

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

**Board of Governors Meeting**  
**Meeting Materials**

**July 21-22, 2022**  
**Greater Tacoma Convention Center**  
**Tacoma, WA**  
**Zoom and Teleconference**



**Board of Governors Meeting  
Greater Tacoma Convention Center, Tacoma, WA  
July 21-22, 2022**

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

***ALL ITEMS ON THIS AGENDA ARE POTENTIAL ACTION ITEMS***

**To participate: Join via Zoom or Call 1.888.788.0099**

**Thursday, July 21<sup>st</sup>, Meeting ID: 876 9116 5060 Passcode: 001057**

<https://wsba.zoom.us/j/87691165060?pwd=MTdkNnN1TWc2V08yZ3Q3NkVpd1cxQT09>

**Friday, July 22<sup>nd</sup>, Meeting ID: 841 9039 4876 Passcode: 700695**

<https://wsba.zoom.us/j/86299854319?pwd=cTl6eXZGVjFoQXRdZDIBc1kvL05YUT09>

**THURSDAY, JULY 21, 2022**

**10:00 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 May 19-20, 2022 Board of Governors meeting minutes
- Approve WSBA Committee Chair appointments
- Approve Presidential Appointment to the Task Force to Develop Action Items in Response to The Joint MBA Proposal to The WSBA Board of Governors
- Approve Recommendations from the Judicial Recommendations Committee
- Approve Amendments to the World Peace Through Law Section Bylaws
- Second Read: Emergency amendment to the WSBA Bylaws Art. VI – Elections

**MEMBER AND PUBLIC COMMENTS**

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** ..... 74

**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. Brent Williams-Ruth, Chair
- Nominations Committee, Gov. Lauren Boyd and President-elect Dan Clark, Co-Chairs
- 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.
- TAXICAB, Immediate Past Pres. Kyle Sciuchetti

**SPECIAL REPORTS**

**AD HOC BOG-STAFF TASK FORCE REPORT ON KEY TAKEAWAYS FROM THE BOG-STAFF**

**TEAMBUILDING RETREAT** Gov. Francis Adewale and Chief Culture Officer & Human Resources Director Glynnis Klinefelter Sio

**EQUITY AND DISPARITY WORKGROUP REPORT** Gov. Alec Stephens and Subcommittee Chair Kim Sandher ..... 91

**AGENDA ITEMS & UNFINISHED BUSINESS**

**VOLUNTEER VACCINATION POLICY** ..... 104

**12:00 PM – RECESS FOR LOCAL HEROES LUNCH**

**NEW BUSINESS**

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

**AGENDA ITEMS & UNFINISHED BUSINESS**

- SECOND READ: PROPOSED AMENDMENTS TO WSBA BYLAWS ART. IV RE SCOPE OF BOG LEGISLATIVE COMMITTEE** Gov. Brent Williams Ruth and Chief Communications Officer Sara Niegowski..... 109
- SECOND READ: PROPOSED STRUCTURE FOR THE WSBA DIVERSITY COMMITTEE** Gov. Sunitha Anjilvel, Diversity Committee Co-Chair..... 122
- APPROVE COUNCIL ON PUBLIC DEFENSE’S PROPOSED WORKLOADS STATEMENT** CPD Chair Travis Stearns, CPD Vice Chair Jason Schwarz, and CPD Emeritus Member Professor Bob Boruchowitz,..... 194
- CONSTRUCTION LAW SECTION PROPOSED MODEL RESIDENTIAL CONSTRUCTION CONTRACT** At-Large Member Masaki Yamada ..... 208
- APPROVE MOVING FORWARD WITH DISTRICT 8 ELECTION** Volunteer Engagement Advisor Paris Eriksen and Executive Director Terra Nevitt..... 348

**SPECIAL REPORTS**

- LONG RANGE STRATEGIC PLANNING COUNCIL REPORT RE FUTURE OF WSBA SPACE**

**5:00 PM – RECESS**

**FRIDAY, JULY 22, 2022**

**10:00 AM – RESUME MEETING**

**ELECTION OF 2022-2023 TREASURER**

- CANDIDATE INTERVIEWS** Volunteer Engagement Advisor Paris Eriksen.....349

**ELECTION OF 2022-2023 TREASURER**

The election will be conducted by secret electronic ballot. If no candidate receives a majority of the votes cast, the two candidates receiving the highest number of votes will be voted on in a run-off election. The candidate with the most votes in the run-off will be deemed the winner.

**AGENDA ITEMS & UNFINISHED BUSINESS CONTINUED**

- BUDGET AND AUDIT COMMITTEE ITEMS** Treas. Bryn Peterson and Director of Advancement Kevin Plachy
  - **First Read: Proposed Fiscal Policy Revisions** ..... LM
  - **First Read: Fiscal Year 2023 Draft WSBA Budget** ..... LM

- PERSONNEL COMMITTEE UPDATE ON EXECUTIVE DIRECTOR EVALUATION** Chief Culture Officer and Human Resources Director Glynnis Klinefelter Sio..... 358

**12:00 PM – RECESS FOR LUNCH**

- PROPOSED CONFLICT OF INTEREST POLICY** General Counsel Julie Shankland..... 365
- LAW CLERK BOARD SUGGESTED AMENDMENT TO THE WSBA COMMITTEES AND BOARDS POLICY** Chair Emily Mowrey, Regulatory Services Specialist RSD Katherine Skinner ..... 375

<b>CLE PRESENTATION</b>
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- ADA MYTH-CONCEPTIONS** Washington Civil & Disability Advocate Conrad Reynoldson

<b>AGENDA ITEMS &amp; UNFINISHED BUSINESS CONTINUED</b>
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- MCLE BOARD SUGGESTED AMENDMENT TO PRACTICE RULE 11** MCLE Board Vice Chair Robert Malae, MCLE Board Chair Todd Alberstone and WSBA MCLE Manager Adelaine Shay ..... 381
- MBA PROPOSAL TASK FORCE PROPOSED AMENDMENT TO BOARD OF GOVERNORS POLICY RE REQUESTS FOR ACTION**..... 445
- OPPORTUNITY TO SIGN ON TO RECOMMENDATIONS FOR THE COMMISSION FOR JUDICIAL CONDUCT** ..... 448

**5:00 PM – ADJOURN**

**INFORMATION**

- General Information ..... 459
- Monthly Financial Reports, Unaudited..... 475

## 2021-2022 Board of Governors Meeting Issues

### 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

Spokane, WA

May 19-20, 2022

[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 Brian Tollefson on Thursday, May 19, 2022 at 9:01 AM. Governors in attendance were:

Hunter Abell  
Francis Adewale  
Sunitha Anjilvel  
Lauren Boyd  
Pres. Elect Daniel D. Clark  
Jordan Couch  
Matthew Dresden  
Carla Higginson  
Tom McBride  
Treas. Bryn Peterson  
Brett Purtzer  
Serena Sayani  
Alec Stephens  
Brent Williams-Ruth

Also in attendance were April Anderson, Janae Ball, Yvette Buckley, Meng Li Che (WA BIIA) Michael Cherry (Practice of Law Board), Rajeev Majumdar, Felicia Dixon, Gabe Galanda, PJ Grabicki, Nancy Hawkins (Family Law Section), Bill Hyslop, Andrea Jarmon, Amy Klosterman (MAMA) Section, Michelle Su (KABA), James E Macpherson (Washington Defense Trial Lawyers), Duaa-Rahemaah Williams, Coreen Wilson, Andrew Van Winkle, Aretha Sconiers, Carmen Pacheco Jones, Dory Reeves, Immediate Past President Kyle Sciuchetti, Parliamentarian G. Kim Risenmay, Gov. Elect Kevin Fay, Gov. Elect Kari Petrasek, Gov. Elect Nam Nguyen, Executive Director Terra Nevitt, Executive Administrator Shelly Bynum, Broadcast Services Manager Rex Nolte, Chief Disciplinary Counsel Doug Ende, Volunteer Engagement Advisor Paris Eriksen, Chief Regulatory Counsel Renata Garcia, Assistant General Counsel-Disciplinary Board Nicole Gustine, General Counsel Julie Shankland, Chief Communications & Outreach Officer Sara Niegowski, Communication Strategies Manager Jennifer Olegario, Community Outreach Specialist Mike Kroner Chief Equity & Justice Officer Diana Singleton, Equity and Justice Lead Imani Shannon, Director of Advancement Kevin Plachy, Member Services & Engagement Manager Julianne Unite, Member Engagement Specialist Curtiss Melvin, and Sections Programs Specialist Carolyn MacGregor.

A moment of silence was held for the victims of the mass shooting in Buffalo, New York.

### Consent Calendar ([link](#))

Pres. Tollefson inquired as to whether any governor wished to remove any item from the Consent Calendar. Gov. Peterson moved for approval. Motion passed unanimously. Gov. Clark abstained from the vote.

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

Gov. Adewale thanked the Board members for meeting in Spokane and expressed special appreciation to Pres. Tollefson for coming the week prior to meet with local judges and legislators and to the board for giving voice to judges. Gov. Stephens reported on his attendance at the second annual Charles Z. Smith Heritage Symposium honoring three law students from the three Washington state law schools for their commitment to justice and working for the public.

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

Pres. Tollefson is trying to attend as many committee meetings as possible. He and Immediate Past President Kyle Sciuchetti attended the Breakfast With Champions fundraiser for the King County Bar Association, which was very well attended with 700-800 people. They both also attended Volunteer Legal Services fundraiser held by the Spokane County Bar Association. While in Spokane, he and Gov. Adewale met with local Judiciary to discuss funding, security, and relationships with other branches of government. The conversation continued with a judicial lunch on May 18 in advance of the Board of Governors meeting.

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

Executive Director Terra Nevitt reminded everyone that the volunteer application deadline was extended to June 3. She noted that at the March Board meeting, Volunteer Engagement Advisor Paris Eriksen reported that volunteer engagement has been trending down at the WSBA, consistent with national trends. She encouraged members of the Board and others that are already engaged to consider reaching out to their colleagues to encourage them to also volunteer.

Executive Director Nevitt highlighted that The Practice of Law Board is bringing to fruition the first part of its Legal Check-Up project, which is intended to educate the public about how to receive competent legal assistance. The project is to include two parts: 1) a set of FAQs that will be published on the WSBA website and 2) they are hoping to produce an interactive-web based tool.

Executive Director Nevitt highlighted that the organization is continuing to work towards fully paperless licensing for 2023, and that the change should save on direct costs (paper, postage, etc.) as well as indirect costs, including the decrease in staff time spent on printing and mailing packets and processing paper returns. She noted that of the 14,000 packets mailed out, only one-third of them are returned, and the rest of the members renew online. She surmised that one possible reason for the low rate of return is that some members like to get the paper packet as a physical reminder but prefer the efficiency of renewing online. For that reason, the WSBA intends to send out reminder postcards to those who have not opted for paperless renewal in the past. She noted that payment by check for licensing fees will still be allowed; with recent upgrades, however, the online system is the most secure form of payment.

Gov. Williams-Ruth asked if there has been any examination of whether the savings from moving to paperless licensing could be used to eliminate the credit card processing fees members pay for online

licensing renewal. Executive Director Nevitt explained that the Bar has explored absorbing those credit card fees.

Finally, Executive Director Nevitt provided an update on the ETHOS (bar structure study) process and reviewed the draft agendas for the remaining meetings. Discussion followed about how to submit proposals.

#### Election of the 2022-2023 President-elect ([link](#))

Two candidates applied for the position of President-elect, Gov. Hunter Abell and Gov. Lauren Boyd. Each candidate was interviewed by the Board. General Counsel Shankland presented the research conducted by her team and the rationale for concluding that the President should vote in the election of WSBA President. Discussion followed about whether the President-elect and Past President would benefit from the same analysis; the interaction of the WSBA Bylaws and Roberts Rules of Order; historical interpretation of the Bylaws; principles of Bylaw interpretation; a perspective that neither past practice nor the current interpretation seems to be clearly correct; that under this interpretation the result would be the opposite for the election of treasurer; a perspective that the State Bar Act is clear that the President is a member of the body; and a suggestion that the Board revise the Bylaws to have the Treasurer election mirror the Presidential election, including timing. Gov. Stephens moved to accept the interpretation of General Counsel that the president participates in the election of President-elect. Motion passed unanimously. Gov. Abell and Gov. Boyd abstained from the vote.

Discussion followed about whether it was appropriate to conduct the ballot electronically and the process to review the results. Discussion followed about reporting vote totals and confidentiality. A vote was held by secret electronic ballot. The votes were tallied by three persons designated by the President, one of which was the Executive Director and also included Russell Knight and G. Kim Risenmay. G. Kim Risenmay announced that Hunter Abell was elected President-elect by a majority of the votes.

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

*Executive Committee.* Pres. Tollefson noted that the committee met and an agenda item for this meeting arose out of that discussion.

*APEX Awards Committee.* Gov. Abell reported that the committee met and selected this year's honorees.

*Personnel Committee.* No report.

*Legislative Committee.* No report.

*Nominations Committee.* Gov. Boyd noted that the committee met on Tuesday and took action on three appointments.

*Diversity Committee.* Gov. Anjilvel reported on the committee's work to reexamine its structure; revising WSBA's diversity and inclusion plan; and on pipeline programing and collaboration with the law schools.

*Long-Range Strategic Planning Council.* No report.

*Member Engagement Workgroup.* No report.

*Budget & Audit Committee.* Treas. Peterson noted that the Board will be taking up the reforecast of the FY22 budget later in the meeting.

*Equity & Disparity Workgroup.* Gov. Stephens reported on the work of the workgroup and noted that he expects a report to come back to the Board in July.

*Supreme Court Bar Licensure Task Force.* Gov. Williams-Ruth reported on the work of the task force and noted that his co-chair, Justice Montoya-Lewis, is taking a medical leave from the Court.

*TAXICAB.* Imm. Past Pres. Sciuchetti reported on the goal of this workgroup and that he expects the group to report back in July.

#### Governor Roundtable ([link](#))

Gov. Stephens shared his intent to bring forward several proposals, including one to involve the membership in the WSBA presidential election; one to not count abstentions for any purpose; and one to require committees to bring work back to the Board before taking action. Gov. Williams-Ruth commented on the recent passing of Slade Gordon and his perspective on the importance of challenging the status quo in our systems and structures.

#### First Read: Proposed Amendments to WSBA Bylaws Art. IV Re Scope of BOG Legislative Committee ([link](#))

Gov. Williams-Ruth presented his proposed amendment to the Bylaws, which would permit the Legislative Committee to approve comments on court rules under certain circumstances. Discussion followed including the need for the amendment and the process to follow.

#### Court Rules and Procedures Committee Items ([link](#))

*Update and Request for Guidance Re USPS Mail Delays.* Coreen Wilson reported that the committee had been asked to review Court Rule 5, as a result of mail delays. The committee noted that changing the rule will not solve the problem and may create new challenges. As a result, the committee is seeking additional feedback from the Board.

*Proposal to Undertake a Review of the Superior Court Mental Proceedings Rules.* Andrew Van Winkle reported on an inquiry received as to whether these rules should be updated in light of new legislation. He reported that conflicts between the statute and the rules do exist, as well as new terminology, and his recommendation that the committee form a subcommittee to bring the rules into alignment.

Discussion followed regarding the issue of mail delivery, including how the issue can be resolved if an amendment to Court Rule 5 will not resolve the issue; a suggestion that the issue be explored further and that the committee develop a proposal; a question as to whether the proposal will need to be developed elsewhere if the solution goes beyond court rules; consideration of mandating electronic service; with regard to the Mental Proceedings Rules there was a suggestion to contact interested stakeholders to gather feedback; changes that have occurred in local rules; clarification that the committee is looking for guidance on whether to invest its time in the Mental Proceeding Rules outside of the regular schedule; new legislation relating to service; and clarification that the Court Rules Committee does have the capacity to continue exploring the mail delay issue. The Board took public comment from Nancy Hawkins, who suggested that the WSBA advocate for the US Postal Service to resolve the issue in addition to the work

being done to identify a solution in the court rules. Pres. Tollefson suggested that the Executive Committee discuss the issue further at its next meeting.

#### Proposed Conflict of Interest Policy ([link](#))

General Counsel Shankland presented the proposed revised Conflict of Interest Policy noting that the new policy would be broader by including professional and personal conflicts in addition to financial conflicts. The proposed policy would also revise the annual form to simply acknowledge the policy. She noted that "professional conflicts" is probably broad enough to cover the concerns raised by Gabe Galanda. She described some of the reasons that bar associations do not allow judges to serve on their boards. The Board took public comment from Gabe Galanda who spoke to the need to disclose the multiple roles they are playing, noting that he is suggesting a disclosure requirement in order to avoid compromising the integrity of the Bar and of the legal system.

Discussion followed, including support for disclosure; how a disclosure might have impacted the events that that triggered the suggestion; how disclosure would operate in the context of public appointments; the appropriate timing for the disclosure given the manner in which pro tem appointments occur; a perspective that the parties are best protected by a disclosure in connection with a hearing; a perspective the conversations that might occur following a disclosure could be problematic. Gov. Clark moved to approve the proposed policy drafted by General Counsel Shankland. General Counsel Shankland was asked to walk through the specific changes, which she did. Discussion followed about the originating event; whether the Code of Judicial Conduct combined with the policy before the Board resolves the concern; a perspective that this issue might be unique to tribal court where often the Code of Judicial Conduct does not apply; and a suggestion that we prohibit the WSBA president from serving as a tribal court pro tem. Mr. Galanda emphasized his focus on the reputation of WSBA. Discussion followed, including a concern that the issue is being discussed while litigation is pending. Gov. Adewale called the question. Motion to call the question failed to obtain a two-thirds majority. Gov. Sayani was not present for the vote.

Gov. Clark requested to withdraw his motion. There was an objection by Gov. Williams-Ruth so the motion was not withdrawn. Discussion continued, including a suggestion that a committee be set up to review our standing bylaws. Gov. Clark moved to table the discussion. Discussion followed, including a perspective that the multiple roles can reinforce each other; and additional background on the history of this issue and proposal and a perspective that the conflict of interest policy needs updating separate from the issues raised by Mr. Galanda. Motion to table passed 9 to 2. Govs. Abell and Adewale abstained from the vote. Gov. Sayani was not present for the vote. Discussion followed, including a perspective that the issues presented require further thought. Gov. Williams-Ruth noted that he will be requesting that the conflict of interest policy be put back on the agenda for the July meeting and discussion followed about what might come back at that time.

#### Proposed Structure of the WSBA Diversity Committee ([link](#))

Gov. Anjilvel moved that this proposal be considered for first read. The motion passed unanimously. Gov. Anjilvel presented the proposal noting that the WSBA Diversity Committee and the BOG Diversity Committee were merged in 2012 resulting in a structure that did not closely align the Bylaws or the Committees and Boards Policy. She outlined the proposal that the Diversity Committee be made a Council which will allow the entity to continue to operate in a manner similar to its current form and to expand its

membership to include judicial officers, law students, and members of the public. She highlighted the stakeholder input that had already been gathered with the intent to gather more. General Counsel Shankland highlighted the issue raised in the memo regarding the ability of judicial officers to vote.

Discussion followed including regarding any fiscal impact; whether the council's work would overlap with other entities; whether the committee should be a BOG committee rather than a council; a perspective that a uniform set of rules should apply to each committee and a contrary view that the issues of diversity, equity and inclusion are unique and should be handled differently; a perspective that it may not be appropriate to have judicial members vote given their time constraints and lessened ability to be engaged; support for the council model because it is inclusive of more voices; a perspective that this proposal will harmonize the intent of the Board of Governors when it amended combined the committees; whether the WSBA signing onto the REJI Commitments is appropriate under GR 12.2; a perspective that it would be preferable to amend the Bylaws to allow all committees to have members outside of the Board; support for the proposal as a straightforward solution to the issue raised; a perspective that a global fix is not likely to be simple and that the Board should focus on the issue at hand; and a suggestion that the committee consider whether there should be a majority of votes from the BOG and whether there should be numerical limits on the types of members. The Board took comment from Judge Andrea Jarmon who noted that she had been unable to continue as a co-chair of the committee due to her change of status to judicial and outlined the significance of the work of the committee in inspiring young people, including for judicial service. Discussion continued, including a suggestion that the Member eEngagement Council continue to discuss some of the issues raised during the discussion and that this specific proposal should move forward. Motion passed unanimously. Govs Higginson and Sayani were not present for the vote.

#### Overview and Update on the WSBA Insurance Marketplace ([link](#))

Advancement Director Kevin Plachy introduced Nick Trefry and John Kelly who presented the background and an overview of the WSBA Insurance Marketplace, highlighting the program's performance, marketing and program/product updates. Feedback was provided that it would be helpful for members that need to select group insurance to be pointed to the best plan available for their business. Mr. Trefry recommended utilizing the counselors as a solution.

#### Pro Bono and Public Service Committee Report ([link](#))

Co-Chairs Michael Addams and Bonnie Rosinbum presented the committee's report. Co-Chair Addams presented the committee's purpose, authority and composition and described how the committee's work furthers the mission of the bar. Co-Chair Addams and Co-Chair Rosinbum spoke to the committee's adoption of values and they both highlighted specific accomplishments of the committee.

#### Presentation and Discussion of Next Steps Regarding MBA Proposal to the Board of Governors ([link](#))

KABA Diversity and Outreach Chair Michelle Su presented the context and specific requests within the joint MBA proposal, calling upon the organization to take decisive action and focus on the intent of the proposal rather than getting bogged down in the details. Discussion followed including appreciation for the intentional and thoughtful proposal; and a statement that the Diversity Committee is in support of the bringing about the change the MBAs are seeking. MAMA President Amy Klosterman spoke in support of the proposal, noting that a significant number of attorneys are represented in the proposal. The Board took

public comment from Nancy Hawkins asked if the proponents had considered how the proposal might fit with entities within the bar, such as sections. Discussion followed, including the manner in which the MBAs would like to see the proposal worked through. The Board took public comment from Rajeev Majumdar who noted the relevance of Minority Bar Associations and how these issues impact volunteerism, and urged the Board to take action.

Gov. Williams-Ruth presented his proposal to create a work group that would bring proposals back to the Board in July. Gov. Williams-Ruth moved that the Board approve the creation of an ad hoc task force as set forth in the materials. Discussion followed, including a perspective that the work should not be rushed; support for the recommended appointments to the task force; a request that the Board truly engage in the issues raised by the proposal not avoid the conversation; and the rationale for creating a task force rather than delegating the work to the Diversity Committee. Motion passed unanimously. Govs. Adewale and Higginson were not present for the vote.

#### Approval of the Fiscal Year 2022 Reforecasted Budget ([link](#))

Budget & Finance Manager Liz Wick explained the purpose of the reforecast budget, noting that the practice began in 2020. Manager Wick reported that the overall net income is favorable relative to the original fiscal year budget in the general fund and the CLE fund. Manager Wick walked through the significant changes to the budget. Director Plachy presented on the updated compensation grid and procedures, noting that the Budget and Audit Committee received a detailed presentation and an had an opportunity to speak with Gallagher prior to approving the reforecast budget. Director Plachy noted that the new compensation approach stays true to WSBA's existing compensation policies and identified the key criteria that drove the decision making. Discussion followed regarding the rationale and effect of the cap on salaries; whether it is clear that market updates will occur; clarification that while movement through the steps is not discretionary, promotion upward through the grid will be discretionary; whether a cost of living increase is built into the system and how that is addressed in the budget; a perspective that this approach is customary; and whether the policy should be specific about when compensation studies should be conducted. Manager Wick provided presented the anticipated fund balances at the end of the fiscal year 2022 based on the reforecasted budget. Manager Wick noted that the detail budget information is in the materials. Gov. Williams-Ruth moved to approve the budget as reforecasted. Motion passed 12-1. Gov. Adewale was not present for the vote.

#### CLE Presentation: Race Equity and Justice Reform in the Spokane Regional Legal System ([link](#))

Chief Equity & Justice Officer Diana Singleton provided an introduction to the CLE and the speakers. Chair Janae Ball presented on the genesis and work of the Spokane County Bar Association's Systemic Racism Task Force and a surrounding controversy. Carmen Pacheco Jones shared her story and experience in the criminal justice and foster care systems and her work as the co-founder of the Health and Justice Recovery Alliance, which seeks to address trauma and provide skills and support to people going through the process of reentry. Jermaine Williams, Director Freedom Project East, presented on the work of that organization and his experience as a formerly incarcerated person. The panel was facilitated by Gov. Adewale, who shared his own experience as a public defender in Spokane County. Discussion followed about whether the data effected change; appreciation for the presenters; and a desire for the Board to be mindful of this presentation as it does the work related to the joint MBA proposal discussed previously in the meeting.

