidentified funds subject to this paragraph are remitted in error or if the person entitled to receive the funds is subsequently ascertained, the lawyer shall submit a claim to the Legal Foundation of Washington, unless the person entitled to receive the funds has already done so. After verification of the claim, the Legal Foundation of Washington will return the funds.

(l) "Unidentified funds" are amounts accumulated in a trust account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

Amendment to Comment [6] to RPC 1.15A

[6] If a lawyer is holding fund or property for an identifiable client or third person, the lawyer has a duty to take reasonable steps to locate ~~at the~~ the client or third person ~~for whom the lawyer is holding funds or property~~. If after taking reasonable steps, the lawyer is still unable to locate the client or third person, the lawyer should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29. If, after twelve months of reasonably diligent effort, the lawyer cannot identify the client or third person entitled to receive funds held in a trust account, the lawyer must promptly remit the funds to the Legal Foundation of Washington. Verification of the ownership of remitted funds under paragraph (k) of this Rule, as well as the processes under which claims are submitted and decided, is reserved solely to the Legal Foundation of Washington. The Legal Foundation of Washington may also consider claims submitted by the lawyer, lawyer's client, lawyer's former client, or a third party seeking a return of funds from the Legal Foundation of Washington, provided the claimant can verify the claim of entitlement to receive the funds remitted by a lawyer. A lawyer's duty concerning unidentified funds terminates on remittance of the funds to the Legal Foundation of Washington, except that if it is determined that funds were remitted in error or if the person entitled to receive the funds is subsequently

ascertained, the lawyer shall take reasonably prompt and practicable steps to assure that the funds are returned to the lawyer or directly to the person entitled to receive them, which may include submission of a claim to the Legal Foundation of Washington or assistance in the verification of such a claim. Paragraph (k) of this Rule shall also apply to the actions of a custodian appointed under Rule 7.7 of the Rules for Enforcement of Lawyer Conduct.

New Comment [4] to RPC 1.15B

[4] This Rule requires a lawyer to maintain current and accurate records that identify the client and matter for which trust funds were received, disbursed or transferred, the payor or payee, as well as other information set forth in the Rule. Rule 1.15B(a). If there are unidentified funds in a lawyer's trust account, the lawyer is required to comply with Rule 1.15A(k), but remittance of the unidentified funds to the Legal Foundation of Washington is not a defense to a charge of recordkeeping violations under this Rule. If a lawyer remits funds to, or submits a claim for return of funds to, the Legal Foundation of Washington under Rule 1.15A(k), records relating to the remittance or claim are subject to the recordkeeping requirements of this Rule.

WASHINGTON STATE BAR ASSOCIATION

Office of the Executive Director

October 23, 2020

Pamela H. Anderson, Chair
WSBA Committee on Professional Ethics
3117 Capitol Blvd SW
Tumwater, WA 98501-3301
VIA EMAIL: pandapara@comcast.net

Re: Request to advise the Board of Governors regarding possible RPC amendments relating to unidentified property

Dear Chair Anderson,

The Legal Foundation of Washington, the nonprofit organization created at the direction of the Washington Supreme Court to distribute IOLTA funds to legal aid organizations in Washington State, has recommended an amendment to Washington RPC 1.15A to require that unidentified property in a lawyer's trust account be remitted to the Legal Foundation of Washington rather than transferred to the Department of Revenue as abandoned property under the Uniform Unclaimed Property Act, Chapter 63.29 RCW. A memo to this effect from the Executive Director of the Legal Foundation, Caitlin Davis, is attached.

The proposal does not include a draft of an amendment to RPC 1.15A, but it does append rules adopted in Illinois and Louisiana that address the same issue in those jurisdictions. Additionally, it has come to our attention that the Supreme Judicial Court of Massachusetts recently held that that unidentified client funds on deposit in an IOLTA account do not fall within the statutory definition of "abandoned property" in that state and that such funds must be transferred to the IOLTA administrator in Massachusetts for disposition. A copy of that opinion, *In re Olchowski*, No. SJC-12730 (Mass. Oct. 1, 2020), is also attached.

The WSBA Board of Governors would appreciate a recommendation from the Committee on Professional Ethics as to whether WSBA should support and potentially serve as a co-proponent of such an amendment, and, if so, a recommendation as to the content of such an amendment. Ideally, the Board would receive the Committee's recommendation with ample time to analyze and act on it prior to October 15, 2021, the rule-submission deadline under General Rule 9.

Please keep Caitlin Davis Carlson apprised of the Committee's activity on this issue, and coordinate joint efforts with the Legal Foundation as appropriate. In addition, because of the potential effect of such an amendment on a lawyer's trust-accounting responsibilities, please include the Office of Disciplinary Counsel in the Committee's deliberations.



Let us know if you have questions about this request. On behalf of WSBA and the Board of Governors, thank you for your service as CPE Chair.

Sincerely,

Handwritten signature of Kyle D. Sciuchetti in blue ink, consisting of a stylized 'K' followed by a long horizontal line.

Kyle D. Sciuchetti
President

Handwritten signature of Terra Nevitt in blue ink, featuring a stylized 'T' and 'N'.

Terra Nevitt
Interim Executive Director

Enclosures

CC: Jeanne Marie Clavere, WSBA Professional Responsibility Counsel
Caitlin Davis, Executive Director, Legal Foundation of Washington
Douglas J. Ende, WSBA Chief Disciplinary Counsel
Gov. Brett Purtzer, BOG Liaison to the CPE

MEMORANDUM

1325 Fourth Avenue
 Suite 1335
 Seattle, WA
 98101-2509

Ph: (206) 624-2536
 Fax:(206) 382-3396

To:	Terra Nevitt, Executive Director, Doug Ende, Chief Disciplinary Council
From:	Caitlin Davis, Executive Director
Date:	September 15, 2020
Re:	Proposed IOLTA Rule Change

Over the last five years, IOLTA programs in several states (Pennsylvania, Texas, Louisiana, Vermont, Oregon, Oklahoma, Arkansas and Illinois) have amended court rules and or legislation to include changes regarding unclaimed or unidentified property in lawyers’ trust accounts. These changes have proven to be a new source of revenue for civil legal aid, as well as a tool that helps lawyers properly dispose of unidentified funds in their trust accounts. The Legal Foundation of Washington seeks to amend RPC 1.15 to include instructions on how lawyers handle unidentified property in their trust accounts.

Unidentified vs Unclaimed Property

- Unidentified property are funds or assets that cannot be traced to a specific owner.
- Unclaimed property are funds or assets that can be traced to a specific owner who cannot be located.

Currently in Washington State, all unclaimed property must be turned over to the State Department of Revenue after a period of due diligence in which the holder of the property attempts to locate the owner. Washington law is silent on how unidentified property should be disposed of. However, in the Washington State Bar Association’s publication called “Managing Client Trust Accounts,” lawyers are advised to handle unidentified funds in their trust account as unclaimed property and remit them to the Department of Revenue.

There are many circumstances in which a lawyer may have unidentified property in their trust accounts. The death of a lawyer, the dissolution of a law firm, the merger of lawyers or law firms, retirement, and other situations are examples of when a lawyer may be in possession of unidentified client funds.

The Legal Foundation of Washington seeks a rule amendment that would direct unidentified property to us. The rule amendment we propose would not address unclaimed property.

Experiences in Other States

Several of the states we looked at had amended IOLTA rule changes to include both unidentified and unclaimed property. After discussing those states' experiences with implementation, we decided to focus in on states that had pursued only an unidentified property amendment, Illinois and Louisiana.

Illinois

In March 2015, the Illinois Supreme Court adopted amendments to the IOLTA rule which directs unidentified property to the Lawyers Trust Fund of Illinois (the name of that state's IOLTA program). The Court was persuaded that the rule change would be a law office management tool to provide clearer guidance on how lawyers could dispose of unidentified funds in their trust accounts, as well as providing a new revenue source for civil legal aid. In the first two years of the rule amendment, \$1,007,000 was generated.

Washington is similar to Illinois in that the practice of law is under the supervision of the state Supreme Court and participation in the IOLTA program is mandatory for all lawyers who handle client funds. The Lawyers Trust Fund of Illinois is an independent 501 (c) 3 organization.

Attachments:

"Court Rule Change" article from Illinois Bar News

Illinois Rule of Professional Conduct 1.15 (amended April 7, 2015)

Unidentified Funds for Financial Institutions

Instructions for Remitting Unidentified Funds

Louisiana

On March 23, 2016, the Louisiana Supreme Court amended the Louisiana Rules of Professional Conduct 1.15 concerning how lawyers and law firms should handle unidentified funds accumulated in their IOLTA accounts. The amended rule directs lawyers who discover unidentified funds defined as funds in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person or the lawyer or law firm, to be remitted to the Louisiana Bar Foundation.

Attachments:

Louisiana Rule of Professional Conduct 1.15

Instructions for Remitting Unidentified Funds

Unidentified Funds Remittance Report

Why Implement a Similar Rule Amendment in Washington?

The Legal Foundation of Washington was established by the Washington Supreme Court thirty five years ago to administer the Interest on Lawyers Trust Account program and other available funds. We have decades of expertise working with lawyers, financial institutions and the WSBA on issues related to IOLTA accounts, and reporting on the use of those funds. Amending the RPC 1.15A to move unidentified property in trust accounts under the management of the Legal Foundation of Washington would be an easy expansion for our organization. The Legal Foundation has simple remittance and refund procedures that could easily be expanded to include unidentified property.

Next Steps

We would like WSBA to be a co-sponsor of this amendment to RPC 1.15. We submit this memo as an outline/genesis of what we hope will eventually be a GR 9 cover memo. We look forward to speaking with you about the rulemaking timeline, and how we could work with WSBA to co-sponsor this simple rule change.



**ILLINOIS STATE
BAR ASSOCIATION™**

THE BAR NEWS



Court Rule Change on Unidentified IOLTA Funds Raises Over \$1 Million for Legal Aid

A recent change to the rule governing how lawyers deal with unidentified funds in their pooled client trust accounts has generated over \$1,000,000 for legal aid in Illinois.

In March 2015, the Supreme Court of Illinois amended Rule 1.15 of the Illinois Rules of Professional Conduct to require Illinois lawyers to remit unidentified funds in these client trust accounts to the Lawyers Trust Fund of Illinois after a 12-month due diligence process to determine who owns the funds. Since the new rule went into effect on July 1, 2015, the Lawyers Trust Fund (LTF) has received \$1,007,829.21.

“For the 1.8 million Illinoisans living in poverty, legal aid is the only realistic option when confronted with a serious legal problem,” said LTF executive director Mark Marquardt. “Unfortunately, legal aid groups are facing serious financial headwinds in terms of both state and federal funding, which make this new source of revenue even more critical.”

The amended rule creates a process for lawyers to clear unidentified funds from client trust accounts that are part of the Interest on Lawyer Trust Account (IOLTA) program. An IOLTA account is a pooled interest-bearing trust account established to hold funds from multiple clients that are nominal in amount and/or held for a short period of time. Interest on these accounts is paid to the LTF, which uses IOLTA revenue to support not-for-profit legal aid programs that assist low-income Illinois residents.

The amended rule defines unidentified funds as “amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.”

“The Supreme Court is extremely pleased with how well the new mechanism is working,” Illinois Supreme Court Chief Justice Lloyd A. Karmeier said. “Until the court implemented the new system, handling

unidentified funds was a cumbersome and difficult problem for lawyers. The new rules greatly simplify the process. At the same time, they have opened up an important new source of funding for legal aid programs just as demand for such services is growing, but traditional funding is being threatened. It looks to be a win-win for everyone concerned.”

Unidentified funds are distinct from unclaimed funds, which are funds that belong to a known client or third party who cannot be located or does not respond to communications from the lawyer. Only unidentified funds should be sent to LTF under the new rule. Lawyers should continue to remit unclaimed funds to the state treasurer pursuant to the Uniform Disposition of Unclaimed Property Act.

After determining that the funds are unidentified, lawyers complete a simple, one-page form and send it, along with a check, to LTF. The form, along with a copy of the rule, written instructions, and an informational video, are available on the LTF website at www.ltf.org/lawyers/unidentified-funds/.

“Thanks to the foresight of the Supreme Court of Illinois, LTF is better positioned to support the legal aid system as it exists today, and to invest in new technologies and service strategies to help even more people in the future,” said Marquardt.

The Lawyers Trust Fund is a charitable foundation established by the Illinois State Bar Association and Chicago Bar Association in 1983. The Supreme Court of Illinois designated the Lawyers Trust Fund as the administrator of the Interest on Lawyer Trust Account program and as the recipient of a \$95 legal aid fee paid by Illinois attorneys as part of the annual registration process. The Lawyers Trust Fund is the largest single Illinois-based source of funding for civil legal services, providing approximately one out of every six dollars spent on legal aid in the state. For more information on the Lawyers Trust Fund, please visit www.ltf.org.

Posted on April 17, 2017 by Sara Anderson

Filed under: **Practice News**

Topic: **Legal aid Illinois Supreme Court**

LOGIN TO POST COMMENTS

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered April 7, 2015.

(Deleted material is struck through and new material is underscored.)

Effective July 1, 2015, Rule 1.15 of the Illinois Rules of Professional Conduct of 2010 is amended, as follows.

Amended Rule 1.15

Rule 1.15. SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. For the purposes of this Rule, a client trust account means an IOLTA account as defined in paragraph ~~(i)(2)~~ (j)(2), or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

Maintenance of complete records of client trust accounts shall require that a lawyer:

(1) prepare and maintain receipt and disbursement journals for all client trust accounts required by this Rule containing a record of deposits and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and the date, payee and purpose of each disbursement;

(2) prepare and maintain contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

(3) maintain copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;

(4) maintain all client trust account checkbook registers, check stubs, bank statements,

records of deposit, and checks or other records of debits;

(5) maintain copies of all retainer and compensation agreements with clients;

(6) maintain copies of all bills rendered to clients for legal fees and expenses;

(7) prepare and maintain reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances;

(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

Records required by this Rule may be maintained by electronic, photographic, or other media provided that printed copies can be produced, and the records are readily accessible to the lawyer.

Each client trust account shall be maintained only in an eligible financial institution selected by the lawyer in the exercise of ordinary prudence.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses incurred. Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited in the lawyer's general account or other account belonging to the lawyer. An advance payment retainer may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. An agreement for an advance payment retainer shall be in a writing signed by the client that uses the term "advance payment retainer" to describe the retainer, and states the following:

(1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client;

(2) that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account;

(3) the manner in which the retainer will be applied for services rendered and expenses incurred;

(4) that any portion of the retainer that is not earned or required for expenses will be refunded to the client;

(5) that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving an advance payment retainer, the agreement must so state and provide the lawyer's reasons for that condition.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such

property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) All funds of clients or third persons held by a lawyer or law firm which are nominal in amount or are expected to be held for a short period of time, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more IOLTA accounts, as defined in paragraph ~~(i)(2)~~ (j)(2). A lawyer or law firm shall deposit all funds of clients or third persons which are not nominal in amount or expected to be held for a short period of time into a separate interest- or dividend-bearing client trust account with the client designated as income beneficiary. Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Each IOLTA account shall comply with the following provisions:

(1) Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois and which offers IOLTA accounts within the requirements of this Rule as administered by the Lawyers Trust Fund of Illinois.

(2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

(3) An IOLTA account that meets the highest comparable rate or dividend standard set forth in paragraph (f)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest-yield bank product:

(a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers.

(b) for accounts with balances of \$100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in paragraph (h).

(c) for accounts with balances of \$100,000 or more, a money market fund with, or tied to, check-writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least \$250 million.

(4) As an alternative to the account options in paragraph (f)(3), the financial institution

may pay a “safe harbor” yield equal to 70% of the Federal Funds Target Rate or 1.0%, whichever is higher.

(5) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated; the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. The financial institution may assess only allowable reasonable fees, as defined in paragraph ~~(i)(8)~~ ~~(j)(8)~~. Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.

(g) A lawyer or law firm should exercise reasonable judgment in determining whether funds of a client or third person are nominal in amount or are expected to be held for a short period of time. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer’s or law firm’s exercise of reasonable judgment under this rule or decision to place client funds in an IOLTA account or a non-IOLTA client trust account on the basis of that determination. Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors:

- (1) the amount of interest which the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding;
- (2) the cost of establishing and administering the account, including the cost of the lawyer’s services;
- (3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client’s funds, net of any transaction costs, to the individual client.

(h) All trust accounts, whether IOLTA or non-IOLTA, shall be established in compliance with the following provisions on dishonored instrument notification:

(1) A lawyer shall maintain trust accounts only in eligible financial institutions that have filed with the Attorney Registration and Disciplinary Commission an agreement, in a form provided by the Commission, to report to the Commission in the event any properly payable instrument is presented against a client trust account containing insufficient funds, irrespective of whether or not the instrument is honored. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30 days notice in writing to the Commission. The Commission shall annually publish a list of financial institutions that have agreed to comply with this rule and shall establish rules and procedures governing amendments to the list.

(2) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

- (a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the

dishonored instrument, if such a copy is normally provided to depositors; and

(b) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(3) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by paragraph (h) of this Rule. Fees charged for the reasonable cost of producing the reports and records required by paragraph (h) are the sole responsibility of the lawyer or law firm, and are not allowable reasonable fees for IOLTA accounts as those are defined in paragraph ~~(i)(8)~~ (i)(8).

(i) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (i).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer.

~~(i)~~(j) Definitions

(1) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders or sales drafts, and electronic fund transfers.

(2) "IOLTA account" means a pooled interest- or dividend-bearing client trust account, established with an eligible financial institution with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of nominal or short-term funds of clients or third persons as defined in paragraph (f) and from which funds may be withdrawn upon request as soon as permitted by law.

(3) "Eligible financial institution" is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission that agrees to provide dishonored instrument notification regarding any type of client trust account as provided in paragraph (h) of this Rule; and that with respect to IOLTA accounts, offers IOLTA accounts within the requirements of paragraph (f) of this Rule.

(4) "Properly payable" refers to an instrument which, if presented in the normal course of

business, is in a form requiring payment under the laws of this jurisdiction.

(5) “Money market fund” is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act.

(6) “U.S. Government securities” refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement (“repo”) may be established only with an institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations.

(7) “Safe harbor” is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this Rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.

(8) “Allowable reasonable fees” for IOLTA accounts are per-check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment (“sweep”) fees, and a reasonable maintenance fee, if those fees are charged on comparable accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

(9) “Unidentified funds” are amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(j)(k) In the closing of a real estate transaction, a lawyer’s disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or

(2) has met the “good-funds” requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier’s check, teller’s check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding \$5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a

lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2, (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more client trust accounts. Client trust accounts should be made identifiable through their designation as "client trust account" or "client funds account" or words of similar import indicating the fiduciary nature of the account. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis complete records of client trust account funds as required by paragraph (a), including subparagraphs (1) through (8). These requirements articulate recordkeeping principles that provide direction to a lawyer in the handling of funds entrusted to the lawyer by a client or third person. Compliance with these requirements will benefit the attorney and the client or third party as these fiduciary funds will be safeguarded and documentation will be available to fulfill the lawyer's fiduciary obligation to provide an accounting to the owners of the funds and to refute any charge that the funds were handled improperly.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed. Specific guidance concerning client trust accounts is provided in the Client Trust Account Handbook published by the Illinois Attorney Registration and Disciplinary Commission as well as on the website of the Illinois Attorney Registration and Disciplinary Commission.

[3A] Paragraph (c) relates to legal fees and expenses that have been paid in advance. The

reasonableness, structure, and division of legal fees are governed by Rule 1.5 and other applicable law.

[3B] Paragraph (c) must be read in conjunction with *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007). In *Dowling*, the Court distinguished different types of retainers. It recognized advance payment retainers and approved their use in limited circumstances where the lawyer and client agree that a retainer should become the property of the lawyer upon payment. Prior to *Dowling*, the Court recognized only two types of retainers. The first, a general retainer (also described as a “true,” “engagement,” or “classic” retainer) is paid by a client to the lawyer in order to ensure the lawyer’s availability during a specific period of time or for a specific matter. This type of retainer is earned when paid and immediately becomes property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client. The second, a “security” retainer, secures payment for future services and expense, and must be deposited in a client trust account pursuant to paragraph (a). Funds in a security retainer remain the property of the client until applied for services rendered or expenses incurred. Any unapplied funds are refunded to the client. Any written retainer agreement should clearly define the kind of retainer being paid. If the parties agree that the client will pay a security retainer, that term should be used in any written agreement, which should also provide that the funds remain the property of the client until applied for services rendered or expenses incurred and that the funds will be deposited in a client trust account. If the parties’ intent is not evident, an agreement for a retainer will be construed as providing for a security retainer.

[3C] An advance payment retainer is a present payment to the lawyer in exchange for the commitment to provide legal services in the future. Ownership of this retainer passes to the lawyer immediately upon payment; and the retainer may not be deposited into a client trust account because a lawyer may not commingle property of a client with the lawyer’s own property. However, any portion of an advance payment retainer that is not earned must be refunded to the client. An advance payment retainer should be used sparingly, only when necessary to accomplish a purpose for the client that cannot be accomplished by using a security retainer. An advance payment retainer agreement must be in a written agreement signed by the client that contains the elements listed in paragraph (c). An advance payment retainer is distinguished from a fixed fee (also described as a “flat” or “lump-sum” fee), where the lawyer agrees to provide a specific service (*e.g.*, defense of a criminal charge, a real estate closing, or preparation of a will or trust) for a fixed amount. Unlike an advance payment retainer, a fixed fee is generally not subject to the obligation to refund any portion to the client, although a fixed fee is subject, like all fees, to the requirement of Rule 1.5(a) that a lawyer may not charge or collect an unreasonable fee.

[3D] The type of retainer that is appropriate will depend on the circumstances of each case. The guiding principle in the choice of the type of retainer is protection of the client’s interests. In the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account, pursuant to this Rule.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer’s custody, such as a client’s creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the

property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] Paragraphs (a), (f) and (g) requires that nominal or short-term funds belonging to clients or third persons be deposited in one or more IOLTA accounts as defined in paragraph ~~(i)(2)~~~~(j)(2)~~ and provides that the interest earned on any such accounts shall be submitted to the Lawyers Trust Fund of Illinois. The Lawyers Trust Fund of Illinois will disburse the funds so received to qualifying organizations and programs to be used for the purposes set forth in its by-laws. The purposes of the Lawyers Trust Fund of Illinois may not be changed without the approval of the Supreme Court of Illinois. The decision as to whether funds are nominal or short-term shall be in the reasonable judgment of the depositing lawyer or law firm. Client and third-person funds that are neither nominal or short-term shall be deposited in separate, interest- or dividend-bearing client trust accounts for the benefit of the client as set forth in paragraphs (a) and (f).

[7] Paragraph (h) requires that lawyers maintain trust accounts only in financial institutions that have agreed to report trust account overdrafts to the ARDC. The trust account overdraft notification program is intended to provide early detection of problems in lawyers' trust accounts, so that errors by lawyers and/or banks may be corrected and serious lawyer transgressions pursued.

[8] Paragraph (i) applies when accumulated balances in an IOLTA account cannot be documented as belonging to an identifiable client or third party, or to the lawyer or law firm. This paragraph provides a mechanism for a lawyer to remove these funds from an IOLTA account when, in the lawyer's reasonable judgment, further efforts to account for them after a period of 12 months are not likely to be successful. This procedure facilitates the effective management of IOLTA accounts by lawyers; addresses situations where an IOLTA account becomes the responsibility of a lawyer's successor, law partner, or heir; and supports the provision of civil legal aid in Illinois.

The Lawyers Trust Fund of Illinois will publish instructions for lawyers remitting unidentified funds. Proceeds of unidentified funds received under paragraph (i) will be distributed to qualifying organizations and programs according to the purposes set forth in the by-laws of the Lawyers Trust Fund. When a lawyer learns that funds have been remitted in error or later identifies the owner of remitted funds, the lawyer may make a claim to the Lawyers Trust Fund for the return of the funds. After verification of the claim, the Lawyers Trust Fund will return the funds to the lawyer who then ensures the funds are restored to the owner.

Paragraph (i) relates only to unidentified funds, for which no owner can be ascertained. Unclaimed funds in client trust accounts—funds whose owner is known but have not been claimed—should be handled according to applicable statutes including the Uniform Distribution of Unclaimed Property Act (765 ILCS 1025 et seq.).

[8][9] Paragraph ~~(i)~~~~(j)~~ provides definitions that pertain specifically to Rule 1.15. Paragraph

(1) defines expansively the meaning of “funds,” to include any form of money, including electronic fund transfers. Paragraph (2) defines an IOLTA account and paragraph (3) defines an eligible financial institution for purposes of the overdraft notification and IOLTA programs. Paragraph (4) defines “properly payable,” a term used in the overdraft notification provisions in paragraph (h)(1). Paragraphs (5) through (8) define terms pertaining to IOLTA accounts. Paragraph (9) defines “unidentified funds” as that term is used in paragraph (i).

~~{9}~~[10] Paragraph ~~(j)~~(k) applies only to the closing of real estate transactions and adopts the “good-funds” doctrine. That doctrine provides for the disbursement of funds deposited but not yet collected if the lawyer has already established an appropriate Real Estate Funds Account and otherwise fulfills all of the requirements contained in the Rule.

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015.

Lawyers' Trust Fund of Illinois

Unidentified Funds Information for Financial Institutions

In 2015, the rule governing lawyers' use of IOLTA and other client trust accounts was changed to address unidentified funds in IOLTA accounts. The change to Rule of Professional Conduct 1.15 defines unidentified funds as ***"amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm"***. The rule directs lawyers to make periodic efforts over a period of 12 months to identify the owner and return the unidentified funds. If after 12 months the lawyer believes that continued efforts will not succeed, the unidentified funds are to be remitted to the Lawyers Trust Fund.

A resource for lawyers

The amended rule provides a new resource that banks can highlight for their lawyer customers. The requirement to deal with accumulated balances that are unidentified is particularly relevant for lawyers who are nearing retirement or transition from the active practice of law. By taking proactive steps to manage the IOLTA account and either return or remit unidentified funds, a lawyer can avoid leaving a dormant account with a balance on deposit that ultimately will be administered by an executor or heir, or become the responsibility of the bank to remit to the state treasurer as unclaimed property.

What does this mean for banks?

The new rule applies to lawyers and has no direct impact on financial institutions. Management of each IOLTA account is left to the lawyer, and banks must continue to follow the requirements of the Uniform Disposition of Unclaimed Property Act (765 ILCS secs. 1025/1 et seq.) when holding accounts that are unclaimed or abandoned.

Unclaimed or unidentified funds?

The new rule only addresses only funds that cannot be documented as belonging to a client, a third person, or the lawyer or law firm. If the lawyer knows the accumulated funds belong to someone who cannot be located or who will not cash a check for payment of the funds, the funds are **unclaimed**. Under the Uniform Disposition of Unclaimed Property Act, funds in an IOLTA account that remain unclaimed for five years should be remitted by the lawyer to the treasurer through the I-CASH program. Lawyers should not remit unclaimed funds to LTF.

Instructions for remitting unidentified funds

Lawyers should remit unidentified funds to LTF by (1) submitting a completed Unidentified Funds Report (PDF) and (2) sending a check for the amount of the funds payable to the Lawyers Trust Fund of Illinois. Use of the reporting form is required in all cases. LTF cannot accept remittances made via ACH or wire transfer

LAWYERS TRUST FUND OF ILLINOIS

INSTRUCTIONS FOR REMITTING UNIDENTIFIED FUNDS

Illinois Rule of Professional Conduct 1.15 requires lawyers to address any unidentified funds accumulated in their IOLTA accounts:

A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (i). (The complete rule, along with additional information is available at www.ltf.org.)

Remitting Unidentified Funds

If you believe you are holding unidentified funds in an IOLTA account, please follow these instructions:

Step 1: Are the funds unidentified? Rule 1.15 defines unidentified funds as “amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.”

- If the accumulated funds belong to a known owner (a client or third person) who cannot be located or who will not cash a check for payment of the funds, the funds are **unclaimed**. Under the Uniform Disposition of Unclaimed Property Act (765 ILCS secs. 1025/1 *et seq.*), funds that remain unclaimed for five years may be remitted to the Illinois State Treasurer through the I-CASH program. (More information is available at icash.illinois.gov.) **Do not remit unclaimed funds to the Lawyers Trust Fund.**
- If you determine that the accumulated funds cannot be identified as belonging to a client or third person, or documented as belonging to the lawyer or law firm, proceed to Step 2.

Step 2: Have you met the 12-month requirement? After the discovery of unidentified funds, Rule 1.15(i) requires lawyers to make periodic efforts over 12 months to identify the owner of the funds and return them.

- If ownership of the unidentified funds is ascertained during the 12-month period, the lawyer should return the funds to the owner. If the owner cannot be located or does not accept payment of the funds, the lawyer should treat them as unclaimed funds. **These funds should not be remitted to the Lawyers Trust Fund.**
- After 12 months of periodic efforts to identify and return the funds, if the lawyer determines that further efforts will not succeed, **the funds must be remitted to the Lawyers Trust Fund.**

Step 3: Remit unidentified funds using this report. To remit funds, complete page 2 of this form with required information and signed verification. Send the completed form and a check for the amount of the unidentified funds **payable to the Lawyers Trust Fund of Illinois** to:

Lawyers Trust Fund of Illinois
12976 Collections Center Drive
Chicago, IL 60693

The Lawyers Trust Fund will send an electronic acknowledgement of the remittance and report to the email address supplied in Section A on page 2 of this form.

Step 4 (optional): Are you closing your IOLTA account? If you are remitting unidentified funds because you have retired or are leaving practice, you should close your IOLTA account by contacting your bank. Please send a Notice of Account Closing to LTF (available here: <https://goo.gl/fv5NeS>).

Do you need assistance? Contact us: Director of Banking Terri-Smith Ashford: 312-938-3001, terri@ltf.org or LTF General Counsel David Holtermann: 312-938-3076, david@ltf.org

LAWYERS TRUST FUND OF ILLINOIS
12976 Collections Center Drive
Chicago, IL 60693

UNIDENTIFIED FUNDS REMITTANCE REPORT

This form is for the remittance of unidentified funds from IOLTA accounts pursuant to Illinois Rule of Professional Conduct 1.15

A. PERSON MAKING REPORT

<p>1. Name: _____</p> <p>Address: _____</p> <p>_____</p>	<p>2. Law Firm Name: <i>(if applicable)</i></p> <p>Address: _____</p> <p>_____</p>
<p>3. Phone: _____</p> <p>_____</p>	<p>4. ARDC Number: <i>(if applicable)</i></p> <p>_____</p>
<p>5. Email: _____</p> <p>_____</p>	

B. IOLTA ACCOUNT OWNER INFORMATION: *(Complete only if different from reporting lawyer)*

<p>1. Name: _____</p> <p>Address: _____</p> <p>_____</p>	<p>2. Law Firm Name: <i>(if applicable)</i></p> <p>Address: _____</p> <p>_____</p>
<p>3. Phone: _____</p> <p>_____</p>	<p>4. ARDC Number: <i>(if applicable)</i></p> <p>_____</p>

C. IOLTA ACCOUNT & UNIDENTIFIED FUNDS INFORMATION:

<p>1. Bank Name/Address: _____</p> <p>_____</p>	<p>2. Account Information:</p> <p>_____</p> <p style="text-align: center;"><i>Routing Number</i></p> <p>_____</p> <p style="text-align: center;"><i>Account Number</i></p>
<p>3. Amount of Unidentified Funds Remitted: _____</p> <p style="text-align: center;"><i>(Enclose check for above amount payable to: Lawyers Trust Fund of Illinois)</i></p>	
<p>4. Provide additional details <i>(optional)</i>.</p> <p>_____</p>	

REMINDER: Remit only funds that are **unidentified** and after satisfying the **12-Month requirement**.

D. VERIFICATION: I verify that the information reported on this form is true and correct, and that I am remitting the unidentified funds referenced above pursuant to Rule of Professional Conduct 1.15.

<p>_____ Signature (if unsigned, report will be returned)</p>	<p>_____ Date</p>
<p>_____ Print Name</p>	

Mail the report & remittance check to Lawyers Trust Fund, 12976 Collections Center Drive, Chicago IL 60693

FOR OFFICE USE ONLY

BATCH NUMBER	BANK NAME	ROUTING NO.	CHECK NO.	DATE POSTED

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, and the inherent power of this Court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Rule 1.15, Sections (g)(7) and (h) of the Louisiana Rules of Professional Conduct be and are hereby enacted to read as follows:

Rule 1.15. Safekeeping Property

* * * * *

(g)(7) "Unidentified Funds" are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(h) A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (h).

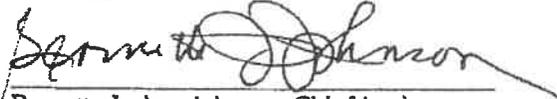
A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the

Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

These rule changes shall become effective upon signing, and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court.

New Orleans, Louisiana, this 23rd day of March, 2016

FOR THE COURT:



Bernette Joshua Johnson, Chief Justice

SUPREME COURT OF LOUISIANA
A TRUE COPY



Robin A. Burras
Deputy Clerk of Court

LOUISIANA BAR FOUNDATION
INTEREST ON LAWYERS TRUST ACCOUNTS (IOLTA) Program
INSTRUCTIONS FOR REMITTING UNIDENTIFIED FUNDS

Effective March 23, 2016, amendments to the Louisiana Rules of Professional Conduct 1.15 require lawyers to change how they handle unidentified funds in IOLTA accounts. The amended rule states in part:

Unidentified Funds are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm. A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph. A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

Remitting Unidentified Funds

If you believe you are holding unidentified funds in an IOLTA account, please follow these instructions:

Step 1: Are the funds unidentified? Rule 1.15 defines unidentified funds as “funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.”

- If you determine that the accumulated funds cannot be identified as belonging to a client or third person, or documented as belonging to the lawyer or law firm, proceed to Step 2.

Step 2: Have you met the one year requirement? Rule 1.15(g)(7) states that unidentified funds are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

- If ownership of the unidentified funds is ascertained, the lawyer should return the funds to the owner.
- If after at least one year and reasonable due diligence, the lawyer cannot document the funds as belonging to the client, a third person or the lawyer or law firm, **the funds must be remitted to the Louisiana Bar Foundation.**
- Unidentified funds discovered before the effective date of the new rule (March 23, 2016) may be remitted to the Louisiana Bar Foundation as long as there has been reasonable due diligence beyond a one-year period to identify the owner and return the funds. However, no lawyer is required to begin efforts to identify and return previously discovered funds until the March 23, 2016 effective date.

Step 3: Remit unidentified funds using this report. To remit funds, complete page 2 of this form with required information and signed verification. Send the completed form and a check for the amount of the unidentified funds **payable to the Louisiana Bar Foundation** to:

Louisiana Bar Foundation
Attn: Unidentified Funds
1615 Poydras Street, Suite 1000
New Orleans, LA 70112

The Louisiana Bar Foundation will send an electronic acknowledgment of the remittance and report to the email address supplied in Section A on page 2 of this form.

Do you need assistance? Contact us at the LBF Office 504-561-1046: IOLTA Program Coordinator Tina Ferrera at tina@raisingthebar.org or Executive Director Donna C. Cuneo at donna@raisingthebar.org

LOUISIANA BAR FOUNDATION
1615 Poydras Street, Suite 1000
New Orleans, LA 70112
(504) 561-1046

UNIDENTIFIED FUNDS REMITTANCE REPORT

This form is for the remittance of unidentified funds from IOLTA accounts pursuant to the Louisiana Rules of Professional Conduct 1.15

A. PERSON MAKING REPORT:

1. Name: _____
2. Law Firm Name: _____
3. Address: _____
4. Phone: _____
5. Email: _____

B. IOLTA ACCOUNT OWNER INFORMATION: *(Complete only if different from reporting lawyer)*

1. Name: _____
2. Law Firm Name: _____
3. Address: _____
4. Phone: _____
5. Email: _____

C. IOLTA ACCOUNT & UNIDENTIFIED FUNDS INFORMATION:

1. Bank Name: _____
2. Bank Address: _____
3. Bank Account Number: _____
4. Bank Account Routing Number: _____
5. Amount of Unidentified Funds Remitted: _____
(Enclose check for above amount payable to Louisiana Bar Foundation)
6. Other Details (optional): _____

REMINDER: Remit only funds that are unidentified and meet requirements of Rule 1.15.

D. VERIFICATION: I verify that the information reported on this form is true and correct, and that I am remitting the unidentified funds referenced above pursuant to the Louisiana Rules of Professional Conduct 1.15.

Signature *(if unsigned, report will be returned)*

Date

Print Name

.....
FOR OFFICE ONLY: Check No. _____ **Date Posted:** _____

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRReporter@sjc.state.ma.us

SJC-12730

IN THE MATTER OF GREGORY M. OLCHOWSKI.

Suffolk. February 11, 2020. - October 1, 2020.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher,
& Kafker, JJ.¹

Board of Bar Overseers. Treasurer and Receiver General.
Attorney at Law, Disciplinary proceeding, Client funds.
Abandoned Property.

Information filed in the Supreme Judicial Court for the county of Suffolk on September 21, 2012.

A motion to remit funds, filed on October 18, 2018, was reported by Kafker, J.

Maureen Mulligan (Kristyn M. Kelley also present) for Massachusetts IOLTA committee.

Timothy J. Casey, Assistant Attorney General, for Treasurer and Receiver General.

Robert M. Daniszewski, Assistant Bar Counsel, was present but did not argue.

Michael J. Serduck, for the respondent, was present but did not argue.

The following submitted briefs for amici curiae:

Karen D. O'Toole for Massachusetts Clients' Security Board & another.

¹ Chief Justice Gants participated in the deliberation on this case and authored this opinion prior to his death.

Jeffrey D. Woolf for Board of Bar Overseers.

Mary K. Ryan, Micah W. Miller, Martin W. Healy, Thomas J. Carey, Jr., & Francis C. Morrissey for Boston Bar Association & others.

Georgia D. Katsoulomitis, Jacquelynne Bowman, Jonathan Mannina, Elizabeth A. Soule, George Weber, Susan Nagl, Richard Dubois, Elizabeth Matos, John A. Froio, Jay McManus, Kathleen B. Boundy, Cathy Costanzo, & Janine Solomon for Massachusetts Law Reform Institute & others.

GANTS, C.J. The question presented in this case concerns the proper disposition of unidentified client funds on deposit in an Interest on Lawyers' Trust Account (IOLTA or IOLTA account): should they be remitted to the Commonwealth's general fund under the abandoned property statute, G. L. c. 200A, or to the IOLTA committee pursuant to this court's inherent authority to govern the conduct of Massachusetts attorneys? We conclude that trust funds on deposit in an IOLTA account do not fall within the statutory definition of "abandoned property" and therefore the disposition of these funds is not governed by G. L. c. 200A. We also conclude that unidentified IOLTA funds should be transferred to the IOLTA committee for disposition, as set forth in this opinion.²

² We acknowledge the amicus briefs submitted by the Board of Bar Overseers; the Massachusetts Clients' Security Board and the Massachusetts Clients' Security Fund; the Boston Bar Association, the Massachusetts Bar Association, and the Real Estate Bar Association for Massachusetts, Inc.; and the Massachusetts Law Reform Institute.

Background. We recite the facts of this case as stated in the parties' joint statement of undisputed facts. On November 23, 2012, this court issued an order temporarily suspending Gregory M. Olchowski from the practice of law. As part of this order, in accordance with our rules governing bar discipline and clients' security protection, Olchowski was directed to notify each of his clients that he had been suspended from the practice of law and could no longer represent them, to make all files available to clients, to refund fees not earned, to close every IOLTA, client, trust or other fiduciary account, and to disburse all client and fiduciary funds in his possession. See S.J.C. Rule 4:01, § 17 (1), as amended, 426 Mass. 1301 (1997).

At the time of Olchowski's temporary suspension, he maintained two IOLTA accounts, one with Bank of America and one with Citizens Bank, which held a combined total of \$29,927. Olchowski was unable to identify the owners of the funds in the IOLTA accounts, so Olchowski's accountant, a Massachusetts-certified public accountant, undertook to try to identify the owners of the unidentified funds. However, the accountant was unable to discover the identity of any of the owners of the funds in Olchowski's IOLTA accounts.³

³ In May 2013, we issued a judgment disbaring Gregory M. Olchowski, retroactive to November 23, 2012.

On December 11, 2017, Olchowski's attorney notified the Office of Bar Counsel (bar counsel) that there were unidentified funds in Olchowski's IOLTA accounts. Subsequently, a financial investigator from the office examined Olchowski's IOLTA accounts to try to determine the owners of the funds. Bar counsel obtained the records for the two IOLTA accounts from the office of Olchowski's former accountant and subpoenaed records from the two banks where the accounts were opened. After reviewing these records, the investigator was unable to determine the owner or owners of the unidentified funds in either of Olchowski's IOLTA accounts.

