

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

Board of Governors Special Meeting
Supplemental Materials

December 16, 2019
WSBA Conference Center
Seattle, Washington

**WASHINGTON STATE
BAR ASSOCIATION**

TO: WSBA Board of Governors

FROM: Rajeev D. Majumdar

DATE: December 12, 2019

RE: Proposed Amendments to BOG Policy on Anti-Harassment Policy and Procedure

ACTION: Adopt Proposed Amendments to BOG Policy on Anti-Harassment Policy and Procedure.

Background

The BOG adopted a more explicit Anti-Harassment Policy on January 18, 2019. Since that time, Personnel Committee has worked on the matter and the Chief Justice recommended that the WSBA would benefit from clear policies and procedures for handling complaints against a governor, which include clear explanations and processes for dealing with such complaints and any conflict of interest.

On December 9, 2019, the Personnel Committee reviewed proposed amendments which were developed with the assistance of retained outside counsel, General Counsel and the Director of Human Resources. The Personnel Committee approved the proposed amendments and forwarded them to the Board of Governors with a recommendation to approve (See Exhibit A, being Page 3 of the originally filed special meeting materials). The proposal was then published on the website for the public and staff outside of H.R. and Legal to review.

Over the course of the week, through the offices of the Executive Director, some very useful feedback was provided by staff, which I believe improves the work product in meaningful and helpful ways. Those minor revisions to the amendments that Personnel Committee approved are attached as Exhibit B.

I would encourage this body to pass Exhibit B as is.

In Service,



Rajeev D. Majumdar

WASHINGTON STATE
BAR ASSOCIATION

Amendments to BOG Policy on Anti-Harassment Policy and Procedure

SEE ATTACHED.

Adopted:

Rajeev D. Majumdar, WSBA President

Date:

WASHINGTON STATE BAR ASSOCIATION

WSBA Board of Governors Anti-Harassment Policy and Procedure

(Adopted by the Board of Governors January 18, 2019; amended 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 complaint.](#)

[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. In such case, all references to the President in the balance of this policy shall be read to say 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 ~~until the investigation is completed, unless the Ombudsperson recommends otherwise.~~

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.