Review Proposals for the Annual Evaluation of the Executive Director ([link](#))

Human Resources Director and Chief Culture Officer Glynnis Klinefelter Sio reported on the request for proposals to facilitate the annual evaluation of the Executive Director, which she conducted at the direction of the Board. She noted that she did not have a recommended vendor, and following the Board's decision, she would enter into a contract with the chosen vendor. It was clarified that HR Director Klinefelter Sio does not have a recommendation because they are all similar in scope and cost. Gov. Clark moved to select the lowest bid of the four vendors for the evaluation of the Executive Director.

Discussion followed, including the extent to which the vendors have a demonstrated commitment to diversity, equity, and inclusion; the extent to which we can expect costs to overrun the bids; specific aspects of the proposals; and how to approach the Board's budget authorization. It was clarified that the lowest bid was provided by FIT and that this should be substituted into the motion, which was agreed to by the movant and seconder. Officer Klinefelter Sio recommended the Board authorize spending up to an additional \$2,000. Discussion continued including a perspective that the expenditure of money is unnecessary; clarification as to whether this will be an annual or one-time expense; a perspective that this is a good investment in a fair and unbiased process that can be used for many years; and a perspective that the evaluation is pro forma and therefore not a good use of resources.

Gov. Clark's motion was restated to select the lowest bid for the Executive Director review, submitted by Fully Integrated (FIT) HR, up to and not to exceed \$18,000 in cost without the written approval of the Board of Governors. Motion passed unanimously. Gov. Higginson abstained and Gov. Purtzer was not present for the vote.

Executive Session ([link](#))

President Tollefson announced that purpose of Executive Session was to discuss an appeal to the decision to terminate a participant in the Law Clerk program, with an anticipated end time of 2:15PM.

Upon return to public session, President Tollefson reported that the Board completed its review of the appeal and had concluded all agenda items.

Gov. Stephens acknowledged that former president Hyslop and former Gov. P.J. Grabicki were in attendance. He also recognized Paris Eriksen for her great work on Board elections. Immediate Past President Sciuchetti also acknowledged some notable attendees. Director Nevitt provided an overview of the May 21 Ethos meeting agenda.

**ADJOURNMENT** ([link](#))

There being no further business, Pres. Tollefson adjourned the meeting at 2:25PM on Friday, May 20, 2022.

Respectfully submitted,

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Terra Nevitt, Executive Director & Secretary



**Board of Governors Meeting – Motions List  
Spokane, WA  
May 19-20, 2022**

1. Motion to approve the Consent Calendar. Motion passed unanimously. Gov. Clark abstained.
2. Motion to accept the interpretation of General Counsel that the President participates in the election of President-Elect. Motion passed unanimously. Govs. Abell and Boyd abstained.
3. Motion to approve the proposed [Conflict of Interest] Policy drafted by General Counsel Shankland.
  1. Motion to call the question. Motion failed to obtain the required two-thirds majority. Gov. Sayani was not present for the vote.
  2. Gov. Clark moved to table the discussion. Motion passed 9 to 2. Govs. Abell and Adewale abstained from the vote. Gov. Sayani was not present for the vote.
4. Motion that the proposal [for a change to the structure of the WSBA Diversity Committee] be considered a first read. Motion passed unanimously. Govs. Higginson and Sayani were not present for the vote.
5. Motion that the Board approve the creation of an ad hoc task force [to address the recommendations set forth in the joint MBA letter] as set forth in the materials. Motion passed unanimously. Govs. Adewale and Higginson were not present for the vote.
6. Motion to approve the [FY22 budget] as reforecasted. Motion passed 12-1. Gov. Adewale was not present for the vote.
7. Motion to select the lowest bid for the Executive Director review, submitted by Fully Integrated (FIT) HR, up to and not to exceed \$18,000 in cost without the written approval of the Board of Governors. Motion passed unanimously. Gov. Higginson abstained. Gov. Purtzer was not present for the vote.

**TO:** WSBA Board of Governors  
**FROM:** Terra Nevitt, Executive Director  
Paris Eriksen, Volunteer Engagement Advisor  
**DATE:** July 5, 2022  
**RE:** Emergency Bylaw Amendment: Eligibility to Vote (Article VI.C.2)

**CONSENT:** A one-time emergency bylaw amendment to change the date when eligibility to vote is determined from March 1 to March 11.

*Background and Process*

This matter was brought to the Board for first reading at the March 2022 meeting. The emergency bylaw amendment was forwarded to the Supreme Court on March 14. The emergency provision was used for the most recent BOG elections.

Per the WSBA Bylaw amendment processes, the Bylaws may be amended on an emergency basis, without prior notice, by an affirmative vote of two-thirds of the BOG. Such amendment will be effective only until notice is given and a vote taken pursuant to the usual procedures for amending the Bylaws, which requires a “first reading” at least one BOG meeting prior to the meeting at which the amendment is approved. This item was provided as Information for first read at the May 2022 meeting and is now on the Consent Calendar for approval.

*Amendment*

The WSBA Bylaws provide that voter eligibility for both the congressional and at large positions elections is determined on March 1. Due to the impact of Washington’s redistricting, an accurate voting list was not available on March 1. The Board of Governors approved a temporary emergency amendment to the WSBA Bylaws, Article VI.C.2a to change the date in which voter eligibility is determined from March 1 to March 11 to allow all elections for positions on the Board of Governors continued uninterrupted.

The amendment adds the following language after Article VI.G:

**H. 2022 ELECTIONS**

Due to the delay in obtaining the updated Congressional District map information affecting eligibility of Active members to vote in the BOG election for their district, the 2022 elections conducted by the Board of Governors pursuant to these Bylaws will establish voter eligibility on March 11, 2022.

# WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors  
 FROM: Dan Clark, WSBA President-elect  
 RE: 2022-2023 Chair Appointments  
 DATE: June 27, 2022

**Consent:** Appointment of the 2022-2023 WSBA committee and board chairs listed below.

The WSBA has a number of standing committees that are created and authorized by the BOG to study matters relating to the general purposes and business of the Bar which are of a continuous and recurring character. Pursuant to the WSBA Bylaws, IX(B)(1)(c), the President-elect annually selects the Chair or Vice Chair of each committee, with the BOG having the authority to accept or reject that selection. Below is the slate of WSBA committee chairs for the 2022-2023 year. The candidates' resumes are attached. All eligible members of the committees listed below were encouraged to apply for the Chair position. Additional Chair appointments forthcoming.

Committee/Board	Recommended for Appointment
Board of Bar Examiners	Chair: Bruce Turcott Vice-chair: Cathy Helman
Client Protection Board	Chair: Carrie Umland
Committee on Professional Ethics	Chair: Pam Anderson
Council on Public Defense	Vice-Chair: Maialisa Vanyo*
Court Rules & Procedures Committee	Chair: Paul Crisalli*
Editorial Advisory Committee	Chair: Drew Pollom
Law Clerk Board	Chair: Emily Rose Mowrey
Legislative Review Committee	Chair: Brian Considine
Pro Bono and Public Service Committee	Co-chair: Michael Addams Co-chair: Jacqui Merrill Martin*
Small Town and Rural Committee	Chair: Kari Petrasek*
Washington Young Lawyers Committee	Chair-elect: Aaron Haynes*

\* new appointment.

All others are reappointments.

## Paris Eriksen

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**From:** B Turcott <blturcott@gmail.com>  
**Sent:** Thursday, May 12, 2022 10:14 AM  
**To:** Paris Eriksen  
**Subject:** [External]Reapplication for Chair, Board of Bar Examiners  
**Attachments:** TurcottResume.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Paris:

Please accept my re-application for the Chair position, Board of Bar Examiners (BOBE), for FY 2022-23.

I have been a member of the Board of Bar Examiners since 2007. I graded nearly every exam and assisted with training new graders until becoming Chair in Oct 2020 (for remote exams Winter and Summer 2021 and in-person exam Winter 2022). I participated with WSBA admissions staff in the initiation of Exam360 grading software, replacing a paper grading process, for remote grading (Winter and Summer 2021) and in-person grading (Winter 2022).

I have given presentations to the Executive Committee, Board of Governors, and Joint Minority Mentorship Program. I was appointed to the WSBA Equity and Diversity Committee and Washington Bar Licensure Task Force. With the Vice-Chair, admissions staff, and BOG liaison, I participated in recruiting, selecting, onboarding, and training new BOBE members. They are a pleasure to work with, and everyone's contribution has been indispensable. My favorite comment from a new grader at the resumption of in-person grading was, "This seems so well run."

I also participate in National Conference of Bar Examiners (NCBE) annual and uniform bar exam meetings and am a member of the NCBE Outreach and Communications Committee.

It would be a pleasure to continue to assist the WSBA as BOBE Chair.

My resume is attached.

Sincerely,

Bruce Turcott  
blturcott@gmail.com  
(360) 701-4052

**Bruce L. Turcott**

(360) 701-4052 – Mobile

**Legal Experience**

**Legal Editor, Cannabis Law Deskbook, AG Alliance (2022-present)**

Track developments in cannabis law across fifty-six U.S. jurisdictions and other counties, edit annual editions and interim updates, manage two dozen volunteer authors, coordinate development of new content, and ensure the *Deskbook* reflects nationwide developments in law and policy.

**Senior Counsel, Attorney General's Office (2000-2022)**

**Licensing and Administrative Law Division (2004-2022)**

Lead counsel to Liquor and Cannabis Board, including implementation of Initiative 502 legalizing marijuana from 2012-2022. Co-chair of Attorney General's I-502 implementation work group. Drafted final orders for Director of Licensing. Advised Board of Accountancy and Executive Ethics Board. Served as co-counsel in defense of Initiative 1183 that privatized liquor. Served as prosecutor for 18 business and professional licensing programs, lead counsel for Employment Security Department, counsel for Environmental Hearings Office, team leader, and paralegal and law clerk supervisor. Won 2018, 2013, and 2012 AGO Excellence Awards. Won 2012, 2010, and 2009 Iditarod Awards for complex litigation. AGO fiscal note coordinator and division legislative coordinator.

**Social and Health Services Division (2000-2004)**

Served as lead counsel for Department of Social and Health Services contracts, financial recovery, information technology, lands and buildings, public disclosure, and public assistance programs. Represented state in mental health commitment hearings. Coordinated division bill analysis.

**Department of Social and Health Services, Division of Child Support**

**Legislative Liaison (1998-2000) and Claims Officer (1992-1998)**

Developed request legislation and obtained sponsors and passage. Coordinated bill analysis and participated in DSHS cabinet bill review. Presented at conferences and prosecutor trainings. Represented agency in approximately 500 adjudicative proceedings to establish child support.

**Session Attorney, Code Reviser's Office (1991-1993)**

Drafted 679 bills at request of legislators and agencies. Advised bill requesters on legislative process.

**Legal Counsel to CNMI School System; Assistant Attorney General (1990-1991)**

Served as counsel for Board of Education, U.S. Commonwealth of the Northern Mariana Islands Public School System personnel, procurement, and all legal matters. Assisted Governor mediate employee strike.

**Law Clerk, Chief Judge Sidney C. Volinn (1988-1989)**

Drafted Ninth Circuit Bankruptcy Appellate Panel opinions.

**Chief, Div. of Law; Assistant Attorney General; Federated States of Micronesia (1986-1988)**

Directed delivery of legal services to executive branch of newly self-governing former U.S. Trust Territory, including capital construction, fishery patrol, immigration, and national police. Wrote 50 attorney general opinions. Advised agency rulemaking. Supervised contract review. Drafted bills, testified, advised President.

**Law Clerk, Justice Barbara Durham, State Supreme Court (1986)**

Drafted majority opinions, concurrences, and dissents. Wrote pre-hearing bench memoranda.

**Other Experience**

**Instructor**, English as a second language, Everett Community College, 1979-1981

**Teaching Assistant**, ESL intensive summer institute, University of Washington, 1979

**Sous Chef**, Gerard's Relais de Lyon, Bothell, 1976-1977

**Education and Bar Admission**

**J.D.**, University of Washington School of Law, 1985

**M.Ed.**, Higher Education, University of Washington, 1979

**B.A.**, Anthropology, University of Hawaii, 1974

Admitted to practice in Washington, 1985; Federated States of Micronesia Supreme Court, 1986; U.S. District Court, W.D. Washington, 1989, E.D. Washington, 2000; Ninth Circuit, 2007; Tenth Circuit, 2016

**Publications**

Co-managing editor, Cannabis Law Deskbook, AGA/Thomson Reuters, published 2021.

"Constitutional Jurisprudence of the Federated States of Micronesia Supreme Court," 6 UCLA Pac. Basin L.J. 103 (1989).

"Beginnings of the Federated States of Micronesia Supreme Court," 5 U. Haw. L. Rev. 361 (1983).

**Honors and Community Service**

National Conference of Bar Examiners, Communications and Outreach Committee, 2021-present

State Supreme Court, Washington Bar Licensure Task Force, 2020-present

Washington State Bar Association, Equity & Disparity Workgroup, 2020-present

Chair, Board of Bar Examiners, Washington State Bar Association, 2020-present; member, 2007-2020

Founding Chair, Conference of Western Attorneys General AG Alliance Cannabis Project Advisory Council, 2019-20

Chair, National Association of Attorneys General Informal Cannabis Working Group, 2018-present

Frequent presenter on cannabis law, client advice, and administrative law, including UW Law School six times

Compact of Free Association Islander Health Care Program Advisory Committee, 2018-present

Arbitrator, Financial Industry Regulatory Authority, 2013-present

Attorney General's Excellence Awards, 2012, 2013, 2018; Performance Plus Awards, 2007-present

Volunteer, WSBA Call to Duty – Pro Bono Legal Services for Veterans

Volunteer Judge, University of Washington School of Law moot court and national competitions

Former Board member and officer of Capitol Land Trust; negotiated conservation easements

Member by invitation, American Society of Legal Writers

American Jurisprudence Award, Professional Responsibility

Won first-year law school moot court competition

**CATHY M. HELMAN**



June 3, 2022

Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, Washington 98101

Dear Bar Leaders,

Please allow me to retain my position as the vice-chair of the Board of Bar Examiners. I became a bar examiner in February 2014 and vice-chair in the fall of 2020. I have graded both the summer and winter exams every year and filled in for absentee graders when emergencies have arisen. I truly enjoy reading answers submitted by the applicants and seeing the different approaches when analyzing a challenging legal question. As vice-chair, I've enjoyed training new graders and providing support to the members of the Board of Bar Examiners before, during, and after the grading process.

The position as vice-chair of the Board of Bar Examiners has provided an opportunity to view the bar exam from a new angle. I've learned more about the processes that go into developing and administering the bar exam. I have worked with the bar leaders to insure that the bar exam provides a fair and equitable process for admission into the Washington State Bar Association and the practice of law. I look forward to continuing in this role and using my experience to maintain the integrity of the bar exam and the grading process.

Thank you for your consideration.

Sincerely,

Cathy M. Helman

# CATHY M. HELMAN

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## EMPLOYMENT

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### Office of Administrative Hearings, Spokane Valley, WA

Administrative Law Judge

November 2016- Present

- Hears appeals for denial and termination of public assistance and overpayment of benefits

### Burke Law Group, PLLC, Spokane, WA

Associate

July 2015- May 2018

- Appellate contract with the Office of Public Defense for representation of indigent clients
- Prior work representing clients in Family Law Superior Court and Appellate Court matters, including dissolutions, paternity, child support, adoption actions, and Social Security appeals

### Washington State Court of Appeals, Division III, Spokane, WA

Law Clerk for Hon. Teresa Kulik (ret.) and Hon. Robert Lawrence-Berrey

June 2011- July 2015

- Researched and wrote legal memoranda/first draft opinions for over 160 appeals court cases
- Conducted extensive research on criminal, civil, and dependency and termination matters
- Assessed oral arguments of litigants and counseled the Judge on the merits

### United States Attorney's Office, Eastern District of Washington, Spokane, WA

Legal Intern for Pamela DeRusha, Civil Chief

May 2010- November 2010

- Drafted indictment and prosecution memo concerning Native American repeat sex offender
- Wrote office memos on Indian Law Issues, including a Indian Country property lease dispute

### Washington State Court of Appeals, Division III, Spokane, WA

Legal Intern for Jay Bromme, Staff Attorney

August 2009- May 2010

- Drafted decisions for prisoner Personal Restraint Petitions

## EDUCATION

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### Gonzaga University School of Law, Spokane, WA

Juris Doctor, *cum laude*

December 2010

### Utah Valley University, Orem, UT

Bachelor of Science, Communications, *summa cum laude*

May 2008

## PROFESSIONAL AFFILIATIONS

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### Washington State Bar Association

- Board of Bar Examiners- Exam grader

Admitted May 2011

February 2014- Present

## COMMUNITY INVOLVEMENT

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### Volunteer Lawyers Program

June 2013- December 2018

- 2014 Fundraising Volunteer of the Year

### Our Lady of Fatima Parish Council

July 2014- June 2018

- 2016-17 Council Chair

MEMORANDUM

TO: Board of Governors of the Washington State Bar Association

FROM: Pamela H Anderson

RE: Interest in Serving on Committee on Professional Ethics

DATE: June 3, 2022

I am writing to express my interest in serving as Chair of the Committee on Professional Ethics (CPE), for a third year, commencing on October 1, 2022.

I am currently in my first year of my second term on the Committee, having previously served as a member of the Client Protection Fund Board, the Character and Fitness Board, and the former Rules of Professional Conduct Committee. I have been the Chair of the CPE for the past two years.

While we had anticipated a return to in-person or hybrid meetings this year, the CPE has continued to meet by ZOOM. Meeting by this medium has been a positive experience. Over the past year we have finalized advisory opinions addressing issues related to the mandatory disclosure of insurance status under RPC 1.4 and the propriety of “reply all” email communications under RPC 4.2. We have assisted the Board of Governors (BOG) in responding to a request from the Washington State Supreme Court regarding whether attorneys should be permitted to make small gifts to clients for the basic necessities of life. We have also provided the BOG with an analysis of whether it should support a proposal from the Legal Foundation of Washington (LFW) for a rule change that would allow unidentified funds in lawyer trust accounts to be distributed to LFW.

The CPE currently is working on a variety of issues, including an inquiry related to language access, especially for indigent clients and an updated advisory opinion on the virtual practice of law. While I have an interest in serving as Chair for another year, to provide continuity and shepherd these pending projects to completion, the CPE is fortunate to have several experienced members. If one of them should step forward, I

would be happy to provide input about their role on the CPE during the past year, and step aside as Chair, while continuing on the Committee.

The CPE is fortunate to receive fantastic support from WSBA staff --Jeanne Marie Clavere and Sandra Schilling. It has been a pleasure to work with all of them, especially during my terms as Chair.

# Pamela H Anderson

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3117 Capitol Boulevard, Olympia, WA 98501

253 691 3081



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## RELEVANT WORK EXPERIENCE

### 1998-2018-Washington State Attorney General's Office

**Torts Division Chief, 2013-2018; Counsel to Department of Health, Medical Quality Assurance Commission, Life Sciences Discovery Fund, 2006-2013; Counsel to Social and Health Services, 1998-2006**

- Member, Attorney General's Office Ethics Committee, 2004-20018, Co-Chair, 2013-2018
- Co-Chair, Task Group on Health Information Portability and Accountability Act (HIPAA)
- Member, Electronic Discovery Task Group
- Member, Task Group for Model Rules for Public Disclosure Act

**1982-1990, Associate, Shaw Pittman Potts and Trowbridge, Washington, D.C.**

**1980-1981, Judicial Clerkship, Hon. Ellsworth A. Van Graafeiland, United States Court of Appeals for the Second Circuit**

## EDUCATION

**J.D., magna cum laude, University of Georgia School of Law 1981**

**B.S., Biology, University of Georgia 1977**

## SERVICE FOR WSBA

**Current Member:** Committee on Professional Ethics, Ad Hoc Committee to Investigate Alternatives to Mandatory Malpractice Insurance

**Prior Member:** Client Protection Fund Board, Character and Fitness Board, Rules of Professional Conduct Committee

# Drew Pollom

Associate

SEATTLE

P 206.447.7213

✉ [dpollom@omwlaw.com](mailto:dpollom@omwlaw.com)



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Drew is a strong listener with a passion for problem solving, making him an asset to any municipal or tribal client.

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Drew is an associate in the firm's Municipal practice, assisting clients with a broad range of legal issues. Before joining OMW, Drew served in-house with the Lummi Nation covering everything from foster care dependency matters, revising and developing new ordinances and codes, and federal administrative appeals for education funding. This wide breadth of knowledge gives him a dynamic flexibility to solve all legal needs of his clients. Drew received a BA in Political Science and Criminal Justice from Gonzaga University and his J.D. from Seattle University School of Law and a L.L.M. from the University of Washington School of Law.

When Drew isn't working, Drew and his wife are often found working in their community garden, traveling the country, or cooking. An avid sports fan, Drew can also be found supporting all sports, including most recently trying to learn hockey by watching the Kraken.

## Association Memberships

- Washington State Bar Association
- King County Bar Association
- National Association of Drug Court Professionals
- Northwest Indian Bar Association
- Washington Association of Municipal Attorneys

## Education

- L.L.M, University of Washington, 2018
- J.D., Seattle University, Cum Laude 2015
- B.A., Gonzaga University, Cum Laude 2011

## Publications

- "Killing the Policy to Save the Child: Comparing the Historical Removal of Indigenous Children in Australia to the United States and How the Countries Can Learn from Each Other, 4 Am. Indian L.J. 252 (2016);
- Betting Against the House: Santa Ysabel and the Lessons Learned in Indian Gaming, WBSA Indian Law Newsletter Summer 2016,
- The Wide Reach of Indian Law, April/May 2020 issue of NW Lawyer now Washington State Bar News

## Professional and Community Activities

- Washington State Bar Association
  - Editorial Advisory Committee
    - Member: 2019-Present
    - Chair: 2021-Present
  - Indian Law Section
    - At-Large Executive Committee Member: 2019-Present
- WSAMA
  - Amicus Committee: 2022
- King County Bar Association
  - Public Policy Committee: 2022
  - Awards committee: 2022

## Accolades

- Order of the Barristers, 2015

# DREW POLLOM



## CONTACT

✉ [dpollom@omwlaw.com](mailto:dpollom@omwlaw.com)

☎ (206) 447-7000

📍 Seattle, WA.

**WSBA #49632**

## EDUCATION

**UNIVERSITY OF WASHINGTON SCHOOL OF LAW  
LL.M**

Sustainable International Development, Indigenous Rights Concentration (2018)

**SEATTLE UNIVERSITY SCHOOL OF LAW  
JURIS DOCTOR  
CUM LAUDE**

Order of the Barristers (2015)

**GONZAGA UNIVERSITY  
BACHELOR OF ARTS  
CUM LAUDE,**

Political Science & Criminal Justice (2011)

## Affiliations

King County Bar Association

National Association of Drug Court Professionals

Northwest Indian Bar Association

Washington Association of Municipal Attorneys

Washington State Bar Association- Administrative Law Section and Indian Law Section

## Jurisdictions

State of Washington

Hoopa Valley Tribe

Lummi Nation

Puyallup Tribe of Indians

Tulalip Tribes of Washington

## LEGAL EXPERIENCE

**Ogden Murphy Wallace, PLLC Seattle, WA | Associate, October 2021 - Present**

- Member of the Municipal and Tribal Government Practice Groups.
- Advise municipalities and tribes on a broad range of topics including public records, regulatory changes to the federal Clean Air Act, privacy concerns when transferring data, police use of force standards, and land use policy.

**Lummi Nation, Bellingham, WA |**

**Staff Attorney, June 2020 – October 2021**

- Advised the Lummi Indian Business Council and provided legal services to the Lummi Education Division, Lummi Housing Authority, and Lummi Police Department.

**Deputy Tribal Prosecutor, January 2019 - October 2021**

- Represented the Lummi Nation in all traffic and natural resource infractions as well as criminal matters, juvenile delinquency, and exclusions.
- Represented the Lummi Nation in Lummi Tribal Court from bail setting through the post-adjudication stages of criminal and civil proceedings, including Healing to Wellness Drug Court.

**Staff Attorney I- Indian Child Welfare, February 2017 - December 2018**

- Represented the Lummi Nation in all dependency matters. Writing included extensive preparation of orders, motions, and declarations. Role included working closely with Lummi Child Welfare and individual social workers in determining the best interests of Lummi children.

**Hoopa Valley Tribe | Contract Victims of Crime Attorney, January - December 2019**

- Provided legal services to individual victims of domestic violence, as well as developed new policies and procedures for the Hoopa Valley Tribe Advocacy Program, and helped manage the grant funding the program.

**Perkins Coie, Seattle, WA | ESS Discovery Services and Review Attorney, June 2016 - Feb 2017**

- Ensured compliance with court-ordered discovery in pending litigation, while protecting the privacy and legal rights of our clients.

**Tulalip Tribes of Washington, Marysville, WA | Staff Attorney October 2015 - June 2016**

- Worked for the Chief Judge of the Tulalip Tribal Court and conducted legal research and produced bench memos.