While efforts were being made to identify the owners of the funds, Olchowski's attorney transferred the unidentified funds from the IOLTA accounts into an escrow account. At the time briefs were filed in this case, the escrow account balance was \$29,952, including the unidentified funds and twenty-five dollars deposited to open the account. Automatic withdrawals transferring monthly interest payments to the IOLTA committee continued to be made from this account.

In October 2018, Olchowski's attorney moved that the single justice order the transfer of the unidentified funds from Olchowski's two IOLTA accounts to the IOLTA committee. The motion was served on the director of the unclaimed property division of the office of the Treasurer and Receiver General

(Treasurer), and the director of the IOLTA committee. The Treasurer moved to intervene and requested that the funds be remitted to the treasury as "abandoned property" under G. L. c. 200A. The IOLTA committee then moved to intervene and requested that the funds be remitted to it. Bar counsel took "no position on the issue of whether IOLTA funds whose owners cannot be identified . . . should escheat to the [Treasurer] or be remitted to the IOLTA [c]ommittee," but requested that it be notified of the existence of unidentified funds and have the opportunity to complete "any investigation and review it deems necessary" to determine whether the attorney responsible for the IOLTA accounts should be disciplined and "to ensure that the owners in fact are unknown."

The single justice reserved and reported the matter to the full court, stating that "[t]he ultimate question for the court to decide is where these particular unidentified client funds should go" -- either to the Commonwealth as unclaimed property or to the IOLTA committee. Additionally, the single justice noted that in answering this ultimate question, we would likely have to address three subsidiary questions: (1) "Do unidentified client funds on deposit in an IOLTA account fall within the statutory definition of 'abandoned property' under G. L. c. 200A?"; (2) "Does Mass. R. Prof. C. 1.15, [as appearing in 471 Mass. 1380 (2015),] or any other rule of this court,

govern the disposition of such funds?"; and (3) "Are any constitutional issues raised by the parties' proposed disposition(s) of the funds?"

Discussion. 1. Supreme Judicial Court's superintendence authority over the practice of law. To address these issues, we first explain our governance of the bar and the practice of law. Among the inherent superintendence powers of the Supreme Judicial Court is the authority to govern the conduct of attorneys in the practice of law. See Collins v. Godfrey, 324 Mass. 574, 576 (1949) ("It must now be regarded as settled that in the distribution of powers under art. 30 [of the Massachusetts Declaration of Rights] the ultimate power of general control over the practice of law by its own officers fell to the judicial department"). See also Opinion of the Justices, 375 Mass. 795, 813 (1978) ("As to attorneys admitted to practice before the courts of the Commonwealth, we retain the ultimate authority to control their conduct in the practice of law"). This superintendence authority includes determining who is qualified to be admitted to the bar to practice law, controlling the practice of law through rules of professional conduct, disciplining attorneys who violate those rules, and suspending and disbarring those attorneys who are no longer fit to practice law. See Opinion of the Justices, 279 Mass. 607, 609-610 (1932) ("It is an inherent power of [the judicial]

department of government ultimately to determine the qualifications of those to be admitted to practice in its courts, for assisting in its work, and to protect itself in this respect from the unfit, those lacking in sufficient learning, and those not possessing good moral character").

In the exercise of this superintendence authority, we have promulgated several rules, including S.J.C. Rule 3:07, as amended, 480 Mass. 1315 (2018) (Massachusetts Rules of Professional Conduct), which governs the conduct of attorneys; S.J.C. Rule 4:01, which governs bar discipline, and establishes the Board of Bar Overseers (board) to adjudicate disciplinary matters and bar counsel to investigate and prosecute such matters; and S.J.C. Rules 4:04 through 4:06,⁴ which establish the Clients' Security Board to reimburse clients for losses arising from the misappropriation of funds by members of the bar acting either as attorneys or fiduciaries. In short, this court has established a series of rules that together govern the conduct of attorneys, provide for the discipline of attorneys who violate the rules of professional conduct, and protect clients from losses arising from defalcations by members of the bar.

⁴ S.J.C. Rule 4:04, as appearing in 482 Mass. 1301 (2019); S.J.C. Rule 4:05, as appearing in 482 Mass. 1303 (2019); and S.J.C. Rule 4:06, as appearing in 482 Mass. 1304 (2019).

2. IOLTA accounts. Rule 1.15 of the Massachusetts Rules of Professional Conduct governs the safekeeping of property entrusted to an attorney. An attorney in possession of "trust property," defined as the "property of clients or third persons that is in a lawyer's possession in connection with a representation," is required to hold it "separate from [his or her] own property," and deposit trust funds in a "trust account." Mass. R. Prof. C. 1.15 (a) (1), (b) (1).

An attorney must deposit trust funds in one of two types of interest-bearing trust accounts: (1) where, in the judgment of the attorney, the trust funds "are nominal in amount, or are to be held for a short period of time," the attorney must deposit trust funds into an IOLTA account; or (2) where the amount of money is more than nominal and is to be held for longer than a short period of time, an attorney must deposit the money into an individual trust account. Mass. R. Prof. C. 1.15 (e) (6). With an individual trust account, the identity of the beneficial owner should always be known because the account is held in a client's name, with all accruing interest paid to the client. Mass. R. Prof. C. 1.15 (e) (3), (6). But an IOLTA account is a "pooled account" that may hold deposits from multiple clients and third persons at the same time. Mass. R. Prof. C. 1.15 (e) (6). A bank holding an IOLTA account does not receive any

identifying information about the client or third person whose funds may be pooled in the attorney's account.

Funds deposited into an IOLTA account may be retainers or advances paid by clients for legal fees that have yet to be actually earned by the attorney, client funds that are awaiting disbursement following judgment or a settlement, or third-party funds that are awaiting distribution, such as the funds distributed after a closing on the sale of real property. See Tyrrell and Casey, *Managing Clients' Funds and Avoiding Ethical Problems*, at 4-5 (Jan. 2018). Because an IOLTA account is "pooled," because the bank holding the account does not know to whom the funds in an IOLTA account belong, and because an attorney is responsible to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive," Mass. R. Prof. C. 1.15 (c), an attorney is required to adhere to strict record-keeping and reconciliation requirements for an IOLTA account. See Mass. R. Prof. C. 1.15 (f). An attorney with an IOLTA account is required to keep a ledger for each client matter that identifies every receipt or disbursement of trust funds for that matter, so that the attorney knows at all times how much money in the IOLTA account is beneficially owned by each client and third person. See id. And the attorney is required to prepare a reconciliation report no less than every sixty days to verify

the balance for each client and third person. See Mass. R. Prof. C. 1.15 (f) (1) (C), (E), (F).

Where an attorney fails to keep careful records and prepare periodic reconciliation reports, the risk arises that he or she may not know who is entitled to the trust funds in an IOLTA account, and that the clients and third persons who beneficially own these funds will be deprived of them. Because attorneys are not routinely required to submit reconciliation reports to anyone, neither a bank nor bar counsel will immediately learn if an attorney has failed to keep proper records. In order to assist with oversight of attorney record-keeping, financial institutions accepting IOLTA deposits must agree to report any dishonored checks on IOLTA accounts to the board. Mass. R. Prof. C. 1.15 (h) (1). Because a dishonored check in an IOLTA account may reflect an attorney's failure properly to manage an IOLTA account, receipt of such notice may trigger an investigation by bar counsel into the attorney's management of his or her IOLTA account, and a request for account documentation and reconciliation reports as part of that investigation. See Mass. R. Prof. C. 1.15 (h).

When an attorney is suspended from the practice of law, disbarred, or placed in disability inactive status, or resigns from the bar during a disciplinary investigation, the attorney, among other obligations, must within fourteen days close every

individual trust and IOLTA account, properly disburse or transfer all funds in those accounts, and refund any legal fees that were paid in advance but had not been earned. See S.J.C. Rule 4:01, § 17 (1) (f), (g). And the attorney within twenty-one days must furnish bar counsel with an affidavit attesting to compliance with these obligations and provide "a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession." S.J.C. Rule 4:01, § 17 (5) (c). If an attorney's poor record-keeping was not the impetus for bar discipline, an attorney's inability to identify the beneficial owners of IOLTA funds will become apparent when the attorney's IOLTA accounts are closed. Similarly, IOLTA funds may be unidentified where an attorney who is a sole practitioner is placed on disability inactive status, disappears, or dies, and has made no provisions for the transfer of IOLTA account documents and reconciliation reports, or for the disbursement of funds in an IOLTA account.

Where there are unidentified IOLTA funds arising from a bar disciplinary matter, bar counsel may conduct a forensic investigation to attempt to identify the owners of the funds, as happened in this case. Because the records in the custody of the bank holding the IOLTA account may not disclose the ownership of these funds, or the amount owned, bar counsel's investigation might require a confidential examination of the

attorney's records, including privileged attorney-client communications and attorney work product. Where unidentified IOLTA funds arise from the death, disability, or disappearance of an attorney, and where no partner, executor, or other responsible person is capable of conducting the attorney's affairs, a single justice of the county court may appoint a commissioner to make an inventory of the attorney's files and protect the interests of the attorney's clients, which includes identifying the owners of the unidentified funds. See S.J.C. Rule 4:01, § 14 (1), as appearing in 425 Mass. 1318 (1997). The commissioner's examination of the attorney's files is confidential; the commissioner "shall not disclose any information contained in any files listed in such inventory without the consent of the client to whom such file relates except as necessary to carry out the order of this court to make such inventory." S.J.C. Rule 4:01, § 14 (2).

Where bar counsel or a court-appointed commissioner identifies the owners of previously unidentified funds in an attorney's IOLTA account, the funds are provided to their rightful owner, assuming the owner can be located. When the owner of funds cannot be identified, it can be inferred that one or more unknown clients or third parties who had entrusted funds to the attorney who was responsible for the IOLTA account have been deprived of funds that are rightfully theirs. Clients who

can establish that they suffered losses arising from defalcations by members of the bar can seek reimbursement from the Clients' Security Board. See S.J.C. Rule 4:05, as appearing in 482 Mass. 1303 (2019). But where the true owner of IOLTA funds cannot be identified, he or she cannot be informed that the mismanagement of the attorney's IOLTA account might have caused him or her to suffer losses arising from an attorney's defalcation.

Under Mass. R. Prof. C. 1.15 (g), the interest on IOLTA accounts is distributed to the IOLTA committee, whose members are appointed by this court to oversee the operation of the IOLTA program. The IOLTA committee, in turn, disburses sixty-seven percent of all IOLTA-generated funds, net of expenses, to the Massachusetts Legal Assistance Corporation and the remaining thirty-three percent to "other designated charitable entities," in proportions ordered by this court, to improve the administration of justice and deliver legal services to those who cannot afford them. Mass. R. Prof. C. 1.15 (g) (4) (i). But neither rule 1.15 nor any other rule promulgated by this court declares what happens to the principal in IOLTA accounts when a true owner cannot be identified.

3. Abandoned property law. The Treasurer contends that the disposition of unidentified funds in an IOLTA account is governed by the abandoned property law, G. L. c. 200A. The

abandoned property law, first enacted in St. 1950, c. 801, "sets forth a comprehensive scheme governing the disposition of abandoned property." Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen., 454 Mass. 174, 176 (2009). The legislative purposes of the law are threefold: "protecting true owners' rights, bringing additional revenues to the treasury, and providing a procedure for the transfer of abandoned property." Id.

The law requires every "person"⁵ holding presumptively abandoned funds annually to furnish the Treasurer with a report identifying the name and last known address appearing in its records of the owner of any presumptively abandoned funds of one hundred dollars or more, and transfer those funds to the treasury. G. L. c. 200A, §§ 7, 8A. Sixty days before filing the report, the holder of the presumptively abandoned funds must send a notice to the apparent owner of the funds, at the last known address in the holder's records, informing the owner "of the process necessary to rebut the presumption of abandonment." G. L. c. 200A, § 7A. If the owner does not timely come forward

⁵ The statute defines "person" broadly to include "any individual, corporation, . . . trust, partnership, association, . . . savings bank, . . . national banks, . . . bank holding companies and bank subsidiaries." G. L. c. 200A, § 1.

to rebut the presumption, the funds are included in the holder's abandoned property report and transferred to the treasury.

Once abandoned property is reported and delivered, the Treasurer's unclaimed property division (division) takes various steps to reunite property with its true owner. The division manages an online database (findmassmoney.com) where individuals can search for abandoned property. The search tool displays, among other information, the apparent owner's name and last known address and the holder who reported the property abandoned. The division also publishes the apparent owners' names in Statewide newspapers twice per year. Consistent with the statute's purpose to reunite property with its true owner whenever possible, there is no statute of limitations for a putative owner of abandoned property to make a claim to the treasury; a person making such a claim may do so "at any time" after the property has been surrendered to the Treasurer. G. L. c. 200A, § 10 (a).

4. Application of the abandoned property law. Chapter 200A would govern unidentified funds in IOLTA accounts only if such funds constitute "abandoned property" under the law. "Abandoned property" is defined in G. L. c. 200A, § 1, as "property presumed unclaimed and abandoned pursuant to this chapter." For funds to be deemed "abandoned property" under c. 200A, they must satisfy two sets of statutory conditions.

First, "the conditions for presumption of abandonment" stated in one of eight enumerated sections in c. 200A must "exist."⁶ G. L. c. 200A, § 1A. Second, one of the four conditions in § 1A must be met.⁷ See id. As to the first set of required statutory

⁶ The eight enumerated sections are G. L. c. 200A, § 3 (abandonment of deposits of property); G. L. c. 200A, § 4 (abandonment of security deposits); G. L. c. 200A, § 5 (abandonment of instruments, documents, and money); G. L. c. 200A, § 5A (abandonment of life insurance proceeds and the like); G. L. c. 200A, § 5B (abandonment of dividends, distributions, and interest in business); G. L. c. 200A, § 6A (abandonment of distribution due in liquidation); G. L. c. 200A, § 6B (abandonment of traveler's checks and other guaranteed instruments); and G. L. c. 200A, § 6D (abandonment of property payable from insurance company demutualization).

⁷ The four conditions in G. L. c. 200A, § 1A, are the following:

"(a) the last known address of the apparent owner is in the commonwealth as shown on the records of the person in possession of property;

"(b) no address of the apparent owner appears on the records of the person in possession of the property and

"(1) the last known address of the apparent owner is in the commonwealth, or

"(2) the person in possession of property subject to this chapter is domiciled in the commonwealth and has not previously paid the property to the state of the last known address of the apparent owner, or

"(3) the holder is a government or governmental subdivision or agency of the commonwealth and has not previously paid the property to the state of the last known address of the apparent owner;

"(c) the last known address, as shown on the records of the person in possession of property, is in a state that does not provide by law for the escheat or custodial taking of

conditions, none of the designated sections specifically addresses IOLTA accounts, but the Treasurer contends that § 3, which concerns "deposits" of funds, applies to the unidentified funds in IOLTA accounts. We disagree. A careful review of this section reveals that attempting to apply § 3 to IOLTA accounts would be the legal equivalent of trying to fit a square peg into a round hole.

Section 3 provides that a deposit of funds in a bank shall be presumed abandoned unless the "owner" within three years has "[c]ommunicated in writing with the person concerning the deposit," "[b]een credited with interest on a passbook or certificate of deposit at his request," or otherwise done some act with respect to the account, such as depositing or withdrawing funds, transferring funds, or engaging in some transaction regarding the account.⁸ Under § 3, the "owner" of

such property and the person in possession of property is domiciled in the commonwealth or is a government or governmental subdivision or agency of the commonwealth; or

"(d) the last known address, as shown on the records of the person in possession of property, of the apparent owner is in a foreign nation and the person in possession of property is domiciled in the commonwealth or is a subdivision or agency of the commonwealth."

⁸ The full text of G. L. c. 200A, § 3, provides:

"Any deposit of property with a person having a residence or place of business in the commonwealth, or authorized to do business therein, together with the increments thereon, shall be presumed abandoned unless the owner has, within

the funds in the account is the person named on the account who is also presumed to be the person who actually owns the funds in the account. In fact, the Treasurer's regulations define an "owner" as "[a] person or entity having a legal or equitable claim to abandoned property." 960 Code Mass. Regs. § 4.02 (2004). But with an IOLTA account, the attorney named on the

three years next preceding the date as of which reports are required by [G. L. c. 200A, § 7]:

"(1) Communicated in writing with the person concerning the deposit; or

"(2) Been credited with interest on a passbook or certificate of deposit at his request; or

"(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the person; or

"(4) Increased or decreased the amount of deposit; or

"(5) Owned other property for which clause (1), (2), (3) or (4) is applicable; provided, however, that the holder communicates in writing with the owner with regard to such property that would otherwise be presumed abandoned under this section at the address at which communications regarding such other property regularly are received; or

"(6) Had another relationship with the holder concerning which the owner has:

"(i) communicated in writing with the holder, or

"(ii) otherwise indicated an interest as evidenced by a memorandum on file prepared by an employee of the holder; provided, however, that if the holder communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this section at the address at which communications regarding the other relationship regularly are received."

account is not the true owner of the funds; those funds are the property of the clients or third persons who entrusted those funds to the attorney. See Matter of Sharif, 459 Mass. 558, 565 n.7 (2011). See also ZVI Constr. Co. v. Levy, 90 Mass. App. Ct. 412, 419 (2016), quoting Phillips v. Washington Legal Found., 524 U.S. 156, 164 (1998) ("the principal held in IOLTA trust accounts is the 'private property' of the client").

The bank has no way to learn the identity of the true owners of the funds, and therefore no way to provide them with the advance notice required under § 7A to prevent these funds from being deemed presumptively abandoned and included in the bank's report of abandoned property it must provide to the Treasurer under § 7. Additionally, § 7 (b) (1) requires the bank in its report to provide the name and last known address of "each person appearing from the records of the holder to be the owner of any property of the value of one hundred dollars or more presumed abandoned under this chapter," but the bank's records will reveal only the attorney's name and address, not the name and address of the true owner of the funds in the IOLTA account. Therefore, if IOLTA accounts could be deemed "abandoned property" under § 3, the true owners of these funds would not receive notice by the bank that the account was to be reported abandoned (that notice would go only to the attorney whose name is on the IOLTA account), nor be able to take one of

the six listed actions in § 3 to prevent their IOLTA funds from being presumed abandoned by the bank.

The claims process established by the Treasurer to allow true owners of presumptively abandoned property to claim those funds also does not fit the unique nature of IOLTA accounts. Under the Treasurer's regulations, "the original owner" of the funds is required to submit documentation in support of his or her claims. See 960 Code Mass. Regs. § 4.04(1), (2) (2004). But the usual required documentation, such as the monthly statement of the bank or the holder's certification, is not applicable to an IOLTA account because these documents would not establish a purported owner's beneficial ownership of the funds. The attorney named on the IOLTA account may make a claim on behalf of the true owner, but only if he or she is the "legal representative" of the owner, which is defined as an executor or administrator of an estate, a conservator or guardian, "or an authorized agent appointed in accordance with a properly-executed power of attorney." 960 Code Mass. Regs. §§ 4.02, 4.04(2)(b).

In short, the careful procedures established by c. 200A to identify presumptively abandoned funds, report and remit those funds to the treasury, and allow the true owner of those funds to reclaim them by proof of ownership simply do not fit when applied to IOLTA accounts. This is not a criticism of the

Legislature; there were no pooled IOLTA accounts in 1950 when the law was enacted, and although the law has since been amended,⁹ none of the amendments addresses the unique nature of an IOLTA account.¹⁰

⁹ See, e.g., St. 1958, c. 283; St. 1969, c. 377; St. 1975, c. 277; St. 1975, c. 608; St. 1980, c. 130, §§ 3, 4, 7; St. 1984, c. 458; and St. 2000, c. 198.

¹⁰ The IOLTA committee contends that G. L. c. 200A, § 3, does not apply to IOLTA accounts because, under Mass. R. Prof. C. 1.15 (g) (2) (i), banks must remit interest to the committee no less than quarterly, so the account may never be presumed abandoned where G. L. c. 200A, § 3 (2), provides that a bank account is not to be presumed abandoned if the account each quarter has "[b]een credited with interest on a passbook or certificate of deposit at his request." This argument ignores the phrase, "at his request," which requires some act by the owner of the account (here, the attorney) to request the credit of interest. If the passive receipt of automatic interest payments was sufficient to show that a bank account was not presumptively abandoned, any bank account with an established automatic transfer schedule would never be considered abandoned under the statute nor ever be remitted to the treasury -- undermining the statute's aim to "provide a smooth and simple procedure for transferring such property into the state treasury and out of the hands of those in unjust possession." Treasurer & Receiver Gen. v. John Hancock Mut. Life Ins. Co., 388 Mass. 410, 423 (1983), quoting 1950 Senate Doc. No. 1, at 22. Moreover, the Treasurer's regulations reflect that an owner's property should not be deemed presumptively abandoned where "the owner maintains an active relationship with a holder with respect to any property of the same owner." 960 Code Mass. Regs. § 4.03(11) (2004). "Activity" is defined in the regulations as an "[a]ction taken by an owner with respect to his or her property which indicates that the owner intends for the property not to be presumed abandoned." 960 Code Mass. Regs. § 4.02. The passive receipt of interest is not an "activity" and is insufficient to rebut a presumption of abandonment.

The Treasurer seeks to fit IOLTA accounts into § 3 by arguing, in the alternative, that the definition of "person" holding unclaimed property who is required to report and transmit the property to the treasury is broad enough to include the attorney responsible for the IOLTA account. It is certainly true that the definition of "person" under the abandoned property law is broad enough to include an attorney or law firm holding funds on behalf of a client or third person. See G. L. c. 200A, § 1 ("person" includes "any individual" or "partnership"). However, in the context of § 3, this would require the attorney responsible for the account, and not the bank, to report to the Treasurer that the funds in an IOLTA account are presumptively abandoned where the client or the third person who is the beneficial owner of the funds has not communicated with the attorney for three years regarding the funds. There are two problems with this alternative argument.

First, G. L. c. 200A, § 7, requires the "holder" of funds deposited in a bank that are presumptively abandoned to file a report based on "the records of the holder." There is nothing in the Treasurer's regulations or in the record to suggest that the Treasurer has informed banks that, with regards to IOLTA accounts, the attorney is the holder of the funds, not the bank. Under the Treasurer's regulations, "holder" is defined as "[t]he entity that has custody of abandoned property," which suggests

that, at least with respect to bank deposits, the holder is expected to be an entity rather than an individual attorney. 960 Code Mass. Regs. § 4.02. Nor is there any language in c. 200A or the regulations to suggest that there may be multiple "holders" of the same funds, and any such suggestion would be a recipe for confusion, because it would mean that multiple reports would be filed regarding the same abandoned funds. To be sure, law firms and legal service agencies at times have filed abandoned property reports regarding an IOLTA account with the Treasurer, but the vast majority of such reports are filed by banks. According to the director of audit and compliance for the division, as of December 1, 2019, 572 "IOLTA-type properties" were unclaimed in the abandoned property database, but only thirteen of the submitted reports were from law firms; one was from a legal aid organization.

Second, if the attorney responsible for an IOLTA account is deemed the "holder" of the account, the Treasurer or her agents "may at any reasonable time and upon reasonable notice examine or audit a holder's books, papers or other records to verify proper compliance with the reporting requirements of [c. 200A]." 960 Code Mass. Regs. § 4.07 (2004). Section 3 cannot be reasonably understood to mean that, by opening an IOLTA account, which an attorney may be required to do under our rules of professional conduct, the attorney opens the door to treasury

agents examining all of his or her books, papers, and other records, which may contain confidential client information, attorney-client communications, or attorney work product. Allowing that to happen in the ordinary course might result in a breach of an attorney's obligations to his or her client. See Commonwealth v. Perkins, 450 Mass. 834, 851 (2008) ("It is axiomatic that among the highest duties an attorney owes a client is the duty to maintain the confidentiality of client information" [citation omitted]); Mass. R. Prof. C. 1.6 comment 2, as amended, 474 Mass. 1301 (2016) ("A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent or as otherwise permitted by these Rules, the lawyer must not reveal confidential information relating to the representation. . . . This contributes to the trust that is the hallmark of the client-lawyer relationship"); Mass. R. Prof. C. 1.6 (providing for protection of confidential client information).

We therefore conclude, given the incongruent fit between § 3 and IOLTA accounts, that G. L. c. 200A, § 3, does not apply to unidentified funds deposited in IOLTA accounts. Where the Treasurer does not contend that any of the other seven enumerated sections in c. 200A apply to these funds, we conclude

that IOLTA accounts fall outside the scope of the abandoned property law.¹¹

5. Identification, investigation, and disposition of abandoned IOLTA funds. Our conclusion that c. 200A does not govern IOLTA accounts does not mean that there will be no process to identify abandoned funds in IOLTA accounts, to investigate bank and attorney records to determine the true owners of those funds, to restore the funds to those true owners, and to transfer any funds whose true owner cannot be identified despite diligent investigation. It simply means that we must put that process in place through our superintendence authority over the bar and the practice of law. We do so here, and direct this court's standing advisory committee on the rules of professional conduct (standing committee) to propose amendments to Mass. R. Prof. C. 1.15 to incorporate the following guidance into our rule.

Just as a dishonored check in an IOLTA account is an indicator of a possible disciplinary violation by an attorney regarding his or her management of an IOLTA account, so, too, is the absence of any activity in an IOLTA account over an extended

¹¹ Because we conclude that the first set of required statutory conditions is not met, we need not address whether unidentified funds in IOLTA accounts meet the second set of required conditions in § 1A for the funds to be "presumed abandoned" under the statute.

period of time. We currently require lawyers to maintain IOLTA accounts only in financial institutions that agree to notify the board when a check is dishonored for insufficient funds. See Mass. R. Prof. C. 1.15 (h). See also Go-Best Assets Ltd. v. Citizens Bank of Mass., 463 Mass. 50, 60 (2012). Such notification permits bar counsel to investigate the attorney to determine whether the dishonored check arises from a disciplinary violation regarding the attorney's management of client funds, from financial mismanagement that could be remedied with appropriate guidance or supervision, or from a simple careless mistake. We shall now require similar agreements to impose an obligation on financial institutions to notify the board when there is no activity in an IOLTA account for more than two years, apart from automatic interest payments to the IOLTA committee.¹² This notification will allow bar counsel, where appropriate, to conduct a forensic examination of the attorney's IOLTA account records, and other books and records, to ascertain whether the funds are abandoned and determine the true owner of any such funds so that they may be disbursed. In addition, such notice will allow bar counsel to

¹² This court's standing advisory committee on the rules of professional conduct, in proposing amendments to Mass. R. Prof. C. 1.15, may consider whether a different time period is more appropriate to accomplish our purpose for requiring such notification.

determine whether the prolonged inactivity of the account is a sign of possible disciplinary violations or financial mismanagement by the attorney.

Of course, bar counsel need not wait for two years of IOLTA account inactivity to examine whether there are presumptively abandoned funds in certain IOLTA accounts. As discussed supra, Supreme Judicial Court rules are already in place requiring an attorney who is suspended from the practice of law, disbarred, or placed on disability inactive status, or has resigned from the bar during a disciplinary investigation, to close every IOLTA account, disburse or transfer all IOLTA funds, and report to bar counsel the disposition of all such funds, which should reveal the existence of any unclaimed or unidentified funds. See S.J.C. Rule 4:01, § 17 (1), (5) (c). And where an attorney dies, disappears, or becomes inactive because of disability, and where no partner, executor, or other responsible person disburses or transfers the funds in the attorney's IOLTA account, a single justice of the county court may appoint a commissioner to identify the owners of the funds in the IOLTA accounts and disburse the monies. See S.J.C. Rule 4:01, § 14 (1). With vigilant bar counsel and commissioners, the number and dollar amount of unidentified IOLTA funds should be minimized.

But as this case demonstrates, there will still be unidentified funds in IOLTA accounts that, despite exhaustive forensic investigation, will elude all reasonable efforts to determine and locate their true owner.¹³ There are two reasonable alternative dispositions of these funds: the Commonwealth's general fund, where abandoned property within the scope of G. L. c. 200A is ultimately transferred pursuant to G. L. c. 200A, § 9 (e); or the IOLTA committee, where the interest on IOLTA accounts is transferred, which is in turn distributed pursuant to Mass. R. Prof. C. 1.15 (g) to entities that will deliver civil legal services to those who cannot afford them or improve the administration of justice. Some

¹³ We are of course concerned about the 572 "IOLTA-type properties" currently unclaimed in the abandoned property database. It is unclear whether bar counsel was alerted to their existence before this litigation, or how bar counsel would otherwise be alerted to abandoned IOLTA accounts in order to begin an investigation or disciplinary proceeding. It is also unclear whether bar counsel has conducted, or will be able to conduct, investigations into whether the funds in these 572 accounts are truly unidentified or simply unclaimed.

States have chosen the first alternative.¹⁴ Others have chosen the second alternative.¹⁵

Even though the disposition of these funds is not governed by c. 200A because IOLTA funds fall outside the scope of the abandoned property law, we recognize and respect the legislative purpose that all abandoned property be transferred to the general fund. We would, pursuant to our superintendence authority, transfer these funds to the general fund out of respect for that legislative purpose if funds deemed abandoned could never be claimed by their rightful owner. But such claims may be made, with no limitations period, and therein lies the rub.

If we were to determine that unidentified IOLTA funds should be transferred to the Treasurer, we would expect the Treasurer to apply the same claims process to IOLTA funds, which fall outside the scope of c. 200A, as she applies to abandoned

¹⁴ See, e.g., Alaska Bar Association Ethics Opinion No. 90-3 (1990); State Bar of Arizona Ethics Opinion No. 97-03 (1997); State Bar of Georgia Formal Advisory Opinion No. 98-2 (1998); State Bar of Michigan Ethics Opinion No. RI-38 (1989); Mississippi Ethics Opinion No. 178 (1990); N.C. R. Prof. C. 1.15-2(r); Washington Bar Association, Ethics FAQ ("What do I do with unclaimed trust account funds?"), citing Wash. Rev. Code § 63.29, <https://www.wsba.org/for-legal-professionals/ethics/ethics-faqs#unclaimed> [<https://perma.cc/2R3H-GUFW>].

¹⁵ See, e.g., Ark. R. Prof. C. 1.15(c)(1)-(2); Colo. R. Prof. C. 1.15B(k); Ill. R. Prof. C. 1.15(i); La. R. Prof. C. 1.15(g)(7)-(8), (h); N.J. Court Rule 1:21-6(j); N.Y. R. Prof. C. 1.15(f); Pa. R. Prof. C. 1.15(v).

funds that are within the scope of c. 200A. Under that process, when someone claims an interest in property surrendered to the State, the Treasurer has "full and complete authority to determine all such claims" and, in doing so, may take testimony under oath, subpoena the attendance of witnesses, and subpoena the production of all "books, papers and documents which may be pertinent to such hearing." G. L. c. 200A, § 10 (b)-(c). This is precisely the type of inquiry that we are reluctant to relinquish to the Treasurer should a claim be made on unidentified IOLTA funds by an attorney's client. Attorney records concerning IOLTA accounts are necessarily intertwined with attorney-client confidences. Any such inquiry by the Treasurer poses the risk of impermissible disclosure of confidential client information, attorney-client communications, and attorney work product.

We conclude that there is a better approach that is more protective of the confidential information so fundamental to the attorney-client relationship: where bar counsel determines after reasonable investigation that the owner of IOLTA funds cannot be identified or located, bar counsel should request the single justice of the county court to find that the funds are presumptively abandoned and to order the transfer of the

abandoned funds to the IOLTA committee.¹⁶ The transfer of these funds to the IOLTA committee, in order to avoid constitutional concerns, carries with it an obligation by the committee to return those funds to their true owner, with interest, if the true owner establishes ownership at any time. Therefore, we will revise our rules of professional conduct to memorialize that obligation after considering language recommended by our standing committee.¹⁷ Where such a claim is made, the investigation of its merits should be conducted by bar counsel, whose obligation to maintain the confidentiality of information arising from an investigation is already established by rule. See S.J.C. Rule 4:01, § 20, as amended, 438 Mass. 1301 (2002).

¹⁶ Where the owner of the IOLTA funds has been identified but cannot be located, the Board of Bar Overseers shall publish the name on a webpage on its website to allow the missing client or third person to reclaim his or her abandoned funds from the IOLTA committee. Nothing in this opinion is intended to prevent the board from seeking the agreement of the Treasurer to include these names on her abandoned property website, with the proviso that any persons claiming ownership of such property will be referred to bar counsel for investigation.

¹⁷ The Treasurer does not allege that there is any constitutional bar to the transfer of funds to the IOLTA committee but instead contends that "constitutional problems could arise" under the takings clause of the Fifth Amendment or under the First Amendment to the United States Constitution, if the transfer were deemed compelled speech. The Treasurer does not have standing to raise such claims, see Tax Equity Alliance for Mass. v. Commissioner of Revenue, 423 Mass. 708, 715-716 (1996), and in any event she recognizes that the weight of these claims is diminished if a claimant who can establish ownership of previously unidentified IOLTA funds will be able to recover those funds from the IOLTA committee, with interest, at any time.

Any dispute concerning the adjudication of ownership shall be resolved by the single justice.

Conclusion. In answer to the questions posed by the single justice in his reservation and report, we conclude that unidentified client funds on deposit in an IOLTA account do not fall within the statutory definition of "abandoned property" under G. L. c. 200A; that neither Mass. R. Prof. C. 1.15 nor any other rule of this court presently governs the disposition of such funds; and that such funds shall be transferred to the IOLTA committee for disposition under the conditions set forth in this opinion, which shall later be incorporated in revisions to Mass. R. Prof. C. 1.15.

So ordered.

LOWY, J. (dissenting). The court holds, without an adequate factual record to support it, that Interest on Lawyers' Trust Accounts (IOLTAs or IOLTA accounts) fall outside the abandoned property act (act), in part because the alternative would allow the Treasurer and Receiver General (Treasurer) to inspect attorneys' records in a manner that could allow the Treasurer to maintain and to investigate IOLTA accounts, as she does with other abandoned property. This, according to the court, would improperly risk "disclosure of confidential client information, attorney-client communications, and attorney work product," all of which fall under the attorney-client privilege governed by the judicial branch. Ante at . Because the court concludes as such, it avoids having to decide whether classifying orphaned IOLTA funds as abandoned property would impede upon the judiciary's authority under art. 30 of the Massachusetts Declaration of Rights to regulate the practice of law, or whether keeping unclaimed IOLTA accounts within the province of the judiciary would unduly interfere with the executive or legislative powers as outlined in art. 30.

I, on the other hand, believe that the plain meaning and legislative intent of the act require categorizing unclaimed or orphaned IOLTA funds as abandoned property, a conclusion that prevents us from avoiding the lurking separation of powers issues. I therefore do not believe that we should draw any

definitive conclusions from the bare factual record. Instead, we should remand to a trial court to develop a more complete record.

First, orphaned IOLTA funds, at least based on this limited record, seem to fit within the act's definition of abandoned property, specifically as intangible property, property on deposit in a bank, or, perhaps, as security deposits.¹⁸ See G. L. c. 200A, §§ 1A, 3, 4. Because IOLTA funds are deposited into "trust accounts" in a bank by attorneys operating on behalf of their clients in a fiduciary capacity, such funds facially qualify as abandoned property under the act absent some compelling factual or legal reason to the contrary. See Mass. R. Prof. C. 1.15, as appearing in 471 Mass. 1380 (2015). Aside from plain meaning, the Legislature intended the act to "set[] forth a comprehensive scheme governing the disposition of abandoned property," Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen., 454 Mass. 174, 176 (2009), including "all kinds"

¹⁸ The Treasurer contended that IOLTA accounts fall within G. L. c. 200A, § 3, and the court cabined its analysis to that section of the act. In whole, G. L. c. 200A, § 4 states: "Subject to the provisions of section one A, any deposit of property made to secure payment for services rendered or to be rendered, or to guarantee the performance of service or duties, or to protect against damage or harm, and the increments thereof, shall be presumed abandoned, unless claimed by the person entitled thereto within three years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent."

of unclaimed property "whose owner is unknown or had neglected to claim it during a specific number of years," Treasurer & Receiver Gen. v. John Hancock Mut. Life Ins. Co., 388 Mass. 410, 412-413, 423 (1983). Whether one conceives of the owner as the attorney who opened the IOLTA account or the clients whose funds constitute the account, the legislative intent facially captures IOLTA accounts.

The court argues that "attempting to apply § 3 to IOLTA accounts would be the legal equivalent of trying to fit a square peg into a round hole." Ante at . Statutory interpretation, however, does not pursue a perfect fit when effectuating legislative intent, and some square pegs can fit into round holes. See Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd., 483 Mass. 600, 604 (2019). To that end, the court contends that orphaned IOLTA funds do not qualify as abandoned property because the true owner is the client, not the attorney listed on the account, and the holder of the account, the bank, could not therefore notify the true owner in advance of deeming the property presumptively abandoned. See G. L. c. 200A, § 7 (b) (1) (bank must report name and last known address of "each person appearing from the records of the holder to be the owner"); G. L. c. 200A, § 7A (if holder has accurate address of "apparent owner" of property presumed abandoned, then holder

must send notice "of the process necessary to rebut the presumption of abandonment").

This apparent "square peg" actually fits quite nicely into the act, even though the statute does not define "owner," see G. L. c. 200A, § 1, because attorneys acting as fiduciaries have a "legal . . . claim to abandoned property" on behalf of their clients and therefore qualify as "owners" under the Treasurer's regulations.¹⁹ 960 Code Mass. Regs. § 4.02 (2004). See Matter of Sharif, 459 Mass. 558, 565 n.7 (2011) (explaining ways that attorney must act as fiduciary for trust accounts). See also Biogen IDEC MA, Inc., 454 Mass. at 186-187 (in absence of clear statutory language to contrary, we must defer to Treasurer's regulations). Because the attorney is the owner of the IOLTA account, I am not convinced on this record that the bank could not comply with its statutory obligations to notify the owner in advance of reporting the IOLTA account as abandoned property.²⁰ See G. L. c. 200A, §§ 7 (b) (1), 7A.

¹⁹ I presume that, in the context of this case, Gregory M. Olchowski's counsel, who requested the transfer of the IOLTA account, would have legal claim to the property.

²⁰ The court seems to recognize that attorneys acting as fiduciaries for IOLTA funds are owners of those accounts when refuting an argument made by the IOLTA committee that trust-bearing accounts cannot qualify as abandoned property under the act. Under the act, earning interest rebuts the presumption of abandonment only "at his request," which, according to the court, "requires some act by the owner of the account (here, the

Moreover, the regulations appear to account for circumstances where an attorney or other fiduciary may be the "owner" of an account that becomes abandoned for which the "true owners" of the funds, the clients, can file to reclaim property that was abandoned due to their fiduciaries' irresponsibility. See John Hancock Mut. Life Ins. Co., 388 Mass. at 426 ("The focus of the statute is to reunite the owners with their property, and therefore it is irrelevant that John Hancock does not own [or control] the property"). The Treasurer's regulations outlining the claims process note that only the "original owner" can make a claim by presenting certain documents, such as a "monthly statement, if applicable." 960 Code Mass. Regs. § 4.04(2)(a) (2004). Although clients may not have documents, such as the specific IOLTA account information, they could still make a claim by presenting "other documentation as may be required by the [unclaimed property division] to substantiate the validity of the claim," since the Treasurer would likely recognize that those other documents were not "applicable." Id. Alternatively, the owner's "legal representative" may make a claim on behalf of the client. 960 Code Mass. Regs. § 4.04(2)(b). The record shows that banks and law firms have transferred 572 IOLTA accounts to the Treasurer

attorney) to request the credit of interest." Ante at note 10, quoting G. L. c. 200A, § 3 (2).

as abandoned property, but the record does not reflect the claims process to which clients with funds in those accounts have adhered. The existing framework seems capable of handling claims by the true owners of funds within IOLTA accounts.

The court next alleges that it would be improper for an attorney to be a "holder" under the act -- the individual who would have to file reports about presumptively abandoned property -- even though the statute's definition of a person who can hold property is broad enough to encompass an attorney acting as the fiduciary for IOLTA funds. See G. L. c. 200A, § 1. The court worries that this would create an unmanageable scenario with multiple persons with statutory responsibilities as holders of one pool of property under the act. To the contrary, it is perfectly plausible that the bank would be a holder for the IOLTA account and the attorney would be a holder for the apportioned IOLTA funds within the account. In fact, it makes logical sense that responsible attorneys would report abandoned IOLTA funds to the Treasurer as abandoned property if they could not contact clients for three years, and that the bank would report the entire IOLTA account if it qualified as presumptively abandoned under the act. See 960 Code Mass. Regs. § 4.02. Although the court claims that this scenario "would be a recipe for confusion," ante at , the factual record provides no indication of such confusion, especially considering

that some attorneys and law firms have reported IOLTA funds as abandoned property. We simply need more information.