## Paris Eriksen

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**From:** Emily Rose Mowrey <[REDACTED]>  
**Sent:** Wednesday, May 25, 2022 2:43 PM  
**To:** Bar Leaders  
**Cc:** Katherine Skinner  
**Subject:** [External]Law Clerk Board Chair Application  
**Attachments:** Emily Mowrey Resume 2022.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear WSBA Board of Governors:

I have been honored to serve on the Law Clerk Board since 2017 and to Chair the Board since 2021. It has been a pleasure to help oversee the APR 6 Program during that time. As a former APR 6 Clerk, I feel strongly that this Program is an extremely valuable part of the WSBA and I appreciate the opportunity to help grow and develop the Law Clerk Program as well as helping applicants to succeed and become contributing members of WSBA.

I would be honored to continue serving the Law Clerk Board as Chair in the coming year.

I appreciate your consideration of my application to Chair the Law Clerk Board this coming year. I have attached my resume for your consideration as well. Please don't hesitate to ask if there is any other information I can provide in support of my application. Thank you!

### Emily Rose Mowrey

Attorney at Law

Limitless Law PLLC

[www.limitlesslaw.com](http://www.limitlesslaw.com)

1313 E. Maple Street, Suite 400

Bellingham, Washington 98225

Phone: (360) 685-0145

Fax: (888) 262-4167

Email: [REDACTED]

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, please notify me and then delete this message immediately. You are hereby notified that any review, dissemination, distribution or copying of this message, or the taking of any action based on it is strictly prohibited.

# Emily Rose Mowrey

1313 E. Maple St, Ste 400 ♦ Bellingham, WA 98225

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## AREAS OF EXCELLENCE

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### Experienced Litigator & Legal Writer

- ♦ Compose complex contracts including settlement agreements, purchase/sale contracts & corporate mergers
- ♦ Draft estate planning documents - wills, living & testamentary trusts, powers of attorney & living wills
- ♦ Create pleadings, from Notices of Appearance to Interrogatories & Motions for Summary Judgment
- ♦ Craft schedules for Chapter 7 & 13 bankruptcy filings; represent debtors in Federal Bankruptcy Court
- ♦ Facilitate real estate transactions: leases, deeds, sale agreements, easements, deeds of trust & promissory notes
- ♦ Originate & file a full range of probate documents, including TEDRA Petitions & Agreements

### Skilled Negotiator

- ♦ Intervene with creditors to settle debts for 15 to 20 cents on the dollar & resolve unfair mortgage contracts
- ♦ Prepare discovery responses & trial preparation for jury trials & depositions
- ♦ Appear in court to gain entry of probate cases & agreed orders

### Community Leader

- ♦ Washington State Bar Association Law Clerk Program Board Member 2017-2022 (Chairperson 2021-2022)
- ♦ Selected as a Super Lawyers “Rising Star” for 2020, 2021 and 2022
- ♦ Bellingham Roller Betties roller derby league Board of Directors, 2018-2019
- ♦ Bellingham/Whatcom Chamber of Commerce Young Professional of the Year, 2015
- ♦ President, Washington Women Lawyers, Whatcom County Chapter, 2014
- ♦ Recipient of the 2013-2014 Washington Young Lawyer Committee Public Service Award
- ♦ Designed law firm operations manuals for training legal staff; supervised & managed law firm staff & interns
- ♦ Experienced in screening potential new hires & coordinating employment interviews
- ♦ Supervise, manage & train multiple paralegals, interns and law firm staff
- ♦ LAW Advocates legal aid volunteer, providing *pro bono* counsel assistance at “Law on the Street” events

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## EXPERIENCE

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- ♦ **Attorney** – Limitless Law PLLC, Bellingham, Washington – **2014-present**
- ♦ **Business Law Instructor** – Whatcom Community College, Bellingham, Washington – **2016-present**
- ♦ **Team Lead/Attorney Advisor (GS-11)** – United States Small Business Administration – **2020-2021**
- ♦ **Attorney/Rule 9/Law Clerk** – Britain & Vis PLLC, Bellingham, Washington – **2007-2014**

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## EDUCATION

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- ♦ Certificate of Completion - Washington State Bar Association Law Clerk Program – Seattle, Washington
- ♦ Bachelor of Arts in Politics – Whitman College – Walla Walla, Washington

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## BAR ADMISSIONS

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- ♦ Washington State Bar Association, WSBA No. 46673

May 23, 2022

**To:** WSBA Board of Governors

**From:** Brian J. Considine, WSBA No. 39517

**Re:** Application for Chair of WSBA Legislative Review Committee

Dear WSBA Board of Governors:

I'm applying to continue as the Chair of the WSBA Legislative Review Committee. I have the necessary legal and legislative experience that will allow me to effectively serve as chair of this committee to ensure the Committee meets your and the WSBA's legislative objectives. Lastly, I enjoyed being chair the past two years and believe I can continue to add value as chair because I understand the innerworkings of the committee and the bar-request legislation process having been a member of this Committee since 2016.

Currently, I am the Legislative Director for the Department of Natural Resources and Commissioner of Public Lands Hilary Franz. I was also the Legal and Legislative Manager for the Washington State Gambling Commission. Both positions require me to provide expert level legislative direction and advice to my executive team so that the agency can establish legislative priorities and goals for each legislative session.

I have drafted, found sponsorship, and advocated for agency request legislation for a variety of bills that have passed into law. I also have effectively worked with a wide-range of stakeholders, including Tribes, large international companies, small businesses, and local nonprofits, to ensure the agency has good stakeholder relationships to drawn upon during a legislative session.

Additionally, I have been successful in passing agency request legislation and/or securing operating budget appropriations each year I have been in my current position. My legislative duties require me to have expert-level knowledge of the legislative process and I enjoy bringing this experience to the committee as the Committee Chair.

Lastly, I believe my status as a government attorney is an important group to consider since we are generally underrepresented throughout the WSBA committee structures and we typically work with a diverse group of people as public servants. My work and experience as a government attorney in Olympia is valuable and I will be able to use my in-depth understanding of the innerworkings of our branches of government to lead the Legislative Review Committee in the upcoming year.

I hope you will consider re-appointing me Chair of the WSBA Legislative Review Committee. Thank you for your time and consideration, and I look forward to working with you soon.

Sincerely,



Brian J. Considine

## Brian J. Considine

Email: [REDACTED]

### EDUCATION

**Seattle University School of Law**, Seattle, WA

J.D., *Cum Laude*, May 2007

- Seattle Journal for Social Justice, Staff
- Public Interest Law Foundation, Vice President
- Dispute Resolution Board

**John Carroll University**, Cleveland, OH

B.A., Sociology, Business minor, May 2000

### WORK EXPERIENCE

**Department of Natural Resources & Commissioner of Public Lands Hilary Franz**, Olympia, WA

Legislative Director, August 2021 – Present

- Manage the Agency's Legislative Team.
- Provide the Commissioner and Executive Leadership expert level guidance on legislative process and strategy as it related to a \$740 million biennial budget agency for FY 21-23.

**Washington State Gambling Commission**, Olympia, WA

Legal and Legislative Manager, November 2015 – July 2021

- Manage the Agency's Legal and Records Division
  - Provide expert level legal guidance on gambling laws, agency rules, Administrative Procedures Act, Public Records Act, and Tribal-State gaming compacts.
  - Supervise a unit of three employees that are responsible for the agency's Legal, Rule-making, Records Management and Public Disclosure programs.
- Manage the Agency's Policy and Legislative Priorities
  - Provide Commissioners, Director, and senior leadership with expert level guidance on legal, records, regulatory, tribal, law enforcement, and legislative policies and issues.
  - Work with Legislators, legislative staff, and stakeholders to pass agency priority legislation.
    - 2017 session: drafted and advocated for passage of two agency request bills, [HB 1274](#) and [HB 1475](#)—both passed into law.
    - 2018 session: secured a \$100,000 appropriation for a problem gambling study.
    - 2019 session: drafted, advocated agency request bill [HB 1302](#) passed into law and secured \$100,000 appropriation for a problem gambling task force.
    - 2020 session: drafted and advocated for agency request bills [SB 6119](#) and [SB 6120](#) passed into law, closely worked on the state's new sports wagering law, [HB 2638](#); and obtained a \$500,000 appropriation for a problem gambling prevalence study.
    - 2021 session: drafted and advocated for operating budget provisos on: Problem Gambling Task Force, Problem Gambling Prevalence Study, and \$3.6 million appropriation to agency.
  - Cultivate critical government-to-government relationships with Tribal partners to ensure agency's policy and legislative objectives are met.

**Washington State Attorney General's Office**, Olympia, WA

Assistant Attorney General, June 2008 – November 2015

- Corrections Division (Nov. 2011 – Nov. 2015):
  - Areas of Practice: Civil Rights, Public Records Act, Personal Restraint Petitions, and Parole Revocations
  - Advised and defended DOC on issues and policies related to inmates' legal access, Eighth Amendment medical, and First Amendment speech and religion, including Tribal religious issues.
- Government Compliance and Enforcement Division (June 2008 – Nov. 2011):
  - Clients: Liquor Control Board, Gambling and Horse Racing Commissions, and Washington State Patrol.

**Office of Program Research – Washington State House of Representatives, Olympia, WA**

December 2007 – March 2008

Session Counsel

- Counsel for the Commerce and Labor, Early Learning and Children’s Services, and Human Services Committees.
- Researched, analyzed, and presented House and Senate bills for committees and members. Also, drafted bills and amendments for members.

**Governor’s Executive Policy Office, Olympia, WA**

January 2007 – May 2007

Policy Intern

- Worked under policy advisor John Lane. Researched and analyzed assigned criminal justice bills, and tracked all criminal justice bills throughout the 2007 legislative session.
- Important project: researched, tracked, and analyzed the offender reentry bill, SB 6157, signed into law on May 15, 2007.

**Kitsap County Prosecuting Attorney’s Office, Port Orchard, WA**

May 2006 – August 2006

Rule 9, Legal Intern

- Duties included: criminal prosecution: arraignments, status conferences, revocation hearings, and jury trials.

**Yakima County Prosecuting Attorney’s Office, Yakima, WA**

August 2001 – November 2003

Victim-Witness Assistant

- Duties included: courtroom advocacy, trial preparation for victims and witnesses, and community outreach.

**Texas Rural Legal Aid, Inc., Edinburg, TX**

August 2000 – August 2001

Legal Advocate, Advocacy Resource Center for Housing (A.R.C.H.) Project

- Duties included: Assisting indigent clients with landlord/tenant issues, representing tenants in eviction hearings before Justices of the Peace, and prepared motions for indigent clients.

**PROFESSIONAL AND VOLUNTEER ASSOCIATIONS**

**Washington State Bar Association**

November 2007 – Present

WSBA Legislative Review Committee • Current Chair • Member, 2016-present

Bar No. 39517

**Government Lawyers Bar Association of Washington**

January 2010 – Present, Member

Board Member • 2015-18, President

**American Constitution Society**

January 2005 – Present

Member • 2009 Public Interest Fellow

**Jesuit Volunteer Corps Alumnus**

Jesuit Volunteer, 2000 – 2002 • Support Person, 2004 – 2014

**AWARDS**

2013 Excellence Award – Washington State Attorney General’s Office

2010 Recent Alumni of the Year – Seattle University School of Law

Eagle Scout – Boy Scouts of America, Buckeye Council, Canton, OH

To whom it may concern,

My name is Michael R Addams, and I am a member of the WSBA Pro Bono Public Service Committee. I am currently a co-chair and would like to be considered for reappointment as co-chair of the PBPSC. My resume is attached.

As you can see from my resume, I am dedicated to being a public servant. I currently work for the Washington Association of Prosecuting Attorneys, and previously worked at the Division of Child Support. Even while in private practice, I regularly accepted pro bono and low bono cases, as well as contracted public defense work.

As a co-chair to the committee, I would work to build connections and foster relationships between individuals and organizations that are committed to pro bono and public service work, and I would seek opportunities to encourage other attorneys to take part in this work as well. As the senior co-chair of the committee, I would use my previous experience in the position and the input of all members of the committee for guidance as we work together to accomplish the mission of the committee.

If you have any questions for me, please don't hesitate to contact me. Thank you for your time and consideration.

Signed,

A handwritten signature in black ink, appearing to read "Michael R Addams", written in a cursive style.

Michael R Addams

PBPSC, Co-chair

# MICHAEL R. ADDAMS

## Curriculum Vitae

### EDUCATION

#### **Gonzaga University Graduate School of Business**

*MBA*: December 2014

- Relevant coursework: Operational Management, Strategic Management

#### **Gonzaga University School of Law**

*JD*: May 2014

- Thomas More Scholar; Armed Services Law Club – President; Federalist Society – President; Child Advocacy Club – Treasurer
- Relevant coursework: Legal Research and Writing

#### **Weber State University**

*B.A. Criminal Justice (Communication minor), cum laude*, April 2011

- Relevant coursework: Media Management; Small Group & Interpersonal Communication; Communication Theory

#### **Community College of the Air Force**

*A.A.S. Information Systems Technology*, April 2006

*A.A.S. Human Resource Management*, February 2018

### WORK EXPERIENCE HIGHLIGHTS

#### **Brigham Young University – Idaho**

*Online Adjunct Instructor*, September 2019 – present

- Instructor for FAML 100 – The Family (2019-2020)
- Instructor for FAML 460 – Child and Family Advocacy (2020-present)

#### **Washington Association of Prosecuting Attorneys**

*Director – Support Enforcement Project*, September 2019 – present

- Manage statewide partnership between Division of Child Support and elected prosecutors
- Oversee best practices coordination between deputy prosecutors of all Washington state counties
- Direct statewide training program of child support enforcement prosecutors and staff
- Provide bill analysis regarding proposed legislation affecting child support enforcement

#### **United States Air Force / Air National Guard**

*Captain*, June 2002 – present

- Healthcare Systems Administrator and Chief Information Officer
- Officer in Charge – 141st Air Refueling Wing Honor Guard
- Former Executive Officer; assisted detachment commander with various tasks to carry out agenda
- Former First Sergeant; advised commander regarding enlisted personnel issues of discipline and morale
- Performed operational management of logistics with multimillion-dollar weapon systems
- President of Airman Against Drunk Driving – Hawaii Chapter (2006)

#### **Department of Social and Health Services – Division of Child Support**

*Government Liaison*, February 2018 – September 2019

- Maintained statewide partnership with elected and deputy prosecutors of Title IV-D judicial caseloads
- Facilitated workgroup of statewide prosecutor liaisons to resolve disagreements between prosecutors and DCS
- Coordinated support to county clerks for timely entry of judicial child support orders
- Managed DCS contracts team

#### **Addams & Leavitt, PLLC – Attorneys at Law**

*Attorney & Managing Partner*, November 2014 – January 2018

- Provided analysis and representation to clients in family, juvenile, criminal, and administrative proceedings
- Managed accounting, advertising, supervising, scheduling, and other daily operational management activities
- Awarded Public Service and Leadership Award – 2016 by Washington State Bar Association

### **Counsel for Defense – Spokane County**

*Law Clerk / Extern*, January – May 2011

- Represented juvenile delinquents in felony and misdemeanor proceedings

### **U.S. Attorney’s Office – Eastern District of Washington**

*Law Clerk / Extern*, June 2012 – July 2013

- Managed and prosecuted federal misdemeanor caseload
- Assisted in prosecution of felonies, including controlled substances, illegal immigration, and child exploitation
- Drafted appellate briefs for Ninth Circuit Court of Appeals

### **Ogden City Prosecutor**

*Undergraduate Law Clerk*, May 2010 – August 2010

- Assisted in prosecution of misdemeanors

### **Weber State University – KWCR**

*General Manager/Instructor*, May 2009 – April 2011

- Oversaw programming, promotions, and sponsorship of student-operated broadcast radio station
- Classroom and hands-on instruction of broadcasting techniques and technology

## **HONORS AND AWARDS**

### **Public Service and Leadership Award**

Washington Young Lawyer Committee – Washington State Bar Association  
2016

### **Small Firm of the Year**

Spokane County Bar Association – Volunteer Lawyers Program  
2016

### **Status Conference Volunteer of the Year**

Spokane County Bar Association – Volunteer Lawyers Program  
2015

### **Thomas More Scholar**

Gonzaga University School of Law  
2011-2014

## **PUBLICATIONS**

### **How to Serve the Underserved While Building Your Practice**

Washington State Bar News  
October 2020

## **SPEAKING ENGAGEMENTS**

### **Coming Together When Things Fall Apart: Best Practices for Collaboration Between the IV-D and IV-E Agencies and Courts**

Western Interstate Child Support Engagement Council (WICSEC)  
2019

### **Digitally Aware Decisions – Sexting and Cyberbullying**

Various audiences  
2013-2016

### **Moderate Means as a Good Business Practice**

Gonzaga University School of Law  
2016

### **Moderate Means as a Good Business Practice**

Gonzaga University School of Law  
2016

**Moderate Means**

Washington State Bar Association  
2016

**Law and Religion Panel Discussion**

Gonzaga University School of Law and J. Reuben Clark Law Society  
2016

**Contention in the Legal Field**

J. Reuben Clark Law Society  
2015

**Starting Your Own Legal Practice**

Gonzaga University School of Law  
2015

**Digital Citizenship**

Davenport High School  
2014

**SELECTED VOLUNTEER EXPERIENCE****Pro Bono Public Service Committee – Washington State Bar Association**

*Committee Member*, October 2020 – present

**Juvenile Law Section – Washington State Bar Association**

*Secretary*, October 2020 – present

**Administrative Law Section – Washington State Bar Association**

*Young Lawyer Liaison*, October 2018 – September 2019

**Volunteer Lawyers Program – Spokane County Bar Association**

*Volunteer Lawyer*, June 2014 – January 2018

**CASA Partners**

*Vice President/Race Director*, June 2014 – January 2018

**Boy Scouts of America**

*Scoutmaster*, 2005 – 2011

**PERSONAL LIFE**

Distance runner and sprint triathlete; snow skier; leadership in church men's group; oil painting; and time with family

# JACQUI MERRILL MARTIN

LICENSED IN WASHINGTON

## EXPERIENCE

### **Compliance Counsel PLLC** Principal

2019 - Present

- Provide legal counsel and support to corporations in a range of areas, including conducting internal investigations, risk assessments, and program evaluations; analyzing conflicts of interest; drafting policies, procedures, and codes of conduct; creating and presenting training materials; reviewing third-party contracts; and managing M&A and third party due diligence.
- Expertise in anti-corruption (FCPA & UK Bribery Act); export and sanctions compliance; and workplace health and safety, with emphasis on COVID-19-focused regulatory compliance.
- See attached representative engagements and testimonials.
- Devote substantial time to pro bono, public interest matters, and nonprofit outside counsel support.

### **Association of Certified Anti-Money Laundering Specialists (ACAMS)** Instructor

2017 - Present

- Train finance and compliance professionals on various subjects, including investigations, sanctions, and anti-corruption laws.
- Advise on substantive content for presentations in areas of subject matter expertise, including FCPA, internal investigations, hotlines and reporting, and ethics and compliance training.

### **The Volkov Law Group**

Senior Associate; Associate

2014 - 2018

- Led on-site internal investigations and compliance program assessments, both domestically and internationally.
- Advised general counsel, compliance professionals, and C-Suite on ethics and compliance matters.
- Analyzed legal issues and drafted corresponding memoranda, briefs, demand letters, and filings.
- Trained domestic and foreign employees, including managers and executives, in facilitated and classroom formats.
- Managed third party due diligence programs and conducted reviews of potential business partners for corporate clients in industries such as technology, energy, aviation, and logistics.
- Drafted policies and procedures for compliance program components, including anti-corruption, code of conduct, anti-money laundering, third party due diligence, sanctions and export compliance, social media, conflicts of interest, policy management, internal investigations, and antitrust.

Pragmatic attorney with proven ability to effectively conduct compliance reviews and internal investigations, manage teams, and organize workflow. Strong interpersonal and leadership skills and record of building trust and rapport with clients, internal teams, and external partners. Seasoned presenter and skilled communicator.

## CONTACT

(828) 231-0460

[www.compliancecounselpllc.com](http://www.compliancecounselpllc.com)

## PRO BONO

- Community Passageways (Restorative Justice)
- Northwest Immigrant Rights Project (Asylum Representation)
- Seattle Clemency Project
- Voter Protection Efforts
- WSBA Pro Bono and Public Service Committee
  - Chair, Technology Workgroup

## EDUCATION

### **Campbell University School of Law** Juris Doctor, 2014

- Recipient of Dean's Scholarship
- Juvenile Justice Clinician & Research Aide
- Awards: NC Advocates for Justice; Outstanding Performance in Client Counseling Competition

### **University of North Carolina** Bachelor of Arts, 2011

- Journalism and Mass Communication, English
- Graduated with Distinction; Admissions Ambassador; Club Soccer Captain; Dean's List

## REPRESENTATIVE ENGAGEMENTS

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- Filled associate general counsel role at publicly traded information, data, and management firm on an interim basis. Conducted investigations, advised on new government corporate compliance guidelines, analyzed conflicts of interest, and enhanced policies and procedures.
- Led global anti-corruption testing and audit project, covering thirteen countries and ten focus areas, for Fortune 500 medical device and pharmaceutical company. Required strong organizational skills, development of appropriate testing rubric, and keen analysis of a massive amount of data and information. Conducted more than seventy interviews and substantial documentary review and presented findings in thorough report.
- Conducted comprehensive risk and compliance program assessment for a Fortune 500 global transportation and logistics company. Led approximately fifty interviews, reviewed applicable documents, and prepared extensive reports for two business segments.
- Investigated alleged misconduct in a client's subsidiary operations in Asia. Exercised audit rights with involved third party. Following review of financial documents and interviews, prepared comprehensive report analyzing the conduct and designing a remediation program to address internal control weaknesses and employee misconduct.
- Provided many corporate clients with guidance on designing and implementing effective internal controls for managing risk. Counseled clients on third party red flags, prepared due diligence reports, and crafted appropriate risk mitigation strategies.

## TESTIMONIALS

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"Jacqui has an excellent understanding of compliance and always provided valuable insight on the various issues that would arise.

She is a competent lawyer and excellent communicator, and she is well organized. Unique to her skillset is her mastery of working with us on global business matters. I highly recommend Jacqui to any company looking for a respected, insightful and well-rounded legal professional to add to their organization."

-Kathy Self, Vice President, Chief Compliance Officer, Data Protection Officer, Universal Weather and Aviation

"Jacqui worked with our Compliance & Integrity team for five months. She brought her depth of experience as a compliance attorney and offered expert advice on various compliance matters, sanctions compliance, and internal investigations.

"Jacqui was instrumental in two ways - she took ownership of projects to help us manage an extremely busy time when we were low on resources and, as an independent third party, she was able to evaluate and improve our program in key ways. When the DOJ's Criminal Division issued an updated Evaluation of Corporate Compliance Programs, she proactively brought the new material to my attention and provided an analysis of the updates in light of how our program is structured.

"I highly recommend Jacqui as a valuable resource for any Compliance Department or in-house counsel."

-Emily Epstein, Former SVP, General Counsel of Corporate & Compliance, Corporate Secretary, Nielsen

May 21, 2022

Washington State Bar Association  
1325 Fourth Ave., Suite 600  
Seattle, WA 98101-2539

To Whom It May Concern:

I am proud to have served on the WSBA Pro Bono and Public Service Committee for the last two years, and I am thrilled to be considered for appointment as co-chair of the Committee. Please find my resume attached.

As an in-house compliance attorney who spends significant time practicing pro bono, public service work and who also formerly ran a solo practice, I offer unique insight and leadership skills to the Committee. The goal of my pro bono practice is to pursue endeavors that make stronger and more compassionate communities, whether through youth mentorship, legal support of nonprofits, or representation of clients in need. I have always maintained an active pro bono practice and deeply enjoy serving as a resource for others interested in doing the same.

It has been my honor to serve the Committee, working with my colleagues to find creative ways to encourage members to engage in public service. In this time, I have led the technology workgroup, helped to revamp the ProBonoWA.org website, co-written two articles, served as a liaison to local organizations, and regularly attended and contributed to meetings. As co-chair, I would continue to cultivate the open and welcoming community atmosphere that Bonnie, Mike, and Nick have done a wonderful job building. In addition, I would encourage our Committee to think creatively regarding how we connect WSBA members to community organizations who so greatly could use volunteer support. I would also aim to work with the co-chair to set goals and objectives for the Committee and sub-committees on a regular basis so that we stay focused and generate helpful deliverables to members. Overall, if I were fortunate enough to be chosen for the role, I would embrace the potential of leading and connecting the Committee in an engaging and authentic way—and bringing more volunteers in to help us pursue our mission of communicating opportunities and eliminating barriers to providing pro bono services to our communities.

Thank you for your consideration.