Even if I were to agree with the court's statutory analysis, my foundational concern about the inadequate record remains for the court's apparent primary concern: that the Treasurer might need to investigate attorneys' books to determine to whom the unclaimed IOLTA funds belong, see G. L. c. 200A, § 10 (b)-(c), or to ensure that attorneys complied with their requirements as holders. See 960 Code Mass. Regs. § 4.07 (2004). The court raises the understandable concern that "[a]llowing [such an investigation] to happen in the ordinary course might result in a breach of an attorney's obligations to his or her client," ante at , but only hints at the second-level implication of that statement; allowing the Treasurer such access as the statute would require might invade upon the judiciary's art. 30 power to protect attorney-client privilege and attorney confidentiality as part of its power to regulate the practice of law.

Of course, the court does not need to reach whether those fears would come true, because its version of statutory interpretation keeps IOLTA accounts outside the realm of abandoned property and therefore out of the possible reach of the Treasurer. The court accordingly has no obligation to provide evidence that such breaches occur or that investigations

by the Treasurer would impede upon our art. 30 authority. I view the matter differently.

Because I conclude that orphaned IOLTA funds qualify as abandoned property under the act, we can only keep the Treasurer from exercising her statutory obligations regarding those funds based on some interpretation of our constitutional authority to regulate the practice of law. We could hold that the act is unconstitutional as applied to orphaned IOLTA funds, or we could craft an alternative solution that gives the Treasurer control over the orphaned IOLTA funds without unduly impeding the attorney-client privilege. Either solution necessarily implicates separation of powers concerns, as both could interfere with the Legislature's and the executive branch's powers under art. 30. In sum, concluding that unclaimed IOLTA funds constitute abandoned property requires me to consider how the court's proposed solution, one that still might be constitutionally or statutorily permissible even though I determined that IOLTA accounts are abandoned property under the act, affects art. 30, and to consider whether it does so appropriately on the facts before the court.

Before we reach such a significant decision, I believe that we need a factual record to help answer critical questions beyond the bare joint statement of facts presented to the single justice. The record does not reflect whether investigating

unclaimed funds in IOLTA accounts would necessarily violate the attorney-client privilege. The amicus briefs presented by the Boston Bar Association and others and by the Board of Bar Overseers (BBO) suggest that it does, but the factual record only explains that a financial investigator subpoenaed records from banks and examined records held by Gregory M. Olchowski's former accountant. There is no indication that the investigation necessarily pierced the veil of attorney-client privilege, which, if accurate, would lessen the art. 30 concerns for orphaned IOLTA funds constituting abandoned property because the Treasurer would not therefore be impeding upon the judiciary's art. 30 authority to regulate the practice of law.²¹

Moreover, there might be an alternative path that neither ignores the act's plain meaning nor imposes on or interferes with our art. 30 obligations, and that simultaneously respects the Legislature's and executive branch's powers. However, the parties only briefed opposing absolutes: the Treasurer claimed complete authority to investigate and to manage orphaned IOLTA

²¹ As stated supra, the record notes that entities have transferred 572 IOLTA accounts to the Treasurer as abandoned property. The record makes no reference to whether the Treasurer has investigated these properties to determine the true owner and, if so, whether those investigations pierced the veil of attorney-client privilege. Moreover, the record does not reflect whether investigations into other types of abandoned property, such as trust funds or remainders of estates, which I presume are under the authority of the Treasurer, would also pierce the veil of attorney-client privilege.

accounts, no matter attorney-client privilege, while the IOLTA committee and Olchowski, who the court largely followed, put the power squarely with the judiciary. I agree with the court that it is possible that classifying IOLTA accounts as abandoned property could interfere with the judiciary's art. 30 authority to regulate the practice of law. On the other hand, mitigating that concern by following the court's chosen path, which would transfer abandoned IOLTA funds to the judiciary's control rather than to the general fund, or by ordering the Treasurer to respect attorney-client privilege could also offend art. 30 by unduly interfering with legislative or executive authority.²²

We simply need to know more before we meddle with the separation of powers, a principle that is the foundation of our

²² The court contemplates that someone will have to review attorney-client privileged materials to determine the true owners of the IOLTA funds, but it does not discuss any precise procedures for doing so beyond keeping the funds within the judiciary and having the BBO conduct an inquiry in a manner similar to how it assesses attorney accounts during disciplinary procedures. There may be alternatives. For example, it may be constitutionally permissible to require that the Treasurer transfer investigatory responsibilities to an agent of the judiciary, namely the BBO, if an examination of orphaned IOLTA accounts threatened to pierce the veil of attorney-client privilege. It also might be possible to maintain the privilege if the BBO hired outside counsel to conduct the review. It may even be possible to rely on an interpleader action, with the Treasurer and the IOLTA committee as nominal parties, so that the unclaimed IOLTA funds are deposited with the court until appropriate disposition of the matter. See Mass. R. Civ. P. 67, 365 Mass. 835 (1974). Perhaps these ideas would not be possible or constitutionally permissible, but the parties understandably did not brief this matter.

constitutional system. I therefore dissent and recommend that we remand to the Chief Justice of the Trial Court for assignment of the case to create a more thorough factual record.

TO: WSBA Board of Governors
CC: Terra Nevitt, Executive Director
FROM: Committee on Professional Ethics
DATE: September 8, 2021
RE: Unidentifiable Funds in Lawyers' Trust Account

INFORMATION: CPE Memorandum on Unidentifiable Funds in Lawyers' Trust Account

A. Introduction

This memorandum provides a recommendation in response to the letter of October 23, 2020 to Pamela Anderson, Chair of the WSBA Committee on Professional Ethics (CPE) from Kyle Sciuchetti, WSBA President, and Terra Nevitt, WSBA Interim Executive Director. That letter requested a recommendation as to whether WSBA should support, and potentially serve as a co-proponent of, an amendment to RPC 1.15A proposed by the Legal Foundation of Washington (LFW).

By memorandum dated September 15, 2020 to Ms. Nevitt and Doug Ende, WSBA Chief Disciplinary Counsel, LFW's Executive Director, Caitlin Davis, proposed that lawyers be required to remit any unidentified funds in their trusts account to the LFW, rather than to the Department of Revenue (DOR) as unclaimed property under the Unclaimed Property Act (UPA), Chapter 63.20 RCW. The LFW distinguishes unidentified funds that cannot be traced to an owner from unclaimed property, the owner of which is known but cannot be located. The LFW believes that, in the aggregate, these unidentifiable trust account funds could supply meaningful revenue for access-to-justice programs.

Among other resources, the LFW identified Illinois RPC 1.15 as a useful model. That rule provides in pertinent part:

(i) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (i).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer.

(j) Definitions

* * *

(9) "Unidentified funds" are amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

Currently Washington's Comment [6] to RPC 1.15A addresses funds held by a lawyer when the owner cannot be located:

A lawyer has a duty to take reasonable steps to locate a client or third person for whom the lawyer is holding funds or property. If after taking reasonable steps, the lawyer is still unable to locate the client or third person, the lawyer should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW 63.29.

The comment does not specifically address situations when the owner cannot be identified.

B. Activities Undertaken by CPE

The CPE formed a subcommittee, which undertook the following activities:

1. Review of the materials provided by Ms. Davis with her memorandum of September 15, 2020, including background concerning RPC amendments in Illinois and Louisiana.
2. Review of the decision in a Massachusetts case, *In re Olchowski*, which interpreted a similar Massachusetts statute as not applicable to unidentified funds in lawyer trust accounts.
3. Telephone conversations with representatives of the Illinois Trust Fund and Louisiana Bar Foundation, which are analogous in mission to the LFW, and review of additional information provided by them. These representatives recommended reaching out to all stakeholders, which the subcommittee understood to include relevant state agencies such as DOR and the Attorney General's Office (AGO).
4. Preparation of a discussion draft of a potential amendment to Washington RPC 1.15A, modeled on the Illinois language quoted above.
5. Consultation with Mr. Ende regarding ethics issues presented by the discussion draft, which issues the CPE believes can be appropriately addressed.
6. Multiple consultations with, or reports to, Ms. Davis, including on April 4, May 5, May 12, June 7, and September 3, 2021, regarding the discussion draft, the LFW refund policy, the issues raised by Mr. Ende, approaches for addressing those issues, and the status of discussions with the AGO and DOR.
7. Multiple telephone conferences with Rosann Fitzpatrick, Assistant Attorney General for the Revenue Division, one of which occurred on August 10, 2021 and included Gil Brewer, Senior Assistant Director of Tax Policy for the DOR.

8. Review of "Director's Briefing Document" prepared by Rex Munger on DOR letterhead dated July 26, 2021, which was received following the August 10, 2021 conference and which is attached hereto.¹
9. Telephone conference on September 3, 2021 with Ms. Nevitt and Ms. Davis.

C. Positions of Department of Revenue and the Attorney General's Office

Mr. Brewer (DOR) and Ms. Fitzpatrick (AGO) are each engaged in dialogue within their agencies and are collaborating with each other. The gist of their comments on August 10, 2021 was that unidentified IOLTA funds are unclaimed property within the scope of the UPA, such that it would be appropriate to achieve the LFW's objective by amending that statute. The tenor of the conversation was cordial and collaborative.

Mr. Brewer mentioned an internal DOR memo and treated our conversation as a Public Records Act request for that document. Shortly after, he provided the attached copy, which contains minor redactions to protect attorney-client privilege. In summary, the document cites portions of the UPA that refer to unidentified property, concludes that the UPA is intended to apply to unclaimed property when the owner cannot be identified, and states that the LFW proposal would be contrary to the UPA.

Mr. Brewer and Ms. Fitzpatrick both expressed willingness to assist with a legislative solution, if approved by their superiors. Ms. Fitzpatrick noted that the UPA already contains a number of "carved out" exceptions.² Mr. Brewer said the DOR participates in legislative action frequently, whether or not it agrees with the change, to ensure that any amendments are technically correct.

Ms. Fitzpatrick noted that she was in discussion with colleagues in the AGO regarding the LFW's preference for amending RPC 1.15A. However, the effort to develop a consensus is presently a work in progress. She has not as of yet estimated a timeline for completion of those discussions.

D. Options Available to the Board of Governors

The assigned CPE subcommittee could not quantify the revenue stream that may result from the LFW's proposal. The CPE subcommittee, however, also did not encounter any express opposition to the proposal's goal of directing unidentified trust account funds to the LFW for access-to-justice programs. The issue identified to date is whether

¹ Mr. Munger's document incorrectly refers to a proposal by the WSBA, rather than the LFW. He has been notified of this misstatement and asked to attach our clarifying email to his document to avoid confusion.

² "Carved out" exceptions to the Unclaimed Property Act include:

1. Unclaimed property held by a museum or historical society (RCW 63.26)
2. Unclaimed property in the hands of a bailee (RCW 63.24)
3. Motor vehicles under RCW 46.52 per RCW 63.21.080
4. Uniform disposition of unclaimed property under RCW 63.29 (RCW 63.21.080)
5. Secured vessels under RCW 88.27 (RCW 63.21.080)

the LFW goal should be accomplished by statutory amendment or RPC amendment. With the available information, therefore, the CPE has identified four potential options for the Board:

1. The Board could defer taking action until after receipt of information about the position of the AGO concerning the LFW proposal.
2. The Board could direct the WSBA Legislative Review Committee to explore collaboration with the DOR on an amendment to the UPA. Assistance with legislative matters is outside the purview of the CPE.
3. The Board could decide to support the LFW proposal to amend RPC 1.15A (which should also include amending Comment [6] thereto), subject to addressing the implementation issues raised by Mr. Ende and conveyed by the CPE to LFW. If the Board chooses this option, the CPE would be pleased to assist, having already reviewed those issues. This option, however, could place the RPC in conflict with DOR interpretation of the UPA. We do not yet have the position of the AGO, but it may be forthcoming prior to the Board's September meeting.
4. The Board could go further and act as a co-proponent of the LFW proposal, subject to the same condition, and with the same offer, as Option 3.

These options are not necessarily mutually exclusive.

Attachment:

DOR Director's Briefing Document dated July 26, 2021

The deliberative process exemption from public records disclosure applies to the development of an agency decision or position up to the point where a final decision or position is made.

Once complete, send this document as a link to the Director's Executive Assistant

UCP: Can "unidentified property" be diverted from being reported as UCP by rule of the WSBA?

Date	July 26, 2021
From	Rex N. Munger, ITA (360) 534-1554
Purpose	<input type="checkbox"/> Information <input type="checkbox"/> Decision
Issue	Can the WSBA by rule require that IOLTA funds described as "unidentified property" be turned over to the Legal Foundation of Washington for their use, rather than being remitted to the Department as unclaimed property as required by statute?

Executive Summary *This section contains opinions, recommendations, or deliberations that may be subject to the deliberative process exemption.*

The WSBA proposal is contrary to the law because it is in conflict with existing UCP statutes. Having attorneys remit "unidentified property" in their IOLTA accounts to the Foundation is not permitted under the UCP statutes.

Executive Decision *This section should be used if the Director has been asked to make a decision regarding the information in this briefing. If the purpose of the briefing is only informational, please delete this section.*

Background *Provide solely facts in this section. Do not include any opinions, recommendations, or deliberations.*

The WSBA (The Washington State Bar Association) has approached the Attorney General's office seeking their comment about a proposed WSBA rule.¹ The WSBA proposal is to require attorneys (who are regulated by the WSBA) to turn over "unidentified property" to the Legal Foundation of Washington. (The Foundation.)

¹ The concept of the rule is described in the October 23, 2020 WSBA correspondence. The WSBA does not yet have a specific draft rule.

The Foundation is a nonprofit organization created at the direction of the Washington Supreme Court. The proposal is designed to raise funds for the Foundation in a manner similar to what has been done in a few other states.

The Attorney General's office has sought the Department's input as this appears to impact the application of Washington's Unclaimed Property laws (UCP), which are administered by the Department. [1b]

The key issue is identified in the Foundation's memo, attached to the WSBA's letter. It makes the following distinction and comments on the UCP law:

Unidentified vs Unclaimed Property

- Unidentified property are funds or assets that cannot be traced to a specific owner.
- Unclaimed property are funds or assets that can be traced to a specific owner who cannot be located.

Currently in Washington State, all unclaimed property must be turned over to the State Department of Revenue after a period of due diligence in which the holder of the property attempts to locate the owner. Washington law is silent on how unidentified property should be disposed. However, in the Washington State Bar Association's publication called "Managing Client Trust Accounts," lawyers are advised to handle unidentified funds in their trust account as unclaimed property and remit them to the Department of Revenue.

The Foundation's memo makes no citation to any of the Washington state UCP statutes. The funds in question would be in attorney's IOLTA accounts. (These are trust accounts attorneys must maintain for their client's funds, and are regulated by the WSBA.)

Analysis

RCW Chapter 63.29 contains Washington State's Uniform Unclaimed Property Act. Nowhere in the Washington State UCP law, is there a distinction between "Unidentified Property" and Unclaimed Property. The Foundation's claim that the UCP Act is silent on Unidentified property is an incorrect statement of the law. In at least two sections of the UCP act, the statutes clearly refer to circumstances where the owner of the property is not known. In neither circumstance is the holder of the property allowed to keep the property, rather than remit it along with all other abandoned property.

Initially, the property in question would be "intangible property" as defined in RCW 63.29.010(12):

"Intangible property" does not include contract claims which are unliquidated but does include:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

All abandoned intangible property must be remitted to the Department. RCW 63.29.020 and RCW 63.29.170.

RCW 63.29.030 provides "General rules for taking custody of intangible unclaimed property." This is property to be turned over to the State (the Department). RCW 63.29.030(2), lists property to be turned over to the state and includes intangible property that:

The records of the holder *do not reflect the identity of the person entitled to the property* and it is established that the last known address of the person entitled to the property is in this state;

(Emphasis added.) Additionally, RCW 63.29.170(2)(a) describes the abandoned property report that the property holder must make to the Department. Among the requirements is that the report must:

(a) Except with respect to travelers checks and money orders, *the name, if known*, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(Emphasis added.)

The "if known" reference is a clear statutory statement that unclaimed property may include property where the owner is not known. Finally, unused abandoned gift cards are an area where the holder of the funds routinely does not know who the owner is. RCW 63.29.140 and RCW chapter 19.240 address the statutory treatment of gift cards. This is another area of the UCP Act demonstrating that there is no legal distinction between UCP where the owner is known or unknown.

Decision

This section contains opinions, recommendations, or deliberations that may be subject to the deliberative process exemption. Note: any statements of the law should not be redacted from this section.

Recommendation

This section contains opinions, recommendations, or deliberations that may be subject to the deliberative process exemption.

[1b]

The UCP Act applies to "unidentified property." The WSBA proposal is contrary to the law because it is in conflict with existing UCP statutes. The change suggested by the WSBA would need to be accomplished by legislative changes to RCW Chapter 63.29. The WSBA's current instructions to attorneys to remit such funds to the Department as unclaimed property are correct.

Code	Description of Exemption	Brief Explanation (how the record meets the criteria of the exemption)	Statute
[1b]	Attorney-Client Privilege	This record contains communication from attorney to client for the purpose of providing legal advice	RCW 42.56.070(1) & RCW 5.60.060(2)(a)

MEMORANDUM

TO: WSBA Board of Governors
FROM: Terra Nevitt, Executive Director
DATE: October 27, 2021
RE: Personnel Committee Proposal to Clarify WSBA Governance

At its meeting on September 23-25, 2021, the Board of Governors discussed the Personnel Committee's recommendation to clarify the roles and responsibilities of WSBA Staff and the Board of Governors as a response to the Climate and Culture Survey's Recommendation #1. By majority vote, the Board tabled the motion to the November meeting. You can review a recording of the discussion [here](#).

The materials from the September meeting are attached. There are no new materials.

TO: WSBA Board of Governors
CC: Terra Nevitt, Executive Director
FROM: Governor Alec Stephens, Chair of the Personnel Committee
DATE: September 15, 2021
RE: Climate and Culture Survey Recommendation # 1

DISCUSSION & ACTION: Have a general discussion about, and possibly take action on, the recommendation to clarify the roles and responsibilities of WSBA Staff and the Board of Governors.

At the August 2021 Board Meeting, in response to the Climate Survey Recommendation # 1 (“BOG commits to clarify its governance operating model”), the Personnel Committee presented the Board with two documents that delineate the roles and responsibilities of the of the Board of Governors and Executive Director.

Summarize the problem and the proposed solution:

The Personnel Committee submits to the BOG to develop a practical document as a restatement that delineates and defines the roles and responsibilities of the BOG, Individual Governors, the Officers, and the Executive Director. This document will be presented to the BOG for revision/approval. Upon approval by the BOG, further work may be done to further define the roles and responsibilities of the Executive Leadership Team and the staff in relation to the BOG, its Officers and individual Governors.

What is the problem we are trying to solve?

WSBA is a unique organization, created by both legislative action and court rule and subject to a multiplicity of bylaws, rules, policies and guidelines as well as a revolving Board of Governors. WSBA also is an organization that relies heavily on staff to fulfill its complex duties towards lawyers and the public across the state of Washington. The work of Staff is the lifeblood of the organization. One clear result of the climate survey was that staff feels that there is a lack of clarity around staff roles as well as the respective roles of the Executive Director, and the Board of Governors including the President and individual governors. Furthermore, it can be said that this issue goes beyond “perception;” lack of clarity on the issue of WSBA’s complex operational structure is to be expected given its unique structure. It is critical for the BOG to be responsive to staff on the issue of role clarification; it will make the organization function in a more positive and productive fashion. When roles and responsibilities are murky, it invites uncertainty and unease within the organization. Staff deserve clearly articulated descriptions of their functions, roles and responsibilities in relation to the BOG. The BOG should commit to provide this for the benefit of the entire organization.

What does success look like and how will we measure it?

The document that was created is in its formative stages; it is expected that the draft submitted to the Board will be subject to debate, dialogue and revisions by the Board. Success would be a final product approved by the Board and presented to all staff.

Discussion item:

Several bullet points in the attached documents state that the Officers and individual Governors should “avoid seeking to individually direct the implementation of policies or activities of the WSBA staff including the work of the Executive Director”. The Personnel Committee requests that the BOG discuss this item in particular.

Background

The BOG received four recommendations as a result of the 2020 Climate and Culture survey. The Board took action on three of the recommendations, leaving recommendation # 1 to be discussed at the September 2021 meeting.

Attachments

Attachment 1 – Roles and Responsibilities

Attachment 2 – Roles and Responsibilities & Delineation of duties - Annotations

Attachment 3 – Philosophy of Governance

Board and Officer Roles and Responsibilities

The roles of the WSBA Board of Governors and Officers are set forth in the WSBA Bylaws, Art. IV Governance. (Details about their) Descriptions of specific roles and responsibilities are also (captured) elucidated in various other written WSBA policies and documents, including the Fiscal Policies & Procedures.

The intent of this document is to clarify and delineate the duties of the Board and its Officers.

Board of Governors

The Board of Governors is the governing body of the WSBA. Its primary function is to set the policies of the WSBA and to evaluate how well the Executive Director carries them out and accomplishes the mission. WSBA is subject to the plenary authority of the Washington Supreme Court and the Board of Governors authority over WSBA is restricted in some regulatory matters by court rule, order, case law, or statute. The Board exercises its authority through majority vote, except in some cases where a two-thirds majority is required per applicable bylaw.

Specific responsibilities include:

- Electing the President-Elect and Treasurer.
- Selecting, supporting, setting the compensation for, and evaluating the performance of the Executive Director.
- Approving the annual budget, monitoring WSBA's financial health, establishing reserves, and ensuring that the WSBA has adequate resources to achieve its strategic goals and fulfill its mission.
- Recommending license fees to the Supreme Court and approving other significant fees such as the Keller Deduction and MCLE fees.
- Approving unbudgeted expenditures and reallocation of budgeted expenditures that are outside of the Executive Director's authority.
- Approving the expenditure of reserve funds, consistent with reserve policies.
- Approving gifts from the Client Protection Fund.
- Selecting an independent auditor and reviewing of the annual audit report.
- Approving a facilities strategy, including approval of decisions to lease or purchase real estate.
- Developing strategic goals. Establishing, supporting, and evaluating progress toward strategic goals.
- Establishing and supporting significant organizational policies, including but not limited to the WSBA Bylaws, Fiscal Policies, and Compensation Plan.
- Establishing, supporting, and evaluating the work of WSBA entities that are not directly supervised by the Supreme Court or otherwise excluded by court rule or order.
- Establishing, supporting, and supervising WSBA volunteers not appointed by the Supreme Court.
- Filling vacancies on the Board of Governors.
- Ensuring WSBA entities, volunteers, and members of the Board of Governors comply with WSBA policy, applicable laws, regulations, court rules, orders, and case law in the course of their work with WSBA.
- Approving litigation decisions that involve a significant issue of policy.

- Hearing appeals of certain regulatory matters as provided by court rule or order.

Members of the Board of Governors, Individually

Members of the Board individually carry out the work of the Board of Governors by attending Board meetings, serving on Board committees, panels, or councils, by liaising to other WSBA and external entities, and by engaging with WSBA members. Although members are elected by specific constituencies, as governors they have a duty to act in the best interests of all members of the Bar and the public.

Individually, specific responsibilities of each Governor include:

- Attending all meetings of the Board of Governors and staying informed about Board matters by reading relevant materials, seeking additional information as needed, and preparing for discussion.
- Attending all Board committee meetings to which the member is appointed to and staying informed about committee matters by reading relevant materials, seeking additional information as needed, and preparing for discussion.
- Engaging with WSBA members and the communities they serve as well as the public as an ambassador of WSBA and providing information about issues that are or will come before the Board and conveying member viewpoints to the Board.
- Actively serving as a liaison and acting as a resource to WSBA and external entities as appointed by the President and conveying viewpoints and information to the Board.
- Avoid speaking publicly in opposition to positions taken by the Board.
- Avoid seeking to individually direct the implementation of policies or activities of the WSBA staff including the work of the Executive Director.

President

The President is the chief spokesperson of WSBA and presides over meetings of the Board of Governors. The President leads the Board in effectively carrying out its roles and responsibilities by establishing a healthy Board culture and working closely with each Board member to make the best use of their strengths and interests.

Specific responsibilities include:

- Setting the agenda for Board meetings and presiding over meetings to ensure constructive, high-quality debate.
- Chairing the BOG Executive Committee.
- Leading the Board in establishing strategic goals.
- Facilitating communication between the Board and the Executive Director, including ensuring clear communication of the Board's goals and expectations, and notice of anticipated actions with sufficient time to provide sufficient information to support high-quality decision-making.
- Educating the Board about its procedures, strategic goals, responsibilities, and culture.
- Cultivating a culture of direct communication, healthy conflict, respect for all viewpoints, and professionalism.
- Facilitating the resolution of conflict among Board members.
- Acting, in collaboration with the Executive Director, to carry out policies established by the Board of Governors.
- Acting as a liaison between the Board of Governors and the Supreme Court of Washington.

- Presiding over the APEX Awards, 50-Year Lunch and similar events.
- Avoid speaking publicly in opposition to positions taken by the Board.
- Avoid seeking to individually direct the implementation of policies or activities by WSBA staff, including the work of the Executive Director.

President-Elect

The President-Elect's primary function is to perform the duties of the President at their request or when the President is otherwise unable to do so. The President-Elect may also be assigned other duties by the President.

Specific responsibilities include:

- Setting the meeting BOG meeting schedule for the year they will serve as President.
- Appointing the chairperson for certain WSBA entities for the year they will serve as President.
- Appointing Governors to BOG committees, including appointing the chairs (people), for the year they will serve as President.
- Assigning Governors liaison responsibilities with WSBA and external entities for the year they will serve as President.
- Setting the agenda for the BOG's annual retreat.
- Avoid seeking to individually direct the implementation of policies or activities by WSBA staff, including the work of the Executive Director.

Treasurer

The Treasurer's primary function is to ensure that the Board and officers are informed about the finances of the Bar. The Treasurer will perform the duties of the President if the President-Elect is unable to do so. The Treasurer may also be assigned other duties by the President.

Specific responsibilities include:

- Chairing the BOG Budget and Audit committee, including setting the agenda and presiding over committee meetings to ensure constructive, high-quality debate.
- Presenting the final proposed budget and other recommendations of the Budget and Audit Committee to the Board of Governors.
- Establishing deposit and credit relationships, withdrawing WSBA funds, and signing checks.
- Deciding appeals of the Executive Director's decisions with regard to rejecting or modifying an expense reimbursement.
- Reviewing WSBA financial reports and reporting to the Board of Governors about WSBA's financial health.
- Reviewing the Executive Director's expenses, payroll, and benefits reports.
- Approving supplement budget requests from sections that exceed 25% of the sections' annual expense budget or \$1,000, whichever is greater.
- Avoid seeking to individually direct the implementation of policies or activities by WSBA staff, including the work of the Executive Director.

Past President

The Past President supports the President and the Board of Governors by providing continuity and is responsible for the training and education of new BOG members and officers. The Past President will

perform the duties of the President if the President, President-Elect, and Treasurer are unable to do so. The Past President may also be assigned other duties by the President.

Specific responsibilities include:

- Setting the agenda for the annual New Governor Orientation and Team Building Retreat.
- Planning governance, diversity, equity, and inclusion, anti-harassment, and other appropriate training for the Board of Governors throughout the year.
- Avoid seeking to individually direct the implementation of policies or activities by WSBA staff, including the work of the Executive Director.

Executive Director

The Executive Director serves as Secretary of the Board of Governors, is the principal administrative officer of the bar, chief of staff, and is responsible for its day-to-day operations, including acting as a spokesperson. The Executive Director is responsible for executing the strategic goals and policies set forth by the Board of Governors. The Executive Director reports directly to the Supreme Court on all regulatory matters.

Specific responsibilities include:

- Attending Board of Governor meetings and board committee meetings and supporting decision making by participating in the discussion to provide information and recommendations.
- Supporting the Board of Governors to develop policy and strategic goals, by making recommendations, engaging stakeholders, and assessing fiscal, operational, and other impacts.
- Preparing an annual budget and implementing the approved budget.
- Recommending license and other significant fees and establishing other operational and administrative fees not established by the Supreme Court of Board of Governors.
- Establishing deposit and credit relationships, withdrawing WSBA funds, and signing checks.
- Approving and reporting to the Board of Governors about certain unbudgeted expenses, including, reallocations of budgeted expenditures where the intent is similar or varies slightly; unbudgeted expenditures that are fully offset by unbudgeted revenue or a reallocation of budgeted expenditures up to 5% of the approved operating budget to address operational, regulatory or programmatic needs; and necessary and prudent expenditures to implement WSBA's Disaster Recovery Plan or to maintain WSBA's operations.
- Ensuring the finances of the WSBA are managed in a manner consistent with generally accepted accounting principles and WSBA policy; directing the preparation and reporting of complete and accurate financial statements; and ensuring an annual audit is performed and that the results are made public.
- Taking action to accomplish WSBA's strategic goals and to carry out approved policies and programs.
- Establishing and modifying an organizational structure of staff to accomplish the approved goals, programs, and policies of the WSBA.
- Supervising WSBA Employees, including ensuring a healthy workplace culture, developing, and enforcing HR policies and procedures, hiring, firing, and approving compensation and job specifications within the limits of the approved budget.
- Facilitating communication between the Board and WSBA employees, including ensuring clear communication of the Board's goals and expectations to employees and conveying employee viewpoints to the Board.
- Overseeing the elections of the Board of Governors, including officers.

- Overseeing the recruitment, appointment, and onboarding process of WSBA volunteers. Monitoring volunteers and entities to ensure compliance with WSBA policy, applicable laws,

- regulations, court rules, orders, and case law in the course of their work with WSBA and reporting issues to the Board of Governors.
- Acting as an official spokesperson for the WSBA, including communicating with WSBA members, the judiciary, elected officials, and the community at large regarding WSBA matters.
- Avoid speaking publicly in opposition to positions taken by the Board.
- Ensuring the proper performance of all regulatory functions as set forth in the WSBA Bylaws, court rules, court orders, and case law, including the development of procedures to ensure the consistent application of those rules and policies.
- Reporting to the Supreme Court regarding regulatory matters and on other topics as requested by the Board of Governors, the Chief Justice, or the Supreme Court.
- Taking steps to ensure WSBA and its entities are in compliance with all applicable laws, regulations, court rules, orders, and case law.
- Directing litigation that involves the WSBA, including retention of outside counsel, except when a litigation decision raises a significant issue of policy, or the Executive Director has a conflict of interest.
- Overseeing the operations of the WSBA, including facilities, insurance, contracting, and developing and executing policies related to health and safety.
- Reporting to the Board of Governors regarding WSBA operations.

Board of Governors

The Board of Governors is the governing body of the WSBA. Its primary function is to set the policies of the WSBA and to evaluate how well the Executive Director carries them out and accomplishes the mission. WSBA is subject to the plenary authority of the Washington Supreme Court and the Board of Governors authority over WSBA is restricted in some regulatory matters by court rule, order, case law, or statute. The Board exercises its authority through majority vote, except in some cases where a two-thirds majority is required per applicable bylaw. Specific responsibilities include:

Roles and responsibilities of the Board of Governors	Reference
1. Electing the President-Elect and Treasurer.	Bylaws, IV.A and IV.B.6.a. (President-Elect); Bylaws, IV.B.7.a.4. (elect Treasurer upon removal or resignation); VI.D.2. (Treasurer election).
2. Selecting, supporting, setting the compensation for, and evaluating the performance of the Executive Director.	Bylaws, IV.A.2.; Fiscal Policies and Proc 10/16/19, p.13
3. Approving the annual budget, monitoring WSBA's financial health, establishing reserves, and ensuring that the WSBA has adequate resources to achieve its strategic goals and fulfill its mission.	Bylaws, IV.A.; Fiscal Policies and Proc 10/16/19, p.13
4. Recommending license fees to the Supreme Court and approving other significant fees such as the Keller Deduction and MCLE fees.	Bylaws, III.I.1.a.1.(license fees); XV.A. (referencing Keller Deduction Policy); Fiscal Policies and Proc 10/16/19, p.11 (certain MCLE fees); Fiscal Policies and Proc 10/16/19, p.13 (Keller deduction)
5. Approving unbudgeted expenditures and reallocation of budgeted expenditures that are outside of the Executive Director's authority.	Bylaws, V.A. and B. (Appropriations and Expenses); Fiscal Policies and Proc 10/16/19, p.13
6. Approving the expenditure of reserve funds, consistent with reserve policies.	Fiscal Policies and Proc 10/16/19, p.13
7. Approving gifts from the Client Protection Fund.	Fiscal Policies and Proc 10/16/19, pp.11-12 (BOG approves gifts over 25K per applicant)
8. Selecting an independent auditor and reviewing of the annual audit report.	Fiscal Policies and Proc 10/16/19, pp.12-13 (BOG considers recommendation of Budget and Audit Committee; reviews auditor reports)
9. Approving a facilities strategy, including approval of decisions to lease or purchase real estate.	Fiscal Policies and Proc 10/16/19, p.13 (approves/sets: long-term leases for WSBA office space or equipment)
10. Developing strategic goals. Establishing, supporting, and evaluating progress toward strategic goals.	ED Job Specification

11. Establishing and supporting significant organizational policies, including but not limited to the WSBA Bylaws, Fiscal Policies, and Compensation Plan.	Bylaws IV.A. (BOG determines Bar policies), XVI. (Amendments); Bylaws, Fiscal Policies and Proc 10/16/19, pp.12-13
12. Establishing, supporting, and evaluating the work of WSBA entities that are not directly supervised by the Supreme Court or otherwise excluded by court rule or order. Does the Board do this ?	Bylaws IV.A.2.e (Board liaisons to entities); Bylaws, IX.A.2 (entities require active and continuing attention of Board); Bylaws IX.B.3.a (carry out duties as requested by BOG)
13. Establishing, supporting, and supervising WSBA volunteers not appointed by the Supreme Court. Does the Board do this?	Bylaws, IV.A, Bylaws, IX.A.2 (entities require active and continuing attention of Board); Board Policy 1002: Committees and Boards Policy Sept. 2015
14. Filling certain vacancies on the Board of Governors. define when this happens	Bylaws, IV.A.4.
15. Ensuring WSBA entities, volunteers, and members of the Board of Governors comply with WSBA policy, applicable laws, regulations, court rules, orders, and case law in the course of their work with WSBA.	Bylaws, IX.A.2 (entities require active and continuing attention of Board)); Board Policy 1002: Committees and Boards Policy Sept. 2015
16. Approving litigation decisions that involve a significant issue of policy.	See Bylaws, VII.B.7.a.4.
17. Hearing appeals of certain regulatory matters as provided by court rule or order.	Cite Relevant Court Rules
Delineation of Duties	Reference
18. Establish new programs and determine when to sunset programs.	Bylaws IV.A, GR 12.2(b) (WSBA may maintain various programs)
19. Establish committees, councils, task forces, and work groups to carry out the work of WSBA. Sunset such entities.	Bylaws, IX.B.1 (Committees are created and authorized by the BOG); IX.A.3. (Committee termination by BOG); IX.B.2 (BOG task forces, workgroups, etc.); IX.C. (Councils)
20. Sunset sections.	Bylaws, XI.L. (Termination Sections)
21. Approves changes to WSBA Bylaws, subject to Court review.	Bylaws, XVI. (Amendments)
22. Revises, adopts, and sunsets significant organizational policies – not operational policies.	Fiscal Policies and Proc 10/16/19, p.6 (BOG approves or sets all significant fiscal policies);
23. Establishes volunteer reimbursement policies.	Fiscal Policies and Proc 10/16/19, pp.6-7
24. Provides support and guidance to WSBA entities carrying out the work of WSBA by reviewing annual reports and engaging in dialogue.	Bylaws, IX.C.5 (Councils)

25. Approve amicus requests, upon recommendation of Exec Cmte.	Board Policy 1001: Amicus Policy 9/2017
26. Approve Budget, upon recommendation of the Budget & Audit Cmte.	Bylaws, IV.A.; Fiscal Policies and Proc 10/16/19, p.12
27. Approve unbudgeted expenses.	Bylaws, V.A. and B. (Appropriations and Expenses); Fiscal Policies and Proc 10/16/19, p.13
28. Affirms President-Elect's chair appointments to WSBA entities.	Bylaws, IX.B.1.c. (committees); IX.B.2.b. (other bar entities)
29. Removes WSBA volunteers.	Bylaws, IV.B.7. (BOG may remove with 75% vote: President, President-Elect, Immediate Past President, and Treasurer)
30. Appoints former governors to investigate allegations against a president, president-elect, or governor that implicate fitness to serve and decides what action to take after receiving a report from the appointed group.	Board Policy 301: Complaints About Governors, President, or the President-Elect
31. Establish the Compensation Philosophy for WSBA employees, to be executed by the ED.	Fiscal Policies and Proc 10/16/19, pp.12, 14
32. Advise the ED on litigation and settlement strategy in cases that threaten a significant fiscal impact and/or implicate a matter of organizational of policy.	See Bylaws, VII.B.7.a.4.
33. Can refer legislation to WSBA entities for consideration.	BOG Policy 1501: WSBA Legislation and Court Rule Comment Policy (paragraph 6)
34. Approves comment on federal legislation/court rules by WSBA entities.	BOG Policy 1501: WSBA Legislation and Court Rule Comment Policy (paragraph 6)
35. Can direct entities to cease public comment.	BOG Policy 1501: WSBA Legislation and Court Rule Comment Policy (paragraph 6)
36. Establish the license fee, subject to Court's review for reasonableness.	Fiscal Policies and Proc 10/16/19, p.13
37. Sets law clerk program fees	Fiscal Policies and Proc 10/16/19, p.13
38. Approves MCLE fees	Fiscal Policies and Proc 10/16/19, pp.11-12 (certain MCLE fees)
39. Hears appeals of denial of late fees.	Guidelines for Appeals Relating to Annual License and Reinstatement Fees (Approved by the Board of Governors on July 23, 2010)
40. Hears appeals from Law Clerk Board decisions.	APR 6(d)(4), APR 6 LAW CLERK BOARD REGULATIONS 2-5
41. Sets MCLE requirements for status changes through WSBA Bylaws.	Bylaws, III.B.2.b, III.B.3.h, III.D.1.a.1.b, III.D.1.a.2, III.D.1.b.1.b, III.K.4.d, III.N.1.c.a.