Best regards,





**PETRASEK  
LAW**

May 30, 2022

WSBA Board of Governors – Attn: Dan Clark  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101-2539

***Re: Small Town and Rural Committee Chair Position***

Dear President-Elect Clark:

I am submitting my application to serve as the Chair for the Small Town and Rural Committee. I believe that I am the perfect candidate for this position due to having attended all of the STAR committee meetings this past year and having a home both in Snohomish County and Grant County and working in both counties. I have a strong interest in Washington's rural communities and am dedicated to help develop a practitioner pipeline to support growth of legal practitioners in rural communities.

Starting in November 2020, I served on the WSBA Rural Practice Project until the Project finished in March 2021. I greatly enjoyed the time spent with this project and can definitely see its benefit to the greater community. Since the inception of the Small Town and Rural Committee last October, I have served as the Chair of the Education & Outreach Subcommittee and have had frequent conversations with the current Chair, Hunter Abell. For the past 3 plus years, I have been going over to my home in Grant County quite often, particularly over the past 2 years during Covid. I am in Grant County at least four days each month, often more frequently than that. I am a well-connected attorney with other legal professionals in the community, however, I have found it surprisingly difficult to connect with other attorneys in the Grant County area, primarily due to the distance between most of the towns in that County. The Grant County courthouse in Ephrata is about 35 minutes from my home, and I am not aware of any other attorneys in the area where I live. I definitely understand the difficulties attorneys have who live and practice full-time in rural and small towns based on my part-time experience in eastern Washington. On the flip side, based on distance and fewer attorneys practicing in rural areas, I recognize that this creates an issue for the residents in those communities in finding legal assistance to help them.

I am a solo attorney practicing primarily in the areas of juvenile law, elder law, estate planning, guardianships, and family law. In addition, I am a Snohomish County CASA program attorney and have been serving as a Snohomish County Superior Court pro tem judge and commissioner for over ten years. Throughout my career, I have volunteered on many WSBA

committees and boards. In 2010, I served as the WYLD president and from 2018-2020, I was Chair of the Solo & Small Practice Section. Throughout my lengthy involvement in the WYLD, I was able to travel around the state and had an opportunity to meet numerous attorneys in all parts of the state. Both through my involvement in the WYLD and more recently on the WSBA Solo & Small Practice Section (“SSPS”) Executive Committee, I have made connections with the deans and other faculty at all three law schools as well as many attorneys around the state. I have helped plan many events on behalf of the WYLD and SSPS, plus other organizations, and am always looking for ways to network and connect people.

In the legal community, I am known to be a reliable and prompt person and someone people can count on. I am a self-starter, extremely self-motivated, organized, and determined. In many instances, I have worked as a team member in collaborative settings and have been mutually supportive of those with whom I work.

In summary, I believe that I am an excellent choice to be the next Chair of the Small Town and Rural Committee. Based on the time I spend in Grant County, and the work we have been doing at the monthly STAR meetings and subcommittee meetings, I am truly dedicated to help develop a practitioner pipeline to support the growth of legal practitioners in small town and rural communities in our state. Please find enclosed with this letter my résumé. I look forward to hearing from you.

Very truly yours,



Kari M. Petrusek

Enclosure

## KARI PETRASEK

11700 Mukilteo Speedway, Suite 201-1006

Mukilteo, WA 98275

(425) 361-7699

kari@petraseklaw.com

### LEGAL EXPERIENCE

#### **Snohomish County Superior Court, Everett, WA**

*Superior Court Judge and Commissioner Pro Tempore*

January 2010 – present

Preside over trials and hearings relating to ITA cases, juvenile offender matters, truancies, at-risk-youth, children in need of services, probation violations, family law hearings, domestic violence hearings, probate and guardianship hearings, and ex parte matters. Attend judicial trainings when offered.

#### **Petrasek Law, PLLC, Mukilteo, WA**

*Owner, Attorney*

January 2015 – present

Represent clients almost daily in juvenile law matters, including dependency and termination proceedings at Snohomish County Juvenile Court. Represent the Snohomish County Volunteer Guardian ad Litem program in hearings and trials as needed. Appear in Superior Court for various civil litigation hearings and trials, including family law, elder law, and guardianship cases. Meet with clients and draft documents in estate planning cases. Court hearings involve all stages of the case from preliminary/show-cause hearings and discovery conferences, to contested review hearings or motion hearings, and eventually settlement negotiations or trial. Represent clients in arbitrations and mediations. Attend annual Children's Justice Conference, OPD, OCLA education programs and other relevant case-type continuing legal education.

#### **Carson Law Group, P.S., Everett, WA**

*Attorney*

December 2007 – December 2014

Represented clients almost daily in juvenile law matters, including dependency and termination proceedings, and court-appointed Guardian ad Litem cases at Snohomish County Juvenile Court. Represent the Snohomish County Volunteer Guardian ad Litem program in hearings and trials as needed. Appear in Superior Court for various civil litigation hearings and trials, including family law, guardianships, business law, collection, property, landlord-tenant cases, and domestic violence cases. Represent clients in criminal hearings and trials at District Court and handle estate planning cases. Court hearings involve all stages of the case from preliminary/show-cause hearings and discovery conferences, to contested review hearings or motion hearings, and eventually settlement negotiations or trial. Represent clients in arbitrations and mediations. Attended annual Children's Justice Conference and OPD education programs and other relevant case-type continuing legal education.

#### **Bell & Ingram, P.S., Everett, WA**

*Associate Attorney*

September 2005 – December 2007

Represented clients in juvenile law matters, including dependency and termination proceedings, juvenile offender, and court-appointed Guardian ad Litem cases at Snohomish County Juvenile Court. Appeared in Superior Court for various civil litigation hearings and trials, including family law, business law, collection, property,

landlord-tenant cases, and domestic violence cases. Represented clients in criminal hearings at District Court and handled estate planning cases. Court hearings involved all stages of the case from preliminary/show-cause hearings and discovery conferences, to contested review hearings or motion hearings, and eventually settlement negotiations or trial. Represented clients in arbitrations and mediations. Attended annual Children's Justice Conference and OPD education programs and other relevant case-type continuing legal education.

### **Law Offices of Alayne Spaulding, Everett, WA**

*Associate Attorney*

December 2002 – September 2005

Represented clients (parents and children) in juvenile law matters, including dependency and termination proceedings, juvenile offender, BECCA bill, CHINS, ARY, and court-appointed Guardian ad Litem cases at Snohomish County Juvenile Court. Appeared in Superior Court for child support contempt hearings and family law matters, including dissolution proceedings, parenting plan modifications, and child support contempt hearings. Represented clients in criminal hearings at District Court. Court hearings involved all stages of the case from preliminary hearings and discovery conferences, to contested review hearings or motion hearings, and eventually settlement negotiations or trial. Attended relevant case-type continuing legal education.

### **United States Attorney's Office, Seattle, WA**

*Legal Intern*

May 2001 – June 2002

Appeared in front of U.S. Magistrate and District Court judges for initial appearances, pleas, sentencings, evidentiary hearings, and other matters; completed legal research; drafted complaints, informations, plea agreements, charging documents, indictments; wrote appellate briefs; collected discovery information; worked with attorneys to collect research and information relevant to the case; met with agents from various federal agencies working on the case.

## EDUCATION

### **Seattle University School of Law, Seattle, WA**

Juris Doctor, May 2002

Mentor for first-year law students, Fall 2000, 2001

Academic Conduct Board Member, September 2000-August 2002

- Vice President, Spring 2001-Spring 2002

American Bar Association – Law Student Division, 1999-2002

Alternative Dispute Resolution Negotiation Competition, October 2000

Alternative Dispute Resolution Client Counseling Competition, January 2000

### **Gustavus Adolphus College, St. Peter, MN**

Bachelor of Arts in Criminal Justice and International Management, 1999

Dean's List: Spring and Fall 1997, 1998, 1999

College Judicial Board Member 1997-1999

## PROFESSIONAL MEMBERSHIPS AND SKILLS

WSBA Member, in good standing, November 2002 – present

- WSBA Pro Bono Publico Service Commendation, every year since 2006
- Solo & Small Practice Section, Member 2009 – present
  - Chair, April 2018 – September 2020

- Chair-Elect, October 2016 – April 2018
  - Executive Committee, 2012 – present
  - Electronic Communications Committee, Chair 2014-2015, Member 2014 – present
  - Solo & Small Firm Conference Steering Committee, 2018 – present
  - WSBA Coronavirus Response Task Force, 2020 – 2021
  - WSBA Rural Practice Project, November 2020 – March 2021
  - WSBA Small Town and Rural Committee
    - Education & Outreach Subcommittee, Chair October 2021 – present
  - Juvenile Law Section, Member
    - Executive Committee, 2021 – present
  - WSBA Delegate to the ABA House of Delegates, September 2010 – August 2016, September 2020 – present
  - Mentorship Workgroup, 2014
- Washington Young Lawyers Division, member 2002 - 2013
- WYLD President, 2010 - 2011
  - WYLD President-Elect, 2009 - 2010
  - WYLD Snohomish District Trustee, 2005 - 2009
  - WYLD Board of Trustees liaison to WSBA Solo Small Practice Section, 2008 - 2009
  - Trial Advocacy Program, Chair: 2008, 2009; Co-Chair: 2010
  - WYLD/ATJ GAAP committee, 2006 - 2010
- Washington Women Lawyers, member 2007 - present
- State Board Treasurer, October 2017 – present
  - State Board Membership Co-VP, April 2017 – September 2017
  - Joint Minority Mentorship Program, Mentor 2020 – present
  - Snohomish County Chapter Board member, 2012 – present
  - Snohomish County Chapter Treasurer, October 2018 – present
  - Snohomish County Chapter Representative to State Board, October 2015 – September 2016
  - Snohomish County Chapter VP and chair of Membership and Marketing, 2013-2016
  - Chapter Member of the Year, 2013 and 2021
  - Joint Minority Mentorship Program, Mentor, 2021 – present
- Washington Association for Justice, Eagle Member, 2015 – present
- Snohomish County Bar Association, 2002 - present
- Treasurer, 2021 - present
  - President, 2015
  - Awarded the 2017 President’s Award
  - Board Member, 2012 - present
  - Snohomish Co Superior Court GAL Committee, SCBA Representative, January 2021 – present
  - Mentorship Committee Co-Chair, 2012 - 2018
- Snohomish County Legal Services Board Member January 2006 - December 2012
- Snohomish County Legal Services
- Serving Our Senior Will Clinic Attorney Recruitment volunteer and participant, 2011 - present
  - Family Law Clinic Volunteer and Direct Representation Attorney
- Snohomish County Young Lawyers Division, founding member, 2003-2013
- Trustee 2003-2006, 2007-2009
  - President 2006-2007

American Bar Association, member 2002 - present

- ABA At-Large Delegate to the House of Delegates, September 2017 – August 2020
  - ABA State Membership Chair - Washington, September 2019 – present
  - ABA Standing Committee on Technology & Information Systems, September 2020 – present
  - ABA Cybersecurity Legal Task Force, September 2021 – present
  - ABA Membership Advocate, 2017-2019
  - GP|Solo Member 2005 – present
    - Council Member, 2014 – 2020
    - Corporate Sponsorships Committee, Chair, 2017 – 2019; Vice-Chair, 2015 – 2017; Member 2015 - 2020
    - Director of Division 2: Member Benefits, September 2019 – August 2020
    - Director of Division 1: Administration, September 2018 – August 2019
    - Director of Division 4: Practice Setting, September 2017 – August 2018
    - Director of Division 3: Practice Specialty, September 2016 – August 2017
    - Women’s Initiative Network, September 2016 – present
    - Long range planning committee, 2015 - 2018
    - Solo & Small Firm Summit Committee, 2014 - 2016
    - Technology & Resource Committee, Chair, 2019 – present; Member 2015 - present
    - Programs Board, Co-Chair, 2020 – 2021, member 2021 – present
    - Solo Strong Committee Vice-Chair, September 2013-2014, member 2014-2015
    - Juvenile Law Committee Chair, September 2013 - 2016; Co-Chair, September 2012 - August 2013, Member since 2010
    - Young Lawyers Committee Member, 2010 – present
    - Membership Board Member, 2011 - 2015
    - Star of the Quarter, October 2013, October 2014, February 2016, July 2021
    - Amicus Curiae Committee Co-Chair, September 2012 - August 2013
  - Judicial Division, Lawyers Conference, 2009 – present
  - American Bar Foundation, Fellow 2015 – present
  - Youth at Risk Advisory Commission, September 2016 – 2018
  - Children and the Law Committee, 2009 – 2016
  - YLD Fellows, Member 2014 – present
  - YLD Member Service Team Coordinator, September 2012 - August 2013; member 2009-2010
  - YLD Star of the Quarter, October 2011
  - Chair of Seattle Host Committee for the 2011 ABA YLD Fall Conference
  - YLD District 29 (WA/OR) Representative, 2010-2012
  - YLD Awards & Subgrants Team, Judge 2011-2012, 2008-2009, Vice-Chair Judge 2007-2008
  - 2008 National Outstanding Young Lawyer Nominee
- Seattle University School of Law 1L Mentorship Program, Mentor 2017 – present
- Washington State CASA, member 2003 - present
- Snohomish County VGAL of the Month: June 2008 and March 2010

## CONTINUING LEGAL EDUCATION & PROGRAMS

“Good Practice Habits That Don’t Go Out of Style.” Washington State Bar Association, Solo & Small Firm Conference. September 13, 2019.

“So You Want to be the Boss – What it Takes to Start Your Own Firm.” American Bar Association Solo, Small Firm & General Practice Division Spring Conference. May 2, 2019.

“Kids in Need of Defense” training. American Bar Association GP Solo & Small Firm Division Fall Conferences: October 25, 2014, September 24, 2015, October 19, 2017, October 26, 2018; American Bar Association Midyear Meeting: February 14, 2020.

“Planning Your Bar Year: Keeping Membership Active.” American Bar Association Young Lawyer Division Teleconference. September 21, 2011.

“Overcoming Barriers to Public Service and Incorporating Public Service Into Your Bar Year.” Washington State Bar Association ATJ/Bar Leaders Conference. June 4, 2011.

“How to Start Your Solo Practice.” Washington State Bar Association CLE. May 5, 2011.

“Reset Your Practice in a Reset Economy.” Washington State Bar Association ATJ/Bar Leaders Conference. June 5, 2010.

## LEGAL ARTICLES

“The Child Client.” American Bar Association, *GPSolo*, Volume 34, Number 2, March/April 2017.

Articles discussing ways for lawyers to become involved in the Snohomish County Bar Association and informative interviews of attorneys and judges in Snohomish County. Snohomish County Bar Association, *SCBA News*. Every month March 2015 to February 2016.

“Avoiding Common Pitfalls in Your Job Search.” American Bar Association, *The Young Lawyer*, Volume 17, Number 9, July/August 2013.

Articles discussing ways for new and young lawyers to get involved in the moderate means program, other public service activities and the Washington State Bar Association. Washington Young Lawyers Division, *De Novo*. Every two months between October 2010 and August 2011.

“Succession Planning: Who It’s For, and Why It’s Important.” Washington State Bar Association, *Bar News*. February 2010.

## COMMUNITY ACTIVITIES

Archbishop Murphy High School mock trial coach, 2011 – present

Rotary Club of Everett, 2017 – present

- Program Committee Chair, July 2021 – present
- Vice President, July 2020 – June 2021
- Fellowship Committee Chair, August 2018 – June 2020

Gustavus Adolphus College Seattle Alumni Chapter President, 2015 – present

Gustavus Adolphus Student Mentoring Program, Mentor, 2019 – present

Gustavus Adolphus College Alumni Board Member, 2014-2017

- Diversity, Equity & Inclusion Alumni Board Task Force, 2017-2018

Camp Fire of Snohomish County, Governing Board Member, 2021 – present

- Secretary, 2022

Susan G. Komen 3-day, 60-mile Walk for the Cure, 2011 and 2012

Everett Symphony Board Member, 2007

**Aaron Haynes**

Bellingham, WA 98225

907-351-9596 —

Washington State Bar Association  
ATTN: Young Lawyers Committee  
1325 Fourth Ave, Suite 600  
Seattle, WA 98101

April 14, 2022

Dear Washington Young Lawyers Committee,

I am writing to express my interest in the Washington Young Lawyers Committee (WYLC) Chair-Elect Position. As a young lawyer in my fourth year of private practice and currently serving as an At-Large Representative for the WYLC, I would like to continue serving Washington's young lawyers.

As an At-Large Representative for the WYLC, I took the lead on the WYLC's CLE scholarship and WYLC's Public Service & Leadership Award. I also acted as the intermediary between the WYLC and the American Bar Association's Young Lawyers Division. I represented Washington at the ABA YLD's Mid-Year Assembly, and I will be continuing my work with the ABA YLD as the District Representative for Oregon and Washington.

Becoming engaged with the WYLC early on in my legal career has been incredibly rewarding and allowed me to network and interface with other young lawyers across the state. I appreciate the impact that the WYLC can make in the legal community, especially for young attorneys, and I value its advocacy for young lawyers in the broader structure of the bar. By serving as Chair-Elect, I hope to be part of leading the WYLC into the future, especially as the WSBA debates a restructuring that may fundamentally alter the WYLC, and to advocate for the needs of young lawyers across the state.

Thank you,



Aaron Haynes  
WSBA # 54134

## Aaron Haynes

Bellingham, WA 98225

907-351-9596 —

### EDUCATION

**University of Oregon School of Law, Eugene, OR**

May 2018

*Juris Doctor*

- 3.52 GPA
- Honors: 2018 Excellence in Writing Award, Richard Shaw Business Law Scholarship 2017-2018
- Activities: Law Library Peer Reference Research Assistant (Spring of 2018), Staff Editor – Journal of Environmental Law & Litigation (2017-2018), Associate Editor – Oregon State Bar Debtor Creditor Section Newsletter (2017-2018), Moot Court Board (Winner of Fall 2016 Intrascchool Bankruptcy Competition), Community Action Public Service pro bono organization (Sponsors Prison Reentry Program, Access the Law – Veterans Legal Aid).
- Publications: *Up in Smoke: The Looming Insolvency of Oregon Marijuana Growers and the Case for Chapter 12 Bankruptcy Relief*, Journal of Environmental Law and Litigation, Vol. 34 (2019).

**Willamette University, Salem, OR**

May 2015

*Bachelor of Arts - Double Major in Politics and in Religious Studies*

- 3.83 GPA
- Honors: Phi Beta Kappa, Department Awards - Politics and Religious Studies.
- Study Abroad Spring Semester 2015: Irish Studies, National University of Ireland – Galway.
- Activities: Chamber Orchestra and Quartet (Cellist), Running Club, Model United Nations.

### EMPLOYMENT

**Chmelik Sitkin & Davis, P.S., Bellingham, WA**

December 1, 2021 – Current

*Associate*

- Represent and advise hospitals, municipalities, and other public agencies in a variety of legal areas, including, but not limited to, litigation, labor and employment law, and healthcare law.

**Montoya Hinckley PLLC, Yakima, WA**

August 2018 – October 2021

*Associate*

- Represent my own clients, maintain a book of business, and manage the litigation process.
- Research and draft legal memoranda on legal issues varying from wage-and-hour class action certification to contract and statutory interpretation.
- Practice in a variety of legal areas, including, but not limited to, commercial litigation, labor and employment law, wills and trusts, construction law, and real estate transactions.

**Professor Andrea Coles-Bjerre, Eugene, OR**

September 2015 – May 2018

*Research Assistant – University of Oregon School of Law*

- Researched and drafted legal memoranda on a variety of legal areas including the Uniform Series LLC Act, claims trading under Sec. 1126(e) of the Bankruptcy Code, FDCPA violations for the filing of stale debts in Chapter 13, fraudulent transfer actions in the Bernie Madoff bankruptcy proceedings, and the status of international negotiations regarding judgment enforcement.

**Montoya Hinckley PLLC, Yakima, WA**

May 2017 – August 2017

*Summer Associate*

- Researched and wrote legal memoranda on issues including, but not limited to, construction defect claims, statutory crop liens, insurance law, and employee discipline cases.
- Drafted various legal documents ranging from summary judgment motions to draft court orders.

## Paris Eriksen

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**From:** Efreem Krisher [REDACTED]  
**Sent:** Thursday, June 2, 2022 3:06 PM  
**To:** Bar Leaders  
**Subject:** [External]Client Protection Fund Chair 2022-2033  
**Attachments:** ERK BIO.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[You don't often get email from ekris13268@msn.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

Even though I have previously served as Client Protection Fund Chair, I would be happy to serve as Chair for 2022-2023 especially if no other member of the Client Protection Fund has stepped forward. I am mainly retired and certainly have the time to serve as Chair.

Attached is a brief bio.

Sincerely,

Efreem Krisher

## Efrem Krisher

Efrem Krisher is a 1967 graduate of SUNY Maritime College with a B.S. in Meteorology & Oceanography. After graduating he sailed as 3<sup>rd</sup> Mate in the Merchant Marine and was then commissioned an officer in the now NOAA Commissioned Corps. After serving 6 years, he left the NOAA Corps and attended Tulane University School of Law, graduating in 1976.

Efrem has had a wide variety of experience, primarily in insurance law and insurance claims. He was in a plaintiff's personal injury practice from 2000 until retiring in 2017. He is an active member of the Washington State Bar Association and currently serves as a member on the Fund for Client Protection & the MCLE Board. He also holds an active license as a Washington "Independent Adjuster."

He is an Arbitrator in the Washington State Lemon Law program.

He served in the Washington Army National Guard and Army Reserve retiring as LTC, JAGC, USAR.

Efrem is an active in the Coast Guard Auxiliary and currently serves as District Staff Officer-Finance and Assistant District Staff Officer-Legal Parliamentarian for the 13<sup>th</sup> District

He has lived at Woodcreek since 2015. He is married and has 3 children and 3 grandchildren.

## Paris Eriksen

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**From:** Carrie Umland <Carrie@palacelaw.com>  
**Sent:** Thursday, June 2, 2022 2:59 PM  
**To:** Bar Leaders  
**Subject:** [External]Client Protection Board Chair  
**Attachments:** 2020 Resume.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

You don't often get email from carrie@palacelaw.com. [Learn why this is important](#)

Greetings Bar Leaders:

I am applying for the Chair of the Client Protection Board. I have served on this committee since 2014 and had the honor of chairing it this last year. I love participating in the important work this board does for the community.

I would be honored to chair this Board again next year.

Thank you for your consideration,

Carrie Umland

Carrie Umland  
Attorney at Law  
Palace Law  
4009 Bridgeport Way West Suite B  
University Place, WA 98466  
P 253-254-5876  
F (253) 627-3095  
[Carrie@palacelaw.com](mailto:Carrie@palacelaw.com)  
[www.PalaceLaw.com](http://www.PalaceLaw.com)



# CARRIE D. UMLAND

Burien, WA 98146 | (503) 784-3960 ||

## Professional Summary

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Persuasive litigator providing legal counsel and representation to injured people. Skilled in fostering positive and trusting client relationships. Well-established knowledge of civil law and years of obtaining the best results for clients.

## Skills

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- Litigation Strategy and Management
- Client Advocacy and Trial Preparation
- Legal Research & Documentation
- Legal Research & Documentation
- State & Federal Court Trials
- Reliable and Detail Oriented

## Work History

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### **PALACE PERSONAL INJURY LAW GROUP** – University Place, WA

#### **Personal Injury Attorney**, 2012 to present

- Lead team that provides compassionate and efficient case management and resolution.
- Represent clients injured in automobile collisions, construction site injuries, premises liability, and dog bites.
- Experienced in the development and implementation of pre-litigation processes and litigation discovery plans, motions practice, and resolution by negotiation, ADR, or trial.

### **GRAHAM LUNDBERG PESCHEL P.S** – Seattle, WA

#### **Associate Attorney**, 2005 to 2012

- Represent clients injured in automobile collisions, construction site injuries, premises liability, and dog bites.
- Experienced in the development and implementation of pre-litigation and litigation discovery plans, motions practice, and resolution by negotiation, ADR, or trial.

## Earlier Positions

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### **PLANCO FINANCIAL SERVICES/HARTFORD LIFE**

#### **Regional Marketing Director**, 2000 to 2005

### **DAVID H. MIDDLETON & ASSOCIATES, P.S** – Federal Way, WA

#### **Associate Attorney**, 1998 to 2000

### **DAVID A. LARSON, P.S.**, – Federal Way, WA

#### **Associate Attorney**, 1995 to 1998

## Education & Credentials

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### **Juris Doctor -- SEATTLE UNIVERSITY SCHOOL of LAW**, 12/1994

#### **Washington Bar Admission** – June 1995 WSBA #24949

## Affiliations

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- WSBA Client Protection Fund Board Chairperson
- WSAJ Judicial Relations Committee
- WSAJ SCJA Liaison

# PAUL M. CRISALLI

## EXPERIENCE

**Washington Attorney General's Office, Complex Litigation Division**, Assistant Attorney General | Seattle, WA | 2018-Present  
Research case law, draft briefs, and manage litigation on behalf of the Attorney General in matters of public interest or of a complex nature. Example cases include affirmative litigation against the federal executive branch, cases representing judges and justices who have been sued in their official capacity, and campaign finance enforcement actions.

**Washington Attorney General's Office, Labor & Industries Division**, Assistant Attorney General | Seattle, WA | 2012-2018  
Represented the Department of Labor and Industries (L&I) before the Board of Industrial Insurance Appeals, superior courts, and the Court of Appeals; Superior Court program advisor for L&I Division; L&I Division appellate team; L&I complex litigation team

**Washington Court of Appeals, Division II**, Judicial Clerk to Judge Joel Penoyar, Commissioners Aurora Bearse & Eric Schmidt | Tacoma, WA | 2012

Assisted appellate judge and commissioners in researching, editing, and drafting opinions, rulings, and memoranda.

**The Masters Law Group, PLLC**, Associate Attorney | Bainbridge Island, WA | 2011-2012

Represented clients in civil appeals by researching and writing briefs for Washington Court of Appeals and Supreme Court on property, estate, personal injury, employment, family law, contract, and constitutional issues.

**The Lawless Partnership, LLP**, Associate Attorney | Seattle, WA | 2009-2011

Met with clients; drafted contracts, wills, trusts, demand letters, and discovery requests; researched property and estate planning issues; argued before Washington Court of Appeals.

**Justice Mary E. Fairhurst, Washington State Supreme Court**, Judicial Clerk | Olympia, WA | 2008-2009

Assisted Supreme Court Justice in researching, editing, and drafting opinions and memoranda.

**Oregon Department of Justice, Trial and Appellate Divisions**, Law Clerk | Salem, OR | 2006-2008

Drafted appellate briefs to state and federal courts regarding criminal and family law issues; argued before Oregon Court of Appeals; drafted trial memoranda and prepared for death penalty post-conviction cases.

**Justice Paul J. De Muniz, Oregon State Supreme Court**, Judicial Extern | Salem, OR | 2002-2005

Drafted memoranda regarding petitions for review; conducted legal research for opinions and law review articles.

## EDUCATION

**University of Oregon School of Law, J.D.** | Eugene, OR | 2005-2008

- JOURNAL OF ENVIRONMENTAL LAW AND LITIGATION, Executive Editor
- Regional A.B.A. Negotiation Moot Court; Regional A.C.S. Moot Court
- Orlando and Miriam Hollis Scholarship in Civil Procedure, 2007
- Prosecution Clinic, Lane County District Attorney's Office

**Willamette University, B.A. in Economics & Politics, cum laude** | Salem, OR | 2001-2005

- Varsity Speech and Debate, 2001-2005
- Varsity Golf, 2001-2005
- National Italian American Foundation's Gift of Discovery Scholarship, 2003
- American University, Washington Semester Public Law Program, 4.0 G.P.A., 2003

## PROFESSIONAL INVOLVEMENT

- King County Bar Association, Board of Trustees 2020-Present, Secretary 2021-Present
- King County Bar Association, Membership Committee, Chair 2015-2019
- King County Bar Association, Appellate Section, Chair 2013-2014
- WSBA Judicial Recommendations Committee, 2014-Present, Chair 2018-2019
- WSBA Court Rules and Procedures Committee, 2010-2014, 2020-Present
- Attorney General's Office Ethics Committee, 2013-Present, Co-Chair 2021-Present

## PAUL M. CRISALLI

June 9, 2022

To Whom It May Concern:

Please accept my application to seek appointment as chair of the Court Rules and Procedures Committee. I have thoroughly enjoyed my time on this committee, and its important role in improving the practice of law. Between my work experience and my prior service on WSBA committees, I would provide a unique perspective and be a hard working chair.

I have worked for the Attorney General's Office since 2012, where I handle affirmative litigation matters, campaign finance enforcement cases, complex worker safety cases, class action defense, and cross-divisional litigation support as part of the Complex Litigation Division. Before joining the AGO, I worked in private practice, first doing real estate planning, and then at a boutique appellate firm. I clerked for Justice Mary Fairhurst of the Washington Supreme Court, and Judge Joel Penoyar and the two Commissioners at the Court of Appeals, Division II. My varied background provides a unique perspective in the many different ways to practice law.

For the WSBA, I served one full rotation on the Court Rules and Procedures Committee, and I was reappointed in 2020 to that committee. There, I helped spearhead changes to the RAPs, CRs, and ERs. I currently chair the Criminal Rules Subcommittee. I also served a full rotation on the Judicial Recommendations Committee, which I chaired from 2018-2019. As chair, I spearheaded updating the listed questions and reference forms to root out implicit or explicit biases, particularly with respect to applicants who might have disabilities. I also have chaired the King County Bar Association's appellate section and the Membership Committee, and I am presently on the Board of Trustees and serving as Secretary of the KCBA.

I apply for the chair position of the Rules and Procedures Committee because I enjoy rules and I have enjoyed being on this committee. The work of the committee helps address real problems parties face throughout litigation. These changes can streamline the process and address implicit inequities. I would continue the line of chairs that have had calm and pragmatic leadership of the committee.

Thank you for the opportunity to contribute to the WSBA. Regardless, I have thoroughly enjoyed and found incredibly fulfilling being involved with the Rules and Procedures Committee and the Judicial Recommendations Committee. I hope to have the chance to contribute more to the Bar, the profession, and the greater community.

Sincerely,

*s/ Paul M. Crisalli*

Paul M. Crisalli

**TO:** WSBA Board of Governors  
**FROM:** Terra Nevitt, Executive Director  
**DATE:** July 11, 2022  
**RE:** **Affirm Appointment of Miles Russell to MBA Task Force**

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**APPROVE:** Presidential appointment of Miles Russell to the Task Force to Develop Action Items in Response to the Joint MBA Proposal to the WSBA Board of Governors.

In May, the Board of Governors approved the creation of a Task Force to Develop Action Items in Response to the Joint MBA Proposal to the WSBA Board of Governors (MBA Task Force). The Board also approved presidential appointments to that Task Force. After those appointments were made, there was a request that Miles Russell be appointed to represent the Loren Miller Bar Association, rather than Lionel Greaves IV, due a leadership transition. Pres. Tollefson made this appointment and is requesting acceptance of the appointment by the Board of Governors.

Attachments:

- MBA Task Force Charter
- MBA Task Force Revised Roster

**CHARTER FOR A TASK FORCE TO DEVELOP ACTION ITEMS IN  
RESPONSE TO THE JOINT MBA PROPOSAL TO THE WSBA BOARD OF  
GOVERNORS**

**Approved by the Board of Governors on Friday, May 20, 2022**

### **Background**

On April 6, 2022, eleven Minority Bar Associations made a joint proposal to the WSBA Board of Governors “to continue our dialogue and encourage the Governors in its progress and efforts on diversity, equity, and inclusion in the legal community.” The proposal includes several areas for development of new policy and practices. The WSBA Board of Governors created this Task Force to work collaboratively with leaders of the Minority Bar Associations that authored the proposal to develop actionable proposals arising therefrom.

Under WSBA Bylaws Section IX(B)(2), the Board creates and authorizes this BOG Task Force with the specific purposes set forth in this charter.

### **Task Force Purpose**

- Identify specific action items arising from the April 6, 2022, Joint MBA Proposal;
- Work with the WSBA Executive Director or her designee(s) to conduct legal and fiscal analysis of the action items consistent with the [Board of Governor’s Policy Re: Requests for Action](#);
- Present actionable proposals to the Board of Governors at a meeting no later than the meeting scheduled for September 22-23, 2022;

### **Task Force Timeline**

- The Task Force should complete its work by September 23, 2022. The Task Force will automatically sunset once it has presented its proposals to the Board of Governors, unless the Board acts to extend the timeline.

### **Task Force Membership**

The Task Force will consist of the following voting members:

- Three members of the Board of Governors, one of whom shall serve as Chair; and
- Four representatives of Minority Bar Associations involved in drafting the proposal.

The WSBA President shall serve as a member, ex officio.

In accordance with WSBA Bylaws Section IX(B)(2)(a)-(b), selection of persons to be appointed to the task force and the chair will be made by the President with approval of the Board of Governors.

Roster

**MBA Proposal Task Force**

*Created May 2022*

<b>Chair:</b> Brent Williams-Ruth, Governor, District 8	
<b>Members:</b>	
Brian Tollefson, President ( <i>ex officio</i> )	
Sunitha Anjilvel, Governor, District 1	
Francis Adewale, Governor, District 5	
Aric Bomsytk, Cardoza Society	<a href="mailto:asb@tbr-law.com">asb@tbr-law.com</a>
Miles Russell, Loren Miller Bar Association	<a href="mailto:milesf.russell@atg.wa.gov">milesf.russell@atg.wa.gov</a>
Dana Savage, QLAW	<a href="mailto:dana.savage@atg.wa.gov">dana.savage@atg.wa.gov</a>
Michelle Su, KABA	<a href="mailto:sum@lanepowell.com">sum@lanepowell.com</a>

**Former Members:**

Lionel Greaves

**WASHINGTON STATE**  
**BAR ASSOCIATION**

**TO:** WSBA Board of Governors  
**FROM:** Michiko Fjeld, Chair, WSBA Judicial Recommendation Committee; Sanjay Walvekar, Staff Liaison to the  
Judicial Recommendation Committee  
**CC:** Terra Nevitt, Executive Director  
**DATE:** July 1, 2022  
**RE:** WSBA Judicial Recommendation Committee June 30, 2022 Interviews and Recommendations

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**ACTION: Approve the recommendations of the WSBA Judicial Recommendation Committee.**

The WSBA Judicial Recommendation Committee met via Zoom on June 30, 2022 for the purpose of conducting interviews with four individuals interested in being considered for future openings on the Washington State Court of Appeals and the Washington Supreme Court. Per committee guidelines approved by the Board of Governors, the proceedings and records of the committee, including applicant names, committee discussions, and committee votes, are kept strictly confidential. The committee's recommendations are available in the Governor's confidential materials.

**TO:** WSBA Board of Governors

**FROM:** Anne Watanabe, Immediate Past Chair, on behalf of the WSBA World Peace Through Law Section Executive Committee  
Julianne Unite, WSBA Member Services and Engagement Manager  
Carolyn MacGregor, WSBA Sections Program Specialist

**RE:** WSBA World Peace Through Law Bylaws Amendments

**DATE:** June 21, 2022

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**ACTION: Approve the WSBA World Peace Through Law Section’s Proposed Bylaws Amendments**

Brief Summary/Purpose of the request

The proposed amendments would:

- (1) allow inactive WSBA members to vote in section elections and be members of the executive committee (current bylaws restrict voting to active members or professors at a Washington law school). See Section 3.1 Membership.
- (2) delete a requirement that the nominating committee include at least 3 non-section members, and add language stating that at least one member of the nominating committee should not be a section executive committee member. See Section 5.2 Executive Committee.
- (3) Correct typographical errors.

Process under which the section discussed and voted to approve these amendments:

- The proposed amendments were voted on and approved by the section executive committee with a quorum present, at its regular meeting on June 15, 2022. The amendments are consistent with WSBA’s bylaws, specifically those enacted earlier this year which allow sections to allow inactive members to vote in section elections and to be members of a section’s executive committee. The amendments also bring section bylaws into conformance with current WSBA bylaws concerning the make-up of section nominating committees. It is hoped that the changes will encourage inactive WSBA members, including those who may be phasing out of active practice, to continue to engage with the World Peace Through Law section and WSBA.

/s/ Anne Watanabe

Immediate Past Chair, World Peace Through Law Section



WSBA RISK ANALYSIS: *This section is to be completed by the Office of General Counsel, with input from the proposing entity or individual.*

These bylaw changes are consistent with the recent WSBA Bylaw changes specifically allowing inactive WSBA members to be voting section members, if a section's bylaws permit. These changes do not appear to involve legal risk to the WSBA.

**Attachments:**

- Redline version of the World Peace Through Law Section bylaws
- Clean version of the World Peace Through Law Section bylaws

# WASHINGTON STATE BAR ASSOCIATION

## WORLD PEACE THROUGH LAW SECTION

### Bylaws

As last amended and approved by the  
Washington State Bar Association Board of Governors on July 27, 2017.

#### ARTICLE I: NAME

This organization shall be known as the “World Peace Through Law Section” of the Washington State Bar Association (hereinafter referred to as the “Section” and the “Bar”).

#### ARTICLE II: PURPOSE AND GENERAL CONSIDERATIONS

##### 2.1. Purpose

The World Peace Through Law Section of the Washington State Bar Association seeks to promote the rule of law and peaceful resolution of disputes among states and to foster education on public international law and human rights. The Section provides a forum for ideas, offers continuing legal education programs, publishes a newsletter, engages in activities with governmental entities and non-governmental organizations who share an interest in world peace through law and undertakes such other service as may benefit the members, the legal profession and the public.

##### 2.2. Limitations

These bylaws have been adopted subject to the Bylaws of the Bar.

##### 2.3. Principal Office

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

##### 2.4. Fiscal Year

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

#### ARTICLE III: MEMBERSHIP

##### 3.1. Membership

Any Active member in good standing of the Bar, inactive members under WSBA Bylaws Article III.B.2.b.1 and III.B.2.b.3, and any professor at a Washington law school (whether licensed in Washington or not) may be enrolled as a voting member of the Section upon payment of annual Section dues in the amount and for the purpose approved by the Board of Governors of the Washington State Bar pursuant to Article 3.2 of these

bylaws. In addition, people not licensed to practice law in Washington may be non-voting members (“subscribers”) of the Section by paying the Section’s annual dues. Law students may also be Subscribers by paying an annual amount set by the Board of Governors.

**3.2. Annual Dues**

Annual membership dues amount is determined by the Section executive committee and is subject to approval by the Board of Governors of the Bar.

**ARTICLE IV: OFFICERS**

**4.1. Officers**

The officers of the Section shall be the Chair, the Chair-elect, the Secretary/Treasurer, and the Immediate Past Chair.

**4.2. Chair**

The Chair shall preside at all meetings of the Section and the executive committee. The Chair shall generally attend to the business of the Section and perform other customary duties of the office as well as duties delegated by the executive committee. In accordance with the WSBA Bylaws, the Chair shall also prepare and submit an annual report on the work of the Section for the past year.

**4.3. Chair-elect**

Upon the Chair’s death, resignation, or refusal to act, the Chair-elect shall perform the duties of the Chair for the remainder of the Chair’s term. In case of the Chair’s disability, the Chair-elect shall perform the duties of the Chair only for the duration of the disability.

**4.4. 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 also 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 generally attend to the business of the Section.

**4.5. Immediate Past Chair**

The Immediate Past Chair shall serve as an officer as provided in Article 5.3.

**4.6. Term**

The term of office for each officer shall commence on October 1 and shall be for one year. For interim appointments, Article 5.6 controls.

**ARTICLE V: EXECUTIVE COMMITTEE**

**5.1. Powers and Duties**

The executive committee of the Section shall be vested with the powers and duties necessary for the administration of the affairs of the Section. The executive committee shall have the following primary duties:

To determine programs and activities that further the Section’s purpose.

To be responsible for communications between the Section and the WSBA.

To create additional committees, if necessary, for the administration of the Section’s activities.

From time to time, to make awards, such as the Ralphe J. Bunche Award.

**5.2. Composition**

The executive committee shall be composed of the officers of the Section and three (3) At-Large members. Members of the executive committee must be voting members of the Section.

**5.3. Terms**

With the exception of the three (3) At-Large members, the term of office shall begin on October 1 and be for one (1) year. The term of office for At-Large members shall begin on October 1 and be for three (3) years with terms staggered so that one position is open for election each year.

Upon completion of a one-year term, the Chair shall assume the position of Immediate Past Chair until the next annual election. A vacancy in the office of Immediate Past Chair shall not be filled by appointment, but shall remain vacant until the current Chair’s term has ended.

**5.4. Meetings of the Executive Committee**

The executive committee shall meet at least four times per year. Special meetings may be held as designated by the Chair or a majority of the executive committee. Notice of all meetings shall be provided to all Section members and published on the Bar website.

**5.5. Quorum**

A majority of the voting executive committee members constitutes a quorum. Action by the executive committee is determined by a majority vote of the members present in person, by telephone, or videoconference, once a quorum is established. Votes may be received in person or by telephone, fax or e-mail in accordance with the Bar’s Bylaws.

**5.6. Interim Appointments**

The executive committee will appoint, by majority vote, members to fill vacancies on the executive committee (except for Immediate Past Chair). 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.

**ARTICLE VI: OTHER COMMITTEES**

**6.1. Formation**

The executive committee shall appoint committees to perform such duties and exercise such powers as  
World Peace Through Law Section

may be needed to meet the objectives of the Section. Committees may be identified as standing committees or ad hoc committees.

## **6.2. Newsletter Committee**

If appointed, a newsletter committee may be composed of one or more members. The executive committee shall appoint the Chair of the newsletter committee. The duty of the committee is to prepare a regularly published newsletter. The committee works in collaboration with the Chair of the Section regarding the final content of each newsletter.

## **ARTICLE VII: MEETINGS OF MEMBERS**

### **7.1. Meetings**

The Section may, at its discretion, hold an annual or special meeting of the membership, giving notice to the members of the Section and publishing public notice on the Bar website. Meetings of the membership may be called by the Chair or a majority of the members of the executive committee.

### **7.2. Quorum**

The voting members of the Section present at any meeting shall constitute a quorum for the transaction of business. However, votes may be cast by voting members attending, but not physically present, by electronic ballot, or other similar means.

## **ARTICLE VIII: ELECTIONS**

### **8.1. Elections**

Each year the membership shall elect a Chair-elect and a Secretary/Treasurer to serve a one-year term and one (1) At-Large member of the executive committee to serve a term of three (3) years. The outgoing Chair-elect shall automatically succeed to the office of Chair.

### **8.2. Nominations**

The executive committee shall annually appoint a nominating committee of not fewer than three (3) members of the Section. At least one member of the nominating committee should not be a current member of the section executive committee. All applicants will apply through an electronic process administered by the Bar. The executive committee will also have an alternative process to allow for nominations to occur outside of the nominating committee process. The nominating committee shall make and report nominations for the upcoming vacant positions of the offices of Chair-elect, Secretary/Treasurer, and one (1) At-Large member of the executive committee. In the event that the office of Chair-elect is vacant at the time of the election, the position of Chair shall also be included with the nominations. The executive committee will approve a list of nominees for each open position.

### **8.3. Voting**

Nominations and elections for open executive committee positions will be held between March and May each year. The Bar will administer the elections by electronic means and certify the results, unless the Section develops its own equivalent electronic election process. In the event of a tie, the winner will be determined by a random tie-breaker method to be determined by the Section Chair.

**8.4. Term Of Office**

The term of office of each elected position shall commence October 1.

**ARTICLE IX: AMENDMENTS**

**9.1. Amendments**

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

Approved by the WSBA Board of Governors on July 27, 2017.

# WASHINGTON STATE BAR ASSOCIATION

## WORLD PEACE THROUGH LAW SECTION

### Bylaws

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##### 2.3. Principal Office

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

##### 2.4. Fiscal Year

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

#### ARTICLE III: MEMBERSHIP

##### 3.1. Membership

Any Active member in good standing of the Bar, [inactive members under WSBA Bylaws Article III.B.2.b.1 and III.B.2.b.3,](#) and any professor at a Washington law school (whether licensed in Washington or not) may be enrolled as a voting member of the Section upon payment of annual Section dues in the amount and for the purpose approved by the Board of Governors of the Washington State Bar pursuant to Article 3.2 of these

bylaws. In addition, ~~inactive members and~~ people not licensed to practice law in Washington may be non-voting members (“subscribers”) of the Section by paying the Section’s annual dues. Law students may also be Subscribers by paying an annual amount set by the Board of Governors.

### **3.2. Annual Dues**

Annual membership dues amount is determined by the Section executive committee and is subject to approval by the Board of Governors of the Bar.

## **ARTICLE IV: OFFICERS**

### **4.1. Officers**

The officers of the Section shall be the Chair, the Chair-elect, the Secretary/Treasurer, and the Immediate Past Chair.

### **4.2. Chair**

The Chair shall preside at all meetings of the Section and the executive committee. The Chair shall generally attend to the business of the Section and perform other customary duties of the office as well as duties delegated by the executive committee. In accordance with the WSBA Bylaws, the Chair shall also prepare and submit an annual report on the work of the Section for the past year.

### **4.3. Chair-elect**

Upon the Chair’s death, resignation, or refusal to act, the Chair-elect shall perform the duties of the Chair for the remainder of the Chair’s term. In case of the Chair’s disability, the Chair-elect shall perform the duties of the Chair only for the duration of the disability.

### **4.4. 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 also 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 generally attend to the business of the Section.

### **4.5. Immediate Past Chair**

The Immediate Past Chair shall serve as an officer as provided in Article 5.3.

### **4.6. Term**

The term of office for each officer shall commence on October 1 and shall be for one year. For interim appointments, Article 5.6 controls.

## **ARTICLE V: EXECUTIVE COMMITTEE**

### **5.1. Powers and Duties**

The executive committee of the Section shall be vested with the powers and duties necessary for the administration of the affairs of the Section. The executive committee shall have the following primary duties:

To determine programs and activities that further the Section's purpose.

To be responsible for communications between the Section and the WSBA.

To create additional committees, if necessary, for the administration of the Section's activities.

From time to time, to make awards, such as the Ralphe J. Bunche Award.

### **5.2. Composition**

The executive committee shall be composed of the officers of the Section and three (3) At-Large members.- Members of the executive committee must be ~~voting members of the Section. must be Active members of the Bar.~~

### **5.3. Terms**

With the exception of the three (3) At-Large members, the term of office shall begin on October 1 and be for one (1) year. The term of office for At-Large members shall begin on October 1 and be for three (3) years with terms staggered so that one position is open for election each year.

Upon completion of a one-year term, the Chair shall assume the position of Immediate Past Chair until the next annual election. A vacancy in the office of Immediate Past Chair shall not be filled by appointment, but shall remain vacant until the current Chair's term has ended.

### **5.4. Meetings of the Executive Committee**

The executive committee shall meet at least four times per year. Special meetings may be held as designated by the Chair or a majority of the executive committee. Notice of all meetings shall be provided to all Section members and published on the Bar website.

### **5.5. Quorum**

A majority of the voting executive committee members constitutes a quorum. Action by the executive committee is determined by a majority vote of the members present in person, by telephone, or videoconference, once a quorum is established. Votes may be received in person or by telephone, fax or e-mail in accordance with the Bar's Bylaws.

### **5.6. Interim Appointments**

The executive committee will appoint, by majority vote, members to fill vacancies on the executive committee (except for Immediate Past Chair). 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.

## **ARTICLE VI: OTHER COMMITTEES**

### **6.1. Formation**

World Peace Through Law Section

The executive committee shall appoint committees to perform such duties and exercise such powers as may be needed to meet the objectives of the Section. Committees may be identified as standing committees or ad hoc committees.

### **6.2. Newsletter Committee**

If appointed, a newsletter committee may be composed of one or more members. The executive committee shall appoint the Chair of the newsletter committee. The duty of the committee is to prepare a regularly published newsletter. The committee works in collaboration with the Chair of the Section regarding the final content of each newsletter.

## **ARTICLE VII: MEETINGS OF MEMBERS**

### **7.1. Meetings**

The Section may, at its discretion, hold an annual or special meeting of the membership, giving notice to the members of the Section and publishing public notice on the Bar website. Meetings of the membership may be called by the Chair or a majority of the members of the executive committee.

### **7.2. Quorum**

The voting members of the Section present at any meeting shall constitute a quorum for the transaction of business. However, votes may be cast by voting members attending, but not physically present, by electronic ballot, or other similar means.

## **ARTICLE VIII: ELECTIONS**

### **8.1. Elections**

Each year the membership shall elect a Chair-elect and a Secretary/Treasurer to serve a one-year term and one (1) At-Large member of the executive committee to serve a term of three (3) years. The outgoing Chair-elect shall automatically succeed to the office of Chair.

### **8.2. Nominations**

The executive committee shall annually appoint a nominating committee of not fewer than three (3) members of the Section. ~~who are not members of the executive committee. At least one member of the nominating committee should not be a current member of the section executive committee.~~ All applicants will apply through an electronic process administered by the Bar. The executive committee will also have an alternative process to allow for nominations to occur outside of the nominating committee process. The nominating ~~committee~~ shall make and report nominations for the upcoming vacant positions of the offices of Chair--elect, Secretary/Treasurer, and one (1) At-Large member of the executive committee. In the event that the office of Chair-elect is vacant at the time of the election, the position of Chair shall also be included with the nominations. The executive committee will approve a list of nominees for each open position.