42. Sets admission requirements for status changes through WBSA Bylaws.	APR 2(a)(4)(A); Bylaws III.D-H
43. Sets admissions policy including defining “approved law school”.	APR 2(a); ADMISSIONS POLICIES OF THE WASHINGTON STATE BAR ASSOCIATION (Adopted July 1, 2012. Amended July 28, 2017, amendments effective September 1, 2017. Amended November 14, 2020, amendments effective December 1, 2020)
44. Approves changes to Section Bylaws.	Bylaws, XI.E.
45. approve the per member charge to sections	Bylaws, XI.D.; Fiscal Policies and Proc 10/16/19, p.63
46. Decide investment policy	Fiscal Policies and Proc 10/16/19, p.12
47. Sets member data and contact information policy	Board Policy 601: Member Data and Contact Information Policy 7/23/2010
48. Approve non budgeted expenses and reallocated funds beyond the ED’s authority.	Fiscal Policies and Proc 10/16/19, p.12
49. Create reserve funds, establish the policies for them, and determine use of them.	Fiscal Policies and Proc 10/16/19, p.12
50. Choose outside auditor.	Fiscal Policies and Proc 10/16/19, p.12 (BOG considers recommendation of Budget and Audit Committee)
51. Elect President-Elect and Treasurer	Bylaws, IV.A and IV.B.6.a. (President-Elect); Bylaws, IV.B.7.a.4. (elect Treasurer upon removal or resignation); VI.D.2. (Treasurer election)
52. Select, support, set compensation for, and annually evaluate performance of ED.	Bylaws, IV.A.2.; Fiscal Policies and Proc 10/16/19, p.12
53. Approve certain Client Protection Fund gifts.	Fiscal Policies and Proc 10/16/19, p.12
54. Approves litigation decisions that have significant budget or policy impact.	See Bylaws, VII.B.7.a.4.
55. Approves capital projects for facility improvements.	See Fiscal Policies and Proc 10/16/19, p.12
56. Approves long term leases for WSBA office space or equipment	Fiscal Policies and Proc 10/16/19, p.12
57. Act in the best interest of the Bar and the public.	Bylaws, IV.A.2.c.
58. May direct retention of independent counsel.	Bylaws, IV.E.4.
59. Approves or sets significant fiscal policies (includes Budget and Audit Committee Charter, Fiscal Responsibilities Matrix, budget policies and process, selection of independent auditors, investment policy, resolution	Fiscal Policies and Proc 10/16/19, pp.6-7; 19 (banking relationships)

authorizing banking relationships, unrestricted and restricted fund balance policy, general expense reimbursement policy dollar limits for meals and lodging, purchase of alcohol at bar functions, expense policies for the WSBA Officers and Board of Governors, and Executive Director expense policies).	
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Members of the Board of Governors, Individually

Members of the Board individually carry out the work of the Board of Governors by attending Board meetings, serving on Board committees, panels, or councils, by liaising to other WSBA and external entities, and by engaging with WSBA members. Although members are elected by specific constituencies, as governors they have a duty to act in the best interests of all members of the Bar and the public. Individually, specific responsibilities of each Governor include:

Roles and responsibilities of the BOG Members	Reference
1. Attending all meetings of the Board of Governors and staying informed about Board matters by reading relevant materials, seeking additional information as needed, and preparing for discussion.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(f); List of Governor responsibilities (Revised June 2016)
2. Attending all Board committee meetings to which the member is appointed to and staying informed about committee matters by reading relevant materials, seeking additional information as needed, and preparing for discussion.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(e); List of Governor responsibilities (Revised June 2016)
3. Engaging with WSBA members and the communities they serve as well as the public as an ambassador of WSBA and providing information about issues that are or will come before the Board and conveying member viewpoints to the Board.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(d); List of Governor responsibilities (Revised June 2016)
4. Actively serving as a liaison and acting as a resource to WSBA and external entities as appointed by the President and conveying viewpoints and information to the Board.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(e); List of Governor responsibilities (Revised June 2016)
5. Avoid speaking publicly in opposition to positions taken by the Board.	WSBA Bylaws, amended April 29, 2021 IV(D)(1)
6. Avoiding seeking to individually direct the implementation of policies or activities of the WSBA staff including the work of the Executive Director.	WSBA Bylaws, amended April 29, 2021 IV(B)(5), (E)
Delineation of Duties	Reference
7. Chair a committee to recruit at least two candidates to succeed the governor. Report on this work at the January meeting.	WSBA Bylaws, amended April 29, 2021 VI(D)(3),(c); List of Governor responsibilities (Revised June 2016)
8. Appoint volunteers to WSBA entities, upon recommendation of nomination teams.	List of Governor responsibilities (Revised June 2016)
9. Nominate applicants for WSBA committees or Boards when there is not a continuing member from the Governor's district (latter requirement doesn't apply to at-large).	WSBA Bylaws IX.B.1.b

10. Notify President and ED of policy and program proposals with sufficient time for analysis to occur, taking into account the scope and novelty of the proposal.	WSBA Bylaws, amended April 29, 2021 VIII(A)(1)
11. Attend all Board meetings.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(f); List of Governor responsibilities (Revised June 2016)
12. Engage with WSBA members as WSBA ambassador, provide information about issues that are or will come before the Board, and convey the members' viewpoints and information to the Board.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(d)
13. Primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.2, carries out the mission of the Bar, and operates in accordance with the Bar's Guiding Principles.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(c)
14. Bring to the BOG the perspective, values and circumstances of the Governor's district to be applied in the best interest of all members, the public, and the Board	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(d)
15. Bring information to the members that promotes appreciate of actions and issues affecting the membership as a whole, the public, and the organization.	WSBA Bylaws, amended April 29, 2021 IV(A)(2)(d)
16. Avoid speaking publicly in opposition to positions taken by the Board.	WSBA Bylaws, amended April 29, 2021 IV(D)(1)
17. Avoid seeking to individually direct policies or activities of WSBA, including the work of the Executive Director.	WSBA Bylaws, amended April 29, 2021 IV(B)(5), (E)

President

The President is the chief spokesperson of WSBA and presides over meetings of the Board of Governors. The President leads the Board in effectively carrying out its roles and responsibilities by establishing a healthy Board culture and working closely with each Board member to make the best use of their strengths and interests. Specific responsibilities include:

Roles and responsibilities of the President	Reference
1. Setting the agenda for Board meetings and presiding over meetings (them) to ensure constructive, high-quality debate.	Bylaws, IV.B.1., VII.C.4.
2. Chairing the BOG Executive Committee.	See Bylaws, VI.D, Charter of the BOG Executive Committee
3. Leading the Board in establishing strategic goals.	See Bylaws, IV.B.1.
4. Facilitating communication between the Board and the Executive Director, including ensuring clear communication of the Board's goals and expectations, and notice of anticipated actions with sufficient time to provide sufficient information to support high-quality decision-making.	See Bylaws, IV.B.1.
5. Educating the Board about (its) procedures, strategic goals, responsibilities, and culture.	See Bylaws, IV.B.1.

6. Cultivating a culture of direct communication, healthy conflict, respect for all viewpoints, and professionalism.	See Bylaws, IV.B.1.
7. Facilitating the resolution of conflict among Board members.	See Bylaws, IV.B.1.
8. Acting, in collaboration with the Executive Director, to carry out policies established by the Board of Governors.	See Bylaws, IV.E.1.
9. Acting as a liaison between the Board of Governors and the Supreme Court of Washington.	Bylaws, IV.E.1.
10. Presiding over the APEX Awards, 50-Year Lunch and similar events.	Bylaws, IV.E.1.
11. Avoid speaking publicly in opposition to positions taken by the Board.	See Bylaws, IV.E.1.
12. Avoid seeking to individually direct the implementation of policies or activities (of the) by WSBA staff, including the work of the Executive Director.	See Bylaws, IV.B.5; E
Delineation of Duties	Reference
13. Decides when and where the BOG meetings are held.	Bylaws, VII.C.1.
14. Acts generally as a non-voting member of the Board. Votes only when vote affects the result.	Bylaws, IV.B.1.
15. (Decide what goes on) Sets the agenda for BOG meetings, subject to Board ability to take action on any issue raised and seconded by motion.	Bylaws, IV.B.1. (presides; sets agenda), VII.C.4. (agenda and order of business)
16. Calls special and emergency meetings.	Bylaws, VII.C.2.a., VII.C.3.a.
17. Presides over BOG meetings, including ruling on points of order, deciding the order of speakers, when to take public comment, and any limits on public comment.	Bylaws, IV.B.1. (presides; sets agenda), VII.C.4. (agenda and order of business)
18. Excuses absences from Board of Governors meetings.	Bylaws, II.E.3.
19. Takes action to execute the policies established by the BOG.	Bylaws, IV.B.1.
20. May direct retention of independent counsel.	Bylaws, IV.E.4.
21. Decides when the Executive Committee meetings are held.	Bylaws, VII.D.3. (Any member of Exec Co may call Exec Co meeting)
22. Decide what goes on the agenda for Executive Committee meetings.	Bylaws, VII.C.4. ("For every BOG meeting, the President will establish the agenda")
23. Presides over Executive Committee meetings.	See Bylaws, VII.D.2.
24. Speaks (for the) on behalf of the organization (such as) to various entities including but not limited to the media, legislature, Supreme Court, and the members.	Bylaws, IV.E.1.
25. Writes a column in Bar News	See Bylaws, IV.E.1.
26. Provides an annual report to the membership.	Bylaws, IV.B.1.
27. Represents the organization at legal community events and on external committees such as the Board of Judicial Appeals.	See Bylaws, IV.E.1.
28. Represents the organization at internal events such as Section Leader Meetings and Chairs Orientations.	See Bylaws, IV.E.1.

29. Supports the Executive Director to ensure the Board is in compliance with the WSBA Bylaws and other policies governing the organization	See Bylaws, IV.B.1.
30. Communicates Board action to the Court, to other WSBA entities, and to other external stakeholders.	See Bylaws, IV.E.1.
31. Presides over ceremonial events such as local hero awards, APEX awards, professionalism in practice awards, and the 50 Year Lunch.	See Bylaws, IV.E.1.
32. Supports and drives an effective, inclusive, and professional culture on the Board of Governors.	See Bylaws, IV.B.1.
33. Advises the Executive Director on various matters at the ED's request.	See Bylaws, IV.B.1.
34. Signs Board resolutions.	See Bylaws, IV.E.1.
35. Facilitate conflict resolution among Board members and between Board members and staff members, when support is sought.	See Bylaws, IV.B.1.; CONFLICT RESOLUTION – PRACTICES & POLICY (adopted January 28, 2016) Section 3.
36. Works with the ED to resolve conflicts among Board members or among board and staff that don't prove resolvable through facilitated dialogue.	See Bylaws, IV.B.1.; CONFLICT RESOLUTION – PRACTICES & POLICY (adopted January 28, 2016) Section 3.
37. Participates (along with HR Director and Ombudsperson) to make a threshold determination about whether the facts in a complaint against a Board member, if true, would constitute harassment or discrimination. Upon receipt of a report substantiating discriminatory or harassing conduct by a member of the Board, decide by majority vote with the HR Director and Ombudsperson on corrective action.	See Bylaws, IV.B.1.; CONFLICT RESOLUTION – PRACTICES & POLICY (adopted January 28, 2016) Section 3, 4.; WSBA Board of Governors Anti-Harassment Policy and Procedure (Adopted by the Board of Governors January 2018; modified December 2019)
38. Co-signs amicus briefs approved by WSBA, alongside author.	See Bylaws, IV.E.1.
39. Acts as spokesperson for rule changes proposed to the Court by WSBA.	See Bylaws, IV.E.1.
40. Receives notification of significant personnel actions.	See Bylaws, IV.B.1.; Personnel Committee Handbook 2019-2020
41. May direct entities to cease public comment.	See Bylaws, IV.B.1.
42. Sets the seminar fee schedule, which acts as a ceiling.	See Bylaws, IV.B.1.
43. Signs new admittee welcome letter with ED.	See Bylaws, IV.E.1.
44. Signs law clerk program certificates with Law Clerk Board Chair.	See Bylaws, IV.E.1.
45. Appoints election board for BOG member elections.	See Bylaws, VI.C.2.g.
46. Sign pro bono commendation letters with ED.	See Bylaws, IV.E.1.
47. Lobbies for legal aid funding at federal level with Legal Foundation of Washington.	See Bylaws, IV.E.1.
48. Leads the Board in establishing strategic goals.	See Bylaws, IV.B.1.

49. Presents a report to the membership covering the principal activities of the Board during the President's term.	Bylaws, IV.B.1.
50. Avoid speaking publicly in opposition to positions taken by the Board.	See Bylaws, IV.E.1.
51. Avoid individually directing policies or WSBA activities, including the work of the Executive Director.	See Bylaws, IV.B.5; E
52. Receives written request for review of Executive Director dismissal, along with the Supreme Court.	Bylaws, IV.B.7.b.
53. Avoid publicly supporting or opposing in any election, any candidate for public office.	Bylaws, IV.B.2.
54. Avoid taking a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain unless authorized and instructed to do so by the BOG on a matter relating to the function or purposes of the Bar.	Bylaws, IV.B.2.

President-Elect

The President-Elect's primary function is to perform the duties of the President at their request or when the President is otherwise unable to do so. The President-Elect may also be assigned other duties by the President. Specific responsibilities include:

Roles and responsibilities of the President-Elect	Reference
1. Setting the meeting BOG meeting schedule for the year they will serve as President.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
2. Appointing the chairperson for certain WSBA entities for the year they will serve as President.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
3. Appointing Governors to BOG committees, including appointing the chairs (people), for the year they will serve as President.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
4. Assigning Governors liaison responsibilities with WSBA and external entities for the year they will serve as President.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
5. Setting the agenda for the BOG's annual retreat.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
6. Avoiding seeking to individually direct the implementation of policies or activities (of the) by WSBA staff, including the work of the Executive Director.	WSBA Bylaws, amended April 29, 2021 IV(B)(5), (E)
Delineation of Duties	Reference
7. Nominates chairs to WSBA entities for their year as president, subject to Board approval or rejection.	WSBA Bylaws, amended April 29, 2021 IX(B)(1),(c)
8. Appoints members of BOG committees for year as president, with due consideration to Board members' requests.	WSBA Bylaws, amended April 29, 2021 IV (C)
9. Appoints chairs of BOG committees for year as president.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)

10. Appoints BOG members to liaison assignments for year as president.	WSBA Bylaws, amended April 29, 2021 IV(B)(1)
11. Plans annual retreat in July prior to their year as president.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
12. Participates in onboarding and orientation activities for new members of the Board, including informational sessions for those interested in seeking a position on the Board.	WSBA Bylaws, amended April 29, 2021 VI(E)
13. Sets Board meeting schedule for year as President.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
14. Avoid speaking publicly in opposition to positions taken by the Board.	WSBA Bylaws, amended April 29, 2021 IV(D)(2)
15. Avoid individually directing policies or WSBA activities, including the work of the Executive Director.	WSBA Bylaws, amended April 29, 2021 IV(B)(5), (E)
16. Performs duties of the President at the request of the President, or in the absence, inability, recusal, or refusal of the President to perform the duties.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)
17. Not a voting member of the Board unless acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.	WSBA Bylaws, amended April 29, 2021 IV(B)(2)

Treasurer

The Treasurer's primary function is to ensure that the Board and officers are informed about the finances of the Bar. The Treasurer will perform the duties of the President if the President-Elect is unable to do so. The Treasurer may also be assigned other duties by the President. Specific responsibilities include:

Roles and responsibilities of the Treasurer	Reference
1. Chairing the BOG Budget and Audit committee, including setting the agenda and presiding over committee meetings to ensure constructive, high-quality debate.	WSBA Bylaws, amended April 29, 2021 IV(B)(4); Board of Governors Budget and Audit Committee Charter (10.16.19) In: Washington State Bar Association, Fiscal Policies and Procedures Manual, October 16, 2019
2. Presenting the final proposed budget and other recommendations of the Budget and Audit Committee to the Board of Governors.	WSBA Bylaws, amended April 29, 2021 V(A)(2)
3. Establishing deposit and credit relationships, withdrawing WSBA funds, and signing checks.	Fiscal Responsibilities Matrix (10.16.19) In: Washington State Bar Association, Fiscal Policies and Procedures Manual, October 16, 2019
4. Deciding appeals of the Executive Director's decisions with regard to rejecting or modifying an expense reimbursement.	Fiscal Responsibilities Matrix (10.16.19); In: Washington State Bar Association, Fiscal Policies and

	Procedures Manual, October 16, 2019
5. Reviewing WSBA financial reports and reporting to the Board of Governors about WSBA's financial health.	Board of Governors Budget and Audit Committee Charter (10.16.19) In: Washington State Bar Association, Fiscal Policies and Procedures Manual, October 16, 2019
6. Reviewing the Executive Director's expenses, payroll, and benefits reports.	Washington State Bar Association, Fiscal Policies and Procedures Manual, Chapter 6: Expenses (updated by the Board of Governors on July 23, 2016, V(E) EXPENSE POLICIES: WSBA EXECUTIVE DIRECTOR, October 16, 2019
7. Approving supplement budget requests from sections that exceed 25% of the sections' annual expense budget or \$1,000, whichever is greater.	Fiscal Responsibilities Matrix (10.16.19) and Chapter 10: Sections; In: Washington State Bar Association, Fiscal Policies and Procedures Manual, October 16, 2019
8. Avoid seeking to individually direct the implementation of policies or activities (of the) by WSBA staff, including the work of the Executive Director.	WSBA Bylaws, amended April 29, 2021 IV(B)(5), (E)
Delineation of Duties	Reference
9. Approve section budget requests that exceed the larger of 25% of budgeted amounts or \$1,000.00.	Fiscal Responsibilities Matrix (10.16.19); In: Washington State Bar Association, Fiscal Policies and Procedures Manual, October 16, 2019
10. Chair the Budget and Audit Committee, including setting the agenda and presiding over the committee meetings.	WSBA Bylaws, amended April 29, 2021 IV(B)(4). V(A)(1); Board of Governors Budget and Audit Committee Charter (10.16.19)
11. Present the final proposed budget and other recommendations of the Budget and Audit Committee to the Board of Governors	WSBA Bylaws, amended April 29, 2021 V(A)(2)
12. Reviews WSBA financial reports and reports to the Board of Governors about WSBA's financial health	WSBA Bylaws, amended April 29, 2021 IV(B)(4), V(A)
13. Can establish deposit and credit relationships, withdraw funds, and sign checks.	Washington State Bar Association Fiscal Policies and Procedures Manual October 16, 2019, Chapter 1: Key fiscal policies, Board of Governors Budget and Audit Committee Charter; Financial reporting
14. Reviews the Executive Director's expenses, payroll, and benefits reports.	Fiscal Responsibilities Matrix (10.16.19); In: Washington State Bar Association, Fiscal Policies and

	Procedures Manual, October 16, 2019
15. Decides appeals of the Executive Director's decisions rejecting or modifying expense reimbursements.	Fiscal Responsibilities Matrix (10.16.19); In: Washington State Bar Association, Fiscal Policies and Procedures Manual, October 16, 2019
16. Avoids seeking to individually direct the policies of activities of the WSBA, including the work of the Executive Director.	WSBA Bylaws, amended April 29, 2021 IV(B)(5), (E)
17. Performs the duties of the President in the absence, inability, recusal, or refusal of the President and the President-Elect.	WSBA Bylaws, amended April 29, 2021 IV(B)(4)
18. Is a voting member of the Board.	WSBA Bylaws, amended April 29, 2021 IV(B)

Past President

The Past President supports the President and the Board of Governors by providing continuity and is responsible for the training and education of new BOG members and officers. The Past President will perform the duties of the President if the President, President-Elect, and Treasurer are unable to do so. The Past President may also be assigned other duties by the President. Specific responsibilities include:

Roles and responsibilities of the Past President	Reference
1. Setting the agenda for the annual New Governor Orientation and Team Building Retreat.	Bylaws IV.B.3
2. Planning governance, diversity, equity, and inclusion, anti-harassment, and other appropriate training for the Board of Governors throughout the year.	Bylaws IV.B.3
3. Avoid seeking to individually direct the implementation of policies or activities (of the) by WSBA staff, including the work of the Executive Director.	Bylaw IV.2.b and IV.E.1
Delineation of Duties	Reference
4. Collaborates with ED to plan the annual New Governor Orientation and Team Building Retreat (new).	Bylaws IV.B.3
5. Plans governance, diversity, equity, and inclusion, anti-harassment, and other appropriate training for the Board of Governors throughout the year.	Bylaws IV.B.3
6. Avoids seeking to individually direct the policies or activities of the WSBA, including the work of the Executive Director.	Bylaw IV.2.b and IV.E.1
7. Performs the duties of the President in the absence, inability, recusal or refusal of the President, President-Elect, and Treasurer.	Bylaws IV.B.3

8. 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	Bylaws IV.B.3
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Executive Director

The Executive Director serves as Secretary of the Board of Governors, is the principal administrative officer of the bar, chief of staff, and is responsible for its day-to-day operations, including acting as a spokesperson. The Executive Director is responsible for executing the strategic goals and policies set forth by the Board of Governors. The Executive Director reports directly to the Supreme Court on all regulatory matters. Specific responsibilities include:

Roles and responsibilities of the Executive Director	Reference
1. Attending Board of Governor meetings and board committee meetings and supporting decision making by participating in the discussion to provide information and recommendations.	Bylaws IV.B.5(9), VII.D.2
2. Supporting the Board of Governors to develop policy and strategic goals, by making recommendations, engaging stakeholders, and assessing fiscal, operational, and other impacts	ED Contract Job Specifications I.3 (bullets 3-5)
3. Preparing an annual budget and implementing the approved budget.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 6, 14)
4. Recommending license and other significant fees and establishing other operational and administrative fees not established by the Supreme Court of Board of Governors.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 14)
5. Establishing deposit and credit relationships, withdrawing WSBA funds, and signing checks.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
6. Approving and reporting to the Board of Governors about certain unbudgeted expenses, including, reallocations of budgeted expenditures where the intent is similar or varies slightly; unbudgeted expenditures that are fully offset by unbudgeted revenue or a reallocation of budgeted expenditures up to 5% of the approved operating budget to address operational, regulatory or programmatic needs; and necessary and prudent expenditures to implement WSBA's Disaster Recovery Plan or to maintain WSBA's operations.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
7. Ensuring the finances of the WSBA are managed in a manner consistent with generally accepted accounting principles and WSBA policy; directing the preparation and reporting of complete and accurate financial statements; and ensuring an annual audit is performed and that the results are made public.	Bylaws IV.B.5(5) Bylaws IV.B.5(6)
8. Taking action to accomplish WSBA's strategic goals and to carry out approved policies and programs.	ED Contract Job Specifications I.1 (bullets 2-3)

9. Establishing and modifying an organizational structure of staff to accomplish the approved goals, programs, and policies of the WSBA.	ED Contract Job Specifications I.1 (bullet 9)
10. Supervising WSBA Employees, including ensuring a healthy workplace culture, developing, and enforcing HR policies and procedures, hiring, firing, and approving compensation and job specifications within the limits of the approved budget.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
11. Facilitating communication between the Board and WSBA employees, including ensuring clear communication of the Board's goals and expectations to employees and conveying employee viewpoints to the Board.	Bylaws IV.B.5.1, Employee Handbook A-4; ED Contract II.C
12. Overseeing the elections of the Board of Governors, including officers.	Bylaws VI.C.2, VI.3
13. Overseeing the recruitment, appointment, and onboarding process of WSBA volunteers. Monitoring volunteers and entities to ensure compliance with WSBA policy, applicable laws,	Bylaw IV.B.5, GR 12.3
14. Acting as an official spokesperson for the WSBA, including communicating with WSBA members, the judiciary, elected officials, and the community at large regarding WSBA matters.	Bylaws IV.E.3
15. Avoid speaking publicly in opposition to positions taken by the Board.	Employee Handbook E-2
16. Ensuring the proper performance of all regulatory functions as set forth in the WSBA Bylaws, court rules, court orders, and case law, including the development of procedures to ensure the consistent application of those rules and policies.	ED Contract Job Specifications I.2 (bullet 1), ELC 2.2(a)(1)
17. Reporting to the Supreme Court regarding regulatory matters and on other topics as requested by the Board of Governors, the Chief Justice, or the Supreme Court.	ED Contract Job Specifications I and I.2 (bullet 3)
18. Taking steps to ensure WSBA and its entities are in compliance with all applicable laws, regulations, court rules, orders, and case law.	ED Contract Job Specifications I.1 (bullet 10)
19. Directing litigation that involves the WSBA (is involved with), including retention of outside counsel, except when a litigation decision raises a significant issue of policy, or the Executive Director has a conflict of interest.	Bylaw IV.B.5
20. Overseeing the operations of the WSBA, including facilities, insurance, contracting, and developing and executing policies related to health and safety.	Bylaw IV.B.5
21. Reporting to the Board of Governors regarding WSBA operations.	Bylaws IV.B.5(10)
Delineation of Duties	Reference
22. Responsible for day to day operation of WSBA	Bylaws IV.B.5
23. Hiring, managing and terminating WSBA personnel	Bylaws IV.B.5(1)

24. Revises, adopts and sunsets operational policies and procedures.	Bylaw IV.B.5
25. Receives annual reports from Sections and other WSBA entities.	Bylaws IX.B.3(b), IX.C.5, XI.K
26. Directs litigation. Consulting with Board when there is a potential for significant fiscal impact to the organization and/or a matter of organizational policy is impacted.	Bylaw IV.B.5
27. Develops the investigation plan in the event of a whistleblower complaint, subject to approval by the Personnel Committee. Personnel committee creates the plan if the complaint is against the ED.	BOG Policy 1403: Whistleblower reports of illegal or dishonest activity-notification and investigation policy
28. Attends BOG Meetings and BOG Committee meetings, including Executive Sessions.	Bylaws IV.B.5(9), VII.D.2
29. Negotiates and executes contracts for WSBA.	Bylaws IV.B.5(2)
30. Communicates with bar members, the judiciary, elected officials, and the community at large about bar matters.	Bylaws IV.B.5(3)
31. Ensure the bar's books are kept in proper order and are audited annually.	Bylaws IV.B.5(5)
32. Ensure that the annual audited financial statement is made available to all Active members.	Bylaws IV.B.5(6)
33. Collect debts owed to the Bar and assign debts for collection as deemed appropriate.	Bylaws IV.B.5(7)
34. Acquires, manages, and disposes of personal property related to the bar's operations within the approved budget.	Bylaws IV.B.5(8)
35. Reports to the BOG regarding WSBA operations.	Bylaws IV.B.5(10)
36. Ensures minutes are made and kept of all BOG meetings.	Bylaws IV.B.5(11)
37. Serves as an officer of the Bar, as an ex officio, non-voting member of the BOG.	Bylaws IV.B.5
38. Controls the WSBA Seal.	Bylaws II.B
39. Accepts petitions, notices or other documents the Bylaws require to be filed with the Bar or served on the Board of Governors.	Bylaws II.C
40. Receives member change of required information, within 10 days of change.	Bylaws III.C.1; APR 13(b)

41. Keeps records of required member information, including: physical residence address; principal office address, telephone number and email address; resident agent physical street address; date of admittance; type and status of membership; date of transfer(s) from one status to another, if any; date and period of administrative suspension, if any; date and period of disciplinary actions or sanctions, if any; other data required by the Washington Supreme Court or Board of Governors.	Bylaws III.C.2
42. One of three persons who tallies President and President-Elect votes and may accept confidential telephonic vote from Governor who participated in the interview.	Bylaws VI.D.3(h)-(i)
43. Sets the time and place of New Governor Orientation.	Bylaws VI.E
44. Receives Petitions for recall of Governors.	Bylaws VI.F
45. May call a BOG Special or Emergency Meeting.	Bylaws VII.C.2(a)
46. Must receive notice of a BOG Special Meeting	Bylaws VII.C.2(b)
47. May set the location of an emergency meeting.	Bylaws VII.C.3
48. Member of the Board of Governors Executive Committee.	Bylaws VII.D.2
49. Receives Referenda Petitions, prepares ballots and sets deadlines for filing of statements.	Bylaws VII.A.2(e), VII.C
50. Maintains a list of current committees, councils, and taskforces, including their functions.	Bylaws IX.A.3
51. Maintains a list of the current regulatory boards and their functions.	Bylaws X
52. Maintains a list of current sections.	Bylaws XI.A
53. Receives petition and report seeking to establish new sections.	Bylaws XI.B.1
54. Receives annual reports from all Sections.	Bylaws XI.K
55. Receives requests for Keller arbitrations	Bylaws XV.C
56. In the event of a whistleblower complaint, develop a response and/or action plan to address any recommendations as well as remedial action and discipline as appropriate.	BOG Policy 1403: Whistleblower reports of illegal or dishonest activity-notification and investigation policy
57. Conducts and provides analysis to Board on proposals before the Board, including fiscal impact, stakeholder analysis and input, rule compliance, and implementation implications.	ED Contract Job Specifications I.3 (bullet 3)
58. Declares disaster to trigger implementation of Disaster Recovery Plan; updates disaster recovery plan.	Disaster Recovery Plan Section 2

59. Decides Public Records appeals pursuant to GR 12.4.	GR 12.4(h)
60. Decides member exemptions from the requirement to provide a public address.	Bylaws XII.B.5(l)(1)
61. Can refer legislation to WSBA entities for consideration.	BOG Policy 1501: WSBA Legislation and Court Rule Comment Policy
62. Can direct entities to cease public comment.	BOG Policy 1501: WSBA Legislation and Court Rule Comment Policy (paragraph 6)
63. Grants hardship exemption for license fees.	Bylaws III.I.5
64. Approves armed forces exemption.	Bylaws III.I.a.7
65. Decides when to waive or modify repayment of discipline costs.	Bylaw IV.B.5(7)
66. Signs recommendations for administrative suspension	Bylaws III.J.3.d
67. Signs new admittee welcome letter with President.	Bylaw IV.E.3
68. Sign pro bono commendation letters with President.	Bylaw IV.E.3
69. Permanent member of the Budget and Audit Facilities Advisory Committee	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 9)
70. Supports Board policy development and strategic goals by making recommendations, engaging stakeholder, and assessing fiscal, operational, legal, and other impacts.	ED Contract Job Specifications I.3 (bullets 3-5)
71. Prepares annual budget and implements the approved budget.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 6, 14)
72. Serves as ex officio, non-voting member of Budget and Audit Committee (along with Chief Financial Officer)	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 9)
73. Recommends license and other significant fees and establish other operational and administrative fees not established by the Supreme Court or the Board of Governors.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 14)
74. Approves reimbursement requests and service and program fees including (advertising rates, public records copy fees, fees for sale of member contact information,	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)

sales price of CLE and WSBA publications and other WSBA merchandise.	
75. Sets adjustments to employee salaries within adopted compensation plan.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
76. Approves grants to WSBA and in kind contributions of WSBA to the Foundation	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
77. Can establish deposit and credit relationships, withdraw WSBA funds, sign checks, invest funds in accordance with the investment policy, and transfer funds between established accounts.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
78. Approves unbudgeted expenditure that are offset by unbudgeted revenue, or reallocation of budgeted expenditures where there is a change of intent up to \$10,000 per item, or up to \$50,000 collectively during the fiscal year, where the overall bottom line of the annual budget is not affected (including approval of new programs or significant expansions, but not long term commitments or future obligations).	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
79. Approves necessary and prudent expenditures to implement WSBA's Disaster Recovery Plan or to maintain WSBA's operations	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10)
80. Compiles and review section budgets, with CFO.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 15-16)
81. Engages the approved auditing firm and initiate a competitive bid process prior to the end of the six-year period.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 (p. 10, 18)
82. Consults with CFO when an immediate change in investment strategy is recommended by WSBA's investment managers.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 2 (p. 22)
83. Approve license fee refunds.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 5 (p. 37)
84. Approve deviations from the fiscal policy due to extenuating circumstances in accordance with the Fiscal Matrix.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.I.A (p. 44)
85. Approves reimbursement requests from the prior fiscal year-with the CFO.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.I.D (p. 44)

86. Approves, preliminarily, a request exceeding the Accommodation funds set during the budgeting process, so long as the funds are available within the current fiscal year budget.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.VII.D (p. 52)
87. Approves all employee overnight stays at BOG meetings.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.I.E (p. 45)
88. Approves reimbursement for expenses not otherwise described in the policy when reasonable, necessary, appropriately documented and explained.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.I.I (p. 47)
89. Approves midyear employee cost center allocation changes.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.IX (p. 54)
90. May approve travel advances upon a director's recommendation.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.III.B.4 (p. 48)
91. May approve expenses for certain employee parties and celebrations.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.III.H (p. 50)
92. Approves exceptions to the limits on officer and Governor attendance at bar-related events	BOG Policy 1201: WSBA Fiscal Policies and Procedures 6.IV.B (p. 50-51)
93. Approves reimbursements for lodging and meal expenses about WSBA rates with appropriate supporting receipts.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 1 & 6.I.G-H (p. 10, 46)
94. Approves donations from WSBA committees and boards to entities such as other bar associations, legal organizations, or outside causes.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 7 (p. 55)
95. Supports all grant applications.	BOG Policy 1201: WSBA Fiscal Policies and Procedures 7 (p. 56)
96. Office of the Executive Director oversees administration of the executive functions of the WSBA.	Bylaws IV.B.5, ED Contract Job Specifications II.A; Employee Handbook A-4
97. Can approve overtime for nonexempt employees.	Employee Handbook C-1
98. Full administrative authority to set personnel policies and salaries, to employee and to terminate employment of staff.	Employee Handbook A-4; ED Contract II.C

99. Final decision on all definitions and interpretations involving the Employee Handbook.	Employee Handbook A-4
100. Consults with the HR Director to evaluate and place positions in job grades.	Employee Handbook C-3
101. Authorize revisions to policies and procedures covered in the Employee Handbook.	Employee Handbook vi
102. Enter into written agreements for employment for a specified period of time, or inconsistent with employment at will.	Employee Handbook vi
103. Receives confidential comments about supervisors, directors, or other conditions of work during employee performance evaluations.	Employee Handbook C6
104. Can receive employee complaints of sexual or other harassment, including retaliation.	Employee Handbook D-3
105. Address written employee complaints expressing dissatisfaction with supervisor's resolution of conflict. Executive Director investigations and will review and discuss with employee as soon as possible.	Employee Handbook D-6
106. Receive Whistleblower complaints from employees.	Employee Handbook D-7 and D-8
107. Approves employee resignation withdrawals.	Employee Handbook F-1
108. Approves requests to unlock the elevators during non-business hours.	Employee Handbook G-8
109. Authorize other employees to enter into contracts.	Bylaws IV.B.5(2); Employee Handbook G-8
110. May approve employee vacation schedules.	Employee Handbook I-3, I-7
111. May require employees with over 160 hours of accrued vacation to use the leave on an approved schedule.	Employee Handbook I-7
112. May close the WSBA Offices for severe snow/weather or civil disruptions.	Employee Handbook I-9
113. Approves unpaid leaves of absences for personal reasons.	Employee Handbook I-13
114. Determines licenses that WSBA will reimburse.	Employee Handbook I-17
115. May authorize employees to make statements contrary to the Board of Governors position.	Employee Handbook E-2
116. Decides appeals of the HR Director's decision relating to parking spaces for employees.	Employee Handbook E-5
117. Receives notification from employees who are convicted under any criminal drug statute for a violation occurring in the workplace.	Employee Handbook E-8

118. Takes action to accomplish WSBA's strategic goals and to carry out approved policies and programs.	ED Contract Job Specifications I.1 (bullets 2-3)
119. Establishes and modifies an organizational structure of staff to accomplish the approved goals, programs, and policies of the WSBA.	ED Contract Job Specifications I.1 (bullet 9)
120. Facilitates communication between the Board and WSBA employees, including ensuring clear communication of the Board's goals and expectations to employees and conveying employee viewpoints to the Board.	Bylaws IV.B.5.1, Employee Handbook A-4; ED Contract II.C
121. Oversees the elections of the Board of Governors, including officers.	Bylaws VI.C.2, VI.3
122. Overseeing the recruitment, appointment and onboarding process of WSBA volunteers. Monitoring volunteers and entities to ensure compliance with WSBA policy, applicable laws, regulations, court rules, orders, and case law in the course of their work with WSBA and reporting issues to the Board of Governors.	Bylaw IV.B.5, GR 12.3
123. Acts as an official spokesperson for the WSBA, including communicating with WSBA members, the judiciary, elected officials, and the community at large regarding WSBA matters and is not required to obtain prior approval from the BOG before doing so.	Bylaws IV.E.3
124. Avoids speaking publically in opposition to positions taken by the Board.	Employee Handbook E-2
125. Ensures the proper performance of all regulatory functions as set forth in the WSBA Bylaws, court rules, court orders, and case law, including the development of procedures to ensure the consistent application of those rules and policies.	ED Contract Job Specifications I.2 (bullet 1), ELC 2.2(a)(1)
126. Reports to the Supreme Court regarding regulatory matters and on other topics as requested by the Board of Governors, the Chief Justice, or the Supreme Court.	ED Contract Job Specifications I and I.2 (bullet 3)
127. Takes steps to ensure WSBA and its entities are in compliance with all applicable laws, regulations, court rules, orders, and case law.	ED Contract Job Specifications I.1 (bullet 10)
128. Oversees the operations of the WSBA, including facilities, insurance, contracting, and developing and executing policies related to health and safety.	Bylaw IV.B.5
129. Engaging consultants to facilitate work of WSBA, consistent with approved budget.	Bylaws IV.B.5(2)
130. Avoids taking sides or public positions on issues being submitted to the voters or pending before the legislature	Bylaws IV.D.2.b

<p>unless authorized by the Board of Governors as authorized in the Bylaws.</p>	
<p>131. Avoids publicly supporting or opposing, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is immediate family.</p>	<p>Bylaws IV.D.3</p>

Although not exhaustive this document is intended to enumerate many of the permissive and mandatory functions and duties of the Board of Governors and its Officers.

President

- Decides when and where the BOG meetings are held.
- Acts generally as a non-voting member of the Board. Votes only when vote affects the result.
- (Decide what goes on) Sets the agenda for BOG meetings, subject to Board ability to take action on any issue raised and seconded by motion.
- Calls special and emergency meetings.
- Presides over BOG meetings, including ruling on points of order, deciding the order of speakers, when to take public comment, and any limits on public comment.
- Excuses absences from Board of Governors meetings.
- Takes action to execute the policies established by the BOG.
- May direct retention of independent counsel.
- Decides when the Executive Committee meetings are held.
- Decide what goes on the agenda for Executive Committee meetings.
- Presides over Executive Committee meetings.
- Speaks (for the) on behalf of the organization (such as) to various entities including but not limited to the media, legislature, Supreme Court, and the members.
- Writes a column in Bar News
- Provides and an annual report to the membership.
- Represents the organization at legal community events and on external committees such as the Board of Judicial Appeals.
- Represents the organization at internal events such as Section Leader Meetings and Chairs Orientations.
- Supports the Executive Director to ensure the Board is in compliance with the WSBA Bylaws and other policies governing the organization
- Communicates Board action to the Court, to other WSBA entities, and to other external stakeholders.
- Presides over ceremonial events such as local hero awards, APEX awards, professionalism in practice awards, and the 50 Year Lunch.
- Supports and drives an effective, inclusive, and professional culture on the Board of Governors.
- Advises the Executive Director on various matters at the ED's request.
- Signs Board resolutions.
- Facilitate conflict resolution among Board members and between Board members and staff members, when support is sought.
- Works with the ED to resolve conflicts among Board members or among board and staff that don't prove resolvable through facilitated dialogue.
- Participates (along with HR Director and Ombudsperson) to make a threshold determination about whether the facts in a complaint against a Board member, if true, would constitute harassment or discrimination. Upon receipt of a report substantiating discriminatory or

harassing conduct by a member of the Board, decide by majority vote with the HR Director and Ombudsperson on corrective action.

- Co-signs amicus briefs approved by WSBA, alongside author.
- Acts as spokesperson for rule changes proposed to the Court by WSBA.
- Receives notification of significant personnel actions.
- May direct entities to cease public comment.
- Sets the seminar fee schedule, which acts as a ceiling.
- Signs new admittee welcome letter with ED.
- Signs law clerk program certificates with Law Clerk Board Chair.
- Appoints election board for BOG member elections.
- Sign pro bono commendation letters with ED.
- Lobbies for legal aid funding at federal level with Legal Foundation of Washington.
- Leads the Board in establishing strategic goals.
- Presents a report to the membership covering the principal activities of the Board during the President's term.
- Avoid speaking publicly in opposition to positions taken by the Board.
- Avoid individually directing policies or WSBA activities, including the work of the Executive Director.
- Receives written request for review of Executive Director dismissal, along with the Supreme Court.
- Avoid publicly supporting or opposing in any election, any candidate for public office.
- Avoid taking a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain unless authorized and instructed to do so by the BOG on a matter relating to the function or purposes of the Bar.

President-Elect

- Nominates chairs to WSBA entities for their year as president, subject to Board approval or rejection.
- Appoints members of BOG committees for year as president, with due consideration to Board members' requests.
- Appoints chairs of BOG committees for year as president.
- Appoints BOG members to liaison assignments for year as president.
- Plans annual retreat in July prior to their year as president.
- Participates in onboarding and orientation activities for new members of the Board, including informational sessions for those interested in seeking a position on the Board.
- Sets Board meeting schedule for year as President.
- Avoid speaking publicly in opposition to positions taken by the Board.
- Avoid individually directing policies or WSBA activities, including the work of the Executive Director.
- Performs duties of the President at the request of the President, or in the absence, inability, recusal, or refusal of the President to perform the duties.
- Not a voting member of the Board unless acting in the President's place at a meeting of the BOG and then only if the vote will affect the result.

Past President

- Collaborates with ED to plan the annual New Governor Orientation and Team Building Retreat (new).
- Plans governance, diversity, equity, and inclusion, anti-harassment, and other appropriate training for the Board of Governors throughout the year.
- Avoids seeking to individually direct the policies or activities of the WSBA, including the work of the Executive Director.
- Performs the duties of the President in the absence, inability, recusal or refusal of the President, President-Elect, and Treasurer.
- 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.

Treasurer

- Approve section budget requests that exceed the larger of 25% of budgeted amounts or \$1,000.00.
- Chair the Budget and Audit Committee, including setting the agenda and presiding over the committee meetings.
- Present the final proposed budget and other recommendations of the Budget and Audit Committee to the Board of Governors
- Reviews WSBA financial reports and reports to the Board of Governors about WSBA's financial health
- Can establish deposit and credit relationships, withdraw funds, and sign checks.
- Reviews the Executive Director's expenses, payroll, and benefits reports.
- Decides appeals of the Executive Director's decisions rejecting or modifying expense reimbursements.
- Avoids seeking to individually direct the policies or activities of the WSBA, including the work of the Executive Director.
- Performs the duties of the President in the absence, inability, recusal, or refusal of the President and the President-Elect.
- Is a voting member of the Board.

Board of Governors

- Establish new programs and determine when to sunset programs.
- Establish committees, councils, task forces, and work groups to carry out the work of WSBA. Sunset such entities.
- Sunset sections.
- Approves changes to WSBA Bylaws, subject to Court review.
- Revises, adopts, and sunsets significant organizational policies – not operational policies.
- Establishes volunteer reimbursement policies.
- Provides support and guidance to WSBA entities carrying out the work of WSBA by reviewing annual reports and engaging in dialogue.
- Approve amicus requests, upon recommendation of Exec Cmte.