### **8.3. Voting**

Nominations and elections for open executive committee positions will be held between March and May each year. The Bar will administer the elections by electronic means and certify the results, unless the Section develops its own equivalent electronic election process. In the event of a tie, the winner will be determined by a random tie-breaker method to be determined by the Section Chair.

**8.4. Term Of Office**

The term of office of each elected position shall commence October 1.

**ARTICLE IX: AMENDMENTS**

**9.1. Amendments**

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

Approved by the WSBA Board of Governors on July 27, 2017.

**TO:** WSBA Board of Governors  
**FROM:** Executive Director Terra Nevitt  
**DATE:** July 12, 2022  
**RE:** Executive Director's Report

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### Final ETHOS Meetings

In January 2022, the Board of Governors approved a process for examining the historical organizational and structure of WSBA at the request of the Washington Supreme Court and in light of ongoing legal challenges across the country to the integrated bar model. To date the Board has held five meetings. A sixth meeting will be held on Saturday, July 23 in Tacoma, immediately following the July 21-22 Board of Governors meeting. This upcoming meeting will be focused on gathering public input before the Board comes to its final conclusions at the August 13 meeting. A final meeting is being scheduled to approve the final report and recommendations to the Washington Supreme Court.

At the June ETHOS meeting, the Board directed the Member Engagement Council to work with a professional survey company to draft survey questions to gather input from members about the structure of the Bar. In their meeting on July 7, the Member Engagement Council appointed a subgroup to work with our outside consultant in drafting survey questions. The Council also voted to send out a standalone survey regarding the structure instead of the normal quarterly survey that is scheduled to go out in late July. The subgroup is meeting on July 13 to start the process of drafting the questions. The Member Engagement Council's goal is to have survey results available for the August ETHOS meeting.

### July Bar Exam in Yakima

Licensing exams for LPO and attorney candidates taking place being held in Yakima, WA on July 26-27. This is our first time holding the exam in Yakima, where we are anticipating 671 attorney and 50 LPO examinees. The exam will be administered by 20 WSBA employees and 50 proctors hired from the Yakima area. Our health and safety protocol, include requiring examinees to wear a mask during the exam and to provide proof of vaccination or a negative test result.

### Gender Inclusive Bathrooms at the WSBA Office

This summer we've made some changes to the bathrooms at the WSBA office to ensure that they are gender-inclusive. Updated signage clarifies that all are welcome to use the bathroom that best aligns with their gender identity and uses gender symbols that are more inclusive to the range of gender expression. In addition, each bathroom now has hygiene trash receptacles in the stalls. Having access to bathrooms that affirms the identity of transgender and gender nonconforming employees, volunteers, and guests is not only a matter of inclusion, but also impacts health and safety.

### WSBA Listening Tour Stops in Central Washington

On July 7, President Brian Tollefson, President-Elect Dan Clark, Past-President Kyle Sciuchetti, and I hit the road as part of the annual WSBA Listening Tour. Since 2014, the President and Executive Director have made it an annual tradition to travel to different parts of the state to meet with members to listen to their comments and questions on a variety of topics. With a membership of over 40,000 spread out all over the state (and beyond), the tour provides a unique opportunity to share a meal and find connection. On this visit we met with members in Wenatchee, Ellensburg, and Yakima. We had rich conversations that included the strong desire for uniform e-filing across all courts in the state, bar structure, and how to support rural attorneys, among other topics. In the fall, we plan to visit other parts of the state, and provide a Listening Tour report that captures the questions, comments and concerns raised over the last year.

### ABA Delegate Expenses

The WSBA appoints seven members to serve as members of the ABA House of Delegates and to attend its meetings on WSBA's behalf. Pursuant to our Fiscal Policies and Procedures, a reimbursement amount for attendance at the midyear and annual meetings of the ABA is to be established annually, however WSBA has not changed the amount for the past ten years. The amount was last set at \$800, which is well below the reasonable anticipated costs for conference attendance. For the upcoming meeting in Chicago in August, I have increased the reimbursement amount to \$1,700. This increase is offset by unused funds for BOG elections (we budgeted for run-offs but did not conduct any this year). Accordingly, the FY23 budget proposal will include updated amounts that reflect current costs and the locations of the 2023 midyear and annual meetings.

### CLE Summer Sale

Our CLE Summer Sale starts July 12th and runs until August 2nd! During the sale we are offering 50% off the regular price of hundreds of on-demand seminars.

### Attachments

Litigation Report

Media Report

Q1 Discipline Report

Member Demographics Report

# 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: June 27, 2022  
 Re: Litigation Update

No.	Name	Brief Description	Status
1.	<i>Norman v. WSBA</i> , No. 22-2-03177-8 (King Sup. Ct.)	Alleges employment and disability discrimination.	Complaint filed 03/04/22. A notice of filing petition for removal to U.S. District Court filed on 3/24/22.
2.	<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. WSBA's motion to dismiss granted 09/24/21. Notice of appeal received 11/22/21.
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 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 <i>Block II</i> pursuant to the original vexatious litigant order.</p>



			<p>Block filed in 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, 9<sup>th</sup> Cir., No. 21-35261), “Block II – Appeal II”. 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 opposed and the motion was denied on 09/28/21. Block appealed the Ninth Circuit Court’s 9/28/21 order, and the amended notice of appeal was added to Block II -Appeal II.</p> <p>The Ninth Circuit Court then issued an order to Block to show cause why it should not summarily dispose of this appeal; Block failed to respond and the Ninth Circuit dismissed Block II – Appeal II.</p>
4.	<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.	<p>On 02/11/19, the Ninth Circuit 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> <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 I – Appeal II”). Block filed an opening brief in Block I – Appeal II on 11/06/20; WSBA filed its answering brief on 01/07/21. Block’s</p>

		<p>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> <p>Block appealed the order issued on 09/28/21. The Ninth Circuit opened a new appeal (9<sup>th</sup> Cir. No. 21-35922), “Block I – Appeal III”, in which Block’s opening brief was due 01/05/22. Block filed an untimely motion to extend the time to file her opening brief; WSBA opposed the motion on 02/07/22. Block filed an opening brief in Block I – Appeal III on 3/3/22. WSBA’s answering brief was due 5/4/22. Block’s counsel filed a motion for extension for her optional reply brief on 5/25/22.</p>
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# WASHINGTON STATE BAR ASSOCIATION

## MEMO

To: WSBA Board of Governors

From: Jennifer Olegario, Communications and Outreach Manager

CC: Sara Niegowski, Chief Communications and Outreach Officer

Date: July 5

RE: **Summary of Media Contacts, May 1 – June 30, 2022**

Date	Journalist and Media Outlet	Inquiry
May 2	Donald W. Meyers, <i>Yakima Herald-Republic</i>	Doing a story on shortage of attorneys in Yakima County, and if it was a statewide phenomenon. Sent latest member demographic count of all counties.
May 2	Marianna Wharry, Law.com	Public records request for Scott D. Gallina.
May 6	Sarah Liebowitz, KUOW Public Radio (NPR)	Working on a story about how difficult it can be to prosecute child abuse cases, and particularly physical child abuse, as a follow up to a recent story by KUOW. Looking for someone who can speak generally to why it can be difficult to prosecute these cases. Referred her to Juvenile Law Section Chair Michael Addams.
May 13	Heidi Groover, <i>Seattle Times</i>	Inquired about possible grievances against Michael Cramer Williams. Sent stand media response regarding grievances.
June 2	Jim Brunner, <i>Seattle Times</i>	Inquired when a public hearing would be set for Stephen Pidgeon.
June 3	Heidi Groover, <i>Seattle Times</i>	Public records request for Michael Cramer Williams.
June 16	Natalie Newcomb, KUOW Public Radio (NPR)	Working on a story about violence against public defenders; informed her we do not have any statistics about these types of occurrences and

		referred her to contacts at the Washington Defender Association and King County Department of Public Defense.
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MEMO

To: Terra Nevitt, WSBA Executive Director  
From: Douglas J. Ende, WSBA Chief Disciplinary Counsel & Director of the Office of Disciplinary Counsel  
Date: June 22, 2022  
Re: Quarterly Discipline Report, 1st Quarter (January – March 2022)

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**A. Introduction**

The Washington Supreme Court’s exclusive responsibility to administer the systems for discipline of licensed legal professionals (including disability systems) is delegated by court rule to WSBA. See GR 12.2(b)(6). Staff and volunteers carrying out the functions delegated by the Rules for Enforcement of Lawyer Conduct (ELC) act under the Supreme Court’s authority. The investigative and prosecutorial function is discharged by the employees in the Office of Disciplinary Counsel (ODC), which is responsible for investigating allegations and evidence of professional misconduct and incapacity and prosecuting violations of the Washington Supreme Court’s Rules of Professional Conduct.

The Quarterly Discipline Report provides a periodic overview of the functioning of the Office of Disciplinary Counsel. The report graphically depicts key discipline-system indicators for the 1<sup>st</sup> Quarter 2022. Note that all numbers and statistics herein are considered tentative/approximate. Final figures will be issued in the 2022 Discipline System Annual Report.

**B. Public Dispositions & Other Information**

- **Discipline System Annual Report Published.** In April 2022, the WSBA issued the 2021 Discipline System Annual Report. The Report is now available and can be accessed on the WSBA website at [bit.ly/disciplinereport2021](http://bit.ly/disciplinereport2021). The report, which is published and distributed in electronic form only, provides public information about Washington State’s discipline and disability system and summarizes information about its work and achievements during the 2021 calendar year. The Annual Report also includes discipline statistics and information about limited licenses. A “[snapshot](#)” of the Report was published in the June 2022 issue of the Bar News.

- **Public Dispositions**

**Suspensions:**

Amanda Lilly #48416, Two-year suspension (*Stipulation*)

Matthew Johnson #43808, Two-year suspension (*Stipulation*)

**Resignations in Lieu of Discipline:**

Floyd Ivey #6888

Robert McKay #19667

Linda Staples #32854

**Admonition:**

Gerald Moberg #5282 (*Stipulation*)

**Reciprocal Discipline:**

Lynn Smith #20060, Ninety-day suspension (Oregon)

Troy Stewart #15888, Two-year suspension (California)

Sandy Van #53745, Reprimand (Nevada)

- **ELC 7.1 and 7.2 Interim Suspensions:**

**ELC 7.2:**

Nicholas Fay #47603 (failure to cooperate)

Michael Graham #37391 (failure to cooperate)

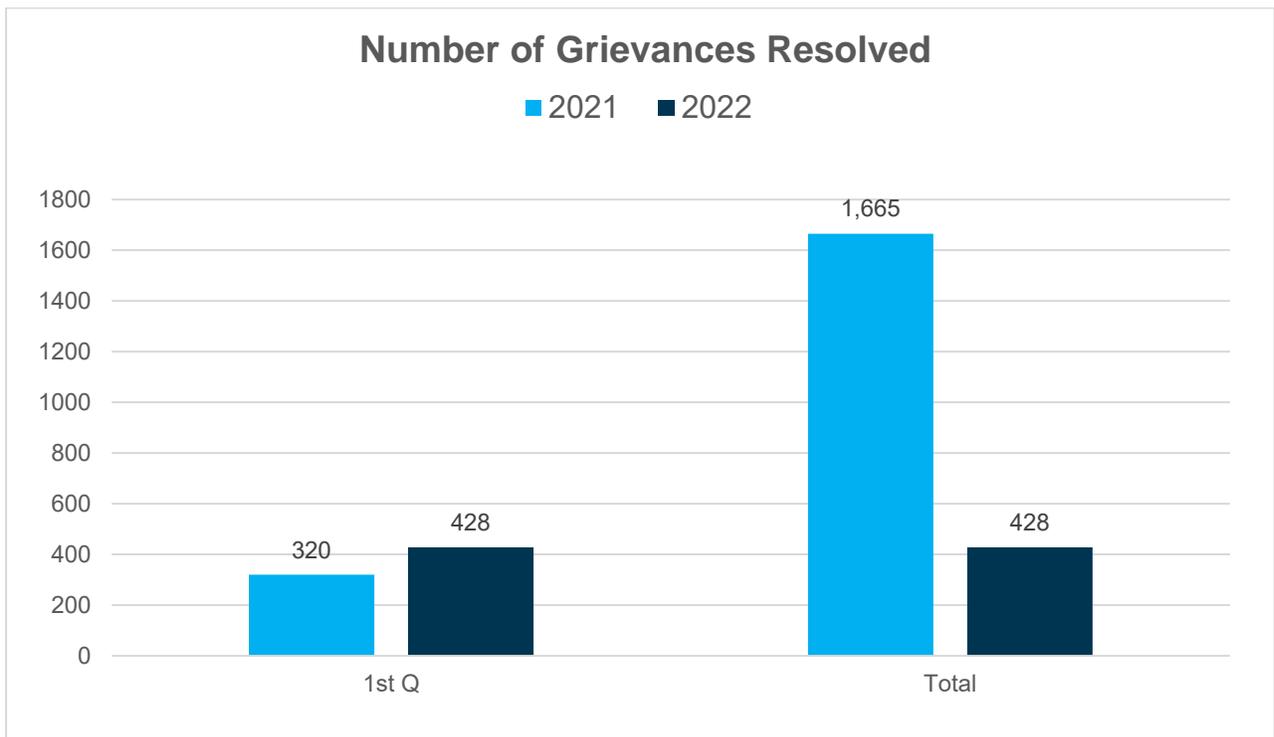
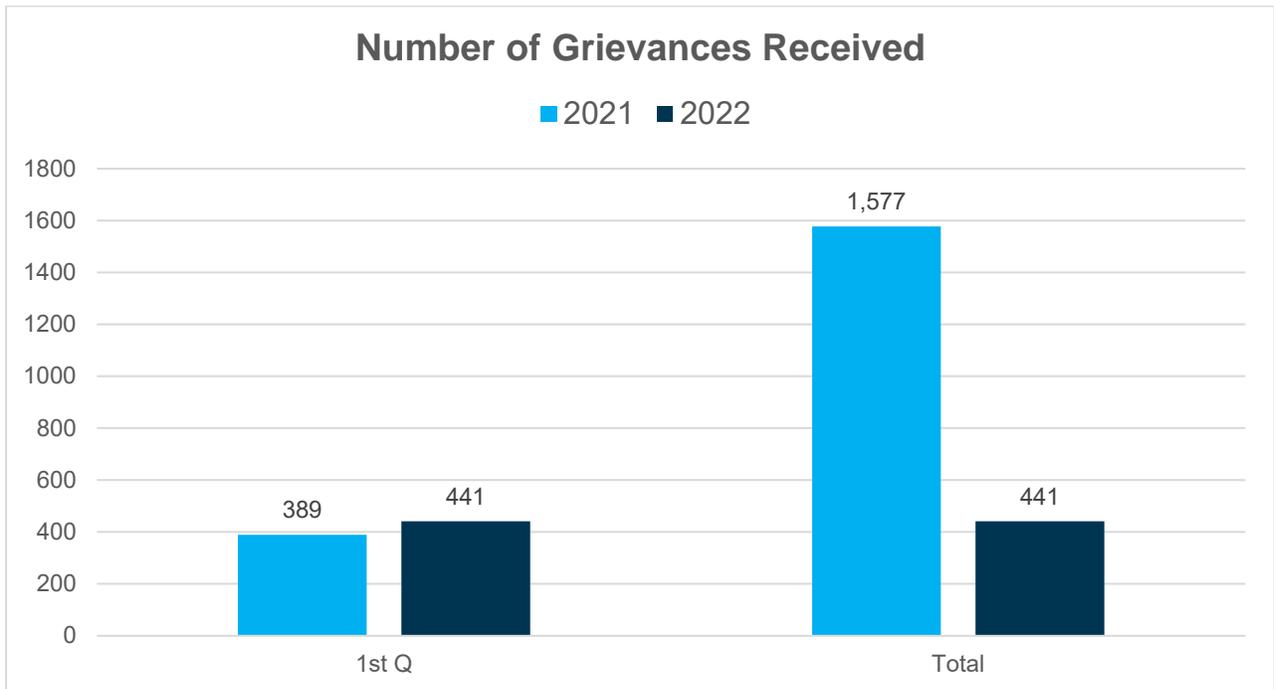
Dominique Jinhong #28293 (risk to public)

Benjamin Pepper #49692 (failure to cooperate)

- **Hearings, Appeals, and Other Proceedings**

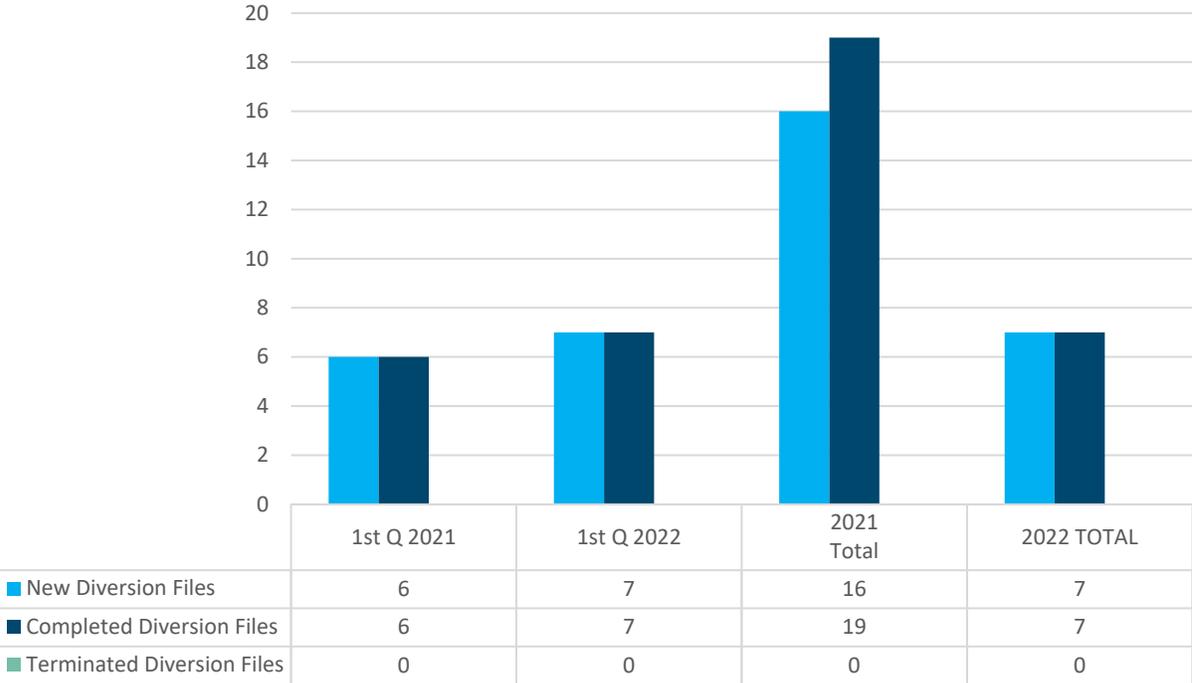
No hearings were held this quarter. Because of an overall reduction in the number of contested hearings in 2020-2021, there has been a corresponding lull in the number of pending appeals and review proceedings before the Disciplinary Board and Supreme Court.

**C. Grievances and Dispositions<sup>1</sup>**

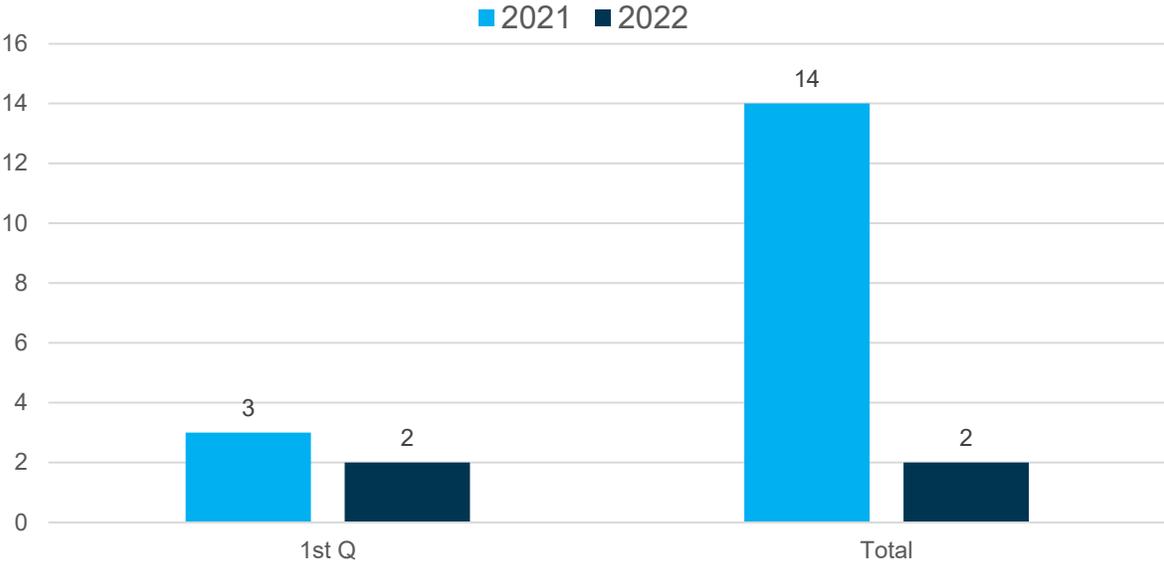


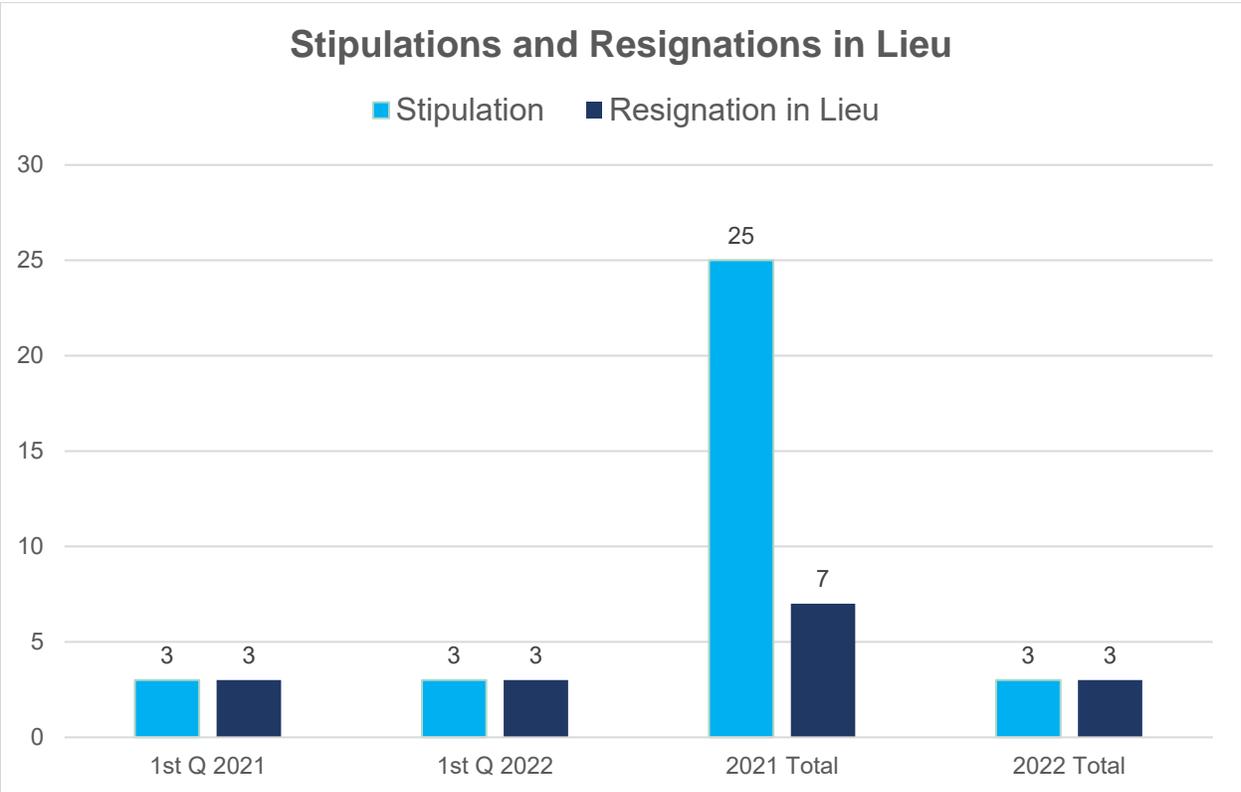
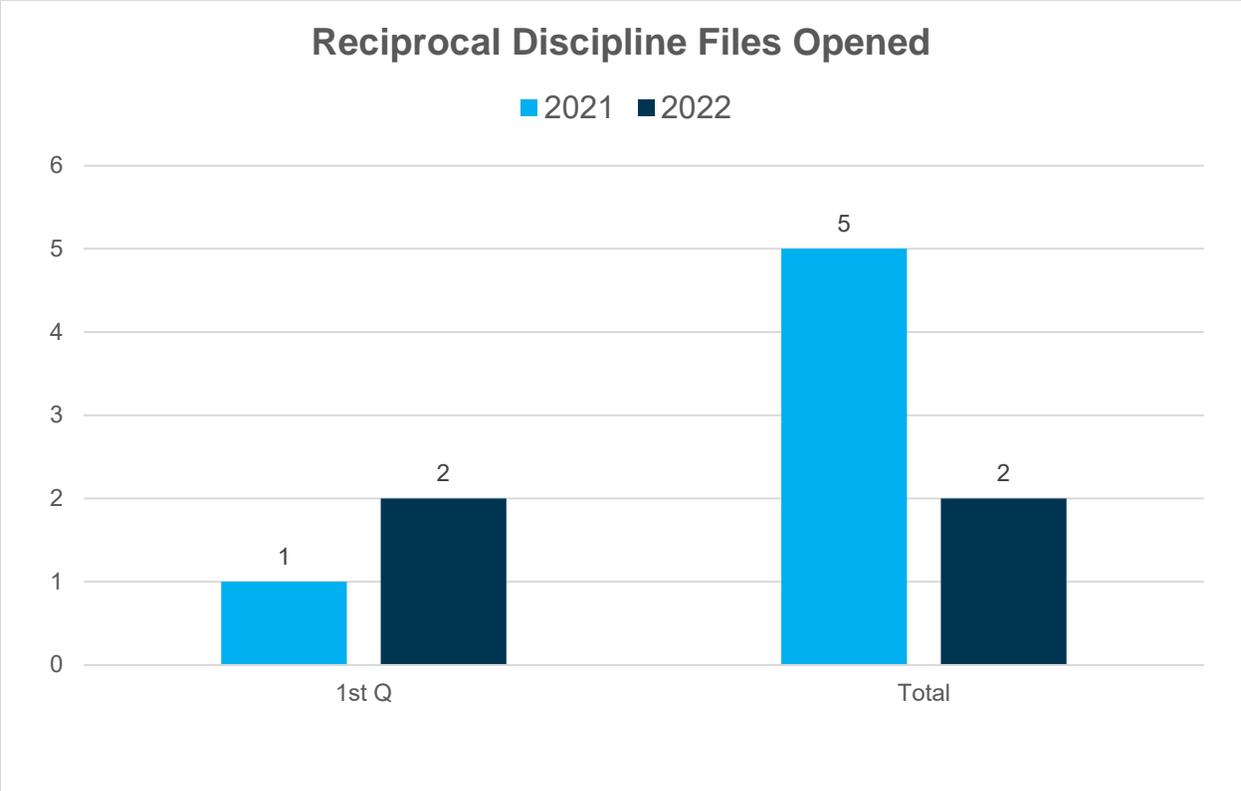
<sup>1</sup> These figures may vary from subsequent quarterly reports and statistical summaries owing to limitations on data availability at the time of issuance of these quarterly reports.