- Approve Budget, upon recommendation of the Budget & Audit Cmte.
- Approve unbudgeted expenses.
- Affirms President-Elect’s chair appointments to WSBA entities.
- Removes WSBA volunteers.
- Appoints former governors to investigate allegations against a president, president-elect, or governor that implicate fitness to serve and decides what action to take after receiving a report from the appointed group.
- Establish the Compensation Philosophy for WSBA employees, to be executed by the ED.
- Advise the ED on litigation and settlement strategy in cases that threaten a significant fiscal impact and/or implicate a matter of organizational of policy.
- Can refer legislation to WSBA entities for consideration.
- Approves comment on federal legislation/court rules by WSBA entities.
- Can direct entities to cease public comment.
- Establish the license fee, subject to Court’s review for reasonableness.
- Sets law clerk program fees
- Approves MCLE fees
- Hears appeals of denial of late fees.
- Hears appeals from Law Clerk Board decisions.
- Sets MCLE requirements for status changes through WSBA Bylaws.
- Sets admission requirements for status changes through WBSA Bylaws.
- Sets admissions policy including defining “approved law school”.
- Approves changes to Section Bylaws.
- approve the per member charge to sections
- Decide investment policy
- Sets member data and contact information policy
- Approve non budgeted expenses and reallocated funds beyond the ED’s authority.
- Create reserve funds, establish the policies for them, and determine use of them.
- Choose outside auditor.
- Elect President-Elect and Treasurer
- Select, support, set compensation for, and annually evaluate performance of ED.
- Approve certain Client Protection Fund gifts.
- Approves litigation decisions that have significant budget or policy impact.
- Approves capital projects for facility improvements.
- Approves long term leases for WSBA office space or equipment
- Act in the best interest of the Bar and the public.
- May direct retention of independent counsel.
- Approves or sets significant fiscal policies (includes Budget and Audit Committee Charter, Fiscal Responsibilities Matrix, budget policies and process, selection of independent auditors, investment policy, resolution authorizing banking relationships, unrestricted and restricted fund balance policy, general expense reimbursement policy dollar limits for meals and lodging, purchase of alcohol at bar functions, expense policies for the WSBA Officers and Board of Governors, and Executive Director expense policies).

Board Members

- Chair a committee to recruit at least two candidates to succeed the governor. Report on this work at the January meeting.
- Appoint volunteers to WSBA entities, upon recommendation of nomination teams.
- Nominate applicants for WSBA committees or Boards when there is not a continuing member from the Governor's district (latter requirement doesn't apply to at-large).
- Notify President and ED of policy and program proposals with sufficient time for analysis to occur, taking into account the scope and novelty of the proposal.
- Attend all Board meetings
- Engage with WSBA members as WSBA ambassador, provide information about issues that are or will come before the Board, and convey the members' viewpoints and information to the Board.
- Primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.2, carries out the mission of the Bar, and operates in accordance with the Bar's Guiding Principles.
- Bring to the BOG the perspective, values and circumstances of the Governor's district to be applied in the best interest of all members, the public, and the Board
- Bring information to the members that promotes appreciate of actions and issues affecting the membership as a whole, the public, and the organization.
- Avoid speaking publicly in opposition to positions taken by the Board.
- Avoid seeking to individually direct policies or activities of WSBA, including the work of the Executive Director.

Executive Director

- Responsible for day to day operation of WSBA
- Hiring, managing and terminating WSBA personnel
- Revises, adopts and sunsets operational policies and procedures.
- Receives annual reports from Sections and other WSBA entities.
- Directs litigation. Consulting with Board when there is a potential for significant fiscal impact to the organization and/or a matter of organizational policy is impacted.
- Develops the investigation plan in the event of a whistleblower complaint, subject to approval by the Personnel Committee. Personnel committee creates the plan if the complaint is against the ED.
- Attends BOG Meetings and BOG Committee meetings, including Executive Sessions.
- Negotiates and executes contracts for WSBA.
- Communicates with bar members, the judiciary, elected officials, and the community at large about bar matters.
- Ensure the bar's books are kept in proper order and are audited annually.
- Ensure that the annual audited financial statement is made available to all Active members.
- Collect debts owed to the Bar and assign debts for collection as deemed appropriate.
- Acquires, manages, and disposes of personal property related to the bar's operations within the approved budget.
- Reports to the BOG regarding WSBA operations.
- Ensures minutes are made and kept of all BOG meetings.

- Serves as an officer of the Bar, as an ex officio, non-voting. member of the BOG.
- Controls the WSBA Seal.
- Accepts petitions, notices or other documents the Bylaws require to be filed with the Bar or served on the Board of Governors.
- Receives member change of required information, within 10 days of change.
- Keeps records of required member information, including: physical residence address; principal office address, telephone number and email address; resident agent physical street address; date of admittance; type and status of membership; date of transfer(s) from one status to another, if any; date and period of administrative suspension, if any; date and period of disciplinary actions or sanctions, if any; other data required by the Washington Supreme Court or Board of Governors.
- One of three persons who tallies President and President-Elect votes and may accept confidential telephonic vote from Governor who participated in the interview.
- Sets the time and place of New Governor Orientation.
- Receives Petitions for recall of Governors.
- May call a BOG Special or Emergency Meeting.
- Must receive notice of a BOG Special Meeting
- May set the location of an emergency meeting.
- Member of the Board of Governors Executive Committee.
- Receives Referenda Petitions, prepares ballots and sets deadlines for filing of statements.
- Maintains a list of current committees, councils, and taskforces, including their functions.
- Maintains a list of the current regulatory boards and their functions.
- Maintains a list of current sections.
- Receives petition and report seeking to establish new sections.
- Receives annual reports from all Sections.
- Receives requests for Keller arbitrations
- In the event of a whistleblower complaint, develop a response and/or action plan to address any recommendations as well as remedial action and discipline as appropriate.
- Conducts and provides analysis to Board on proposals before the Board, including fiscal impact, stakeholder analysis and input, rule compliance, and implementation implications.
- Declares disaster to trigger implementation of Disaster Recovery Plan; updates disaster recovery plan.
- Decides Public Records appeals pursuant to GR 12.4.
- Decides member exemptions from the requirement to provide a public address.
- Can refer legislation to WSBA entities for consideration.
- Can direct entities to cease public comment.
- Grants hardship exemption for license fees.
- Approves armed forces exemption.
- Decides when to waive or modify repayment of discipline costs.
- Signs recommendations for administrative suspension
- Signs new admittee welcome letter with President.
- Sign pro bono commendation letters with President.
- Permanent member of the Budget and Audit Facilities Advisory Committee

- Supports Board policy development and strategic goals by making recommendations, engaging stakeholder, and assessing fiscal, operational, legal, and other impacts.
- Prepares annual budget and implements the approved budget.
- Serves as ex officio, non-voting member of Budget and Audit Committee (along with Chief Financial Officer)
- Recommends license and other significant fees and establish other operational and administrative fees not established by the Supreme Court or the Board of Governors.
- Approves reimbursement requests and service and program fees including (advertising rates, public records copy fees, fees for sale of member contact information, sales price of CLE and WSBA publications and other WSBA merchandise.
- Sets adjustments to employee salaries within adopted compensation plan.
- Approves grants to WSBA and in kind contributions of WSBA to the Foundation
- Can establish deposit and credit relationships, withdraw WSBA funds, sign checks, invest funds in accordance with the investment policy, and transfer funds between established accounts.
- Approves unbudgeted expenditure that are offset by unbudgeted revenue, or reallocation of budgeted expenditures where there is a change of intent up to \$10,000 per item, or up to \$50,000 collectively during the fiscal year, where the overall bottom line of the annual budget is not affected (including approval of new programs or significant expansions, but not long term commitments or future obligations).
- Approves necessary and prudent expenditures to implement WSBA's Disaster Recovery Plan or to maintain WSBA's operations
- Compiles and review section budgets, with CFO.
- Engages the approved auditing firm and initiate a competitive bid process prior to the end of the six-year period.
- Consults with CFO when an immediate change in investment strategy is recommended by WSBA's investment managers.
- Approve license fee refunds.
- Approve deviations from the fiscal policy due to extenuating circumstances in accordance with the Fiscal Matrix.
- Approves reimbursement requests from the prior fiscal year-with the CFO.
- Approves, preliminarily, a request exceeding the Accommodation funds set during the budgeting process, so long as the funds are available within the current fiscal year budget.
- Approves all employee overnight stays at BOG meetings.
- Approves reimbursement for expenses not otherwise described in the policy when reasonable, necessary, appropriately documented and explained.
- Approves midyear employee cost center allocation changes.
- May approve travel advances upon a director's recommendation.
- May approve expenses for certain employee parties and celebrations.
- Approves exceptions to the limits on officer and Governor attendance at bar-related events
- Approves reimbursements for lodging and meal expenses about WSBA rates with appropriate supporting receipts.
- Approves donations from WSBA committees and boards to entities such as other bar associations, legal organizations, or outside causes.

- Supports all grant applications.
- Office of the Executive Director oversees administration of the executive functions of the WSBA.
- Can approve overtime for nonexempt employees.
- Full administrative authority to set personnel policies and salaries, to employee and to terminate employment of staff.
- Final decision on all definitions and interpretations involving the Employee Handbook.
- Consults with the HR Director to evaluate and place positions in job grades.
- Authorize revisions to policies and procedures covered in the Employee Handbook.
- Enter into written agreements for employment for a specified period of time, or inconsistent with employment at will.
- Receives confidential comments about supervisors, directors, or other conditions of work during employee performance evaluations.
- Can receive employee complaints of sexual or other harassment, including retaliation.
- Address written employee complaints expressing dissatisfaction with supervisor's resolution of conflict. Executive Director investigations and will review and discuss with employee as soon as possible.
- Receive Whistleblower complaints from employees.
- Approves employee resignation withdrawals.
- Approves requests to unlock the elevators during non-business hours.
- Authorize other employees to enter into contracts.
- May approve employee vacation schedules.
- May require employees with over 160 hours of accrued vacation to use the leave on an approved schedule.
- May close the WSBA Offices for severe snow/weather or civil disruptions.
- Approves unpaid leaves of absences for personal reasons.
- Determines licenses that WSBA will reimburse.
- May authorize employees to make statements contrary to the Board of Governors position.
- Decides appeals of the HR Director's decision relating to parking spaces for employees.
- Receives notification from employees who are convicted under any criminal drug statute for a violation occurring in the workplace.
- Takes action to accomplish WSBA's strategic goals and to carry out approved policies and programs.
- Establishes and modifies an organizational structure of staff to accomplish the approved goals, programs, and policies of the WSBA.
- Facilitates communication between the Board and WSBA employees, including ensuring clear communication of the Board's goals and expectations to employees and conveying employee viewpoints to the Board.
- Oversees the elections of the Board of Governors, including officers.
- Overseeing the recruitment, appointment and onboarding process of WSBA volunteers. Monitoring volunteers and entities to ensure compliance with WSBA policy, applicable laws, regulations, court rules, orders, and case law in the course of their work with WSBA and reporting issues to the Board of Governors.

- Acts as an official spokesperson for the WSBA, including communicating with WSBA members, the judiciary, elected officials, and the community at large regarding WSBA matters and is not required to obtain prior approval from the BOG before doing so.
- Avoids speaking publicly in opposition to positions taken by the Board.
- Ensures the proper performance of all regulatory functions as set forth in the WSBA Bylaws, court rules, court orders, and case law, including the development of procedures to ensure the consistent application of those rules and policies.
- Reports to the Supreme Court regarding regulatory matters and on other topics as requested by the Board of Governors, the Chief Justice, or the Supreme Court.
- Takes steps to ensure WSBA and its entities are in compliance with all applicable laws, regulations, court rules, orders, and case law.
- Oversees the operations of the WSBA, including facilities, insurance, contracting, and developing and executing policies related to health and safety.
- Engaging consultants to facilitate work of WSBA, consistent with approved budget.
- Avoids taking sides or public positions on issues being submitted to the voters or pending before the legislature unless authorized by the Board of Governors as authorized in the Bylaws.
- Avoids publicly supporting or opposing, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is immediate family.

MEMORANDUM

TO: WSBA Board of Governors
FROM: Terra Nevitt, Executive Director
DATE: October 27, 2021
RE: Anti-Harassment Training Resources

As a resource for WSBA's annual anti-harassment training, please take note of the attached policies:

- WSBA Board of Governors Anti-Harassment Policy and Procedure
- WSBA Board of Governors No Retaliation Policy



WSBA Board of Governors Anti-Harassment Policy and Procedure

(Adopted by the Board of Governors January 2018; modified December 2019)

Purpose

The Washington State Bar Association (“WSBA”) is firmly committed to maintaining a safe environment that encourages its employees and members of the Board of Governors (“BOG”) and other volunteers to speak up about discrimination or other harassment without fear of retaliation. To that end, the WSBA Board of Governors adopts this Anti-Harassment Policy and Procedure.

Scope

This Policy and Procedure applies to WSBA Officers and the Board of Governors. The Board adopts language identical to the WSBA Employee Manual’s Sexual and Other Harassment Policy to clearly demonstrate the Board’s commitment to take all reasonable actions to prevent sexual and other harassment and discrimination. Because the Officers and Board members are not WSBA employees, a new procedure is adopted in the event a complaint is made by a WSBA employee against an Officer or Governor.

Policy

Harassment includes remarks, gestures, or physical contact; display or circulation of written materials or pictures derogatory to either gender or to racial, ethnic, sexual orientation, or religious groups; and basing personnel decisions on an employee’s response to sexually oriented requests. Harassment also includes unwelcome conduct or comments that creates an intimidating, hostile, or offensive working environment or that is directed at a person because of that person’s gender, age, religion, race, sexual orientation, ethnic background, disability, or any other unlawful reason. Harassment may occur as one incident, or a series of incidents.

Harassing behavior does not need to be illegal harassment in order for corrective action to be considered. WSBA and the Board of Governors strive to create an environment free from disrespect, divisiveness, incivility, and inappropriate behavior. Therefore, behavior that could create a harassing environment should the behavior continue or escalate, will not be tolerated.

Engaging in any act that discriminates against an employee because of sex, age, race, color, marital status, national origin, religion, sexual orientation, gender identity, veteran status, genetic information, or the presence of a disability or any other basis prohibited by local, state, or federal laws will not be tolerated.

No one will suffer retaliation for reporting work place concerns, including, but not limited to that an employee who believes that the work environment has become a hostile or offensive place to work, notice of intent to file a lawsuit or charge, even if the filing is not ultimately made; participation in a pending investigation of misconduct or violations; and resisting sexual advances or intervening to protect others. This policy applies during normal working hours, at work related or sponsored functions, and while travelling on work related business.

Retaliation can include disparaging the person to others or in the media, taking actions not directly related to employment or volunteer role/status or by causing the individual harm, termination or illegal retraction of compensation and benefits, exclusion from events or meetings, any other action that might deter reasonable individuals from engaging in protected activity.

Board Procedure for Complaints Filed Against Officers or Governors

Receipt of Complaints

Any person who experiences or becomes aware of conduct described in this policy should immediately bring the matter to that attention of the Human Resources Director. However, the failure to report conduct immediately should not be construed against the complainant.

The WSBA will maintain confidentiality to the extent possible. However, the WSBA cannot promise complete confidentiality. Our duty to investigate and take corrective action may require the disclosure of information to individuals with a need to know. The WSBA will not allow the goal of confidentiality to be a deterrent to an effective investigation.

Initial Notification

The WSBA Director of Human Resources notifies the WSBA President and Executive Director that the complaint has been received. Notification should be made within 48 hours of receiving the complaint. If the President is not available, then notice should be provided to the President-Elect; however, efforts should continue to notify the President. If the complaint is against the President, then notice should be provided to the President-Elect. If the Executive Director is not available, then notice should be given to the person the Executive Director has temporarily placed in charge.

Threshold Determination

A threshold determination shall be made whether the facts as stated in the complaint, if taken as true, constitute harassment or discrimination. This decision shall be made by majority vote of the WSBA President, Director of HR, and the Ombudsperson.

If the complaint states facts that, even if true, do not support the complaint of harassment or discrimination, the complaint shall be closed and no further action taken.

For complaints that are not closed, the HR Director should conduct an initial investigation to determine whether the involved employee and governor or officer agree on the main facts and a resolution of the complaint. If the matter can be resolved by agreement, no further investigation is necessary.

For complaints that will be sent to an outside investigator, the officer or governor involved is automatically recused from discussing or voting on any matter related to the allegations.

Notice of these threshold determinations shall be provided to the complainant and to the involved governor or officer.

Ombudsperson

The Ombudsperson shall be appointed by the Chief Justice of the Washington Supreme Court to serve a three year term. The Ombudsperson is intended to serve in a neutral capacity with no actual or perceived prior connection to WSBA, including as an officer, Governor, or employee and should have experience with the laws pertaining to harassment and investigations. The Ombudsperson does not receive compensation but can be reimbursed for reasonable expenses according to the WSBA reimbursement policy.

Investigation

When an investigation is necessary, the Ombudsperson will choose an investigator from a list of vetted investigators maintained by the WSBA BOG Personnel Committee. The Committee should strive to maintain a list of at least five and less than ten vetted investigators. WSBA shall contract with the investigator to perform the required investigation.

The investigator shall provide an oral report to the HR Director, WSBA President and the Ombudsperson. The report shall include a summary of the facts determined, including any harm caused by the conduct.

If the report does not substantiate any discriminatory or harassing conduct, the complaint shall be closed and no further action taken. All records related to these matters shall be maintained by the Director of HR.

If the report does substantiate discriminatory or harassing conduct, the HR Director, WSBA President, and the Ombudsperson decide, by majority vote, on any recommended correction actions against the involved governor or officer and on the continued recusal of the involved governor or officer. Prior to recommending corrective action, the complaining employee is contacted by the HR Director to determine what corrective action they are seeking. After making a recommendation, the involved governor or officer is contacted by the HR Director and offered an opportunity to agree to the recommended corrective action. If the governor or officer agrees to the recommended corrective action, the matter is considered closed.

If the governor or officer does not agree to the recommended outcome, the Personnel Committee reviews the recommendation and submits the matter to the Board of Governors. The board's

decision must be approved by the Chief Justice, except where the Board of Governors has voted to remove the governor or officer and made the issue moot.

Corrective Action Considerations-Factors

In determining whether corrective action against the involved governor or officer is necessary and appropriate, and which corrective action should be applied, the following factors should be considered:

Whether harassment or discrimination was found by the investigation;

What kind of corrective action the complaining employee is seeking;

The seriousness of the conduct determined by the investigation;

Whether a pattern of conduct was found by the investigation;

Whether additional education would sufficiently address the conduct;

The degree of harm caused by the conduct, as determined by the investigation;

Level of cooperation with the investigation by the officer or governor;

Remorse or acceptance of responsibility as determined by the investigation; and

Whether the conduct knowingly violated a rule, law or advice given.

Corrective Action Options

The following corrective actions may be recommended to the Board of Governors, but do not represent the exclusive list of appropriate actions:

None, if no corrective or disciplinary actions are necessary and appropriate;

Written or oral apology, if agreed to by the complaining employee and the governor or officer involved;

Mediated conversation between the complaining employee and the governor or officer involved, if agreed;

Required course of education by date certain;

Written censure by President or Full Board;

Exclusion from a specific number of meetings, or until the required course of education is completed; or

Removal of the governor or officer from office. This option requires the appropriate vote of the full Board of Governors as required by the WSBA Bylaws.

Policy Distribution

This Policy shall be distributed to all new Governors during orientation and annually to all Governors and Officers during anti-harassment training.

WASHINGTON STATE BAR ASSOCIATION

WSBA Board of Governors No Retaliation Policy

(Adopted by the Board of Governors January 18, 2019)

Purpose

The Washington State Bar Association (“WSBA”) is firmly committed to maintaining a safe environment that encourages its employees and members of the Board of Governors (“BOG”) and other volunteers to speak up about sexual discrimination or other harassment without fear of retaliation. To that end, and to prevent victimization and other retaliatory behavior towards those who report such conduct to appropriate individuals, the WSBA adopts a No Retaliation Policy. This Policy is important for many reasons, including:

1. When reports of concerns of discriminatory or harassing conduct, or retaliatory action are made, the WSBA must consider them and take appropriate action. Retaliating against a BOG member or other WSBA volunteer, or WSBA employee who brought attention to inappropriate behavior harms the WSBA’s trustworthiness and reliability. Retaliation harms the public interest by deterring others from reporting complaints.
2. Any kind of retaliatory action, whether intentional or unintentional, may expose the WSBA to a serious legal risk.

Scope

This Policy applies to all WSBA employees and prospective, current, or former BOG members and other WSBA volunteers (BOG members and other WSBA volunteers hereinafter collectively referred to as “volunteers”). WSBA Employees are subject to provisions under the employee handbook policy on “Standards of Conduct and Discipline” and “Sexual and Other Harassment Policy” as determined by the Executive Director.

Policy

The WSBA prohibits any form of retaliation against or intimidation of WSBA employees or volunteers who report good-faith concerns of discriminatory, harassing, illegal or dishonest conduct or who participate in investigations or other proceedings related to such a report, even if the WSBA ultimately concludes that the report cannot be substantiated or that no violation of law, regulation or WSBA policy has occurred.

Retaliation Definition

Retaliation includes any kind of negative action against a current or former volunteer or employee who has reported actual or potential violations of equal opportunity laws or regulations (protected activity). These adverse actions create a hostile, threatening or uncomfortable environment for a person who reported alleged inappropriate conduct or participated in an investigation. Examples of retaliatory actions can occur outside of an employment relationship and may include, but are not limited to:

- Disparaging the person to others or in the media.
- Taking actions not directly related to employment or volunteer role/status or by causing the individual harm.
- Termination or illegal retraction of compensation and benefits.
- Exclusion from events or meetings.
- Any other action that might deter reasonable individuals from engaging in protected activity.

Activity protected by this Policy includes but is not limited to:

- Complaints about workplace harassment or discrimination;
- Notice of intent to file a lawsuit or charge, even if the filing is not ultimately made;
- Participation in a pending investigation of misconduct or violations; and
- Resisting sexual advances or intervening to protect others.

The WSBA will not interfere with the rights of employees or volunteers to speak out about or disclose conduct violating this policy. When possible, the WSBA encourages open communication in accordance with our “Guiding Communication Principles” and “Conflict Resolution Practices Policy.”

Reporting Complaints

Volunteers may file complaints with the President of the WSBA, the Chair of the BOG Personnel Committee or the Executive Director. WSBA employees may file complaints internally to their immediate supervisor, the Director of Human Resources or the Executive Director. Reports from volunteers or employees of misconduct or suspected violations will be investigated thoroughly and those who report or participate in the investigation must be protected from retaliation.

Appropriate action will be taken against a volunteer who is found to have engaged in prohibited harassing or retaliatory conduct, up to and including removal from the volunteer position as determined in accordance with the WSBA Bylaws and/or Washington Supreme Court rules.

Filing False Reports

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate action.

All WSBA employees and volunteers are required to cooperate with investigations undertaken in response to a complaint under this policy. In particular, among other things, WSBA employees and volunteers are required to make themselves available to investigators immediately upon request, be forthcoming and truthful with investigators, and provide complete and accurate information. Failing to cooperate with an investigation may also be grounds for removal from a volunteer position. WSBA Employees are subject to the policies and procedures in the employee handbook.



To: WSBA Board of Governors
From: Tracy Flood, President
Date: October 14, 2021
Re: Foundation Annual Report of Activities for FY21

The Washington State Bar Foundation's 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 that the Foundation President present an annual report to the Members within ninety days after the close of the fiscal year, which ends September 30. This report is an opportunity for the members to learn about its activities, priorities and direction.

Highlights

- The Foundation hosted **Powerful Communities Project** grant recipients and **Moderate Means Program** attorneys and students at Foundation Board meetings, where they shared details of their experiences with these programs.
- Via the **WSBA Justice & Diversity Opportunities Fund**, which is intended to enhance WSBA's credibility and visibility in access to justice and diversity communities, the Foundation sponsored the YMCA Youth & Government mock trial program; awarded five scholarships for the WSBA Judge Pro Tem CLE; and provided assistance to students that are part of the Academic Resource Center at Seattle University School of Law.

Fundraising Highlights

- **5,714** Washington legal professionals (almost 14%) made a voluntary contribution to the Foundation on their license forms, indicating their support for WSBA's equity and justice efforts. This was the fifth consecutive year of fundraising growth in this campaign.
- The Foundation worked with the Access to Justice Board to secure support for the 2021 conference, raising \$53,250 in sponsorships and gifts.

Program Highlights

The following program achievements were made possible in part with support from the Foundation. The Foundation has designated \$315,000 to WSBA equity and justice programs and Powerful Communities Project grant recipients for FY22.

- The **Powerful Communities Project** completed its third year, bringing the total amount awarded to \$87,000 and the number of grantees to 39. This critical program helps ensure people from underserved and underrepresented communities are able to get legal assistance. These grants are paid directly by the Foundation.
- The **Moderate Means Program**, which completed ten years in 2021, continued to refer family, housing, consumer law, and unemployment benefit cases to help moderate income families, many of which have been deeply affected by the COVID crisis.
- The Foundation administered funds for the **WSBA Elder Law Section** for Brittany Jones' stipend for a summer internship with the Northwest Justice Project.

Conclusion and Look Ahead

The Foundation enters FY22 with a seasoned and passionate Board of Trustees representing a diverse cross-section of the profession and the community. We are continually exploring new ways to connect with current and potential donors. WSBA members and private supporters continue to be generous to the Foundation, for which we are grateful. Connecting the impacts of WSBA programs with gifts to the Foundation will help us grow support for WSBA's equity and justice goals.

To: Washington Supreme Court Justices
From: MCLE Board
Date: August 20, 2021
RE: **2020-2021 MCLE BOARD TERM REPORT**

Background & Purpose:

The Mandatory Continuing Legal Education (MCLE) Board derives its authority from the Washington Supreme Court. Under Admission and Practice Rule (APR) 11(d)(2), the MCLE Board is authorized to accredit courses and educational programs that satisfy the educational requirements of the mandatory CLE rule, consider MCLE policy issues, determine and adjust fees, consider member and sponsor petitions for waivers from requirements and appeals from decisions, and suggest amendments or regulations to APR 11. The MCLE Board is comprised of 6 WSBA members and 1 community members. On average, the MCLE Board meets five times a year.

FY 2020-2021 MCLE Board Goals:

1. Suggested Amendment

Taking into consideration feedback from the public, licensed legal professionals, and the WSBA Board of Governors, the MCLE Board made a goal of determining whether to recommend to the Washington Supreme Court an amendment to the Admission and Practice Rule (APR) 11 ethics requirement. On October 15, 2020, the MCLE Board submitted the suggested amendment to the Washington Supreme Court. On July 1, 2021, the Washington Supreme Court entered order 25700-A-1349 approving the MCLE Board's suggested amendment. The order is effective September 1, 2022. The amendment to APR 11 requires, per each three-year MCLE reporting period, that each licensed legal professional complete at least one ethics credit in the topic of equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law.

2. Course Audits

MCLE Board members have a goal of auditing two or more CLE courses each year, focusing on accredited sponsors. The MCLE Board has completed five (5) audit reports throughout the 2020-2021 term, and are in the process of auditing three (3) additional courses. Accredited sponsors have the same duties as general sponsors, but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with APR 11. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

3. Diversity



The MCLE Board will continue to examine and work to increase the diversity of the MCLE Board. The MCLE Board continues to seek board members who represent diversity in geography, and all other diversity criteria used by the WSBA. In addition, the MCLE Board has done targeted outreach to WSBA members and CLE sponsors regarding topics that the Board has considered during the year. Also, the Board routinely receives and considers input from petitions filed by WSBA members affected by the MCLE rules.

The MCLE Board fosters an atmosphere of civility and collegiality insofar as how the Board receives comments from WSBA members, staff, fellow board members, and others. This is accomplished by active listening and respectful discussion. Consistency in the application of the rules is maintained by active discussion on the merits of each issue brought before the MCLE Board. The MCLE Board aims to achieve Board consensus whenever possible.

Newly Adopted MCLE Board Policies

At its August 6, 2021 meeting, the MCLE Board adopted two policies with the intent to provide guidance for the implementation of the Court's order NO. 25700-A-1349, which requires at least one MCLE credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law (hereinafter referred to as "equity credit"). Pursuant to APR 11(d)(2)(ii) the policies will become effective 60 days after promulgation by the MCLE Board. Below is a brief description of each policy.

MCLE Board Policy – Implementation of New Ethics Requirement

This policy establishes 2023-2025 as the first reporting period required to report and certify the new requirement. The policy is intended to allow time for WSBA staff to develop tracking mechanisms in the MCLE database for certification and course accreditation according to the new requirements. In addition, this policy provides time to notify both licensed legal professionals and CLE sponsors of the new requirement.

MCLE Board Policy – Credit Carryover

This policy clarifies that while all ethics credit earned in excess of the reporting period requirement will be carried over as ethics credit in accordance with APR 11(c)(7), a new equity requirement must be earned in each reporting period. This policy is consistent with the current administration of ethics carryover credits: excess ethics credits carryover in its broader, general definition. For example, activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system all currently carryover as ethics credit.

MCLE Credit for Law Clerk Tutors Workgroup



Over the years, there have been several requests by Law Clerk tutors to receive MCLE credit for giving their time as tutors. Tutors provide three hours of personal supervision each week, including instruction and substantive discussion of the law. It's a four-year program, and each year law clerks are required to study six subjects and pass monthly examinations. The exams are developed, administered, and graded by the tutors. At its May 25, 2021 meeting, the MCLE Board nominated two members to serve on the workgroup alongside two members from the Law Clerk Board to explore the possibility of suggesting an amendment to APR 11(e)(6) to allow Law Clerk tutors to obtain MCLE credit for teaching. On August 12, 2021, the workgroup met to discuss and draft potential language for an amendment to APR 11(e)(6).

WSBA Task Force Administering Xenial Involvement with Court Appointed Boards

MCLE Board member Robert Malae serves as the MCLE Board representative on the WSBA Task Force Administering Xenial Involvement with Court Appointed Boards (TAXICAB), and provides regular updates to the MCLE Board regarding the actions of the task force, at each MCLE Board meeting. The task force was created to begin a collaborative discussion with the Washington Supreme Court and to coordinate efforts to administer Court Boards, as well as to facilitate cooperation and the sharing of information between the Court and the WSBA on issues related to substantive, fiscal, and administrative concerns.

Board Interpretations of APR 11

After receiving a request for course accreditation guidance from MCLE staff, the MCLE Board determined that courses not designed nor intended for licensed legal professionals—that cover issues of diversity, inclusion, and elimination of bias—are not eligible for MCLE credit under APR 11(h). The MCLE Board requested MCLE staff to bring additional course applications in this topic to future meetings, in order to explore potential accreditation.

Petitions & Board Decisions

At each meeting, the MCLE Board reviews petitions that have been submitted on the basis of undue hardship. Per APR 11(i)(5): “a lawyer, LLLT, or LPO may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements.”

All petitions are first reviewed by the MCLE staff liaison and approved, denied, or forwarded to the MCLE Board based on the Board-approved decision matrix, which defines applicable hardships. The MCLE Board also reviews appeals of denials and holds hearings at the request of licensed legal professionals who also have the option to appeal a denial by the MCLE Board to the Supreme Court.

In total, two (2) petitions of undue hardship were reviewed by the MCLE Board during the 2020-2021 meeting term; however, both petitions were for the 2017-2019 reporting period. Due to the Court ordered extension of the 2018-2020 reporting period, and as of August 11, 2021, no petitions have been submitted to the MCLE Board for either the 2018-2021 extended reporting period or the 2019 -2021 reporting period. However, it is anticipated that the MCLE Board will begin to receive petitions for both

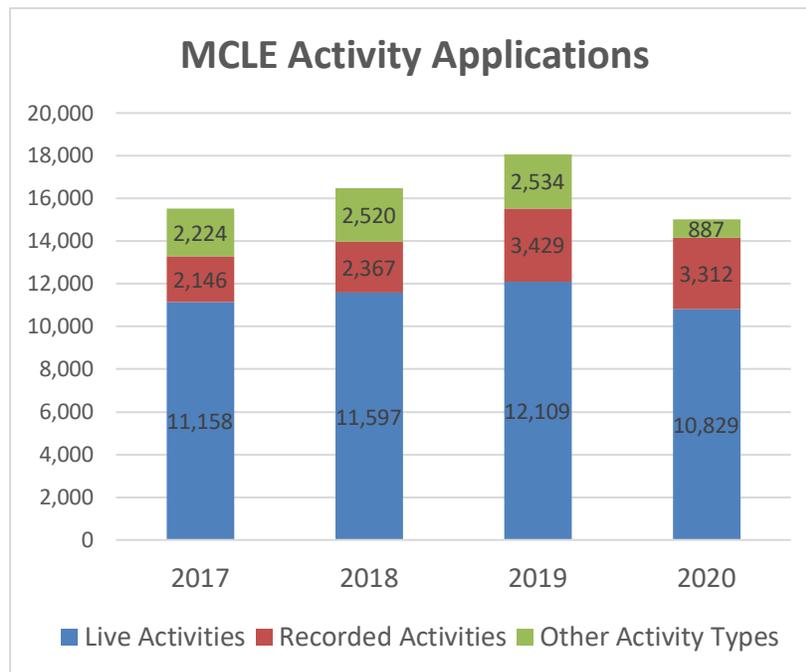


reporting periods this fall. For comparison, the MCLE Board received a total of sixty-eight (68) petitions during the 2017-2019 reporting period.

Strategies for Mitigating Implicit and Explicit Bias

In an effort to mitigate implicit and explicit bias from the MCLE petition review process, MCLE staff will begin to redact information pertaining to the petitioner’s identity, such as name, email, and license number before forwarding it to the MCLE Board.

MCLE Certification and Activity Submissions



The MCLE Board has delegated approval of courses to the WSBA’s MCLE staff. MCLE analysts regularly review CLE course submissions and accredit activities per standards outlined in APR 11. Hundreds of CLE activity applications are received each month, and MCLE analysts review and approve thousands of activity applications each year.

In addition to CLE activity reviews, MCLE staff handle the certification review process. As MCLE reporting and certification are based on a three-year reporting period, MCLE analysts review and verify that the MCLE requirements

are completed for one-third of active membership each year.

Due to the Court-ordered extension of the 2018-2020 reporting period (now 2018-2021), twice as many licensed legal professionals are due to certify credits by February 1, 2022. In order to meet and accomplish this increased workload (each individual certification must be reviewed by an MCLE analyst), MCLE staff worked with WSBA IT to open the MCLE certification in July 2021—several months ahead of the normal certification opening month of November. As of August 11, 2021, **1,538** licensed legal professionals have certified and are compliant for the 2018-2021 and 2019-2021 reporting periods, out of the **21,376** individuals that are due to report.

Sponsor Fees during COVID-19

MCLE staff provided an overview to the MCLE Board of sponsor application fee procedures in the midst of the COVID-19 pandemic—including charging separate application fees for formerly in-person



seminars that are divided into unique webcast offerings/separate applications. MCLE staff had encountered several examples of CLE sponsors attempting to apply for webinars as a package, to avoid multiple application fees. MCLE staff requested sponsors to separate such applications where non-consecutive days could cause confusion for 8-hour violation tracking (required per APR 11(c)(2)). The MCLE Board agreed with the current fee assessment procedure—to ensure that courses advertised as individual webinars be applied for individually—and requested MCLE staff to watch for any unique application issues that may require an additional assessment of the MCLE fee structure.

Attachments:

- 2020-2021 MCLE Board Roster
- MCLE Board Policies and Letter to Court (Ethics Requirement Implementation and Credit Carryover)
- WSBA Board of Governors Memo
- MCLE Board Undue Hardship Decision Matrix
- Fee Structure & Budget
- Admission and Practice Rule (APR) 11



2020-2021 MCLE Board Term Report

Attachments

- 2020-2021 MCLE Board Roster
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 - Fee Structure & Budget
 - Admission and Practice Rule (APR) 11

MCLE Board Members:

Ayanna Colman (Chair)
Todd Alberstone (Vice-Chair)
M. Christopher Bueter
Robert J Malae
Asia Noel Wright
Melissa Skelton
Merri Hartse

WSBA Board of Governors Liaisons:

Russell Knight
Sunitha Anjilvel

WSBA Staff Liaison:

Adelaine Shay



August 13, 2021

The Honorable Steven González
Chief Justice
Washington State Supreme Court
PO Box 40929
Olympia WA 98504-0929

RE: Notification of MCLE Board Policies

Dear Chief Justice González:

The purpose of this letter is to inform the Supreme Court of the MCLE Board's recently adopted policies. Pursuant to Admission and Practice Rule (APR) 11(d)(2)(ii), the MCLE Board is authorized to adopt policies to provide guidance in the administration of APR 11 and the associated regulations. Under that same section of APR 11, the MCLE Board is required to notify the Board of Governors and the Supreme Court of any policies that it adopts.

At its August 6, 2021 meeting, the MCLE Board adopted the attached policies with the intent to provide guidance for implementation of the Court's [order NO. 25700-A-1349](#) which requires at least one MCLE credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law. Pursuant to APR 11(d)(2)(ii) the policies will become effective 60 days after promulgation by the MCLE Board. Below is a brief description of each policy.

MCLE Board Policy – Implementation of New Ethics Credit

This policy establishes 2023-2025 as the first reporting period required to report and certify the new requirement. The policy is intended to allow time for WSBA staff to develop tracking mechanisms in the MCLE database for certification and course accreditation according to the new requirements. In addition, this policy provides time to notify both licensed legal professionals and CLE sponsors of the new requirement.

MCLE Board Policy – Credit Carryover

This policy clarifies that while all ethics credit earned in excess of the reporting period requirement will be carried over as ethics credit in accordance with APR 11(c)(7), a new equity requirement must be earned in each reporting period. This policy is consistent with the current administration of ethics carryover credits which is that excess ethics credits carryover in its broader, general definition. (e.g. activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system, etc... all carryover as "ethics" credit.)

If you would like additional information, please don't hesitate to contact the MCLE Board Staff Liaison at AdelaineS@wsba.org or (206) 727-8249.



Sincerely,

Ayanna Colman
MCLE Board Chair

cc: Kyle Sciuchetti, WSBA President
Terra Nevitt, WSBA Executive Director
Renata de Carvalho Garcia, Chief Regulatory Counsel
Adelaine Shay, MCLE Board Staff Liaison

Enclosed: MCLE Board Policies



BOARD POLICY : Implementation of the New Ethics Credit

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

1. The MCLE Board will track the new equity credit—as outlined in APR 11(c)(1)(ii) and APR 11(f)(2)—starting with the 2023-2025 MCLE reporting period. Licensed legal professionals in the 2023-2025 and subsequent MCLE reporting periods will be required to report and certify fulfillment of the equity credit requirement.

BOARD POLICY: Ethics Credit Carryover

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

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

TO: WSBA Board of Governors
FROM: Ayanna Colman, MCLE Board Chair
Adelaine Shay, WSBA MCLE Manager
DATE: August 20, 2021
RE: MCLE Board Adopted Policies – Notification

Notification Summary

Pursuant to Washington Supreme Court Admission and Practice Rule (APR) 11 (d)(2)(ii) the MCLE Board is notifying the Board of Governors of two policies adopted at its August 6, 2021 meeting. The attached policies are intended to provide guidance in the administration of the newly adopted APR 11 amendment and will become effective 60 days from promulgation.

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

MCLE Board Policy – Implementation of New Ethics Credit

This policy establishes 2023-2025 as the first reporting period required to report and certify the new requirement. The policy is intended to allow time for WSBA staff to develop tracking mechanisms in the MCLE database for certification and course accreditation according to the new requirements. In addition, this policy provides time to notify both licensed legal professionals and CLE sponsors of the new requirement.

MCLE Board Policy – Credit Carryover

This policy clarifies that while all ethics credit earned in excess of the reporting period requirement will be carried over as ethics credit in accordance with APR 11(c)(7), a new equity requirement must be earned in each reporting period. This policy is consistent with the current administration of ethics carryover credits which is that excess ethics credits carryover in its broader, general definition. (e.g. activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system, etc... all carryover as “ethics” credit.)

Attachments:

- MCLE Board Policy – Implementation of New Ethics Credit
- MCLE Board Policy – Credit Carryover



MCLE Board Approved
Undue Hardship Petition Decision Matrix

EXTENSION (EXT) REQUESTS MATRIX

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

CREDIT MODIFICATION (MOD) DECISION MATRIX

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

EXEMPTION (EXM) DECISION MATRIX

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

LATE FEE WAIVER DECISION CRITERIA

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

Y* = Complete at time petition considered

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

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

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

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

MCLE Board Direction on Petitions

04/03/2020 Meeting:

- **Regarding Military Spouses Submitting Petitions:** The MCLE Board approved by motion to direct the WSBA Staff Liaison to bring any military spouse petitions to the Board for review.