### Diversion Statistics



### Formal Complaints Filed





Hearings Held	Quarter Total
1 <sup>st</sup> Quarter	0
2 <sup>nd</sup> Quarter	TBD
3 <sup>rd</sup> Quarter	TBD
4 <sup>th</sup> Quarter	TBD
2022 Total	0
2021 Total	7

**D. Pending Proceedings<sup>2</sup>**

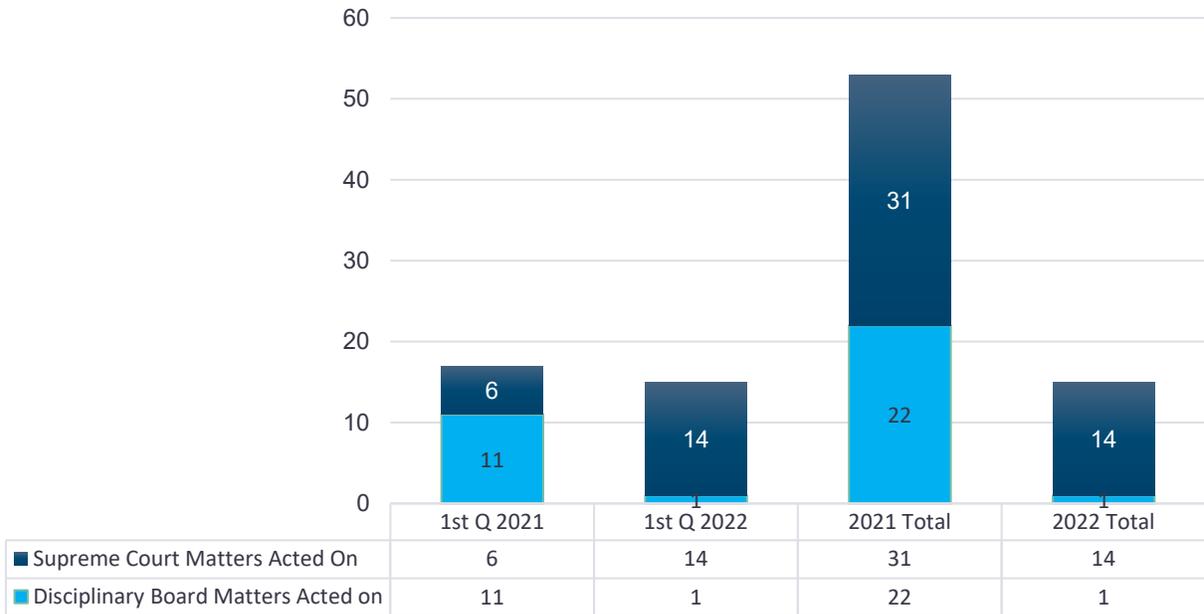
Open Proceedings	2021	2022
Ending 1 <sup>st</sup> Quarter	37	31
Ending 2 <sup>nd</sup> Quarter	38	TBD
Ending 3 <sup>rd</sup> Quarter	34	TBD
Ending 4 <sup>th</sup> Quarter	36	TBD

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<sup>2</sup> In the second table in this section, the Disciplinary Board numbers reflect Board orders on stipulations and following review after an appeal of a hearing officer's findings.

## Matters Acted on by Reviewing Bodies

■ Disciplinary Board Matters Acted on   ■ Supreme Court Matters Acted On



### E. Final Disciplinary Actions

## Final Disciplinary Actions

■ Disbarment   ■ Resignation in Lieu of Discipline   ■ Suspensions   ■ Reprimands   ■ Admonitions



#### F. Disability Found

<b>Disability Found</b>	<b>Quarter Total</b>
1 <sup>st</sup> Quarter	0
2 <sup>nd</sup> Quarter	TBD
3 <sup>rd</sup> Quarter	TBD
4 <sup>th</sup> Quarter	TBD
2022 Total	0
2021 Total	4

#### G. Discipline Costs<sup>3</sup>

<b>Quarterly Discipline Costs Collected</b>	<b>Total</b>
1 <sup>st</sup> Quarter	\$25,415.10
2 <sup>nd</sup> Quarter	TBD
3 <sup>rd</sup> Quarter	TBD
4 <sup>th</sup> Quarter	TBD
2022 Total	\$25,415.10
2021 Total	\$105,389.72

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<sup>3</sup> The cost figures may vary from amounts indicated in previous quarterly reports, statistical summaries, and annual reports, owing to limitations on the data available at the time of issuance of these quarterly reports and the final cost figures available after Accounting closes the monthly books.

## WSBA Member\* Licensing Counts 7/1/22 9:00:01 AM GMT-07:00

Member Type	In WA State	All
Attorney - Active	26,319	33,533
Attorney - Emeritus	111	119
Attorney - Honorary	359	408
Attorney - Inactive	2,689	5,858
Judicial	635	664
LLLT - Active	72	72
LLLT - Inactive	7	8
LPO - Active	796	806
LPO - Inactive	135	151
	31,123	41,619

Misc Counts	
All License Types **	42,008
All WSBA Members	41,619
Members in Washington	31,123
Members in western Washington	26,973
Members in King County	17,330
Members in eastern Washington	3,904
Active Attorneys in western Washington	22,867
Active Attorneys in King County	15,127
Active Attorneys in eastern Washington	3,241
New/Young Lawyers	6,728
MCLE Reporting Group 1	11,202
MCLE Reporting Group 2	11,072
MCLE Reporting Group 3	11,755
Foreign Law Consultant	20
House Counsel	359
Indigent Representative	10

By District		
	All	Active
0	4,504	3,403
1	2,967	2,476
2	2,182	1,772
3	2,107	1,765
4	1,380	1,164
5	3,299	2,708
6	3,498	2,911
7N	5,062	4,317
7S	6,383	5,262
8	2,312	1,967
9	5,019	4,266
10	2,906	2,400
	41,619	34,411

By State and Province	
Alabama	22
Alaska	200
Alberta	9
Arizona	370
Arkansas	20
Armed Forces Americas	3
Armed Forces Europe, Middle East	22
Armed Forces Pacific	10
British Columbia	94
California	1,974
Colorado	286
Connecticut	47
Delaware	7
District of Columbia	359
Florida	279
Georgia	92
Guam	15
Hawaii	142
Idaho	500
Illinois	164
Indiana	46
Iowa	31
Kansas	29
Kentucky	42
Louisiana	48
Maine	15
Maryland	117
Massachusetts	83
Michigan	72
Minnesota	110
Mississippi	5
Missouri	74
Montana	176
Nebraska	17
Nevada	165
New Hampshire	14
New Jersey	62
New Mexico	80
New York	264
North Carolina	86
North Dakota	9
Northern Mariana Islands	6
Nova Scotia	1
Ohio	94
Oklahoma	45
Ontario	17
Oregon	2,748
Pennsylvania	73
Puerto Rico	6
Quebec	2
Rhode Island	16
South Carolina	33
South Dakota	8
Tennessee	62
Texas	423
Utah	185
Vermont	13
Virginia	276
Virgin Islands	2
Washington	31,123
Washington Limited License	1
West Virginia	4
Wisconsin	51
Wyoming	20

By WA County		By Admit Yr	
Adams	17	1946	1
Asotin	25	1947	2
Benton	401	1948	2
Chelan	259	1949	1
Clallam	157	1950	4
Clark	984	1951	12
Columbia	8	1952	17
Cowlitz	148	1953	15
Douglas	40	1954	20
Ferry	8	1955	9
Franklin	59	1956	30
Garfield	3	1957	20
Grant	126	1958	25
Grays Harbor	113	1959	28
Island	154	1960	25
Jefferson	121	1961	21
King	17,330	1962	25
Kitsap	832	1963	29
Kittitas	91	1964	30
Klickitat	27	1965	44
Lewis	117	1966	55
Lincoln	13	1967	54
Mason	94	1968	70
Okanogan	87	1969	85
Pacific	28	1970	85
Pend Oreille	14	1971	91
Pierce	2,454	1972	140
San Juan	96	1973	220
Skagit	298	1974	210
Skamania	19	1975	259
snohomish	1	1976	312
Snohomish	1,709	1977	324
Spokane	2,038	1978	346
Stevens	53	1979	381
Thurston	1,705	1980	402
Wahkiakum	11	1981	443
Walla Walla	120	1982	423
Whatcom	602	1983	460
Whitman	73	1984	1,056
Yakima	442	1985	534
		1986	721
		1987	687
		1988	607
		1989	670
		1990	841
		1991	814
		1992	799
		1993	894
		1994	855
		1995	798
		1996	778
		1997	891
		1998	876
		1999	894
		2000	894
		2001	892
		2002	972
		2003	1,033
		2004	1,068
		2005	1,102
		2006	1,170
		2007	1,243
		2008	1,084
		2009	966
		2010	1,056
		2011	1,039
		2012	1,065
		2013	1,208
		2014	1,336
		2015	1,579
		2016	1,296
		2017	1,369
		2018	1,290
		2019	1,350
		2020	1,544
		2021	1,411
		2022	635

\* 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.



**TO:** WSBA Board of Governors

**CC:** Terra Nevitt, Executive Director

**FROM:** Gov. Alec Stephens, Chair of the Equity & Disparity Work Group  
Kim Sandher, Chair of the Experiences of the Justice System Subcommittee

**DATE:** June 28, 2022

**RE:** Report of the Equity & Disparity Work Group's Experiences of the Justice System Subcommittee for consideration of a Hybrid In-Person/Virtual Court System for Selective Continued Remote Court Access

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**DISCUSSION: Notification to the Board of Governors that the Workgroup's Proposal for a Hybrid In-Person/Virtual Court System for Selective Continued Remote Court Access was forwarded to the Washington Courts Board for Judicial Administration for their consideration.**

Attached, please see background and details of the proposal that has been accepted by the Board for Judicial Administration (BJA) as one of two initiatives they will take up next year. As the BJA takes up this proposal, they will also take on the processes for stakeholder outreach and comments. As this is the beginning of the process, the Board of Governors may also decide to provide early comment to the BJA.

#### Background

See attached Background of the Equity & Disparity Workgroup, the members of the Workgroup and the proposal that has to the BJA along with the details of the proposal.

#### Stakeholder Input

Stakeholders are a part of the workgroup, but the detailed proposal also identified stakeholders that BJA should consider as it considers implementing this proposal.

#### Attachments

- Experiences of the Justice System Subcommittee Final Report
- Focus Topic Proposal Details-- Hybrid In-Person/Virtual Court System for Selective Continued Remote Court Access
- Equity & Disparity Workgroup Roster



# WSBA

## Washington State Bar Association

**EQUITY & DISPARITY WORK GROUP**  
**Experiences of the Justice System Subcommittee Final Report**  
**to the Board of Governors**  
June 23, 2022

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### **I. BACKGROUND**

In June 2020 the Washington State Bar Association’s (WSBA) Board of Governors (the BOG), created the Equity & Disparity Work Group (the E&D Work Group) “to reckon with the harsh reality that laws, policies, and procedures in place in the legal system have historically led to disparate and inequitable results that disproportionately harm people of color.<sup>1</sup> The Washington Supreme Court’s June 4, 2020 open letter further informs the work of the E&D Work Group and the obligations of all legal practitioners in Washington State.<sup>2</sup>

With this background, the E&D Work Group was tasked with (1) reviewing rules, regulations, and laws related to the practice of law and administration of justice to identify ones that facilitate injustice; (2) soliciting feedback from stakeholders, especially marginalized communities, and (3) propose remedies the WSBA can advance pursuant to its mandate in GR 12.2.

The E&D Work Group created two subcommittees: (1) GR 12.2; and (2) Experiences of the Justice System.

Below is the final report of the Experiences of the Justice System Subcommittee of the E&D Work Group. The Subcommittee identified the focus topic of a hybrid court system for selective continued remote court access to decrease disparity and expand access to civil and criminal legal services so certain court hearings and other proceedings can continue to be access remotely post-pandemic.

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<sup>1</sup> See [Equity & Disparity Work Group \(wsba.org\)](https://www.wsba.org)

<sup>2</sup> [Judiciary Legal Community SIGNED 060420.pdf \(wa.gov\)](#)

## **II. SUBMISSION TO BOARD OF JUDICIAL ADMINISTRATION.**

In October 2021, the subcommittee drafted a focus topic issue statement. It outlined a vision, the justice gap issue, and identified benefits of remote access to courts, as well as considerations for courts. It also identified stakeholders and began outreach to solicit feedback from those stakeholders, which was overwhelmingly positive.

In April 2022, Terra Nevitt, who is a member of the subcommittee brought the Board of Judicial Administration (BJA) Strategic Initiative Request for Proposals to the subcommittee's attention. The BJA was in the process of determining its Strategic Initiative(s) for the next two years and asked for proposals for its next initiative. They were looking for a high priority issue for them to act on to bring about meaningful change in administrative policies, practices, or operations for the 2022-2024 period.

Given BJA was established to adopt policies and provide strategic leadership for the courts relating to the administration of justice, the subcommittee voted to submit our focus topic to BJA as a proposal. Our focus topic of a hybrid court system for selective continued remote access seemed like a timely, high priority initiative for BJA to take on given where we are at in the pandemic now. Ms. Nevitt submitted the focus topic as a proposal on April 21, 2022, and notified BJA that we were exploring the topic as well.

BJA evaluated our proposal and placed it second. BJA decided it had the capacity for two initiatives this year and voted on May 20, 2022 that our focus topic would be one of the two they move forward with.

The subcommittee and E&D Work Group consider this a success as BJA is better positioned to move this topic forward.

## **III. FOCUS TOPIC ISSUE STATEMENT.**

A copy of the focus topic issue statement is attached.

**EQUITY AND DISPARITY WORK GROUP****EXPERIENCES OF THE JUSTICE SYSTEM SUBCOMMITTEE****FOCUS TOPIC PROPOSAL**

Subcommittee members: Kim Sandher (Chair), Annette Clark, Jefferson Coulter, Judge David Keenan, Jonathan Ko, Patrice Kreider-Hughes, Dr. Susan Lee, Terra Nevitt, Rebecca Stith, Patricia Sully, Mir Tariq

**VISION: HYBRID COURT SYSTEM FOR SELECTIVE CONTINUED REMOTE COURT ACCESS**

In an effort to decrease disparity and expand access to civil and criminal legal services, there should be a hybrid in-person/virtual court system so certain court hearings and other proceedings can continue to be accessed remotely post-pandemic.

**ISSUE: JUSTICE GAP**

Prior to the pandemic, nearly all hearings and other court proceedings were done in person. This sometimes resulted in inequitable access to our legal system for Black persons, other persons of color, and low-income individuals.

In particular, the over-representation of Black Americans in the criminal legal system is well-documented and rooted in America's history of racism and oppression, which continues to manifest itself. Historically, Black Codes[1], vagrancy laws[2], and convict leasing[3], all interrelated, were used to continue post-slavery control over newly freed people. Such discrimination continues today, typically in less overt ways, including through bias and disparity in enforcing seemingly race-neutral laws. For example, while drug possession and distribution rates are similar across racial and ethnic groups, Black people are arrested, prosecuted, and sentenced at a much higher rate than white people[4].

Maintaining these disparities is seriously damaging. As just two examples, a criminal conviction has negative impacts on employability and access to housing and public services, and lack of affordable childcare limits the ability of low-income women to get to court, which highlights the need for flexible court schedules and online access to court[5].

**BENEFITS OF REMOTE ACCESS**

In 2003, a WA Supreme Court Task Force on Civil Equal Justice Funding found that even back then, nearly half of low-income households had access to and capacity to use the Internet[6]. While the advent of smartphones has greatly increased Internet access for low-income persons in the intervening years, approximately one-quarter of households with incomes below \$30,000 have no smartphone and over 40% of such households lack broadband services or a computer at home[7]. With resources devoted

toward providing more such households with, e.g., reconditioned donated smartphones, remote proceedings would enable legal providers to reach difficult-to-serve communities, expand language access, and allow attorneys to spend more time serving clients and less time in transit to and from the courthouse. The availability of remote proceedings could mean the difference between staying in custody or returning home to family and community. It adds accessibility for people with disabilities as well.

## CONSIDERATIONS

Remote proceedings can undermine attorney-client relationship, alter perceived credibility of witnesses, lead participants to disengage with the judicial process, and ultimately result in changed outcomes of the case[8].

**Attorney-client Relationship:** The opportunity for communication and strategizing between attorneys and clients can be reduced prior to, during, and after court proceedings when they are not together in person. This could hinder the attorney’s ability to get needed information to make the strongest possible case for their client and the client’s ability to ask questions. The technology needs to allow confidential attorney-client communication during proceedings and there should be procedures to facilitate such communication. Judges would also need to go to greater lengths to ensure parties appreciate the significance of proceedings and their options for relief.

**No One-size-fits-all<sup>1</sup>:** There is no one-size-fits all approach because courts hear a broad range of cases where remote proceedings will likely pose very different challenges, benefits, and trade-offs. Factors include complexity of a case, time-sensitivity, stakes of a win or loss, type of factfinding required, whether there are detained individuals involved or pro se individuals.

**Pro Se Parties:** A large portion of civil parties are unrepresented. Not only are they unfamiliar with the court system, but they are also disproportionately likely to have computer literacy. This means extra steps need to be taken to ensure they can navigate the new system – with additional support or prioritizing opportunities for in-person services.

**Remote Pro Bono Services:** Continued access to in-court legal support programs should be prioritized because the justice gap is narrowed through innovations such as, for example, legal help-desks that give advice to unrepresented parties and programs that station pro bono counsel in courthouses to provide on-the-spot limited representation. Remote versions of these programs should be prioritized, and extra steps should be taken to publicize these resources and identify parties and other individuals who might benefit from them. Court facilitators seem to be helping in Washington where they are available - they already help pro bono parties in family law and guardianship matters in participating counties[9].

**Technology Glitches:** Even mundane glitches could have substantial impact on fairness of court proceedings. For example, poor video and sound quality can disrupt cases to the point where due process

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<sup>1</sup> Since this document was developed, subcommittee members have been conducting initial outreach to stakeholders. Several stakeholders have noted that the consent of the individual whose liberty or wellbeing is at stake must be a criteria for remote and hybrid proceedings. Note by Terra Nevitt (4/21/22).

issues may arise. Courts must have a plan in place to respond to when a party cannot be heard, cannot hear, especially at a critical juncture in their case. This might mean on-call technical support for staff and the public who might be using the system for the first time. Party interests need to be placed above efficiency and case conclusion so that parties are not penalized for technological difficulties. Guidelines may be needed to determine when a proceeding has failed to meet a minimum level of technical quality to be considered fair.

**Technology Impacts:** Credibility or other fact finding can be impacted by how defendants, witnesses, or parties appear on screen, including their backdrop, lighting, and sound. Standards should be considered to ensure technology doesn't unfairly disadvantage litigants. This might require establishing access points for people without quality technology at home or where a witness can go to avoid the concern of witnesses being coached or reading from a script.

**Barriers for People with Disabilities.** While remote access could add accessibility for people with disabilities, it could also present a barrier for people with audio/visual disabilities.

**Persistent Digital Divide:** There are large disparities in access to technology by income, race, and geography. People with disabilities may also face obstacles. For example, studies show in the use of remote education platforms, Black and Latino students, English language learners, and students facing housing instability accessed remote technology at reduced rates in some districts. Thus, any proposals should be flexible and understanding that substantial populations, especially historically marginalized communities, may not easily transition to remote proceedings or may have difficulty using resource-intensive technology like video.

**Remote Service Quality:** Services like remote interpreter services need to be of sufficient quality. Court administrators have reported non-English speakers have a more difficult time understanding and communicating with remote interpreters, which the Washington Supreme Court has taken steps to address<sup>[10]</sup>.

**Sensitive Cases:** Some types of cases may require a cost benefit analysis and some aspects of a case might be too crucial or sensitive to conduct remotely. They may be resolved by requiring meaningful consent of all parties to move forward.

**Evidence:** Documentary and other evidence could be more difficult to present, and examining witnesses and determining the reliability of witness testimony could be diminished.

**Constitutional Rights/Privacy:** These rights need to be factored in, especially for criminal cases. The public has a right to hearings, but it might be difficult to seal a proceeding that was previously streamed to the public. It is also a concern that people could record proceedings with their phone and information could be used to, for example, deny a person a job or housing.

**Type of Cases:** Categories of cases should be evaluated separately to strike the right balance. For example, an uncontested divorce will raise different fairness considerations than an eviction from someone's home.

**Type of Hearings:** The cases would also need to be context-specific and judges would need to be cautious depending on the types of hearings and the stakeholders most impacted by reliance on remote-access technology. For example, a status conference will have different considerations than an evidentiary hearing.

**Court Resources:** Court dockets were full prior to the pandemic and became significantly backlogged because of the pandemic, but the allocated resources are the same or fewer, especially because of tax revenues reduced by the pandemic. Not all courts have access to or the budget for optimum remote-access technology. Some state courts still do not allow e-filing of documents or even telephonic hearings, although this may improve soon[11].