Current MCLE Fee Structure

Fee For CLE Sponsors	
Course Application and Late Fees for CLE Sponsors	Fees
Course Application <i>Note: Government agencies and Nonprofit organizations are not required to pay the application fee when a course is offered for free.</i>	\$ 100 / course
Course Application Late Fee	\$50 / course
Attendance Late Fee	\$50 / submission

Fees For Accredited Sponsor Annual Fees	
<i>Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with Washington Supreme Court Admission and Practice Rule 11. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.</i>	
Number of annual courses	Fees
0-50 courses	\$ 500
51-100 courses	\$ 1,500
101-250 courses	\$ 2,250
251-500 courses	\$ 3,000
501-1000 courses	\$ 4,500
1001 + courses	\$ 6,000

Late Certification By Licensed Legal Professionals	
Certification Late Fees	Fees
Lawyer, LLLT, and LPO Certification Late Fee	Start at \$ 150 and increase by \$ 300 for every consecutive (three-year) period of late compliance.

Washington State Bar Association

Statement of Activities

For the Period from June 1, 2021 to June 30, 2021

75.00% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
MANDATORY CONTINUING LEGAL EDUCATION									
REVENUE:									
ACCREDITED PROGRAM FEES	40,000	42,600	2,600	377,600	434,400	56,800	497,600	63,200	87.30%
FORM 1 LATE FEES	12,500	18,450	5,950	143,700	180,450	36,750	190,200	9,750	94.87%
MEMBER LATE FEES	-	3,300	3,300	2,400	6,346	3,946	2,700	(3,646)	235.05%
ANNUAL ACCREDITED SPONSOR FEES	(63)	(500)	(438)	41,938	42,250	313	41,750	(500)	101.20%
ATTENDANCE LATE FEES	6,667	11,600	4,933	74,833	92,250	17,417	94,000	1,750	98.14%
COMITY CERTIFICATES	100	650	550	12,687	13,312	625	13,000	(312)	102.40%
TOTAL REVENUE:	59,204	76,100	16,896	653,158	769,009	115,850	839,250	70,242	91.63%
DIRECT EXPENSES:									
DEPRECIATION	7,447	5,530	1,917	120,703	126,456	(5,753)	143,045	16,589	88.40%
STAFF MEMBERSHIP DUES	-	-	-	500	-	500	500	500	0.00%
ONLINE LEGAL RESEARCH	152	154	(2)	1,217	1,224	(8)	1,672	448	73.22%
LAW LIBRARY	13	11	2	110	100	10	150	50	66.43%
MCLE BOARD	-	-	-	-	-	-	650	650	0.00%
STAFF TRAVEL/PARKING	6	-	6	31	-	31	50	50	0.00%
STAFF TRAINING	-	-	-	1,170	-	1,170	1,170	1,170	0.00%
TOTAL DIRECT EXPENSES:	7,619	5,695	1,924	123,731	127,779	(4,049)	147,237	19,458	86.78%
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	24,132	19,148	4,984	197,367	186,113	11,253	269,761	83,648	68.99%
BENEFITS EXPENSE	10,488	10,541	(53)	76,222	76,174	47	106,179	30,004	71.74%
OTHER INDIRECT EXPENSE	11,366	7,262	4,104	93,593	77,263	16,331	135,803	58,540	56.89%
TOTAL INDIRECT EXPENSES:	45,986	36,950	9,036	367,182	339,550	27,631	511,743	172,192	66.35%
TOTAL ALL EXPENSES:	53,604	42,645	10,960	490,913	467,330	23,583	658,980	191,650	70.92%
NET INCOME (LOSS):	5,600	33,455	27,855	162,246	301,679	139,433	180,271	(121,408)	167.35%

APR 11
MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

(a) Purpose. Mandatory continuing legal education (MCLE) is intended to enhance lawyers', LLLTs', and LPOs' legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence as defined in RPC 1.1 or equivalent rule for LLLTs and LPOs, fitness to practice as defined in APR 20, and character as defined in APR 20. These rules set forth the minimum continuing legal education requirements for lawyers, LLLTs, and LPOs to accomplish this purpose.

(b) Definitions. For the purposes of this rule, the following definitions shall apply:

- (1) "Activity" means any method by which a lawyer, LLLT, or LPO may earn MCLE credits.
- (2) "Attending" means participating in an approved activity or course.
- (3) "Calendar year" means a time period beginning January 1 and ending December 31.
- (4) "Identical activity" means any prior course or other activity that has not undergone any substantial or substantive changes since last offered, provided, or undertaken.
- (5) "Lawyer, LLLT, or LPO" means an active lawyer, LLLT, or LPO of the Bar, a judicial member of the Bar classified as an administrative law judge, and any other lawyer licensed or authorized to practice law in Washington who is required by the Admission and Practice Rules (APR) to comply with this rule.
- (6) "Reporting period" means a three-year time period as assigned by the Bar in which a lawyer, LLLT, or LPO must meet the education requirements of this rule.
- (7) "Sponsor" means a provider of continuing legal education activities.

(c) Education Requirements.

- (1) *Minimum Requirement.* Each lawyer must complete 45 credits and each LLLT and LPO must complete 30 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:
 - (i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in subsection (f)(1); and
 - (ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2).

- (2) *Earning Credits.* A lawyer, LLLT, or LPO earns one credit for each 60 minutes of attending an approved activity. Credits are rounded to the nearest quarter hour. A lawyer, LLLT, or LPO may earn no more than eight credits per calendar day. A lawyer, LLLT, or LPO cannot receive credit more than once for an identical activity within the same reporting period.
- (3) *New Lawyers, LLLTs, and LPOs.* Newly admitted lawyers, LLLTs, and LPOs are exempt for the calendar year of admission.
- (4) *Military Personnel.* Military personnel in the United States Armed Forces may be granted an exemption, waiver, or modification upon proof of undue hardship, which includes deployment outside the United States. A petition shall be filed in accordance with subsection (i)(5) of these rules.
- (5) *Exemptions.* The following are exempt from the requirements of this rule for the reporting period(s) during which the exemption applies:
 - (i) *Judicial Exemption.* Judicial members of the Bar, except for administrative law judges;
 - (ii) *Supreme Court Clerks.* The Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law;
 - (iii) *Legislative Exemption.* Members of the Washington State Congressional Delegation or the Washington State Legislature; and
 - (iv) *Gubernatorial Exemption.* The Governor of Washington State.
- (6) *Comity.* The education requirements in Oregon, Idaho, and Utah substantially meet Washington's education requirements for lawyers. These states are designated as comity states. A lawyer may certify compliance with these rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period.
- (7) *Carryover Credits.* If a lawyer, LLLT, or LPO completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, 2 of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.

(d) MCLE Board.

- (1) *Establishment.* There is hereby established an MCLE Board consisting of seven members, six of whom must be active lawyers, LLLTs, or LPOs of the Bar and

one who is not licensed to practice law. The Supreme Court shall designate one board member to serve as chair of the MCLE Board. The members of the MCLE Board shall be appointed by the Supreme Court. Appointments shall be staggered for a three-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

(2) *Powers and Duties.*

- (i) **Rules and Regulations.** The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.
- (ii) **Policies.** The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.
- (iii) **Approve Activities.** The MCLE Board shall approve and determine the number of credits earned for all courses and activities satisfying the requirements of these rules. The MCLE Board shall delegate this power to the Bar subject to MCLE Board review and approval.
- (iv) **Review.** The MCLE Board shall review any determinations or decisions regarding approval of activities made by the Bar under these rules that adversely affect any lawyer, LLLT, or LPO or sponsor upon request of the lawyer, LLLT, or LPO, sponsor, or Bar. The MCLE Board may take appropriate action consistent with these rules after any such review and shall notify the lawyer, LLLT, or LPO or sponsor in writing of the action taken. The MCLE Board's decision shall be final.
- (v) **Fees.** The MCLE Board shall determine and adjust fees for the failure to comply with these rules and to defray the reasonably necessary costs of administering these rules. Fees shall be approved by the Board of Governors.
- (vi) **Waive and Modify Compliance.** The MCLE Board shall waive or modify a lawyer's, LLLT's, or LPO's compliance with the education or reporting requirements of these rules upon a showing of undue hardship filed in accordance with these rules. The MCLE Board may delegate this power to the Bar subject to (1) parameters and standards established by the MCLE Board and (2) review by the MCLE Board.

- (vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules.
 - (viii) Audits for Standards Verification. The MCLE Board may audit approved courses to ensure compliance with the standards set forth in these rules.
 - (3) *Expenses and Administration.* Members of the MCLE Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Bar's expense policies. The Bar shall provide administrative support to the MCLE Board.
- (e) **Approved Activities.** A lawyer, LLLT, or LPO may earn MCLE credit by attending, teaching, presenting, or participating in activities approved by the Bar. Only the following types of activities may be approved:
- (1) Attending, teaching, presenting, or participating in or at a course, provided that any pre-recorded audio/visual course is less than five years old;
 - (2) Preparation time for a teacher, presenter, or panelist of an approved activity at the rate of up to five credits per hour of presentation time, provided that the presentation time is at least 30 minutes in duration;
 - (3) Attending law school courses with proof of registration or attendance;
 - (4) Attending bar review courses for jurisdictions other than Washington with proof of registration or attendance;
 - (5) Writing for the purpose of lawyer, LLLT, or LPO education, when the writing has been published by a recognized publisher of legal works as a book, law review, or scholarly journal article of at least 10 pages, will earn one credit for every 60 minutes devoted to legal research and writing;
 - (6) Teaching law school courses, when the instructor is not a full-time law school professor;
 - (7) Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 1;
 - (8) Participating in a structured mentoring program approved by the MCLE Board, provided the mentoring is free to the mentee and the mentor is an active member of the Bar in good standing and has been admitted to the practice of law in Washington for at least five years. The MCLE Board shall develop standards for approving mentoring programs; and

- (9) Judging or preparing law school students for law school recognized competitions, mock trials, or moot court. The sponsoring law school must comply with all sponsor requirements under this rule.

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

- (1) *Law and legal procedure*, defined as legal education relating to substantive law, legal procedure, process, research, writing, analysis, or related skills and technology;
- (2) *Ethics and professional responsibility*, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including diversity and antibias with respect to the practice of law or the legal system, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;
- (3) *Professional development*, defined as subjects that enhance or develop a lawyer's, LLLT's, or LPO's professional skills including effective lawyering, leadership, career development, communication, and presentation skills;
- (4) *Personal development and mental health*, defined as subjects that enhance a lawyer's, LLLT's, or LPO's personal skills, well-being, and awareness of mental health issues. This includes, stress management, and courses about, but not treatment for, anxiety, depression, substance abuse, suicide, and addictive behaviors;
- (5) *Office management*, defined as subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office;
- (6) *Improving the legal system*, defined as subjects that educate and inform lawyers, LLLTs, or LPOs about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low cost service planning; and
- (7) *Nexus subject*, defined as a subject matter that does not deal directly with the practice of law but that is demonstrated by the lawyer, LLLT, or LPO, or sponsor to be related to a lawyer's, LLLT's, or LPO's professional role as a lawyer, LLLT, or LPO.

(g) Applying for Approval of an Activity. In order for an activity to be approved for MCLE credit, the sponsor or lawyer, LLLT, or LPO must apply for approval as follows.

- (1) *Sponsor.* A sponsor must apply for approval of an activity by submitting to the Bar an application fee and an application in a form and manner as prescribed by the Bar by no later than 15 days prior to the start or availability of the activity.
 - (i) *Late fee.* A late fee will be assessed for failure to apply by the deadline. The Bar may waive the late fee for good cause shown.
 - (ii) *Repeating Identical Course.* A sponsor is not required to pay an application fee for offering an identical course if the original course was approved and the identical course is offered less than 12 months after the original course.
 - (iii) *Waiver of Application Fee.* The Bar shall waive the application fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
- (2) *Lawyer, LLLT, or LPO.* A lawyer, LLLT, or LPO may apply for approval of an activity not already approved or submitted for approval by a sponsor by submitting to the Bar an application in a form and manner as prescribed by the Bar. No application fee is required.

(h) Standards for Approval. Application of the standards for approval, including determination of approved subject areas and approved activities in subsections (e) and (f) of this rule, shall be liberally construed to serve the purpose of these rules. To be approved for MCLE credit, all courses, and other activities to the extent the criteria apply, must meet all of the following criteria unless waived by the Bar for good cause shown:

- (1) A course must have significant intellectual or practical content designed to maintain or improve a lawyer's, LLLT's, or LPO's professional knowledge or skills, competence, character, or fitness;
- (2) Presenters must be qualified by practical or academic experience or expertise in the subjects presented and not disbarred from the practice of law in any jurisdiction;
- (3) Written materials in either electronic or hardcopy format must be distributed to all lawyers, LLLTs, and LPOs before or at the time the course is presented. Written materials must be timely and must cover those matters that one would expect for a professional treatment of the subject. Any marketing materials must be separate from the written subject matter materials;
- (4) The physical setting must be suitable to the course and free from unscheduled interruption;
- (5) A course must be at least 30 minutes in duration;

- (6) A course must be open to audit by the Bar or the MCLE Board at no charge except in cases of government-sponsored closed seminars where the reason is approved by the Bar;
- (7) Presenters, teachers, panelists, etc. are prohibited from engaging in marketing during the presentation of the course;
- (8) A course must not focus directly on a pending legal case, action, or matter currently being handled by the sponsor if the sponsor is a lawyer, LLLT, or LPO, private law firm, corporate legal department, legal services provider, or government agency; and
- (9) A course cannot have attendance restrictions based on race, color, national origin, marital status, religion, creed, gender, age, disability, or sexual orientation.

(i) Lawyer, LLLT, or LPO Reporting Requirements.

- (1) *Certify Compliance.* By February 1 of the year following the end of a lawyer's, LLLT's, or LPO's reporting period, a lawyer, LLLT, or LPO must certify compliance, including compliance by comity certification, with the education requirements for that reporting period in a manner prescribed by the Bar.
- (2) *Notice.* Not later than July 1 every year, the Bar shall notify all lawyers, LLLTs, and LPOs who are in the reporting period ending December 31 of that year that they are due to certify compliance.
- (3) *Delinquency.* A lawyer, LLLT, or LPO who does not certify compliance by the certification deadline or by the deadline set forth in any petition decision granting an extension may be ordered suspended from the practice of law as set forth in APR 17.
- (4) *Lawyer, LLLT, or LPO Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for either (i) or (ii) below but not both.
 - (i) *Education Requirements Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the minimum education requirements of this rule by December 31. Payment of the late fee is due by February 1, or by the date set forth in any decision or order extending time for compliance, or by the deadline for compliance set forth in an APR 17 presuspension notice.
 - (ii) *Certification and Comity Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the certification requirements or comity requirements by February 1. Payment of the late fee is due by the

date set forth in any decision or order extending time for compliance or by the deadline for compliance set forth in an APR 17 presuspension notice.

- (iii) *Failure to Pay Late Fee.* A lawyer, LLLT, or LPO who fails to pay the MCLE late fee by the deadline for compliance set forth in an APR 17 presuspension notice may be ordered suspended from the practice of law as set forth in APR 17.
- (5) *Petition for Extension, Modification, or Waiver.* A lawyer, LLLT, or LPO may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's, LLLT's, or LPO's ability to meet the education or reporting requirements. The petition shall be filed at any time in a form and manner as prescribed by the Bar, but a petition filed later than 30 days after the date of the APR 17 presuspension notice will not stay suspension for the reasons in the APR 17 presuspension notice.
- (6) *Decision on Petition.* The MCLE Board shall as soon as reasonably practical notify the lawyer, LLLT, or LPO of the decision on a petition. A lawyer, LLLT, or LPO may request review of the decision by filing, within 10 days of notice of the decision, a request for a hearing before the MCLE Board.
- (7) *Hearing on Petition.* Upon the timely filing of a request for hearing, the MCLE Board shall hold a hearing on the petition.
 - (i) The MCLE Board shall give the lawyer, LLLT, or LPO at least 10 days', written notice of the time and place of the hearing.
 - (ii) Testimony taken at the hearing shall be under oath and recorded.
 - (iii) The MCLE Board shall issue written findings of fact and an order consistent with these rules as it deems appropriate. The MCLE Board shall provide the lawyer, LLLT, or LPO with a copy of the findings and order.
 - (iv) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer, LLLT, or LPO files a written notice of appeal with the Supreme Court and serves a copy on the Bar. The lawyer, LLLT, or LPO shall pay to the Clerk of the Supreme Court any required filing fees.
- (8) *Review by the Supreme Court.* Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after such a noncompliance petition hearing, the lawyer, LLLT, or LPO shall cause the record

or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar.

- (i) The MCLE Board chairperson shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.
 - (ii) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding before the MCLE Board, which must be certified by the MCLE Board chairperson.
 - (iii) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.
 - (iv) The matter shall be considered by the Supreme Court pursuant to procedures established by order of the Court, which may in the Court's discretion consist of consideration solely on the basis of the record presented to the MCLE Board.
 - (v) The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown, (1) extend the time for the filing or certification of said record or narrative report of proceedings and transcripts or, (2) dismiss the appeal for failure to prosecute the same diligently.
- (9) *Compliance Audits.* The Bar may audit an individual lawyer's, LLLT's, or LPO's compliance certification to substantiate participation in the activities listed in the certification. The Bar may request records from a lawyer, LLLT, or LPO, or sponsor for the purpose of conducting the audit and the lawyer, LLLT, or LPO must comply with all such requests. Where facts exist that indicate a lawyer, LLLT, or LPO may not have participated in the activities certified to, the lawyer, LLLT, or LPO may be referred to the Bar's Office of Disciplinary Counsel and/or credit for the activities may be rescinded.
- (j) Sponsor Duties.** All sponsors must comply with the following duties unless waived by the Bar for good cause shown:
- (1) The sponsor must not advertise course credit until the course is approved by the Bar but may advertise that the course credits are pending approval by the Bar after an application has been submitted. The sponsor shall communicate to the lawyer the number of credits and denominate whether the credits are "law and legal procedure" as defined under subsection (f)(1), "ethics and professional responsibility" as defined under subsection (f)(2), or "other," meaning any of the other subjects identified in subsections (f)(3)-(7).

- (2) The sponsor must provide each participant with an evaluation form to complete. The forms or the information from the forms must be retained for two years and provided to the Bar upon request.
- (3) The sponsor must submit an attendance report in a form and manner as prescribed by the Bar and pay the required reporting fee no later than 30 days after the conclusion of the course. A late fee will be assessed for failure to report attendance by the deadline.
 - (i) *Waiver of Reporting Fee.* The Bar shall waive the reporting fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
- (4) The sponsor must retain course materials for four years from the date of the course. Upon request of the Bar, a sponsor must submit for review any written, electronic, or presentation materials, including copies of audio/visual courses.
- (5) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the Bar upon request.
- (6) The sponsor shall not state or imply that the Bar or the MCLE Board approves or endorses any person, law firm, or company providing goods or services to lawyers, LLLTs, or LPOs, or law firms.
- (7) *Accredited Sponsors.* The Bar may approve and accredit sponsoring organizations as “accredited sponsors” subject to procedures and fees established by the Bar. Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with this rule. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

(k) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, all files and records relating to a lawyer’s, LLLT’s, or LPO’s individual MCLE requirements are confidential and shall be privileged against disclosure except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules. This provision does not apply to the Bar except that such records shall not be disclosed to Bar staff responsible for creating or marketing CLE products.

[Adopted effective January 1, 2016; amended effective September 1, 2017.]

WASHINGTON STATE BAR ASSOCIATION

MEMO

To: Board of Governors

From: Travis Stearns, Chair, Council on Public Defense

Date: October 25, 2021

Re: Council on Public Defense Support of the Washington State Office of Public Defense FY22 Budget Request

ACTION: Approve the Council on Public Defense’s position to support the Washington State Office of Public Defense budget request.

The Council on Public Defense (Council) regularly receives updates from the Washington State Office of Public Defense (OPD), including updates on the OPD’s budget requests. When the Washington State Bar Association created the Council on Public Defense it made the Washington State Office of Public Defense a Core Member of the Council. The Bar Association also directed the Council to, among other tasks, “...address current issues relating to the provision of constitutional public defense services in Washington, including efforts to ensure adequate support.”

The Council followed the WSBA Legislative and Court Rule Comment Policy guidelines prior to requesting this approval. On October 22, 2021, the Council voted, with a supermajority, to affirm that the matter under consideration meets the GR12 guidelines and voted, with a supermajority, to support the Washington State Office of Public Defense budget request for FY22. The Council has submitted similar letters of support during previous legislative sessions. A draft letter for the 2022 session is attached for your consideration.

Travis Stearns, Chair of the Council, will attend the Board of Governors meeting by Zoom and present information about the Council’s proposed comment.

The Council greatly appreciates your consideration of the request.

WASHINGTON STATE BAR ASSOCIATION

January XX, 2022

Senator Christine Rolfes, Chair
Senate Ways and Means Committee
303 J.A. Cherberg Bldg.
P.O. Box 40423
Olympia, WA 98504

Representative Timm Ormsby, Chair
House Appropriations Committee
315 John L. O'Brien Bldg.
P.O. Box 40600
Olympia, WA 98504

Dear Chair Rolfes and Chair Ormsby:

The Washington State Bar Association's Council on Public Defense urges you to support the Washington State Office of Public Defense (OPD) supplemental budget request of \$3.6 million to sustain effective agency operations and support the constitutional right to counsel in state and local programs. Fully funding OPD's budget request will help address ongoing COVID-related impacts, including critical workforce issues, as well as a new mandate to correct thousands of unconstitutional convictions as required by the recent *Blake* decision.

Funding a temporary statewide *Blake* "triage team" will allow OPD to help local public defense administrators, prosecutors, and courts analyze the often complex legal history of more than 4,000 unconstitutionally convicted persons still in custody, and will ensure that limited legal resources are prioritized for the individuals eligible for immediate release from prison.

Funding OPD's request also will provide a vendor rate increase to OPD's contracted attorneys and social work specialists who represent indigent clients in statewide programs. An increase for contractors is necessary to retain attorneys and social workers, who are in high demand in both the public and private sectors. It is also consistent with recent cost-of-living increases for state employees, including the assistant attorneys general who prosecute many of these cases. Parity of resources is a primary tenet of the American Bar Association's 10 Principles of a Public Defense Delivery System, and OPD must be able to offer competitive compensation in order to meet the state's obligation to provide indigent clients a constitutionally adequate level of representation.

As important as the statewide initiatives discussed above, so are OPD's budget requests that would maintain the state agency's basic operations: sufficient, safe office space; language access services; and adequate staffing. Please also include these in your budget.

The WSBA Council on Public Defense unites members of the bar, the bench, and the public to address new and recurring issues that impact public defense services throughout Washington State. The Council believes quality public defense is essential to a fair legal system and is critical in the fight to reduce racial disparity. This position has been approved through the WSBA's legislative and court rule comment policy and the position is solely that of the Council on Public Defense.

Please fully fund the Office of Public Defense's budget request in the Legislature's upcoming supplemental operating budget.

Sincerely,

Terra Nevitt
Executive Director

Cc: Brian Tollefson, President, Washington State Bar Association
Senator June Robinson, Vice Chair, Senate Ways and Means Committee
Senator Lynda Wilson, Ranking Minority Member, Senate Ways and Means Committee
Representative Steve Bergquist, Vice Chair, House Appropriations Committee
Representative Drew Stokesbary, Ranking Member, House Appropriations Committee
Larry Jefferson, Director, Washington State Office of Public Defense



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MEMO

To: Board of Governors

From: Travis Stearns, Chair, Council on Public Defense

Date: October 25, 2021

Re: Council on Public Defense Comments to the Proposed new GR 41 and Amendments to CR 39

ACTION: Approve the Council on Public Defense submitting a comments to the proposed new GR 41 and amendments to CR 39

The WSBA Council on Public Defense (Council) supports efforts to allow virtual proceedings when it is in the best interest of those involved. However, to ensure the rights of those entitled to counsel, the proposed new GR 41 and amendments CR 39 must include the requirement that virtual trials and voir dire can only go forward after the defendant has made an informed on-the-record waiver of in-person proceedings. The attached comments to these rules proposals elaborates on a number of factors that should be addressed when considering virtual proceedings.

On October 22, 2021, a super majority of the Council on Public Defense voted that commenting on the proposed new rule and rule changes fell within the parameters of GR 12. A super majority of the Council then voted to approve submitting comments on the proposed new rule and amendments.

Travis Stearns, Chair of the Council, will attend the Board of Governors meeting by Zoom and present information about the Council's proposed comment. The deadline to submit the comments to the Court is December 30, 2021.

The Council greatly appreciates your consideration of the request.

If the Court is to adopt the new GR 41 and amendments to CR 39, the following language should be included in both rules:

In all cases where there is a constitutional, statutory, or otherwise provided right to counsel, virtual proceedings under GR 41 or CR 39 must require the consent of the defendant or civil respondent, following an informed on-the-record waiver of in-person proceedings.

The Council on Public Defense recognizes there may be circumstances where virtual proceedings benefit everyone. However, to ensure the rights of those entitled to counsel, the proposed new rule GR 41 and amendments to CR 39 must include the requirement that virtual trials and voir dire can only go forward after the defendant or respondent has made an informed on-the-record waiver of in-person proceedings.

Because the Council only comments where there is a right to counsel, these comments focus on cases where there is a constitutional, statutory, or other legal right to counsel, including criminal matters, 71.09 and 71.05 proceedings, contempt of court, and dependency and termination matters.

- Procedural Justice

Where there is a right to counsel in criminal or civil matters, defendants or respondents should get the choose whether to proceed virtually. There may be very good reasons for holding court online, but there are many times when there are not. Repeatedly, the Washington Supreme Court has recognized the importance and constitutional imperative of in-person proceedings.

Being in the same room as witnesses, counsel, jurors, and the court creates more fair proceedings. Jurors can gauge witnesses better, lawyers are more able to communicate with their clients, and judges can better assess those who appear before them.

Requiring a waiver from the defendant or respondent allows that person to determine whether a virtual proceeding can be fair to them.

- Technological capacity

While access over the internet has improved, equal access to technology should also cause this Court to require a waiver. Many parts of Washington lack access to reliable and speedy internet. Even where the internet is available, indigent defendants and respondents may not have easy access to high-speed internet or tools to access it or may not be able to afford it. Jurors and witnesses who appear before the court may have the same issues. Too often, anyone who has participated in a video hearing or meeting can recall a frozen screen or garbled audio. While this is fine for a meeting, it is not acceptable for court. Without assuring equal access to jurors with technological resources, virtual voir dire or trials should not be mandated.

It should also be recognized that not all litigants have the same comfort with technology. While clients with resources may not have trouble hiring lawyers with modern computers, multiple screens, and spreadsheet software, indigent clients cannot be assured their attorneys have the resources to conduct a virtual voir dire or trial competently. Before either rule is implemented, more study should be done on their impact on poor communities without high-speed internet access and how that will create an additional barrier between poor and wealthy communities.

- Effective Trials

Remote voir dire and trials can impact a person's right to a fair trial and effective assistance of counsel. Courts conducting virtual trials with open access must ensure that those excluded from hearing testimony, such as additional witnesses, are not present. The rules lacks safeguards to assure an accurate record for appeal, particularly where it cannot ensure that prospective jurors cannot fully hear and participate in the proceedings.

A lawyer's comfort with technology can also be a barrier to a fair trial. Lawyers who are uncomfortable with technology will not be as competent as those who are. Where assigned counsel represents a person, courts should ensure the competency gap is not widened.

Technological literacy can also impact participation by potential jurors. Like anyone else, potential jurors who do not have the technological capacity or tools to engage in online voir dire or trial effectively may be unfairly excluded if trials are moved online.

- Potential Juror Distraction

In a courtroom, jurors must pay attention to the proceedings. Where they do not, the judge can quickly remedy the problem. At home, jurors have many distractions, from work and family obligations, to pets running across their laps, to deciding what they want to eat from their refrigerator. Likewise, it is easy to minimize a virtual meeting screen and simply surf the internet without anyone knowing whether that juror is actively engaging with the hearing. Neither of these proposals addresses how to remedy this problem with virtual proceedings. Without some measures on how to deal with distracted jurors and venire panels, courts should not mandate these rules. In short, a defendant has the right to be able to see that jurors are paying attention. There is simply no way for that to be guaranteed with virtual voir dire and trials.

- Procedural integrity and privacy concerns

Virtual trials and voir dire create procedural-integrity concerns that do not exist when court is conducted in person. Links to proceedings can be shared with people, and those people are able to record and circulate the proceedings. These problems compromise the privacy of the litigants and the jury pool, who should not have their faces and statements recorded and disseminated without court approval. Before this rule is adopted, provisions should be put into place to protect privacy concerns of those who will appear or participate in the video trials and voir dire and to ensure the integrity of the proceedings.

- Workload issues

In many counties, virtual court voir dire has lengthened the time it takes to try a case. The current Indigent Defense Standards do not account for this increased time. Indigent Defense Standards cap the number of cases per lawyer and not the amount of time worked on each

case, so where the time per case increases, this Court may be required to modify the Indigent Defense Standards to account for this change in procedure.

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

Ensuring Competent and Qualified Legal Professionals

- Cradle to Grave
- Regulation and Assistance

Promoting the Role of Legal Professionals in Society

- Service
- Professionalism

PROGRAM CRITERIA

- 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.]

2021-2022
WSBA BOARD OF GOVERNORS MEETING SCHEDULE

MEETING DATE	LOCATION	POTENTIAL ISSUES / SOCIAL FUNCTION	AGENDA ITEMS DUE FOR EXEC COMMITTEE MTG	EXECUTIVE COMMITTEE MTG 9:00 am–12:00 pm	BOARD BOOK MATERIALS DEADLINE
November 4-5, 2021	Silver Cloud Hotel Tacoma Point Ruston Waterfront Ruston, WA	BOG Meeting	October 1, 2021	October 8, 2021	October 18, 2021
January 13-14, 2022	WSBA Conference Center Seattle, WA	BOG Meeting MLK Luncheon Jan. 14	November 29, 2021	December 6, 2021	December 27, 2021
March 10-11, 2022	St. Martin’s University Lacey, WA Temple of Justice	BOG Meeting BOG Meeting with Supreme Court	January 28, 2022	February 4, 2022	February 21, 2022
May 19-20, 2022	The Davenport Grand Spokane, WA	BOG Meeting	April 11, 2022	April 18, 2022	May 2, 2022
July 13-15, 2022	Tacoma Convention Center Tacoma, WA	BOG Retreat BOG Meeting	June 6, 2022	June 13, 2022	June 27, 2022
September 22-23, 2022	Courtyard Marriott Bellevue, WA	BOG Meeting	August 15, 2022	August 22, 2022	September 5, 2022

The Board Book Material Deadline is the final due date for submission of materials for the respective Board meeting. Please notify the Executive Director's office in advance of possible late materials. Refer to 1305 BOG Action Procedure on how to bring agenda items to the Board.

This information can be found online at: <https://www.wsba.org/about-wsba/who-we-are/board-of-governors>



WSBA Board of Governors CONGRESSIONAL DISTRICT MAP



Brian Tollefson
President-Elect



Dan Clark
President-Elect



Kyle Sciuchetti
Immediate Past
President



Bryn Peterson
Treasurer



Terra Nevitt
Executive Director
& Secretary

2021-2022



Sunitha Anjilvel
Governor District 1



Carla Higginson
Governor District 2



Brett Purtzer
Governor District 6



Matthew Dresden
Governor District 7-North



Serena Sayani
Governor District 7-South



Brent Williams-Ruth
Governor District 8



Bryn Peterson
Governor District 9



Thomas A. McBride
Governor District 10



Dan Clark
Governor District 4



Lauren Boyd
Governor District 3



Hunter Abell
Governor At-Large



Jordan Couch
Governor At-Large



Alec Stephens
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 spirit 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

Working Together to Champion Justice

WASHINGTON STATE
B A R A S S O C I A T I O N

Financial Reports

(Unaudited)

Year to Date August 31, 2021

Prepared by Maggie Yu, Controller
Submitted by
Jorge Perez, Chief Financial Officer
September 20, 2021

Washington State Bar Association Financial Summary
Compared to Fiscal Year 2021 Budget
For the Period from August 1, 2021 to August 31, 2021

Category	Actual Revenues	Reforecasted Revenues	Actual Indirect Expenses	Reforecasted Indirect Expenses	Actual Direct Expenses	Reforecasted Direct Expenses	Actual Total Expenses	Reforecasted Total Expenses	Actual Net Result	Reforecasted Net Result
Access to Justice	-	-	199,028	212,533	11,456	53,204	210,484	265,737	(210,484)	(265,737)
Administration	4,743	6,786	975,164	1,099,780	8,297	15,140	983,462	1,114,920	(978,719)	(1,108,134)
Admissions/Bar Exam	1,177,871	1,115,296	734,910	843,354	147,716	268,696	882,626	1,112,050	295,244	3,246
Advancement FTE	-	-	211,764	239,496	-	-	211,764	239,496	(211,764)	(239,496)
Bar News	527,139	457,200	310,501	353,019	342,208	447,864	652,709	800,883	(125,570)	(343,683)
Board of Governors	-	-	192,968	215,830	150,972	199,698	343,940	415,528	(343,940)	(415,528)
Communications Strategies	2,694	-	404,881	461,876	30,962	71,302	435,843	533,177	(433,149)	(533,177)
Communications Strategies FTE	-	-	200,302	224,154	-	-	200,302	224,154	(200,302)	(224,154)
Covid 19	-	-	-	-	(945)	-	(945)	-	945	-
Discipline	119,999	96,337	5,163,604	5,757,972	99,785	149,655	5,263,389	5,907,627	(5,143,390)	(5,811,290)
Diversity	135,000	135,374	263,182	278,750	1,853	22,440	265,035	301,190	(130,035)	(165,816)
Foundation	-	-	110,157	125,210	3,214,75	5,000	113,372	130,210	(113,372)	(130,210)
Human Resources	-	-	434,633	385,934	-	-	434,633	385,934	(434,633)	(385,934)
Law Clerk Program	186,101	213,668	91,998	108,864	279	1,374	92,278	110,238	93,823	103,430
Legislative	-	-	117,147	121,266	28,032	28,767	145,179	150,033	(145,179)	(150,033)
Licensing and Membership Records	431,362	352,086	524,600	592,011	22,095	23,909	546,695	615,920	(115,333)	(263,834)
Licensing Fees	15,324,199	16,318,268	-	-	-	-	-	-	15,324,199	16,318,268
Limited License Legal Technician	29,768	28,054	100,522	126,595	6,787,50	7,825	107,309	134,420	(77,541)	(106,367)
Limited Practice Officers	186,257	200,770	59,835	78,920	14,249	15,089	74,084	94,010	112,174	106,760
Mandatory CLE	897,284	839,250	412,659	511,743	139,171	147,237	551,830	658,980	345,454	180,271
Member Assistance Program	9,801	9,000	86,906	127,000	1,051,00	1,075	87,957	128,075	(78,156)	(119,075)
Member Benefits	9,457	13,000	120,684	141,432	164,059	185,996	284,743	327,428	(275,286)	(314,428)
Member Services & Engagement	96,566	67,250	400,022	462,869	11,503	23,907	411,524	486,776	(314,958)	(419,526)
Office of General Counsel	747	27,00	785,179,98	906,308	22,000,28	23,813,82	807,180,26	930,122	(806,433)	(930,095)
Office of the Executive Director	-	-	574,511	637,848	3,121	100,465	577,632	738,313	(577,632)	(738,313)
OGC-Disciplinary Board	-	-	149,464	168,809	72,742	130,133	222,205	298,942	(222,205)	(298,942)
Outreach and Engagement	-	-	207,819	257,936	2,239	33,454	210,059	291,390	(210,059)	(291,390)
Practice of Law Board	-	-	52,898	61,823	-	7,825	52,898	69,649	(62,898)	(69,649)
Professional Responsibility Program	-	-	259,244	291,439	1,052	5,736	260,296	297,175	(260,296)	(297,175)
Public Service Programs	103,000	103,000	122,586	135,981	142,143	237,993	264,729	373,974	(161,729)	(270,974)
Publication and Design Services	-	-	88,517	100,900	4,300	5,069	92,817	105,969	(92,817)	(105,969)
Regulatory Services FTE	-	-	352,310	405,650	-	-	352,310	405,650	(352,310)	(405,650)
Sections Administration	283,517	272,000	248,530	291,946	6,353	7,620	254,883	299,566	28,634	(27,566)
Service Center	-	-	609,143	674,133	5,483	8,500	614,625	682,633	(614,625)	(682,633)
Technology	-	-	1,616,935	1,711,290	-	-	1,616,935	1,711,290	(1,616,935)	(1,711,290)
Subtotal General Fund	19,525,505	20,227,365	16,182,603	18,112,672	1,442,178	2,228,785	17,624,782	20,341,457	1,900,723.79	(114,092)
Expenses using reserve funds	-	-	-	-	-	-	17,624,782	-	-	-
Total General Fund - Net Result from Operations									1,900,723.79	(114,092)
Percentage of Budget	96.53%		89.34%		64.71%		86.64%			
CLE-Seminars and Products	1,296,481	1,212,529	874,869	1,012,798	97,928	264,864	972,797	1,277,662	323,683	(65,133)
CLE- Deskbooks	135,441	140,500	194,412	220,190	117,796	111,939	312,208	332,129	(176,767)	(191,629)
Total CLE	1,431,922	1,353,029	1,069,281	1,232,988	215,724	376,803	1,285,005	1,609,791	146,917	(256,762)
Percentage of Budget	105.83%		86.72%		57.25%		79.82%			
Total All Sections	615,745	585,779	-	-	360,159	865,167	360,159	865,167	255,585	(279,388)
Client Protection Fund-Restricted	500,196	533,402	139,204	158,569	71,282	493,353	210,486	651,922	289,710	(118,520)
Totals	22,073,368	22,699,575	17,391,089	19,504,229	2,089,344	3,964,108	19,480,432	23,468,336	2,592,936	(768,761)
Percentage of Budget	97.24%		89.17%		52.71%		83.01%			

Summary of Fund Balances:	Fund Balances Sept. 30, 2020	2021 Budgeted Fund Balances	Fund Balances Year to date
Restricted Funds:			
Client Protection Fund	4,193,130	4,074,610	4,482,840
Board-Designated Funds (Non-General Fund):			
CLE Fund Balance	469,241	212,479	616,158
Section Funds	1,210,209	930,821	1,465,794
Board-Designated Funds (General Fund):			
Operating Reserve Fund	1,500,000	1,500,000	1,500,000
Facilities Reserve Fund	550,000	550,000	1,050,000
Unrestricted Funds (General Fund):			
Unrestricted General Fund	3,478,234	3,364,142	4,878,958
Total General Fund Balance	5,528,234	5,414,142	7,428,958
Net Change in general Fund Balance		(114,092)	1,900,724
Total Fund Balance	11,400,814.00	10,632,053	13,993,750
Net Change In Fund Balance		(768,761)	2,592,935.74

Washington State Bar Association

Statement of Activities

For the Period from August 1, 2021 to August 31, 2021

91.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
LICENSE FEES									
REVENUE:									
LICENSE FEES	1,289,180.00	1,380,156.72	90,976.72	15,023,159.74	15,324,199.05	301,039.31	16,318,267.73	994,068.68	93.91%
TOTAL REVENUE:	1,289,180	1,380,157	90,977	15,023,160	15,324,199	301,039	16,318,268	994,069	93.91%

Washington State Bar Association
Statement of Activities
For the Period from August 1, 2021 to August 31, 2021
91.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
ACCESS TO JUSTICE									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
ATJ BOARD RETREAT	-	-	-	2,000	1,200	800	2,000	800	60.00%
LEADERSHIP TRAINING	250	-	250	1,750	973	777	2,000	1,027	48.65%
ATJ BOARD EXPENSE	2,250	-	2,250	15,750	9,066	6,684	18,000	8,934	50.37%
PUBLIC DEFENSE	550	-	550	3,850	0	3,850	4,400	4,400	0.01%
CONFERENCE/INSTITUTE EXPENSE	3,350	-	3,350	23,454	216	23,237	26,804	26,588	0.81%
TOTAL DIRECT EXPENSES:	6,400	-	6,400	46,804	11,456	35,348	53,204	41,748	21.53%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.60 FTE)	9,657	10,859	(1,202)	108,438	120,811	(12,373)	118,095	(2,716)	102.30%
BENEFITS EXPENSE	3,668	3,201	467	40,402	39,874	527	44,212	4,338	90.19%
OTHER INDIRECT EXPENSE	3,937	2,792	1,146	43,970	38,343	5,627	50,225	11,882	76.34%
TOTAL INDIRECT EXPENSES:	17,262	16,852	411	192,810	199,028	(6,218)	212,533	13,505	93.65%
TOTAL ALL EXPENSES:	23,663	16,852	6,811	239,613	210,484	29,130	265,737	55,253	79.21%
NET INCOME (LOSS):	(23,663)	(16,852)	6,811	(239,613)	(210,484)	29,130	(265,737)	(55,253)	79.21%

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	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
ADMINISTRATION									
REVENUE:									
INTEREST INCOME	500	264	(236)	6,286	4,743	(1,544)	6,786	2,044	69.89%
TOTAL REVENUE:	500	264	(236)	6,286	4,743	(1,544)	6,786	2,044	69.89%
DIRECT EXPENSES:									
CONSULTING SERVICES	-	-	-	8,196	6,931	1,265	11,000	4,069	63.01%
STAFF TRAVEL/PARKING	350	-	350	3,790	1,366	2,424	4,140	2,774	33.01%
TOTAL DIRECT EXPENSES:	350	-	350	11,986	8,297	3,689	15,140	6,843	54.80%
INDIRECT EXPENSES:									
SALARY EXPENSE (6.92 FTE)	55,093	53,370	1,724	626,338	627,050	(712)	681,430.99	54,381	92.02%
BENEFITS EXPENSE	16,650	14,400	2,250	183,582	181,522	2,060	200,848	19,327	90.38%
OTHER INDIRECT EXPENSE	17,029	12,129	4,900	190,447	166,592	23,854	217,501	50,908	76.59%
TOTAL INDIRECT EXPENSES:	88,773	79,899	8,874	1,000,366	975,164	25,202	1,099,780	124,616	88.67%
TOTAL ALL EXPENSES:	89,123	79,899	9,224	1,012,352	983,462	28,891	1,114,920	131,458	88.21%
NET INCOME (LOSS):	(88,623)	(79,634)	8,989	(1,006,066)	(978,719)	27,347	(1,108,134)	(129,415)	88.32%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
ADMISSIONS									
REVENUE:									
BAR EXAM FEES	-	35,466	35,466	1,059,321	1,114,281	54,960	1,059,321	(54,960)	105.19%
RULE 9/LEGAL INTERN FEES	-	550	550	11,192	11,700	508	11,192	(508)	104.54%
RPC BOOKLETS	-	-	-	-	5	5	-	(5)	
SPECIAL ADMISSIONS	-	5,580	5,580	44,783	51,885	7,102	44,783	(7,102)	115.86%
TOTAL REVENUE:	-	41,596	41,596	1,115,296	1,177,871	62,575	1,115,296	(62,575)	105.61%
DIRECT EXPENSES:									
POSTAGE	150	-	150	1,069	407	662	1,219	812	33.36%
STAFF TRAVEL/PARKING	1,134	177	957	1,734	651	1,083	2,500	1,849	26.03%
STAFF MEMBERSHIP DUES	-	250	(250)	400	650	(250)	800	150	81.25%
SUPPLIES	83	-	83	1,523	940	583	1,607	667	58.51%
FACILITY, PARKING, FOOD	4,370	7,614	(3,244)	19,219	18,151	1,067	20,000	1,849	90.76%
EXAMINER FEES	16,000	16,000	-	26,000	26,000	-	26,000	-	100.00%
UBE EXMINATIONS	-	-	-	121,000	25,901	95,099	121,000	95,099	21.41%
BAR EXAM PROCTORS	-	-	-	(133)	150	(283)	(133)	(283)	-113.08%
CHARACTER & FITNESS BOARD	-	-	-	1,000	12	988	1,000	988	1.22%
DISABILITY ACCOMMODATIONS	5,000	-	5,000	9,491	8,385	1,106	9,491	1,106	88.35%
CHARACTER & FITNESS INVESTIGATIONS	-	216	(216)	306	242	64	306	64	79.02%
LAW SCHOOL VISITS	-	-	-	-	-	-	750	750	0.00%
ILG EXAM FEES	39,500	32,650	6,850	50,000	43,100	6,900	50,000	6,900	86.20%
COURT REPORTERS	1,250	-	1,250	12,461	6,766	5,695	13,711	6,945	49.35%
DEPRECIATION-SOFTWARE	1,898	1,627	271	15,052	13,154	1,898	16,950	3,796	77.60%
CONFERENCE CALLS	-	-	-	-	23	(23)	-	(23)	
ONLINE LEGAL RESEARCH	304	307	(3)	3,041	3,063	(22)	3,345	282	91.57%
LAW LIBRARY	13	11	2	137	122	15	150	28	81.12%
TOTAL DIRECT EXPENSES:	69,702	58,852	10,851	262,299	147,716	114,583	268,696	120,980	54.98%
INDIRECT EXPENSES:									
SALARY EXPENSE (6.55 FTE)	39,774	43,420	(3,645)	424,006	421,345	2,661	463,780	42,434	90.85%
BENEFITS EXPENSE	14,384	12,527	1,856	157,743	156,228	1,515	172,719	16,491	90.45%
OTHER INDIRECT EXPENSE	16,365	11,455	4,910	180,857	157,337	23,520	206,855	49,518	76.06%
TOTAL INDIRECT EXPENSES:	70,523	67,402	3,121	762,605	734,910	27,695	843,354	108,444	87.14%
TOTAL ALL EXPENSES:	140,225	126,254	13,971	1,024,905	882,626	142,278	1,112,050	229,423	79.37%
NET INCOME (LOSS):	(140,225)	(84,658)	55,567	90,391	295,244	204,853	3,246	(291,998)	9095.22%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
ADVANCEMENT FTE									
INDIRECT EXPENSES:									
SALARY EXPENSE (1.15 FTE)	13,398	13,033	365	148,196	146,335	1,860	161,593	15,258	90.56%
BENEFITS EXPENSE	3,488	2,984	505	38,138	37,663	475	41,728	4,065	90.26%
OTHER INDIRECT EXPENSE	2,830	2,021	809	31,679	27,765	3,913	36,175	8,409	76.75%
TOTAL INDIRECT EXPENSES:	19,716	18,038	1,678	218,012	211,764	6,248	239,496	27,733	88.42%
NET INCOME (LOSS):	(19,716)	(18,038)	1,678	(218,012)	(211,764)	6,248	(239,496)	(27,733)	88.42%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
BAR NEWS									
REVENUE:									
ROYALTIES	92	3,802	3,710	1,908	5,064	3,156	2,000	(3,064)	253.19%
DISPLAY ADVERTISING	-	-	-	269,787	316,434	46,646	300,000	(16,433)	105.48%
SUBSCRIPT/SINGLE ISSUES	-	-	-	172	72	(100)	200	128	36.06%
CLASSIFIED ADVERTISING	-	61	61	6,407	1,768	(4,639)	7,500	5,732	23.57%
GEN ANNOUNCEMENTS	-	-	-	6,475	4,800	(1,675)	7,500	2,700	64.00%
PROF ANNOUNCEMENTS	-	-	-	17,656	16,552	(1,104)	20,000	3,448	82.76%
JOB TARGET ADVERTISING	-	32,988	32,988	106,418	182,449	76,032	120,000	(62,449)	152.04%
TOTAL REVENUE:	92	36,851	36,758	408,824	527,139	118,315	457,200	(69,939)	115.30%
DIRECT EXPENSES:									
BAD DEBT EXPENSE	63	-	63	438	-	438	500	500	0.00%
POSTAGE	-	-	-	84,290	73,315	10,975	95,000	21,684	77.17%
PRINTING, COPYING & MAILING	-	-	-	220,600	197,480	23,121	250,000	52,520	78.99%
DIGITAL/ONLINE DEVELOPMENT	1,044	850	194	9,956	10,264	(308)	11,000	736	93.31%
GRAPHICS/ARTWORK	31	-	31	219	-	219	250	250	0.00%
OUTSIDE SALES EXPENSE	-	-	-	81,445	61,149	20,296	90,000	28,851	67.94%
EDITORIAL ADVISORY COMMITTEE	63	-	63	438	-	438	500	500	0.00%
STAFF MEMBERSHIP DUES	123	-	123	492	-	492	615	615	0.00%
TOTAL DIRECT EXPENSES:	1,323	850	473	397,877	342,208	55,669	447,864	105,656	76.41%
INDIRECT EXPENSES:									
SALARY EXPENSE (2.83 FTE)	16,743	16,787	(43)	186,014	186,724	(710)	202,757	16,033	92.09%
BENEFITS EXPENSE	5,046	4,369	678	56,104	55,686	418	61,402	5,716	90.69%
OTHER INDIRECT EXPENSE	6,956	4,957	1,999	77,809	68,091	9,718	88,860	20,769	76.63%
TOTAL INDIRECT EXPENSES:	28,746	26,113	2,633	319,926	310,501	9,425	353,019	42,518	87.96%
TOTAL ALL EXPENSES:	30,069	26,963	3,106	717,803	652,709	65,094	800,883	148,174	81.50%
NET INCOME (LOSS):	(29,976)	9,888	39,864	(308,980)	(125,570)	183,410	(343,683)	(218,113)	36.54%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
BOARD OF GOVERNOR									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
BOG MEETINGS	25,000	35,564	(10,564)	73,114	95,494	(22,381)	89,114	(6,381)	107.16%
BOG COMMITTEES' EXPENSES	1,500	518	982	3,135	528	2,607	4,635	4,107	11.39%
BOG RETREAT	-	17,156	(17,156)	15,253	19,394	(4,141)	15,253	(4,141)	127.15%
BOG CONFERENCE ATTENDANCE	5,000	99	4,901	6,988	596	6,392	6,988	6,392	8.53%
BOG TRAVEL & OUTREACH	1,325	(923)	2,248	10,210	3,755	6,455	11,535	7,780	32.55%
LEADERSHIP TRAINING	4,167	-	4,167	29,167	2,071	27,095	33,333	31,262	6.21%
BOG ELECTIONS	-	-	-	28,840	29,134	(294)	28,840	(294)	101.02%
PRESIDENT'S DINNER	-	-	-	-	-	-	10,000	10,000	0.00%
TOTAL DIRECT EXPENSES:	36,991	52,414	(15,423)	166,707	150,972	15,734	199,698	48,726	75.60%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.75 FTE)	9,783	11,668	(1,885)	109,595	113,433	(3,839)	119,377	5,944	95.02%
BENEFITS EXPENSE	3,423	2,981	442	37,925	37,556	369	41,504	3,948	90.49%
OTHER INDIRECT EXPENSE	4,307	3,056	1,250	48,107	41,979	6,128	54,949	12,970	76.40%
TOTAL INDIRECT EXPENSES:	17,512	17,705	(193)	195,626	192,968	2,659	215,830	22,862	89.41%
TOTAL ALL EXPENSES:	54,504	70,119	(15,615)	362,333	343,940	18,393	415,528	71,588	82.77%
NET INCOME (LOSS):	(54,504)	(70,119)	(15,615)	(362,333)	(343,940)	18,393	(415,528)	(71,588)	82.77%

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CONTINUING LEGAL EDUCATION (CLE)									
REVENUE:									
SEMINAR REGISTRATIONS	66,923	57,763	(9,160)	583,475	723,571	140,096	650,398	(73,173)	111.25%
SEMINAR-EXHIB/SPNSR/ETC	3,967	4,000	33	5,000	6,150	1,150	5,000	(1,150)	123.00%
SHIPPING & HANDLING	83	-	(83)	658	254	(403)	741	487	34.32%
COURSEBOOK SALES	362	-	(362)	3,638	3,207	(431)	4,000	793	80.18%
MP3 AND VIDEO SALES	124,342	146,678	22,336	527,522	563,298	35,777	552,390	(10,908)	101.97%
TOTAL REVENUE:	195,677	208,441	12,764	1,120,292	1,296,481	176,188	1,212,529	(83,952)	106.92%
DIRECT EXPENSES:									
COURSEBOOK PRODUCTION	63	-	63	438	-	438	500	500	0.00%
POSTAGE - FLIERS/CATALOGS	70	-	70	1,430	-	1,430	1,500	1,500	0.00%
DEPRECIATION	-	109	(109)	3,188	3,077	111	3,188	111	96.51%
ONLINE EXPENSES	4,000	3,988	12	42,559	42,889	(330)	46,559	3,670	92.12%
ACCREDITATION FEES	-	(60)	60	2,772	2,280	492	2,772	492	82.25%
FACILITIES	21,500	7,734	13,766	52,700	34,934	17,766	64,700	29,766	53.99%
TRANSACTION SERVICES	176	-	176	1,325	2,937	(1,612)	1,500	(1,437)	195.76%
SPEAKERS & PROGRAM DEVELOP	4,000	1,531	2,469	5,526	2,792	2,734	6,026	3,234	46.33%
SPLITS TO SECTIONS	-	-	-	115,000	3,611	111,389	115,000	111,389	3.14%
HONORARIA	838	3,179	(2,342)	5,863	3,179	2,683	6,700	3,521	47.45%
CLE SEMINAR COMMITTEE	13	-	13	88	-	88	100	100	0.00%
BAD DEBT EXPENSE	54	-	54	379	-	379	433	433	0.00%
STAFF TRAVEL/PARKING	1,250	-	1,250	8,823	73	8,750	10,073	10,000	0.73%
STAFF MEMBERSHIP DUES	121	-	121	2,184	1,336	848	2,305	969	57.97%
SUBSCRIPTIONS	-	-	-	-	334	(334)	-	(334)	-
SUPPLIES	83	-	83	583	-	583	667	667	0.00%
CONFERENCE CALLS	4	-	4	29	-	29	33	33	0.00%
COST OF SALES - COURSEBOOKS	125	-	125	944	216	728	1,069	853	20.18%
A/V DEVELOP COSTS (RECORDING)	167	-	167	1,167	-	1,167	1,333	1,333	0.00%
POSTAGE & DELIVERY-COURSEBOOKS	42	-	42	363	271	93	405	134	66.81%
TOTAL DIRECT EXPENSES:	32,505	16,481	16,023	245,360	97,928	147,431	264,864	166,936	36.97%
INDIRECT EXPENSES:									
SALARY EXPENSE (8.42 FTE)	44,556.02	32,373	12,183	505,411	479,911	25,500	551,283	71,371	87.05%
BENEFITS EXPENSE	17,367	15,212	2,155	192,281	192,667	(386)	210,621	17,954	91.48%
OTHER INDIRECT EXPENSE	19,176	14,728	4,448	219,601	202,291	17,311	250,895	48,604	80.63%
TOTAL INDIRECT EXPENSES:	81,098	62,313	18,785	917,294	874,869	42,425	1,012,798	137,929	86.38%
TOTAL ALL EXPENSES:	113,603	78,794	34,809	1,162,653	972,797	189,856	1,277,662	304,865	76.14%
NET INCOME (LOSS):	82,074	129,646	47,573	(42,361)	323,683	366,045	(65,133)	(388,817)	-496.96%

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COMMUNICATION STRATEGIES									
REVENUE:									
50 YEAR MEMBER TRIBUTE LUNCH	-	500	500	-	500	500	-	(500)	
WSBA LOGO MERCHANDISE SALES	-	1,381	1,381	-	2,194	2,194	-	(2,194)	
TOTAL REVENUE:	-	1,881	1,881	-	2,694	2,694	-	(2,694)	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	392	198	194	3,732	3,030	702	4,123	1,093	73.48%
STAFF MEMBERSHIP DUES	99	135	(36)	1,070	515	555	1,169	654	44.07%
SUBSCRIPTIONS	254	256	(2)	2,497	3,185	(688)	2,751	(434)	115.77%
DIGITAL/ONLINE DEVELOPMENT	67	-	67	467	545	(78)	533	(12)	102.20%
APEX DINNER	10,149	-	10,149	23,067	837	22,230	25,000	24,163	3.35%
50 YEAR MEMBER TRIBUTE LUNCH	1,875	11,119	(9,244)	13,125	11,236	1,889	15,000	3,764	74.90%
COMMUNICATIONS OUTREACH	2,083	164	1,920	16,548	10,511	6,037	18,632	8,121	56.42%
TELEPHONE	25	-	25	534	844	(310)	559	(285)	151.04%
CONFERENCE CALLS	25	-	25	176	-	176	201	201	0.00%
MISCELLANEOUS	417	-	417	2,917	260	2,657	3,333	3,073	7.80%
TOTAL DIRECT EXPENSES:	15,385	11,872	3,513	64,132	30,962	33,170	71,302	40,339	43.42%
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	21,355	21,272	83	238,817	238,952	(136)	260,171	21,219	91.84%
BENEFITS EXPENSE	6,749	5,856	893	75,197	74,699	497	82,285	7,586	90.78%
OTHER INDIRECT EXPENSE	9,359	6,642	2,717	104,550	91,229	13,321	119,420	28,191	76.39%
TOTAL INDIRECT EXPENSES:	37,464	33,770	3,693	418,564	404,881	13,683	461,876	56,995	87.66%
TOTAL ALL EXPENSES:	52,849	45,642	7,206	482,696	435,843	46,853	533,177	97,334	81.74%
NET INCOME (LOSS):	(52,849)	(43,761)	9,088	(482,696)	(433,149)	49,547	(533,177)	(100,029)	81.24%

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COMMUNICATION STRATEGIES FTE									
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	12,462	12,457	6	137,451	137,616	(166)	149912.82	12,297	91.80%
BENEFITS EXPENSE	3,606	3,099	507	39,095	38,557	539	42,790	4,233	90.11%
OTHER INDIRECT EXPENSE	2,461	1,757	704	27,541	24,129	3,412	31,451	7,321	76.72%
TOTAL INDIRECT EXPENSES:	18,529	17,312	1,217	204,087	200,302	3,785	224,154	23,852	89.36%
NET INCOME (LOSS):	(18,529)	(17,312)	1,217	(204,087)	(200,302)	3,785	(224,154)	(23,852)	89.36%

Washington State Bar Association
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91.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
CLIENT PROTECTION FUND									
REVENUE:									
CPF RESTITUTION	92	77,962	77,870	9,570	136,727	127,157	9,662	(127,065)	1415.12%
CPF MEMBER ASSESSMENTS	24,700	1,780	(22,920)	490,840	358,960	(131,880)	515,540	156,580	69.63%
INTEREST INCOME	833	400	(434)	7,367	4,509	(2,858)	8,200	3,691	54.99%
TOTAL REVENUE:	25,625	80,142	54,517	507,777	500,196	(7,581)	533,402	33,206	93.77%
DIRECT EXPENSES:									
BANK FEES - WELLS FARGO	26	163	(137)	1,369	1,863	(494)	1,395	(468)	133.53%
GIFTS TO INJURED CLIENTS	102,907	8,300	94,607	387,973	69,365	318,609	490,880	421,515	14.13%
CPF BOARD EXPENSES	71	-	71	807	54	753	877	824	6.12%
STAFF MEMBERSHIP DUES	-	-	-	200	-	200	200	200	0.00%
TOTAL DIRECT EXPENSES:	103,003	8,463	94,540	390,349	71,282	319,067	493,353	422,071	14.45%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.23 FTE)	7,091	7,264	(173)	78,654	78,897	(242)	85,746	6,849	92.01%
BENEFITS EXPENSE	2,843	2,486	357	31,282	30,890	392	34,234	3,345	90.23%
OTHER INDIRECT EXPENSE	3,027	2,142	885	33,781	29,418	4,363	38,589	9,171	76.23%
TOTAL INDIRECT EXPENSES:	12,961	11,892	1,070	143,717	139,204	4,512	158,569	19,365	87.79%
TOTAL ALL EXPENSES:	115,965	20,355	95,610	534,066	210,486	323,580	651,922	441,436	32.29%
NET INCOME (LOSS):	(90,340)	59,787	150,127	(26,289)	289,710	315,999	(118,520)	(408,230)	-244.44%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
DESKBOOKS									
REVENUE:									
LEXIS/NEXIS ROYALTIES	1,500	-	(1,500)	10,500	-	(10,500)	12,000	12,000	0.00%
FASTCASE ROYALTIES	250	-	(250)	1,750	-	(1,750)	2,000	2,000	0.00%
SHIPPING & HANDLING	97	-	(97)	2,403	2,122	(281)	2,500	378	84.87%
DESKBOOK SALES	1,812	9,626	7,813	72,188	83,658	11,470	74,000	(9,658)	113.05%
SECTION PUBLICATION SALES	189	-	(189)	9,811	9,890	79	10,000	110	98.90%
CASEMAKER ROYALTIES	2,335	18,455	16,119	37,665	39,772	2,107	40,000	228	99.43%
TOTAL REVENUE:	6,183	28,080	21,897	134,317	135,441	1,125	140,500	5,059	96.40%
DIRECT EXPENSES:									
COST OF SALES - DESKBOOKS	2,226	18,357	(16,131)	46,649	55,917	(9,268)	48,875	(7,042)	114.41%
COST OF SALES - SECTION PUBLICATION	36	452	(416)	2,764	3,455	(691)	2,800	(655)	123.40%
SPLITS TO SECTIONS	715	-	715	6,785	3,844	2,941	7,500	3,656	51.25%
DESKBOOK ROYALTIES	45	-	45	455	199	255	500	301	39.87%
POSTAGE & DELIVER-DESKBOOKS	127	-	127	2,873	3,167	(293)	3,000	(167)	105.55%
FLIERS/CATALOGS	(0)	-	(0)	2,507	2,507	(0)	2,507	(0)	100.01%
ONLINE LEGAL RESEARCH	171	154	17	1,501	1,532	(30)	1,672	141	91.60%
POSTAGE - FLIERS/CATALOGS	117	-	117	820	936	(116)	937	1	99.92%
OBSOLETE INVENTORY	2,945	581	2,364	32,398	34,524	(2,126)	35,343	819	97.68%
BAD DEBT EXPENSE	13	-	13	88	-	88	100	100	0.00%
RECORDS STORAGE - OFF SITE	625	-	625	7,475	11,500	(4,025)	8,100	(3,400)	141.98%
STAFF MEMBERSHIP DUES	44	-	44	176	30	146	220	190	13.64%
MISCELLANEOUS	25	-	25	175	-	175	200	200	0.00%
SUBSCRIPTIONS	-	-	-	185	185	-	185	0	99.98%
TOTAL DIRECT EXPENSES:	7,088	19,543	(12,455)	104,851	117,796	(12,946)	111,939	(5,857)	105.23%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.52 FTE)	10,472	10,463	9	117,271	117,412	(141)	127,743.6	10,331	91.91%
BENEFITS EXPENSE	3,698	3,217	482	40,802	40,310	493	44,636	4,326	90.31%
OTHER INDIRECT EXPENSE	3,741	2,671	1,069	41,868	36,690	5,178	47,810	11,120	76.74%
TOTAL INDIRECT EXPENSES:	17,911	16,351	1,560	199,942	194,412	5,529	220,190	25,778	88.29%
TOTAL ALL EXPENSES:	24,999	35,895	(10,895)	304,792	312,208	(7,416)	332,129	19,920	94.00%
NET INCOME (LOSS):	(18,816)	(7,814)	11,002	(170,475)	(176,767)	(6,291)	(191,629)	(14,862)	92.24%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
DISCIPLINE									
REVENUE:									
COPY FEES	-	-	-	60	-	(60)	60	60	0.00%
AUDIT REVENUE	107	64	(43)	1,171	1,275	105	1,277	2	99.84%
RECOVERY OF DISCIPLINE COSTS	6,278	11,072	4,794	73,722	100,928	27,206	80,000	(20,928)	126.16%
DISCIPLINE HISTORY SUMMARY	1,166	1,680	1,680	13,834	17,797	3,963	15,000	(2,797)	118.64%
TOTAL REVENUE:	7,551	12,816	6,431	88,786	119,999	31,213	96,337	(23,662)	124.56%
DIRECT EXPENSES:									
PUBLICATIONS PRODUCTION	31	-	31	219	181	38	250	69	72.24%
STAFF TRAVEL/PARKING	2,917	520	2,397	17,670	10,110	7,560	20,587	10,476	49.11%
STAFF MEMBERSHIP DUES	250	-	250	4,830	4,340	490	5,080	740	85.43%
TELEPHONE	185	165	21	2,015	2,039	(24)	2,200	161	92.67%
COURT REPORTERS	2,765	644	2,121	24,735	19,144	5,590	27,500	8,356	69.62%
OUTSIDE COUNSEL/AIC	375	-	375	2,625	500	2,125	3,000	2,500	16.67%
LITIGATION EXPENSES	1,972	1,913	59	15,528	8,653	6,875	17,500	8,847	49.45%
DISABILITY EXPENSES	938	-	938	6,563	4,900	1,663	7,500	2,600	65.33%
ONLINE LEGAL RESEARCH	5,006	4,456	550	48,282	44,456	3,826	53,288	8,832	83.43%
LAW LIBRARY	1,138	45	1,094	10,862	4,962	5,900	12,000	7,038	41.35%
TRANSLATION SERVICES	94	-	94	656	500	156	750	250	66.67%
TOTAL DIRECT EXPENSES:	15,671	7,742	7,929	133,984	99,785	34,199	149,655	49,870	66.68%
INDIRECT EXPENSES:									
SALARY EXPENSE (37.00 FTE)	299,663	276,421	23,242	3,263,753	3,312,810	(49,058)	3,571,125	258,315	92.77%
BENEFITS EXPENSE	88,112	76,145	11,967	963,412	960,980	2,432	1,057,652	96,672	90.86%
OTHER INDIRECT EXPENSE	88,591	64,784	23,808	984,542	889,814	94,728	1,129,195	239,381	78.80%
TOTAL INDIRECT EXPENSES:	476,367	417,350	59,017	5,211,707	5,163,604	48,103	5,757,972	594,369	89.68%
TOTAL ALL EXPENSES:	492,038	425,092	66,946	5,345,690	5,263,389	82,301	5,907,627	644,238	89.09%
NET INCOME (LOSS):	(484,487)	(412,276)	72,211	(5,256,904)	(5,143,390)	113,515	(5,811,290)	(667,901)	88.51%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
DIVERSITY									
REVENUE:									
DONATIONS	(1,250)	-	1,250	126,250	135,000	8,750	125,000	(10,000)	108.00%
WORK STUDY GRANTS	1,297	-	(1,297)	9,077	-	(9,077)	10,374	10,374	0.00%
TOTAL REVENUE:	47	-	(47)	135,327	135,000	(327)	135,374	374	99.72%
DIRECT EXPENSES:									
STAFF MEMBERSHIP DUES	58	-	58	232	-	232	290	290	0.00%
COMMITTEE FOR DIVERSITY	610	285	325	4,290	302	3,988	4,900	4,598	6.16%
DIVERSITY EVENTS & PROJECTS	2,063	-	2,063	15,188	1,551	13,636	17,250	15,699	8.99%
TOTAL DIRECT EXPENSES:	2,731	285	2,446	19,709	1,853	17,856	22,440	20,587	8.26%
INDIRECT EXPENSES:									
SALARY EXPENSE (2.46 FTE)	15,209	17,867	(2,658)	135,331	148,120	(12,789)	150,814	2,694	98.21%
BENEFITS EXPENSE	5,482	4,802	680	53,862	55,896	(2,033)	59,610	3,714	93.77%
OTHER INDIRECT EXPENSE	5,689	4,308	1,381	59,100	59,167	(67)	68,326	9,160	86.59%
TOTAL INDIRECT EXPENSES:	26,380	26,977	(597)	248,293	263,182	(14,889)	278,750	15,568	94.42%
TOTAL ALL EXPENSES:	29,111	27,262	1,849	268,002	265,035	2,967	301,190	36,154	88.00%
NET INCOME (LOSS):	(29,064)	(27,262)	1,802	(132,675)	(130,035)	2,639	(165,816)	(35,780)	78.42%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
FOUNDATION									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
CONSULTING SERVICES	-	-	-	3,000	3,000	-	3,000	-	100.00%
PRINTING & COPYING	-	-	-	-	-	-	450	450	0.00%
STAFF TRAVEL/PARKING	-	-	-	-	-	-	100	100	0.00%
SUPPLIES	150	-	150	150	-	150	150	150	0.00%
SPECIAL EVENTS	-	-	-	-	50	(50)	-	(50)	
BOARD OF TRUSTEES	1,000	111	889	1,000	165	835	1,000	835	16.48%
POSTAGE	-	-	-	-	-	-	300	300	0.00%
TOTAL DIRECT EXPENSES:	1,150	111	1,039	4,150	3,215	935	5,000	1,785	64.30%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	6,443	6,438	6	71,511	71,573	(62)	77,954	6,381	91.81%
BENEFITS EXPENSE	1,279	1,083	196	14,436	14,455	(18)	15,805	1,350	91.46%
OTHER INDIRECT EXPENSE	2,461	1,757	704	27,541	24,130	3,412	31,451	7,321	76.72%
TOTAL INDIRECT EXPENSES:	10,184	9,278	906	113,488	110,157	3,332	125,210	15,053	87.98%
TOTAL ALL EXPENSES:	11,334	9,388	1,945	117,638	113,372	4,267	130,210	16,838	87.07%
NET INCOME (LOSS):	(11,334)	(9,388)	1,945	(117,638)	(113,372)	4,267	(130,210)	(16,838)	87.07%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
HUMAN RESOURCES									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	26	18	8	671	18	653	697	679	2.59%
STAFF MEMBERSHIP DUES	48	-	48	145	-	145	193	193	0.00%
SUBSCRIPTIONS	245	14	231	3,154	610	2,543	3,399	2,788	17.96%
STAFF TRAINING- GENERAL	-	-	-	209	1,524	(1,315)	25,000	23,476	6.10%
RECRUITING AND ADVERTISING	583	236	347	17,997	17,917	79	18,580	663	96.43%
PAYROLL PROCESSING	4,081	-	4,081	44,919	41,722	3,197	49,000	7,278	85.15%
SALARY SURVEYS	242	-	242	1,692	-	1,692	1,933	1,933	0.00%
CONSULTING SERVICES	-	5,250	(5,250)	23,200	62,533	(39,333)	112,500	49,967	55.58%
CONFERENCE CALLS	-	-	-	-	13	(13)	-	(13)	
TRANSFER TO INDIRECT EXPENSE	(5,225)	(5,518)	293	(91,986)	(124,338)	32,353	(211,302)	(86,964)	58.84%
TOTAL DIRECT EXPENSES:	-	-	-	0	-	0	-	-	
INDIRECT EXPENSES:									
SALARY EXPENSE (3.00 FTE)	22,352	22,334	18	197,174	279,651	(82,477)	219,525	(60,126)	127.39%
BENEFITS EXPENSE	8,339	7,262	1,077	78,353	82,924	(4,571)	86,960	4,035	95.36%
OTHER INDIRECT EXPENSE	7,043	5,246	1,797	70,224	72,058	(1,833)	79,450	7,392	90.70%
TOTAL INDIRECT EXPENSES:	37,734	34,842	2,892	345,751	434,633	(88,882)	385,934	(48,699)	112.62%
TOTAL ALL EXPENSES:	37,734	34,842	2,892	345,751	434,633	(88,882)	385,934	(48,699)	112.62%
NET INCOME (LOSS):	(37,734)	(34,842)	2,892	(345,751)	(434,633)	(88,882)	(385,934)	48,699	112.62%

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LAW CLERK PROGRAM									
REVENUE:									
LAW CLERK FEES	5,000	-	(5,000)	203,352	183,001	(20,351)	209,637	26,636	87.29%
LAW CLERK APPLICATION FEES	900	-	(900)	3,800	3,100	(700)	4,031	931	76.91%
TOTAL REVENUE:	5,900	-	(5,900)	207,152	186,101	(21,051)	213,668	27,567	87.10%
DIRECT EXPENSES:									
SUBSCRIPTIONS	-	-	-	250	-	250	250	250	0.00%
CHARACTER & FITNESS INVESTIGATIONS	20	-	20	80	-	80	100	100	0.00%
LAW CLERK BOARD EXPENSE	600	-	600	624	279	344	624	344	44.78%
STAFF TRAVEL/PARKING	52	-	52	248	-	248	300	300	0.00%
LAW CLERK OUTREACH	-	-	-	-	-	-	100	100	0.00%
TOTAL DIRECT EXPENSES:	672	-	672	1,201	279	922	1,374	1,094	20.33%
INDIRECT EXPENSES:									
SALARY EXPENSE (0.90 FTE)	5,282	5,846	(564)	55,082	52,218	2,864	60,364	8,146	86.51%
BENEFITS EXPENSE	1,816	1,580	236	18,767	18,295	472	20,663	2,368	88.54%
OTHER INDIRECT EXPENSE	2,215	1,564	651	24,318	21,485	2,833	27,837	6,351	77.18%
TOTAL INDIRECT EXPENSES:	9,313	8,990	323	98,167	91,998	6,168	108,864	16,866	84.51%
TOTAL ALL EXPENSES:	9,985	8,990	995	99,368	92,278	7,091	110,238	17,960	83.71%
NET INCOME (LOSS):	(4,085)	(8,990)	(4,905)	107,784	93,823	(13,960)	103,430	9,607	90.71%

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LEGISLATIVE									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	-	-	-	400	-	400	400	400	0.00%
STAFF MEMBERSHIP DUES	-	40	(40)	-	40	(40)	-	(40)	
SUBSCRIPTIONS	-	-	-	1,982	1,982	-	1,982	-	100.00%
CONTRACT LOBBYIST	-	-	-	26,000	26,000	-	26,000	-	100.00%
LEGISLATIVE COMMITTEE	-	-	-	10	10	-	260	250	3.77%
BOG LEGISLATIVE COMMITTEE	25	-	25	100	-	100	125	125	0.00%
TOTAL DIRECT EXPENSES:	25	40	(15)	28,492	28,032	460	28,767	735	97.44%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	6,213	10,403	(4,191)	59,996	67,236	(7,240)	66,209	(1,027)	101.55%
BENEFITS EXPENSE	2,543	2,224	319	24,073	25,782	(1,709)	26,705	923	96.54%
OTHER INDIRECT EXPENSE	2,461	1,757	704	24,443	24,129	314	28,353	4,223	85.10%
TOTAL INDIRECT EXPENSES:	11,216	14,384	(3,168)	108,512	117,147	(8,635)	121,266	4,119	96.60%
TOTAL ALL EXPENSES:	11,241	14,424	(3,183)	137,004	145,179	(8,175)	150,033	4,854	96.76%
NET INCOME (LOSS):	(11,241)	(14,424)	(3,183)	(137,004)	(145,179)	(8,175)	(150,033)	(4,854)	96.76%

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LICENSING & MEMBERSHIP RECORDS									
REVENUE:									
STATUS CERTIFICATE FEES	1,700	1,625	(75)	24,415	27,604	3,189	26,115	(1,489)	105.70%
INVESTIGATION FEES	1,986	1,900	(86)	20,413	19,400	(1,013)	22,399	2,999	86.61%
PRO HAC VICE	22,900	35,266	12,366	276,174	378,766	102,592	299,074	(79,692)	126.65%
MEMBER CONTACT INFORMATION	589	400	(189)	3,622	5,328	1,706	4,211	(1,116)	126.51%
PHOTO BAR CARD SALES	33	36	3	253	264	11	286	22	92.26%
TOTAL REVENUE:	27,209	39,227	12,018	324,877	431,362	106,485	352,086	(79,276)	122.52%
DIRECT EXPENSES:									
DEPRECIATION	-	-	-	1,151	1,151	-	1,151	0	99.98%
POSTAGE	1,168	38	1,129	18,745	18,099	646	19,913	1,814	90.89%
LICENSING FORMS	-	-	-	2,845	2,845	-	2,845	-	100.00%
TOTAL DIRECT EXPENSES:	1,168	38	1,129	22,741	22,095	646	23,909	1,814	92.41%
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	27,862	27,840	22	318,916	319,871	(955)	346,778	26,907	92.24%
BENEFITS EXPENSE	10,477	9,110	1,367	115,300	113,500	1,800	125,888	12,388	90.16%
OTHER INDIRECT EXPENSE	9,797	6,642	3,155	109,387	91,229	18,158	119,345	28,116	76.44%
TOTAL INDIRECT EXPENSES:	48,136	43,592	4,544	543,603	524,600	19,003	592,011	67,411	88.61%
TOTAL ALL EXPENSES:	49,304	43,630	5,673	566,344	546,695	19,650	615,920	69,225	88.76%
NET INCOME (LOSS):	(22,095)	(4,404)	17,691	(241,467)	(115,333)	126,135	(263,834)	(148,501)	43.71%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
LIMITED LICENSE LEGAL TECHNICIAN PROGRAM									
REVENUE:									
SEMINAR REGISTRATIONS	282	-	(282)	2,037	796	(1,241)	2,319	1,523	34.33%
LLLT LICENSE FEES	858	831	(27)	9,127	8,448	(679)	9,985	1,537	84.60%
LLLT LATE LICENSE FEES	-	-	-	-	275	275	-	(275)	
INVESTIGATION FEES	20	-	(20)	80	-	(80)	100	100	0.00%
LLLT EXAM FEES	-	-	-	15,650	19,950	4,300	15,650	(4,300)	127.48%
LLLT WAIVER FEES	-	-	-	-	300	300	-	(300)	
TOTAL REVENUE:	1,160	831	(329)	26,893	29,768	2,875	28,054	(1,715)	106.11%
DIRECT EXPENSES:									
LLLT BOARD	817	-	817	1,633	-	1,633	2,450	2,450	0.00%
LLLT EXAM WRITING	-	-	-	5,375	6,788	(1,413)	5,375	(1,413)	126.28%
TOTAL DIRECT EXPENSES:	817	-	817	7,008	6,788	221	7,825	1,038	86.74%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	7,126	6,871	255	64,391	52,130	12,261	71,517	19,387	72.89%
BENEFITS EXPENSE	2,581	2,248	333	24,404	24,262	142	27,070	2,808	89.63%
OTHER INDIRECT EXPENSE	2,338	1,757	581	24,294	24,129	165	28,009	3,879	86.15%
TOTAL INDIRECT EXPENSES:	12,045	10,876	1,169	113,090	100,522	12,568	126,595	26,073	79.40%
TOTAL ALL EXPENSES:	12,861	10,876	1,986	120,098	107,309	12,789	134,420	27,111	79.83%
NET INCOME (LOSS):	(11,701)	(10,045)	1,657	(93,205)	(77,541)	15,664	(106,367)	(28,826)	72.90%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
LIMITED PRACTICE OFFICERS									
REVENUE:									
INVESTIGATION FEES	80	100	20	920	1,200	280	1,000	(200)	120.00%
LPO EXAMINATION FEES	-	-	-	23,700	25,900	2,200	23,700	(2,200)	109.28%
LPO LICENSE FEES	14,279	14,293	14	158,156	155,317	(2,839)	172,435	17,118	90.07%
LPO LATE LICENSE FEES	727	30	(697)	2,908	3,840	932	3,635	(205)	105.65%
TOTAL REVENUE:	15,086	14,423	(663)	185,684	186,257	574	200,770	14,512	92.77%
DIRECT EXPENSES:									
EXAM WRITING	4,875	-	4,875	9,750	9,750	-	9,750	-	100.00%
ONLINE LEGAL RESEARCH	171	154	17	1,501	1,532	(30)	1,672	141	91.60%
LAW LIBRARY	439	268	170	3,224	2,963	262	3,663	700	80.88%
LPO BOARD	-	-	-	4	4	-	4	-	100.00%
TOTAL DIRECT EXPENSES:	5,484	422	5,062	14,480	14,249	231	15,089	841	94.43%
INDIRECT EXPENSES:									
SALARY EXPENSE (0.50 FTE)	4,305	5,421	(1,116)	38,400	34,322	4,078	42,705	8,383	80.37%
BENEFITS EXPENSE	1,683	1,456	227	14,677	13,613	1,063	16,426	2,813	82.88%
OTHER INDIRECT EXPENSE	1,846	866	979	16,857	11,900	4,957	19,789	7,889	60.13%
TOTAL INDIRECT EXPENSES:	7,833	7,743	90	69,934	59,835	10,099	78,920	19,085	75.82%
TOTAL ALL EXPENSES:	13,317	8,165	5,153	84,414	74,084	10,330	94,010	19,926	78.80%
NET INCOME (LOSS):	1,769	6,258	4,489	101,270	112,174	10,904	106,760	(5,414)	105.07%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
MEMBER ASSISTANCE PROGRAM									
REVENUE:									
DIVERSIONS	1,487	375	(1,112)	9,000	9,801	801	9,000	(801)	108.90%
TOTAL REVENUE:	1,487	375	(1,112)	9,000	9,801	801	9,000	(801)	108.90%
DIRECT EXPENSES:									
STAFF MEMBERSHIP DUES	-	-	-	225	226	(1)	225	(1)	100.44%
PROF LIAB INSURANCE	106	-	106	744	825	(81)	850	25	97.06%
TOTAL DIRECT EXPENSES:	106	-	106	969	1,051	(82)	1,075	24	97.77%
INDIRECT EXPENSES:									
SALARY EXPENSE (0.50 FTE)	10,233	4,391	5,842	60,447	48,818	11,628	70,680	21,861	69.07%
BENEFITS EXPENSE	4,508	3,891	617	27,220	26,188	1,032	31,862	5,673	82.19%
OTHER INDIRECT EXPENSE	3,691	866	2,825	18,595	11,900	6,695	24,459	12,559	48.65%
TOTAL INDIRECT EXPENSES:	18,432	9,148	9,284	106,261	86,906	19,355	127,000	40,094	68.43%
TOTAL ALL EXPENSES:	18,538	9,148	9,390	107,230	87,957	19,273	128,075	40,118	68.68%
NET INCOME (LOSS):	(17,051)	(8,773)	8,278	(98,230)	(78,156)	20,074	(119,075)	(40,919)	65.64%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
MEMBERSHIP BENEFITS									
REVENUE:									
SPONSORSHIPS	375	-	(375)	2,625	-	(2,625)	3,000	3,000	0.00%
INTERNET SALES	539	980	441	6,128	6,811	683	6,667	(144)	102.16%
MP3 SALES	288	-	(288)	3,045	2,646	(399)	3,333	687	79.39%
TOTAL REVENUE:	1,202	980	(222)	11,798	9,457	(2,341)	13,000	3,543	72.75%
DIRECT EXPENSES:									
TRANSCRIPTION SERVICES	300	-	300	1,200	-	1,200	1,500	1,500	0.00%
CONFERENCE CALLS	63	-	63	438	-	438	500	500	0.00%
LEGAL LUNCHBOX SPEAKERS & PROGRAM	125	-	125	875	1,321	(446)	1,000	(321)	132.12%
WSBA CONNECTS	3,395	-	3,395	43,165	42,680	485	46,560	3,880	91.67%
CASEMAKER & FASTCASE	5,432	-	5,432	131,004	120,058	10,946	136,436	16,378	88.00%
TOTAL DIRECT EXPENSES:	9,315	-	9,315	176,681	164,059	12,622	185,996	21,937	88.21%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.16 FTE)	6,682	6,628	54	72,863	71,744	1,119	80,368	8,624	89.27%
BENEFITS EXPENSE	2,171	1,885	286	21,613	21,174	438	24,064	2,890	87.99%
OTHER INDIRECT EXPENSE	2,867	2,021	845	31,878	27,765	4,113	36,999	9,234	75.04%
TOTAL INDIRECT EXPENSES:	11,720	10,534	1,186	126,354	120,684	5,670	141,432	20,749	85.33%
TOTAL ALL EXPENSES:	21,035	10,534	10,500	303,035	284,743	18,292	327,428	42,685	86.96%
NET INCOME (LOSS):	(19,832)	(9,554)	10,278	(291,238)	(275,286)	15,952	(314,428)	(39,142)	87.55%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
MANDATORY CONTINUING LEGAL EDUCATION									
REVENUE:									
ACCREDITED PROGRAM FEES	40,000	44,900	4,900	457,600	515,900	58,300	497,600	(18,300)	103.68%
FORM 1 LATE FEES	17,000	13,600	(3,400)	173,200	207,650	34,450	190,200	(17,450)	109.17%
MEMBER LATE FEES	150	-	(150)	2,550	6,496	3,946	2,700	(3,796)	240.60%
ANNUAL ACCREDITED SPONSOR FEES	(63)	-	63	41,813	42,250	438	41,750	(500)	101.20%
ATTENDANCE LATE FEES	6,000	9,600	3,600	87,500	108,750	21,250	94,000	(14,750)	115.69%
COMITY CERTIFICATES	105	875	770	12,895	16,237	3,343	13,000	(3,237)	124.90%
TOTAL REVENUE:	63,193	68,975	5,782	775,557	897,284	121,726	839,250	(58,033)	106.91%
DIRECT EXPENSES:									
DEPRECIATION	7,447	5,530	1,917	135,598	137,518	(1,920)	143,045	5,527	96.14%
STAFF MEMBERSHIP DUES	-	-	-	500	-	500	500	500	0.00%
ONLINE LEGAL RESEARCH	152	154	(2)	1,520	1,532	(11)	1,672	141	91.60%
LAW LIBRARY	13	11	2	137	122	15	150	28	81.13%
MCLE BOARD	650	-	650	650	-	650	650	650	0.00%
STAFF TRAVEL/PARKING	6	-	6	44	-	44	50	50	0.00%
STAFF TRAINING	-	-	-	1,170	-	1,170	1,170	1,170	0.00%
TOTAL DIRECT EXPENSES:	8,269	5,695	2,574	139,618	139,171	448	147,237	8,066	94.52%
INDIRECT EXPENSES:									
SALARY EXPENSE (4.80 FTE)	24,131	21,282	2,849	245,630	227,332	18,298	269,761	42,429	84.27%
BENEFITS EXPENSE	9,827	8,550	1,277	95,924	94,098	1,826	106,179	12,081	88.62%
OTHER INDIRECT EXPENSE	11,812	6,642	5,170	117,037	91,229	25,808	135,803	44,574	67.18%
TOTAL INDIRECT EXPENSES:	45,770	36,474	9,296	458,591	412,659	45,932	511,743	99,084	80.64%
TOTAL ALL EXPENSES:	54,039	42,169	11,870	598,209	551,830	46,380	658,980	107,150	83.74%
NET INCOME (LOSS):	9,154	26,806	17,653	177,348	345,454	168,106	180,271	(165,183)	191.63%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
MEMBER SERVICES & ENGAGEMENT									
REVENUE:									
ROYALTIES	3,940.01	14,105.54	10,165.53	45,309.98	67,376.26	22,066.28	49,250.00	(18,126.26)	136.80%
NMP PRODUCT SALES	1,435	3,647	2,212	16,565	29,165	12,600	18,000	(11,165)	162.03%
SEMINAR REGISTRATIONS	(910)	-	910	910	25	(885)	-	(25)	
TOTAL REVENUE:	4,465	17,753	13,287	62,785	96,566	33,781	67,250	(29,316)	143.59%
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	-	1,037	(1,037)	1,000	1,037	(37)	1,000	(37)	103.71%
SUBSCRIPTIONS	24	17	7	226	174	52	250	76	69.69%
TRANSCRIPTION SERVICES	188	-	188	1,313	750	563	1,500	750	50.00%
CONFERENCE CALLS	13	-	13	88	-	88	100	100	0.00%
YLL SECTION PROGRAM	-	-	-	805	800	5	1,500	700	53.33%
WYLC CLE COMPS	250	-	250	750	-	750	1,000	1,000	0.00%
WYLC OUTREACH EVENTS	-	190	(190)	1,000	190	810	1,500	1,310	12.69%
WYL COMMITTEE	-	3,172	(3,172)	8,000	3,172	4,828	8,000	4,828	39.66%
TRIAL ADVOCACY EXPENSES	-	-	-	900	-	900	900	900	0.00%
RECEPTION/FORUM EXPENSE	-	-	-	367	67	300	667	600	9.99%
WYLC SCHOLARSHIPS/DONATIONS/GRANT	-	-	-	-	4,977	(4,977)	5,000	23	99.54%
STAFF MEMBERSHIP DUES	61	-	61	429	225	204	490	265	45.92%
LENDING LIBRARY	500	10	490	1,090	110	980	2,000	1,890	5.50%
TOTAL DIRECT EXPENSES:	1,035	4,426	(3,391)	15,967	11,503	4,464	23,907	12,404	48.11%
INDIRECT EXPENSES:									
SALARY EXPENSE (4.13 FTE)	22,618	21,485	1,134	224,471	218,795	5,676	250,160	31,365	87.46%
BENEFITS EXPENSE	8,397	7,339	1,059	81,097	82,065	(968)	90,502	8,437	90.68%
OTHER INDIRECT EXPENSE	9,568	7,220	2,348	104,888	99,162	5,726	122,207	23,045	81.14%
TOTAL INDIRECT EXPENSES:	40,584	36,043	4,541	410,456	400,022	10,434	462,869	62,847	86.42%
TOTAL ALL EXPENSES:	41,619	40,469	1,150	426,422	411,524	14,898	486,776	75,251	84.54%
NET INCOME (LOSS):	(37,154)	(22,717)	14,437	(363,637)	(314,958)	48,679	(419,526)	(104,567)	75.07%

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OFFICE OF THE EXECUTIVE DIRECTOR									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	-
DIRECT EXPENSES:									
WASHINGTON LEADERSHIP INSTITUTE	11,000	-	11,000	77,000	-	77,000	88,000	88,000	0.00%
ABA DELEGATES	417	874	(458)	2,917	874	2,043	3,334	2,459	26.23%
SECTION/COMMITTEE CHAIR MTGS	-	-	-	-	-	-	500	500	0.00%
VOLUNTEER SUPPORT	-	1,914	(1,914)	-	1,969	(1,969)	5,000	3,031	39.38%
ED TRAVEL & OUTREACH	417	-	417	2,917	36	2,881	3,333	3,297	1.08%
LAW LIBRARY	-	11	(11)	150	122	28	150	28	81.13%
STAFF TRAVEL/PARKING	-	-	-	98	53	45	98	45	53.86%
STAFF MEMBERSHIP DUES	-	-	-	50	67	(17)	50	(17)	133.34%
TOTAL DIRECT EXPENSES:	11,833	2,799	9,034	83,132	3,121	80,011	100,465	97,345	3.11%
INDIRECT EXPENSES:									
SALARY EXPENSE (3.00 FTE)	34,907	34,890	18	383,639	383,804	(165)	418,546	34,742	91.70%
BENEFITS EXPENSE	10,605	10,131	474	115,027	118,650	(3,623)	125,070	6,420	94.87%
OTHER INDIRECT EXPENSE	7,383	5,246	2,136	82,504	72,058	10,446	94,232	22,175	76.47%
TOTAL INDIRECT EXPENSES:	52,895	50,267	2,628	581,169	574,511	6,658	637,848	63,336	90.07%
TOTAL ALL EXPENSES:	64,728	53,066	11,662	664,302	577,632	86,669	738,313	160,681	78.24%
NET INCOME (LOSS):	(64,728)	(53,066)	11,662	(664,302)	(577,632)	86,669	(738,313)	(160,681)	78.24%

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OFFICE OF GENERAL COUNSEL									
REVENUE:									
COPY FEES	-	-	-	27	117	90	27	(90)	432.78%
RECORDS REQUEST FEES	-	-	-	-	630	630	-	(630)	
TOTAL REVENUE:	-	-	-	27	747	720	27	(720)	100.00%
DIRECT EXPENSES:									
DEPRECIATION	139	-	139	973	-	973	1,112	1,112	0.00%
STAFF TRAVEL/PARKING	8	-	8	409	-	409	417	417	0.00%
STAFF MEMBERSHIP DUES	-	-	-	1,525	725	800	1,525	800	47.54%
ONLINE LEGAL RESEARCH	912	922	(10)	9,122	9,189	(67)	10,034	845	91.58%
LAW LIBRARY	-	22	(22)	1,780	1,936	(156)	1,780	(156)	108.79%
COURT RULES COMMITTEE	296	-	296	899	56	843	1,195	1,139	4.68%
DISCIPLINE ADVISORY ROUNDTABLE	94	-	94	281	-	281	375	375	0.00%
CUSTODIANSHIPS	584	-	584	6,625	10,094	(3,469)	7,209	(2,885)	140.02%
LITIGATION EXPENSES	21	-	21	146	-	146	167	167	0.00%
TOTAL DIRECT EXPENSES:	2,054	944	1,110	21,760	22,000	(240)	23,814	1,814	92.38%
INDIRECT EXPENSES:									
SALARY EXPENSE (6.38 FTE)	48,746	47,604	1,142	499,174	476,413	22,761	547,919	71,506	86.95%
BENEFITS EXPENSE	15,843	13,740	2,104	156,462	155,396	1,066	172,844	17,448	89.91%
OTHER INDIRECT EXPENSE	14,874	11,166	3,708	161,915	153,371	8,544	185,545	32,174	82.66%
TOTAL INDIRECT EXPENSES:	79,463	72,510	6,953	817,551	785,180	32,371	906,308	121,128	86.63%
TOTAL ALL EXPENSES:	81,517	73,454	8,063	839,311	807,180	32,131	930,122	122,942	86.78%
NET INCOME (LOSS):	(81,517)	(73,454)	8,063	(839,284)	(806,433)	32,851	(930,095)	(123,662)	86.70%

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	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
OFFICE OF GENERAL COUNSEL - DISCIPLINARY BOARD									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF MEMBERSHIP DUES	-	-	-	100	21	79	100	79	20.83%
LAW LIBRARY	81	67	14	828	735	93	909	174	80.89%
DISCIPLINARY BOARD EXPENSES	259	-	259	1,015	485	530	1,274	789	38.10%
CHIEF HEARING OFFICER	3,012	2,500	512	29,512	27,500	2,012	32,524	5,024	84.55%
HEARING OFFICER EXPENSES	5,715	-	5,715	34,290	-	34,290	40,005	40,005	0.00%
HEARING OFFICER TRAINING	80	-	80	240	-	240	321	321	0.00%
OUTSIDE COUNSEL	5,321	4,000	1,321	49,680	44,000	5,680	55,000	11,000	80.00%
TOTAL DIRECT EXPENSES:	14,467	6,567	7,901	115,665	72,742	42,924	130,133	57,391	55.90%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.30 FTE)	7,840	7,832	8	87,836	88,906	(1,070)	95,676	6,770	92.92%
BENEFITS EXPENSE	2,671	2,323	348	29,449	29,156	292	32,235	3,079	90.45%
OTHER INDIRECT EXPENSE	3,199	2,286	913	35,816	31,401	4,415	40,898	9,497	76.78%
TOTAL INDIRECT EXPENSES:	13,710	12,441	1,269	153,100	149,464	3,636	168,809	19,346	88.54%
TOTAL ALL EXPENSES:	28,178	19,008	9,170	268,765	222,205	46,560	298,942	76,737	74.33%
NET INCOME (LOSS):	(28,178)	(19,008)	9,170	(268,765)	(222,205)	46,560	(298,942)	(76,737)	74.33%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
OUTREACH & ENGAGEMENT									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	117	-	117	583	-	583	700	700	0.00%
STAFF MEMBERSHIP DUES	230	-	230	922	-	922	1,152	1,152	0.00%
ABA DELEGATES	741	-	741	4,859	-	4,859	5,600	5,600	0.00%
ANNUAL CHAIR MEETINGS	40	-	40	160	-	160	200	200	0.00%
JUDICIAL RECOMMENDATIONS COMMITTEE	438	-	438	3,063	-	3,063	3,500	3,500	0.00%
BAR OUTREACH	2,723	1,457	1,266	19,580	2,239	17,340	22,302	20,063	10.04%
TOTAL DIRECT EXPENSES:	4,288	1,457	2,831	29,166	2,239	26,927	33,454	31,215	6.69%
INDIRECT EXPENSES:									
SALARY EXPENSE (2.00 FTE)	12,860	5,433	7,426	133,767	111,560	22,207	146,626	35,066	76.08%
BENEFITS EXPENSE	4,598	4,003	596	46,851	48,331	(1,480)	51,627	3,296	93.62%
OTHER INDIRECT EXPENSE	4,922	3,489	1,432	51,864	47,928	3,936	59,683	11,755	80.30%
TOTAL INDIRECT EXPENSES:	22,380	12,925	9,454	232,481	207,819	24,662	257,936	50,117	80.57%
TOTAL ALL EXPENSES:	26,667	14,382	12,286	261,648	210,059	51,589	291,390	81,332	72.09%
NET INCOME (LOSS):	(26,667)	(14,382)	12,286	(261,648)	(210,059)	51,589	(291,390)	(81,332)	72.09%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
PRACTICE OF LAW BOARD									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	-
DIRECT EXPENSES:									
PRACTICE OF LAW BOARD	1,538	-	1,538	6,287	-	6,287	7,825	7,825	0.00%
TOTAL DIRECT EXPENSES:	1,538	-	1,538	6,287	-	6,287	7,825	7,825	0.00%
INDIRECT EXPENSES:									
SALARY EXPENSE (0.48 FTE)	3,746	3,744	3	35,021	41,165	(6,144)	38,767	(2,398)	106.18%
BENEFITS EXPENSE	1,096	926	169	9,643	8,097	1,546	10,782	2,685	75.10%
OTHER INDIRECT EXPENSE	1,189	265	925	10,385	3,636	6,749	12,274	8,638	29.62%
TOTAL INDIRECT EXPENSES:	6,031	4,935	1,097	55,049	52,898	2,151	61,823	8,926	85.56%
TOTAL ALL EXPENSES:	7,570	4,935	2,635	61,336	52,898	8,438	69,649	16,751	75.95%
NET INCOME (LOSS):	(7,570)	(4,935)	2,635	(61,336)	(52,898)	8,438	(69,649)	(16,751)	75.95%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
PROFESSIONAL RESPONSIBILITY PROGRAM									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	250	-	250	1,750	-	1,750	2,000	2,000	0.00%
STAFF MEMBERSHIP DUES	31	-	31	469	500	(31)	500	-	100.00%
LAW LIBRARY	54	45	9	554	492	62	608	116	80.90%
CPE COMMITTEE	424	28	395	2,204	60	2,144	2,627	2,568	2.27%
TOTAL DIRECT EXPENSES:	759	73	686	4,977	1,052	3,925	5,736	4,684	18.33%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.69 FTE)	14,269	14,159	110	158,252	159,735	(1,483)	172,521	12,786	92.59%
BENEFITS EXPENSE	5,531	4,819	712	60,072	58,853	1,220	65,754	6,901	89.50%
OTHER INDIRECT EXPENSE	4,165	2,960	1,205	46,547	40,656	5,891	53,164	12,508	76.47%
TOTAL INDIRECT EXPENSES:	23,965	21,938	2,027	264,872	259,244	5,628	291,439	32,195	88.95%
TOTAL ALL EXPENSES:	24,724	22,011	2,713	269,849	260,296	9,553	297,175	36,879	87.59%
NET INCOME (LOSS):	(24,724)	(22,011)	2,713	(269,849)	(260,296)	9,553	(297,175)	(36,879)	87.59%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
PUBLIC SERVICE PROGRAMS									
REVENUE:									
DONATIONS & GRANTS	-	-	-	103,000.00	103,000.00	-	103,000.00	-	100.00%
TOTAL REVENUE:	-	-	-	103,000	103,000	-	103,000	-	100.00%
DIRECT EXPENSES:									
DONATIONS/SPONSORSHIPS/GRANTS	29,024	-	29,024	203,169	142,097	61,072	232,193	90,097	61.20%
PRO BONO & PUBLIC SERVICE COMMITTEE	246	-	246	1,754	46	1,708	2,000	1,954	2.30%
PRO BONO CERTIFICATES	475	-	475	3,325	-	3,325	3,800	3,800	0.00%
TOTAL DIRECT EXPENSES:	29,746	-	29,746	208,247	142,143	66,105	237,993	95,850	59.73%
INDIRECT EXPENSES:									
SALARY EXPENSE (1.00 FTE)	6,704	9,852	(3,148)	69,641	73,387	(3,746)	76,345	2,957	96.13%
BENEFITS EXPENSE	2,560	2,229	331	25,186	25,069	117	27,845	2,775	90.03%
OTHER INDIRECT EXPENSE	2,707	1,757	950	27,491	24,129	3,362	31,792	7,662	75.90%
TOTAL INDIRECT EXPENSES:	11,971	13,838	(1,867)	122,318	122,586	(268)	135,981	13,395	90.15%
TOTAL ALL EXPENSES:	41,717	13,838	27,879	330,566	264,729	65,837	373,974	109,245	70.79%
NET INCOME (LOSS):	(41,717)	(13,838)	27,879	(227,566)	(161,729)	65,837	(270,974)	(109,245)	59.68%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
PUBLICATION & DESIGN SERVICES									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	-
DIRECT EXPENSES:									
EQUIPMENT, HARDWARE & SOFTWARE	25	-	25	175	-	175	200	200	0.00%
SUBSCRIPTIONS	17	-	17	317	200	117	333	133	60.00%
SUPPLIES	13	-	13	88	-	88	100	100	0.00%
IMAGE LIBRARY	84	-	84	4,352	4,100	252	4,436	336	92.43%
TOTAL DIRECT EXPENSES:	138	-	138	4,931	4,300	631	5,069	769	84.83%
INDIRECT EXPENSES:									
SALARY EXPENSE (0.87 FTE)	4,529	4,524	5	50,260	50,652	(393)	54,789	4,136	92.45%
BENEFITS EXPENSE	1,548	1,348	200	17,186	17,041	145	18,811	1,770	90.59%
OTHER INDIRECT EXPENSE	2,141	1,516	625	23,900	20,824	3,076	27,301	6,477	76.28%
TOTAL INDIRECT EXPENSES:	8,218	7,387	830	91,345	88,517	2,828	100,900	12,383	87.73%
TOTAL ALL EXPENSES:	8,356	7,387	968	96,276	92,817	3,459	105,969	13,152	87.59%
NET INCOME (LOSS):	(8,356)	(7,387)	968	(96,276)	(92,817)	3,459	(105,969)	(13,152)	87.59%

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	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
REGULATORY SERVICES FTE									
INDIRECT EXPENSES:									
SALARY EXPENSE (2.70 FTE)	21,863	22,424	(561)	224,145	207,570	16,574	246007.48	38,437	84.38%
BENEFITS EXPENSE	6,756	5,851	905	76,994	79,954	(2,960)	83,964	4,010	95.22%
OTHER INDIRECT EXPENSE	5,906	4,717	1,189	66,296	64,786	1,510	75,679	10,893	85.61%
TOTAL INDIRECT EXPENSES:	34,525	32,992	1,534	367,435	352,310	15,124	405,650	53,340	86.85%
NET INCOME (LOSS):	(34,525)	(32,992)	1,534	(367,435)	(352,310)	15,124	(405,650)	(53,340)	86.85%

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SERVICE CENTER									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
TRANSLATION SERVICES	801	881	(80)	7,699	5,483	2,216	8,500	3,017	64.50%
TOTAL DIRECT EXPENSES:	801	881	(80)	7,699	5,483	2,216	8,500	3,017	64.50%
INDIRECT EXPENSES:									
SALARY EXPENSE (6.71 FTE)	27,736	27,617	119	316,304	315,155	1,148	344,039	28,883	91.60%
BENEFITS EXPENSE	11,269	9,929	1,340	130,155	132,684	(2,529)	141,933	9,250	93.48%
OTHER INDIRECT EXPENSE	14,052	11,744	2,308	165,838	161,304	4,534	188,161	26,857	85.73%
TOTAL INDIRECT EXPENSES:	53,056	49,289	3,767	612,296	609,143	3,153	674,133	64,990	90.36%
TOTAL ALL EXPENSES:	53,858	50,170	3,688	619,995	614,625	5,370	682,633	68,008	90.04%
NET INCOME (LOSS):	(53,858)	(50,170)	3,688	(619,995)	(614,625)	5,370	(682,633)	(68,008)	90.04%

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SECTIONS ADMINISTRATION									
REVENUE:									
REIMBURSEMENTS FROM SECTIONS	3,385	418	(2,967)	268,615	283,517	14,902	272,000	(11,517)	104.23%
TOTAL REVENUE:	3,385	418	(2,967)	268,615	283,517	14,902	272,000	(11,517)	104.23%
DIRECT EXPENSES:									
STAFF TRAVEL/PARKING	167	-	167	333	-	333	500	500	0.00%
SUBSCRIPTIONS	-	-	-	410	410	-	410	-	100.00%
CONFERENCE CALLS	11	-	11	89	8	80	100	92	8.42%
MISCELLANEOUS	60	-	60	240	-	240	300	300	0.00%
SECTION/COMMITTEE CHAIR MTGS	-	-	-	250	-	250	250	250	0.00%
DUES STATEMENTS	-	-	-	5,935	5,935	-	5,935	-	100.00%
STAFF MEMBERSHIP DUES	25	-	25	100	-	100	125	125	0.00%
TOTAL DIRECT EXPENSES:	263	-	263	7,356	6,353	1,003	7,620	1,267	83.38%
INDIRECT EXPENSES:									
SALARY EXPENSE (2.68 FTE)	13,309	9,271	4,039	143,916	136,278	7,638	157,225	20,947	86.68%
BENEFITS EXPENSE	4,994	4,364	630	48,439	47,797	642	53,672	5,875	89.05%
OTHER INDIRECT EXPENSE	6,595	4,693	1,902	70,572	64,455	6,116	81,049	16,594	79.53%
TOTAL INDIRECT EXPENSES:	24,898	18,327	6,571	262,927	248,530	14,397	291,946	43,416	85.13%
TOTAL ALL EXPENSES:	25,162	18,327	6,835	270,283	254,883	15,400	299,566	44,682	85.08%
NET INCOME (LOSS):	(21,777)	(17,909)	3,868	(1,668)	28,634	30,302	(27,566)	(56,199)	-103.88%

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SECTIONS OPERATIONS									
REVENUE:									
SECTION DUES	8,992.78	689.54	(8,303.24)	430,452.33	444,042.48	13,590.15	439,445.00	(4,597.48)	101.05%
SEMINAR PROFIT SHARE	6,473	-	(6,473)	91,891	125,087	33,196	98,364	(26,723)	127.17%
INTEREST INCOME	341	-	(341)	1,129	-	(1,129)	1,470	1,470	0.00%
PUBLICATIONS REVENUE	981	-	(981)	5,019	5,193	175	6,000	807	86.56%
OTHER	4,116	2,590	(1,526)	36,384	41,422	5,038	40,500	(922)	102.28%
TOTAL REVENUE:	20,904	3,280	(17,625)	564,875	615,745	50,870	585,779	(29,966)	105.12%
DIRECT EXPENSES:									
DIRECT EXPENSES OF SECTION ACTIVITIES	103,426	5,674	97,752	481,169	76,642	404,526	584,594	507,952	13.11%
REIMBURSEMENT TO WSBA FOR INDIRECT I	5,631	418	5,213	274,942	283,517	(8,576)	280,573	(2,944)	101.05%
TOTAL DIRECT EXPENSES:	109,057	6,092	102,965	756,110	360,159	395,951	865,167	505,008	41.63%
NET INCOME (LOSS):	(88,153)	(2,813)	85,340	(191,235)	255,585	446,821	(279,388)	(534,973)	-91.48%

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TECHNOLOGY									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
CONSULTING SERVICES	10,905	4,716	6,189	99,095	77,601	21,494	110,000	32,399	70.55%
STAFF TRAVEL/PARKING	208	49	159	1,458	49	1,409	1,667	1,618	2.94%
STAFF MEMBERSHIP DUES	-	-	-	450	-	450	450	450	0.00%
TELEPHONE	2,320	5,892	(3,572)	19,680	19,010	670	22,000	2,990	86.41%
COMPUTER HARDWARE	7,465	215	7,250	52,535	43,700	8,835	60,000	16,300	72.83%
COMPUTER SOFTWARE	6,978	73	6,905	73,022	66,161	6,860	80,000	13,839	82.70%
HARDWARE SERVICE & WARRANTIES	4,257	-	4,257	35,743	31,094	4,648	40,000	8,906	77.74%
SOFTWARE MAINTENANCE & LICENSING	25,620	3,474	22,146	340,380	297,040	43,340	366,000	68,960	81.16%
TELEPHONE HARDWARE & MAINTENANCE	1,382	-	1,382	5,618	2,003	3,615	7,000	4,997	28.61%
COMPUTER SUPPLIES	1,127	614	513	8,873	2,488	6,385	10,000	7,512	24.88%
THIRD PARTY SERVICES	14,010	5,059	8,951	115,990	95,961	20,029	130,000	34,039	73.82%
TRANSFER TO INDIRECT EXPENSES	(74,272)	(20,092)	(54,179)	(752,845)	(635,109)	(117,736)	(827,117)	(192,008)	76.79%
TOTAL DIRECT EXPENSES:	-	-	-	(0)	-	(0)	-	-	
INDIRECT EXPENSES:									
SALARY EXPENSE (12.00 FTE)	102,321	91,739	10,582	1,015,937	970,473	45,464	1,118,256	147,784	86.78%
BENEFITS EXPENSE	32,991	28,544	4,447	331,897	330,680	1,216	366,046	35,365	90.34%
CAPITAL LABOR & OVERHEAD	(28,681)	(11,321)	(17,360)	(101,320)	26,889	(128,209)	(130,000)	(156,890)	-20.68%
OTHER INDIRECT EXPENSE	30,520	21,033	9,487	317,012	288,892	28,120	356,988	68,096	80.92%
TOTAL INDIRECT EXPENSES:	137,151	129,995	7,156	1,563,526	1,616,935	(53,409)	1,711,290	94,355	94.49%
TOTAL ALL EXPENSES:	137,151	129,995	7,156	1,563,526	1,616,935	(53,409)	1,711,290	94,355	94.49%
NET INCOME (LOSS):	(137,151)	(129,995)	7,156	(1,563,526)	(1,616,935)	(53,409)	(1,711,290)	(94,355)	94.49%

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91.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
INDIRECT EXPENSES:									
SALARIES	982,594.85	938,096	44,499	10,499,480	10,528,685	(29,205)	11,495,260	966,575	91.59%
TEMPORARY SALARIES	15,575	7,184	8,391	112,396	59,521	52,876	127,971	68,450	46.51%
CAPITAL LABOR & OVERHEAD	(28,681)	(11,321)	(17,360)	(101,320)	26,889	(128,209)	(130,000)	(156,890)	-20.68%
EMPLOYEE ASSISTANCE PLAN	472	825	(353)	4,904	4,825	79	5,376	551	89.75%
EMPLOYEE SERVICE AWARDS	228	-	228	1,593	1,925	(333)	1,820	(105)	105.77%
FICA (EMPLOYER PORTION)	60,561	61,618	(1,057)	681,261	752,859	(71,599)	741,809	(11,050)	101.49%
L&I INSURANCE	-	-	-	36,928	33,735	3,193	50,169	16,433	67.24%
WA STATE FAMILY MEDICAL LEAVE (EMPLC)	1,464	1,385	79	15,407	14,862	546	16,871	2,010	88.09%
FCRA LEAVE (EMPLOYER PORTION)	-	-	-	-	3,410	(3,410)	-	(3,410)	-
MEDICAL (EMPLOYER PORTION)	134,445	121,041	13,404	1,337,757	1,302,438	35,320	1,473,510	171,072	88.39%
PARKING BENEFITS	-	-	-	24,112	17,672	6,440	24,112	6,440	73.29%
RETIREMENT (EMPLOYER PORTION)	127,334	95,690	31,644	1,330,703	1,251,231	79,472	1,459,748	208,517	85.72%
TRANSPORTATION ALLOWANCE	-	700	(700)	(23,777)	25,886	(49,663)	(23,777)	(49,663)	-108.87%
UNEMPLOYMENT INSURANCE	4,077	4,852	(775)	65,408	61,748	3,660	68,766	7,018	89.80%
STAFF DEVELOPMENT-GENERAL	525	-	525	3,675	414	3,261	4,200	3,786	9.86%
TOTAL SALARY & BENEFITS EXPENSE:	1,298,594	1,220,070	78,524	13,988,527	14,086,100	(97,573)	15,315,834	1,229,733	91.97%
WORKPLACE BENEFITS	3,250	967	2,283	24,498	10,257	14,241	27,748	17,491	36.97%
HUMAN RESOURCES POOLED EXP	6,529	5,518	1,011	98,505	124,338	(25,833)	219,125	94,787	56.74%
MEETING SUPPORT EXPENSES	1,250	761	489	4,235	2,523	1,712	5,485	2,962	46.00%
RENT	150,669	150,730	(61)	1,824,665	1,756,776	67,889	1,975,334	218,558	88.94%
PERSONAL PROP TAXES-WSBA	534	527	7	8,587	6,023	2,563	9,121	3,097	66.04%
FURNITURE, MAINT, LH IMP	8,421	4,294	4,126	21,579	12,516	9,063	30,000	17,484	41.72%
OFFICE SUPPLIES & EQUIPMENT	5,031	718	4,312	38,970	15,086	23,884	44,000	28,914	34.29%
FURN & OFFICE EQUIP DEPRECIATION	4,294	4,234	60	47,991	48,920	(929)	52,285	3,365	93.56%
COMPUTER HARDWARE DEPRECIATION	4,315	2,949	1,366	42,458	32,898	9,560	46,773	13,876	70.33%
COMPUTER SOFTWARE DEPRECIATION	11,091	9,145	1,946	120,834	108,096	12,738	131,925	23,829	81.94%
INSURANCE	18,810	17,492	1,318	206,908	207,792	(883)	225,718	17,927	92.06%
PROFESSIONAL FEES-AUDIT	-	-	-	32,000	32,000	-	32,000	-	100.00%
PROFESSIONAL FEES-LEGAL	23,183	8,016	15,167	226,817	122,598	104,220	250,000	127,402	49.04%
TELEPHONE & INTERNET	5,428	7,237	(1,809)	57,572	76,594	(19,022)	63,000	(13,593)	121.58%
POSTAGE - GENERAL	2,333	578	1,755	21,253	12,215	9,039	23,586	11,372	51.79%
RECORDS STORAGE	2,500	1,779	721	24,004	20,821	3,183	26,504	5,683	78.56%
STAFF TRAINING	11,074	3,045	8,029	42,698	21,654	21,043	45,772	24,118	47.31%
BANK FEES	4,708	2,598	2,110	57,543	45,688	11,854	62,251	16,562	73.39%
PRODUCTION MAINTENANCE & SUPPLIES	1,696	(28)	1,724	16,360	9,085	7,275	18,056	8,971	50.32%
COMPUTER POOLED EXPENSES	83,685	20,092	63,593	816,026	639,108	176,918	899,711	260,603	71.03%
TOTAL OTHER INDIRECT EXPENSES:	348,801	240,652	108,149	3,733,503	3,304,988	428,515	4,188,395	883,407	78.91%
TOTAL INDIRECT EXPENSES:	1,647,395	1,460,722	186,673	17,722,030	17,391,089	330,942	19,504,229	2,113,140	89.17%

Washington State Bar Association
Statement of Activities
For the Period from August 1, 2021 to August 31, 2021
91.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
COVID 19									
REVENUE:									
TOTAL REVENUE:	-	-	-	-	-	-	-	-	
DIRECT EXPENSES:									
COVID 19	-	-	-	-	(945)	945	-	945	
TOTAL DIRECT EXPENSES:	-	-	-	-	(945)	945	-	945	
INDIRECT EXPENSES:									
TOTAL INDIRECT EXPENSES:	-	-	-	-	-	-	-	-	
TOTAL ALL EXPENSES:	-	-	-	-	(945)	945	-	945	
NET INCOME (LOSS):	-	-	-	-	945	945	-	(945)	

Washington State Bar Association
Statement of Activities
For the Period from August 1, 2021 to August 31, 2021
91.67% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON	
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR
ACCESS TO JUSTICE	(23,663)	(16,852)	6,811	(239,613)	(210,484)	29,130	(265,737)	(55,253)
ADMINISTRATION	(88,623)	(79,634)	8,989	(1,006,066)	(978,719)	27,347	(1,108,134)	(129,415)
ADMISSIONS/BAR EXAM	(140,225)	(84,658)	55,567	90,391	295,244	204,853	3,246	(291,998)
ADVANCEMENT FTE	(19,716)	(18,038)	1,678	(218,012)	(211,764)	6,248	(239,496)	(27,733)
BAR NEWS	(29,976)	9,888	39,864	(308,980)	(125,570)	183,410	(343,683)	(218,113)
BOARD OF GOVERNORS	(54,504)	(70,119)	(15,615)	(362,333)	(343,940)	18,393	(415,528)	(71,588)
CLE - PRODUCTS	105,720	130,210	24,490	320,941	365,469	44,528	324,958	(40,511)
CLE - SEMINARS	(23,646)	(563)	23,083	(363,302)	(41,785)	321,517	(390,091)	(348,306)
CLIENT PROTECTION FUND	(90,340)	59,787	150,127	(26,289)	289,710	315,999	(118,520)	(408,230)
COMMUNICATIONS	(52,849)	(43,761)	9,088	(482,696)	(433,149)	49,547	(533,177)	(100,029)
COMMUNICATIONS FTE	(18,529)	(17,312)	1,217	(204,087)	(200,302)	3,785	(224,154)	(23,852)
DESKBOOKS	(18,816)	(7,814)	11,002	(170,475)	(176,767)	(6,291)	(191,629)	(14,862)
DISCIPLINE	(484,487)	(412,276)	72,211	(5,256,904)	(5,143,390)	113,515	(5,811,290)	(667,901)
DIVERSITY	(29,064)	(27,262)	1,802	(132,675)	(130,035)	2,639	(165,816)	(35,780)
FOUNDATION	(11,334)	(9,388)	1,945	(117,638)	(113,372)	4,267	(130,210)	(16,838)
HUMAN RESOURCES	(37,734)	(34,842)	2,892	(345,751)	(434,633)	(88,882)	(385,934)	48,699
LAW CLERK PROGRAM	(4,085)	(8,990)	(4,905)	107,784	93,823	(13,960)	103,430	9,607
LEGISLATIVE	(11,241)	(14,424)	(3,183)	(137,004)	(145,179)	(8,175)	(150,033)	(4,854)
LICENSE FEES	1,289,180	1,380,157	90,977	15,023,160	15,324,199	301,039	16,318,268	994,069
LICENSING AND MEMBERSHIP	(22,095)	(4,404)	17,691	(241,467)	(115,333)	126,135	(263,834)	(148,501)
LIMITED LICENSE LEGAL TECHNICIAN	(11,701)	(10,045)	1,657	(93,205)	(77,541)	15,664	(106,367)	(28,826)
LIMITED PRACTICE OFFICERS	1,769	6,258	4,489	101,270	112,174	10,904	106,760	(5,414)
MANDATORY CLE ADMINISTRATION	9,154	26,806	17,653	177,348	345,454	168,106	180,271	(165,183)
MEMBER ASSISTANCE PROGRAM	(17,051)	(8,773)	8,278	(98,230)	(78,156)	20,074	(119,075)	(40,919)
MEMBER BENEFITS	(19,832)	(9,554)	10,278	(291,238)	(275,286)	15,952	(314,428)	(39,142)
MEMBER SERVICES & ENGAGEMENT	(37,154)	(22,717)	14,437	(363,637)	(314,958)	48,679	(419,526)	(104,567)
OFFICE OF GENERAL COUNSEL	(81,517)	(73,454)	8,063	(839,284)	(806,433)	32,851	(930,095)	(123,662)
OFFICE OF THE EXECUTIVE DIRECTOR	(64,728)	(53,066)	11,662	(664,302)	(577,632)	86,669	(738,313)	(160,681)
OGC-DISCIPLINARY BOARD	(28,178)	(19,008)	9,170	(268,765)	(222,205)	46,560	(298,942)	(76,737)
OUTREACH & ENGAGEMENT	(26,667)	(14,382)	12,286	(261,648)	(210,059)	51,589	(291,390)	(81,332)
PRACTICE OF LAW BOARD	(7,570)	(4,935)	2,635	(61,336)	(52,898)	8,438	(69,649)	(16,751)
PROFESSIONAL RESPONSIBILITY PROGRAM	(24,724)	(22,011)	2,713	(269,849)	(260,296)	9,553	(297,175)	(36,879)
PUBLIC SERVICE PROGRAMS	(41,717)	(13,838)	27,879	(227,566)	(161,729)	65,837	(270,974)	(109,245)
PUBLICATION & DESIGN SERVICES	(8,356)	(7,387)	968	(96,276)	(92,817)	3,459	(105,969)	(13,152)
REGULATORY SERVICES FTE	(34,525)	(32,992)	1,534	(367,435)	(352,310)	15,124	(405,650)	(53,340)
SECTIONS ADMINISTRATION	(21,777)	(17,909)	3,868	(1,668)	28,634	30,302	(27,566)	(56,199)
SECTIONS OPERATIONS	(88,153)	(2,813)	85,340	(191,235)	255,585	446,821	(279,388)	(534,973)
SERVICE CENTER	(53,858)	(50,170)	3,688	(619,995)	(614,625)	5,370	(682,633)	(68,008)
TECHNOLOGY	(137,151)	(129,995)	7,156	(1,563,526)	(1,616,935)	(53,409)	(1,711,290)	(94,355)
COVID 19	-	-	-	-	945	945	-	(945)
INDIRECT EXPENSES	(1,647,395)	(1,460,722)	186,673	(17,722,030)	(17,391,089)	330,942	(19,504,229)	(2,113,140)
TOTAL OF ALL	(2,107,158)	(1,191,003)	916,155	(17,793,622)	(14,798,153)	2,995,469	(20,272,990)	(5,474,837)
NET INCOME (LOSS)	(459,763)	269,719	729,482	(71,592)	2,592,936	2,664,527	(768,761)	(3,361,697)

**Washington State Bar Association
Analysis of Cash Investments
As of August 31, 2021**

Checking & Savings Accounts

General Fund

Checking

<u>Bank</u>	<u>Account</u>	<u>Amount</u>
Wells Fargo	General	\$ 341,863

Total

<u>Investments</u>	<u>Rate</u>	<u>Amount</u>
Wells Fargo Money Market	0.01%	\$ 8,977,863
UBS Financial Money Market	0.00%	\$ 1,081,101
Morgan Stanley Money Market	0.01%	\$ 3,354,149
Merrill Lynch Money Market	0.01%	\$ 1,983,598

General Fund Total \$ 15,738,575

Client Protection Fund

Checking

<u>Bank</u>	<u>Amount</u>
Wells Fargo	\$ 307,610

<u>Investments</u>	<u>Rate</u>	<u>Amount</u>
Wells Fargo Money Market	0.01%	\$ 4,407,310
Morgan Stanley Money Market	0.00%	\$ 106,914

Client Protection Fund Total \$ 4,821,834

Grand Total Cash & Investments \$ 20,560,409