**Lack of Uniform Court System:** There is little to no uniformity among courts and court operations in Washington.

#### **STAKEHOLDERS:**

Members of communities most likely to suffer if remote proceedings go poorly:

- Communities of color
- Immigrant communities
- Communities of people with disabilities
- Communities that don't have access to technology
- Low-income communities

Community advocates

Public defenders and prosecutors

Civil legal service providers

Tenant representatives

Survivors of domestic violence

Public health experts

Disability rights advocates

Court employees

**RESOURCES:**

Washington Courts Gender and Justice Commission

Washington Race Equity & Justice Initiative

Benefits Law Center

Black Alliance of Thurston County

Center for Children & Youth Justice

Columbia Legal Services

Communities Rise

Council on Public Defense

Cowlitz-Wahkiakum Legal Aid

District and Municipal Court Judges Association

Resolution Washington

Eastside Legal Assistance Program

Endowment for Equal Justice

Fair Work Center

JustLead Washington

King County Prosecuting Attorney's Office

Lavender Rights Projects

Legal Counsel for Youth and Children

Legal Foundation of Washington

Legal Voice

Northwest Consumer Law Center

Northwest Immigrant Rights Project

Northwest Justice Project

Office of Civil Legal Aid

Civil Legal Aid Oversight Committee

QLaw Foundation of Washington

QLaw Association of WA

Racial Justice Consortium

Seattle University School of Law

Solid Ground

Spokane Community Against Racism (SCAR)

Superior Court Judges Association

TeamChild

Thurston County Volunteer Legal Services (TCVLS)

University Legal Assistance

Washington Defender Association

Washington State Access to Justice Board

Washington Court Management Association

Washington State Human Rights Commission

Washington State Office of Public Defense

Washington State Pro Bono Council

Washington State House of Representatives

Administrative Office of the Courts

Social and Economic Sciences Research Center, Washington State University

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[1] Under such Codes, a Black person could not vote, testify in court, serve on juries, or exercise many other rights enjoyed by white persons. See, e.g. Texas Black Codes, [https://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtid=3&psid=3681](https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=3681)

[2] Vagrancy laws targeted newly freed Black persons, which meant, for example, that any Black person who could not prove he or she worked for a white employer could be arrested, convicted, and forced into dangerous labor conditions. See, e.g., Slavery by Another Name History Background, [https://bento.cdn.pbs.org/hostedbento-prod/filer\\_public/SBAN/Images/Classrooms/Slavery%20by%20Another%20Name%20History%20Background\\_Final.pdf](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/SBAN/Images/Classrooms/Slavery%20by%20Another%20Name%20History%20Background_Final.pdf).

[3] This was a system of incarceration administered by both state governments and private industry, which allowed enslavement of people who had been convicted of a “crime” – such as “walking without a purpose” or “walking at night”, disorderly conduct, keeping and visiting disorderly houses, drunkenness, etc. See, e.g., Convict Leasing <https://eji.org/news/history-racial-injustice-convict-leasing>

[4] Race, Mass Incarceration, and the Disastrous War on Drugs (2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>

[5] Washington Courts Gender and Justice Commission 2021: How Gender and Race Affect JusticeNow: [https://www.courts.wa.gov/subsite/gjc/documents/GJ\\_Study\\_Fact\\_Sheet\\_English.pdf](https://www.courts.wa.gov/subsite/gjc/documents/GJ_Study_Fact_Sheet_English.pdf)

[6] The Washington State Civil Legal Needs Study (2003), <https://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>

[7] Digital divide persists even as Americans with lower incomes make gains in tech adoption (2021), [https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final\\_0.pdf](https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final_0.pdf)

[8] Principles for Continued Use of Remote Court Proceedings (2020), [https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final\\_0.pdf](https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final_0.pdf)

[9] Courthouse Facilitators, [https://www.courts.wa.gov/committee/?fa=committee.home&committee\\_id=108](https://www.courts.wa.gov/committee/?fa=committee.home&committee_id=108)

[10] *In the Matter of the Suggested Amendment to GR 11.3—Remote Recording*, Order No. 25700-A-1325 (Wash. 2020), [https://www.courts.wa.gov/court\\_rules/adopted/pdf/25700-A-1325.pdf](https://www.courts.wa.gov/court_rules/adopted/pdf/25700-A-1325.pdf)<sup>[r1]</sup>

[11] Statewide Electronic Filing is on the Way to Washington Courts (2021), <https://nwsidebar.wsba.org/2021/03/17/statewide-electronic-filing-is-on-the-way-to-washington-courts>



## WSBA Equity & Disparity Work Group Roster

**Alec Stephens**

WSBA Equity & Disparity Workgroup, Chair  
 Email: [alecstephensjr@gmail.com](mailto:alecstephensjr@gmail.com)  
**(GR 12.2 Subcommittee)**

<p><b>Hunter Abell</b>          WSBA Governor          Email: <a href="mailto:hbell@williamskastner.com">hbell@williamskastner.com</a>  <b>(TBD Subcommittee)</b></p>	<p><b>Annette Clark</b>          Seattle University School of Law          Email: <a href="mailto:annclark@seattleu.edu">annclark@seattleu.edu</a>  <b>(Experiences Subcommittee)</b></p>
<p><b>Jefferson Coulter</b>          WSBA Court Rules and Procedures Committee          Email: <a href="mailto:jeffersonc@nwjustice.org">jeffersonc@nwjustice.org</a>  <b>(Experiences Subcommittee)</b></p>	<p><b>Angelica Gonzalez</b>          Latina/o Bar Association of Washington          Email: <a href="mailto:development@lbaw.org">development@lbaw.org</a></p>
<p><b>Melissa Hall (someone else is going to fill this role going forward, TBD)</b>          QLaw Association          Email: <a href="mailto:melissa@smol-law.com">melissa@smol-law.com</a>  <b>(TBD Subcommittee)</b></p>	<p><b>Monte Jewell</b>          WSBA Committee on Professional Ethics          Email: <a href="mailto:mjewell@fsseattle.org">mjewell@fsseattle.org</a>  <b>(GR 12.2 Subcommittee)</b></p>
<p><b>Joanne Kalas</b>          Vietnamese Bar Association of Washington*          Email: <a href="mailto:jckalas@amazon.com">jckalas@amazon.com</a></p>	<p><b>Judge David Keenan</b>          Access to Justice Board          Email: <a href="mailto:David.Keenan@kingcounty.gov">David.Keenan@kingcounty.gov</a></p>
<p><b>Jonathan Ko</b>          Washington Attorneys with Disabilities Association          Email: <a href="mailto:jonathan.ko@gmail.com">jonathan.ko@gmail.com</a>  <b>(Experiences Subcommittee)</b></p>	<p><b>Patrice Kreider-Hughes</b>          WSBA Equity &amp; Disparity Workgroup, At-Large          Email: <a href="mailto:patrice@kreiderhugheslaw.com">patrice@kreiderhugheslaw.com</a>  <b>(Experiences Subcommittee)</b></p>
<p><b>Dr. Susan Le</b>          Gonzaga University School of Law          Email: <a href="mailto:lee@gonzaga.edu">lee@gonzaga.edu</a>  <b>(Experiences Subcommittee)</b></p>	<p><b>Ailene Limric</b>          WSBA Equity &amp; Disparity Workgroup, At-Large          Filipino Lawyers of Washington          Email: <a href="mailto:ailenel@McKinstry.com">ailenel@McKinstry.com</a>  <b>(GR 12.2 Subcommittee)</b></p>
<p><b>Rajeev Majumdar</b>          WSBA Board of Governors, Immediate Past President          Email: <a href="mailto:rajeev@whatcomlaw.com">rajeev@whatcomlaw.com</a>  <b>(No subcommittee)</b></p>	<p><b>Molly Matter</b>          WSBA Civil Rights Section*          Email: <a href="mailto:amendmentxv@gmail.com">amendmentxv@gmail.com</a>  <b>(GR 12.2 Subcommittee)</b></p>
<p><b>John Meyers</b>          Vietnamese Bar Association of Washington*          Email: <a href="mailto:meyers206@gmail.com">meyers206@gmail.com</a></p>	<p><b>Ron Park</b>          Korean American Bar Association of Washington          Email: <a href="mailto:RPark@friedmanrubin.com">RPark@friedmanrubin.com</a>  <b>(GR 12.2 Subcommittee)</b></p>
<p><b>Rania Rampersad</b>          South Asian Bar Association of Washington          Email: <a href="mailto:rania.rampersad@gmail.com">rania.rampersad@gmail.com</a>  <b>(GR 12.2 Subcommittee)</b></p>	<p><b>Kim Sandher</b>          WSBA Equity &amp; Disparity Workgroup, At-Large          Email: <a href="mailto:KSandher@pivotallawgroup.com">KSandher@pivotallawgroup.com</a>  <b>(Experiences Subcommittee – Likely CHAIR)</b></p>
<p><b>Laura Sierra</b>          WSBA Equity &amp; Disparity Workgroup, At-Large</p>	<p><b>Chalia Stallings-Ala'ilima</b>          WSBA Civil Rights Section*</p>

Email: <a href="mailto:lasierra@microsoft.com">lasierra@microsoft.com</a> <b>(GR 12.2 Subcommittee - CHAIR)</b>	Email: <a href="mailto:Chalia.SA@atg.wa.gov">Chalia.SA@atg.wa.gov</a> <b>(GR 12.2 Subcommittee)</b>
<b>Rebecca Stith</b> WSBA Council on Public Defense Email: <a href="mailto:rstithlaw@gmail.com">rstithlaw@gmail.com</a> <b>(Experiences Subcommittee)</b>	<b>Patricia Sully</b> University of Washington Tacoma Legal Pathways Email: <a href="mailto:psully@uw.edu">psully@uw.edu</a> <b>(Experiences Subcommittee)</b>
<b>Mir Tariq</b> WSBA Practice of Law Board Email: <a href="mailto:mir.a.tariq@gmail.com">mir.a.tariq@gmail.com</a> <b>(Experiences Subcommittee)</b>	<b>Aileen Tsao</b> Asian Bar Association of Washington Email: <a href="mailto:Aileen.tsao@gmail.com">Aileen.tsao@gmail.com</a>
<b>Bruce Turcott</b> Board of Bar Examiners Email: <a href="mailto:bruce.turcott@atg.wa.gov">bruce.turcott@atg.wa.gov</a> <b>(No subcommittee)</b>	<b>Barbara Nahouraii</b> WSBA Staff Liaison Email: <a href="mailto:barbaran@wsba.org">barbaran@wsba.org</a> <b>(Experiences Subcommittee)</b>
<b>Terra Nevitt</b> WSBA, Executive Director Email: <a href="mailto:terran@wsba.org">terran@wsba.org</a> <b>(Experiences Subcommittee)</b>	<b>Kirsten Abel</b> WSBA Staff Liaison Email: <a href="mailto:kirstena@wsba.org">kirstena@wsba.org</a> <b>(GR 12.2 Subcommittee)</b>

\*For purposes of voting, each group represented will have one vote.

**TO:** Board of Governors  
**FROM:** Terra Nevitt, Executive Director  
**DATE:** July 5, 2022  
**RE:** Revisit WSBA COVID-19 Vaccination Policy for Volunteers

**ACTION:** Revisit WSBA's COVID-19 Vaccination Policy for Volunteers considering changes in the local and national response and management of COVID-19.

### Summary

On August 21, 2021 the WSBA Board of Governors approved a policy prohibiting WSBA volunteers from engaging in in-person volunteer work for the WSBA unless fully vaccinated against COVID-19. WSBA moved quickly to implement the policy, creating a [web page](#) with instructions to submit proof of vaccination confidentially. To date, 103 WSBA volunteers have received a WSBA vaccine verification.

On March 11, 2022 the Board of Governors revisited the policy and agreed not make any changes to the vaccination policy and that the issue not be raised again until the Court lifts its vaccination mandate. Additionally, the motion included a booster requirement.

Local and national trends and responses to COVID-19 continue to evolve and it has been suggested that, although the Court has not lifted its vaccination mandate, the Board should revisit the policy.

### Considerations

1. If the policy is sunset, other health and safety policies established by the Executive Director would still apply. Specifically, the [attendee policy](#) would continue to cover volunteers attending certain WSBA events in-person. This policy is expected to be modified along side changing public health guidance.
2. If the policy is maintained, consider clarifying when a booster vaccine is required.
3. The volume of WSBA volunteers returning to in-person meetings has and is expected to continue to increase throughout the coming year. This increases potential exposures and increases the volume of vaccinations being verified by WSBA staff.

### Statistical Information

#### **Center for Disease Control Guidance**

The CDC recommends COVID-19 primary series vaccines for everyone ages 6 months and older, and COVID-19 boosters for everyone 5 years and older, if eligible. The recommended number of boosters varies depending on age and type of vaccine.

The CDC recommends use of COVID-19 Community Levels (detailed below) to determine the impact of COVID-19 on communities.

In Washington, 73% of the population is fully vaccinated and 54.8% of the fully vaccinated population have received the first booster dose.

Low	Medium	High	Status of Washington Counties	
<ul style="list-style-type: none"> <li>Stay <a href="#">up to date</a> with COVID-19 vaccines</li> <li><a href="#">Get tested</a> if you have symptoms</li> </ul>	<ul style="list-style-type: none"> <li>If you are <a href="#">at high risk for severe illness</a>, talk to your healthcare provider about whether you need to wear a mask and take other precautions</li> <li>Stay <a href="#">up to date</a> with COVID-19 vaccines</li> <li><a href="#">Get tested</a> if you have symptoms</li> </ul>	<ul style="list-style-type: none"> <li>Wear a <a href="#">mask</a> indoors in public</li> <li>Stay <a href="#">up to date</a> with COVID-19 vaccines</li> <li><a href="#">Get tested</a> if you have symptoms</li> <li>Additional precautions may be needed for people <a href="#">at high risk for severe illness</a></li> </ul>	Mar 2022	Jul 2022
Low	Medium	High	14	13
Medium	High	Low	16	19
High	Low	Medium	9	7

People may choose to mask at any time. People with symptoms, a positive test, or exposure to someone with COVID-19 should wear a mask.

**Washington State Department of Health & Governor’s Office**

As of March 12, 2022, masks are no longer be required in most indoor public spaces. They are still required in healthcare and medical facilities, long-term care settings, public transportation, and correctional facilities. Business and organizations may choose to implement their own mask requirements and the county urges respect for people’s choices to wear a mask. As of July 2022, this general public order is still in effect.

**King County**

The King County vaccine verification order ended March 1, 2022. Proof of vaccination or a negative test are no longer required to enter bars, restaurants, clubs, gyms, arts and entertainment venues, outdoor events with over 500 people including sports events, concerts and performances; indoor event spaces rented for private gatherings, such as weddings and parties. Business may still require proof of vaccination. The county urges businesses to continue to improve ventilation, support vaccination for employees, encourage employees to stay home when sick, and enforce any indoor mask policies.

**Washington State Supreme Court**

On August 18, 2021, the State Supreme Court issued Order No. 25700-B-699 requiring vaccination for employees of the Supreme Court. This order is still in effect.

Attachments

COVID-19 Volunteer Vaccination Policy, amended March 11, 2022

# WASHINGTON STATE BAR ASSOCIATION

## POLICY

### **WSBA VOLUNTEER COVID-19 VACCINATION MANDATE FOR WSBA IN-PERSON MEETINGS AND EVENTS**

**Approved August 21, 2021**

**Amended March 11, 2022**

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and on February 24, 2021, President Biden continued the national emergency; and

WHEREAS, the Supreme Court of Washington has strongly encouraged the Washington State Bar Association to adopt and implement similar vaccination requirements for their Workers as set forth in their order No. 25700-B-669 of August 18, 2021, mandating vaccines for all Supreme Court workers, which includes any “employee, independent contractor, service provider, volunteer, or through any other formal or informal agreement to provide goods or services, whether compensated or uncompensated”; and

WHEREAS, it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all volunteers who appear in-person at our events or on-site at our facilities, to comply with health and safety measures; and

WHEREAS, the WSBA has regulatory functions and provides services, to the members and the public in every county in our state with the use of volunteers, and many of our volunteers have the potential to interact with the members, the staff, or the public on a regular basis, and they all interact with some portion of the community at large to varying degrees before and/or after volunteer hours;

and

WHEREAS this board has the authority to set policies that are reasonably necessary for carrying out and fulfilling its duties under GR 12, RCW 2.48, and our Bylaws.

NOW, THEREFORE, the following policy applicable to volunteers is hereby ADOPTED:

1. **Prohibitions.** This policy prohibits any volunteer, including the Board of Governors, from engaging in in-person volunteer work for the WSBA, or as a representative of WSBA, if the volunteer has not been fully vaccinated, which includes a booster dose, against COVID-19. A volunteer must either be vaccinated or qualify for an exemption to be eligible to volunteer in-person or on-site.
2. **Exemptions from Vaccine Requirement.**
  - a) Volunteers are not required to get vaccinated against COVID-19 if they are entitled under the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation to the requirements of this order.
  - b) To the extent permitted by law, before providing a disability-related reasonable accommodation to the requirements of this order, the WSBA must obtain from the individual requesting the accommodation documentation from an appropriate healthcare or rehabilitation professional authorized to practice in the State of Washington stating that the individual has a disability that necessitates the accommodation and the probable duration of the need for the accommodation.
  - c) To the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this policy, the WSBA must document that the request for an accommodation has been made and the document must include a statement regarding the way in which vaccinations conflict with the religious observance, practice, or belief of the volunteer.

- d) Reasonable accommodations will be determined by the Executive Director on an individualized basis and, where a volunteer is exempt from this mandate, accommodations may include but are not limited to requirements to wear a mask, obtain viral testing regularly, socially distance, appear virtually, or work remotely.
- e) Like the Independent Contractors mentioned in §4(c) of the Supreme Court's Order this policy applies to volunteers only when their services are performed in person or on site, regardless of frequency, and regardless of whether other staff or volunteers are present.

3. Acceptable Proof of Full Vaccination Against COVID-19: Where required above, volunteers

for the WSBA must provide proof of full vaccination against COVID-19. Acceptable proof may include:

- a) CDC COVID-19 Vaccination Record Card or photo of the card;
- b) Documentation of vaccination from a health care provider or electronic health record;
- c) State immunization information system record;
- d) Other forms approved by Human Resources.

Personal attestation is not an acceptable form of verification of COVID-19 vaccination.

This policy will take effect on 8/22/21 and shall remain in effect until further policy change.

Approved by the WSBA Board of Governors on August 21, 2021.



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Kyle D. Sciuchetti, WSBA# 26264  
WSBA President, 2020-2021

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Governor Brent Williams-Ruth  
**DATE:** July 7, 2022  
**RE:** Supporting Timely Comments on Court Rule Proposals by WSBA Entities

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**ACTION (SECOND READ):** Amend the WSBA Bylaws (C.4(a), C.6 and E.2) to provide the Board Legislative Committee authority to authorize a WSBA entity to comment to the Washington Supreme Court on a proposed rule change when the full Board of Governors will not meet before the comments are due.

### **Background**

*This proposal came before the Board of Governors for a first read at the May 2022 meeting; governors requested no additional changes or information at that time.*

The Board of Governors has recognized that there are certain critical situations requiring nimbleness in decision making to meet quick deadlines. Foremost are decisions in the realm of proposed state legislation and court rules. For WSBA and its entities to meaningfully engage with such proposals, we often do not have time to wait for the entire Board of Governors to meet, especially during the legislative session. For this reason, we have approved policies that delegate decision-making authority to the Board Legislative Committee (BLC) to allow sections and other entities to comment on state legislation and court rules.

This legislative session, however, we became aware of an inconsistency within the WSBA Bylaws and BOG policy. Policy 1501 allows the BLC to authorize entities to comment on proposed court rules. But language in the WSBA Bylaws only explicitly carves out state legislation under the BLC's authority: The BLC can "propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be in the Washington State Legislature."

This creates a problem, and one we should address quickly. Members of the Supreme Court have themselves communicated how critical it is to receive member feedback on proposed rule amendments, and the WSBA regularly sends out wide and specific notice about rule changes to lawyers who may be affected. We as the Board of Governors should support our sections and other entities as they respond. Further, unlike with legislators and legislation, the risk of "germaneness" and confusion seems to be minimized with court rules: The court is able to distinguish between WSBA speech and WSBA entity speech, and comments are very likely to be considered within the scope of GR 12.2.

### **Proposal**

I propose a simple Bylaw amendment expanding the BLC's authority to include comments on court rules so we can practice our policy. Historically, the BLC has considered comments on court rules, and the system works well to provide timely authorization for our sections and other entities. This is a matter of alignment now that we know of the Bylaw/Policy inconsistency. (Note: Our practice would be to continue to have entities seek full Board of Governor authorization if they are able to do so and still meet the comment deadline.)

### **Stakeholder Input**

At the April Executive Committee, there was discussion about the possibility of resolving the Bylaw/policy misalignment by allowing the full Board of Governors to pre-authorize entity comments on proposed court rules by establishing criteria that—if met—would allow the comments to go forward upon review by the Executive Director. I strongly prefer continuing to have entities seek case-by-case authorization for court rule comments for several reasons: It allows both the entity and the Board of Governors to proactively clear up any misunderstanding or misinformation inherent in the comment; it alerts the Board of Governors to potential issues/concerns we may not otherwise hear about; and it allows the Board of Governors to consider whether we, too, might want or need to send in a comment.

*WSBA RISK ANALYSIS: General Counsel notes that the WSBA Bylaws need to provide appropriate authority for the Board of Governors to take the actions specified in their policies. This proposal would provide authority for the Board Legislative Committee to approve entity court rule comments; such a change would decrease legal risk of following the policy.*

*WSBA FISCAL ANALYSIS: If the BLC continues to meet remotely to consider entity requests to comment, the fiscal impact to the organization is negligible; in fact, when compared to the likelihood that the entire Board of Governors will be called into special meetings to authorize comments if we do not align our Bylaws and policies, the cost savings—in terms of governor and staff time—might be significant.*

### **Attachments**

*Redline of proposed WSBA Bylaw amendments  
Policy 1501*

## **IV. GOVERNANCE**

### **A. BOARD OF GOVERNORS**

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

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

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

#### **2. Duties**

- a. The BOG elects the President-elect of the Bar.
- b. The BOG selects the Bar's Executive Director and annually reviews the Executive Director's performance.
- c. Regardless of the method by which any person is selected to serve on the BOG, each Governor will act in the best interest of all members of the Bar and the public. Each Governor is primarily obligated to ensure that the Bar fulfills the mandate set forth in General Rule 12.1, carries out the mission of the Bar, and operates in accordance with the Bar's Guiding Principles.
- d. Each Governor is expected to engage with members about BOG actions and issues, and to convey member viewpoints to the Board. In representing a Congressional District, a Governor will at a minimum: (1) bring to the BOG the perspective, values and circumstances of her or his district to be applied in the best interests of all members, the public and the Bar; and (2) bring information to the members in the district that promotes appreciation of actions and issues affecting the membership as a whole, the public and the organization.
- e. Each Governor appointed to serve as a BOG liaison to a committee, task force, council, section, board, or other entity has the responsibility to fulfill those liaison duties on behalf of the BOG. Governors appointed to serve as BOG liaisons are not voting members of those entities. BOG liaisons must not be excluded but will not participate in those entities' executive sessions or confidential deliberations except when requested to do so as a resource.

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

### **3. Term**

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

### **4. Vacancy**

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

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

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

### **1. President**

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

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

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

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

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

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

### **4. Treasurer**

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

### **5. Executive Director**

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

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

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

#### **7. Vacancy**

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

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

#### **C. BOARD OF GOVERNORS COMMITTEES**

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

PROPOSED AMENDMENTS TO BOG LEGISLATIVE COMMITTEE C.4.a, c.6) and E.2 - REDLINE

- a. Purpose: The BOG Legislative Committee is authorized to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation. [The BOG Legislative Committee is authorized to review and approve proposed comments to Court Rules, so long as the deadline for submission is before the next regularly scheduled meeting of the Board of Governors.](#)
- b. Membership: The President appoints the Committee, which consists of the following voting members:
  - 1) Eight Governors, including the Treasurer;
  - 2) the President;
  - 3) the President-elect; and
  - 4) the Immediate Past President.

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

- c. Procedure: Consideration of legislation by the Committee proceeds in the following order:
  - 1) The Committee first determines, by a two-thirds majority vote of those voting, whether the legislation is within the scope of GR 12.1 and whether it is appropriate under the circumstances for the Committee to determine a position on the legislation on behalf of the BOG.
  - 2) If the determination in subsection (1) above is affirmative, then the Committee will determine by a two-thirds majority vote of those voting what position, if any, to adopt on the legislation on behalf of the BOG.
  - 3) The Committee may determine that major or novel legislative issues will be referred to the BOG for consideration.
  - 4) Any issues to be considered or actions taken by the Committee must be promptly communicated to the BOG by electronic delivery; and actions taken by the Committee must also be communicated at the next BOG meeting.
  - [5\) Due to the Committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between meetings the Committee may discuss and vote on issues by e-mail; however, if any Committee member objects to using an e-mail process for any particular issue, the Committee will take up that issue at its next scheduled Committee meeting.](#)
  - [5\)6\) When reviewing a proposed comment for a Court Rule that has a submission deadline prior to the next regularly scheduled Board of Governors meeting, a simple majority of the BOG Legislative Committee present at a regular or special meeting of the Committee may approve the comment for submission with the same effect as if it has been approved by the Board of Governors.](#)
- d. Quorum: A quorum consists of a majority of the Committee's voting members.
- e. Committee Meetings: The Committee may meet in executive session, with no persons present except the members of the Committee, other members of the BOG, the Executive

Director, the Legislative Liaison, and such others as the Committee may authorize. Committee meetings may be held electronically.

#### **D. POLITICAL ACTIVITY**

##### **1. Board of Governors**

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

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

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

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

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

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

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

Governors, other officers, and the Executive Director must not publicly support or oppose, in an election, any candidate for public elective office in the State of Washington the prerequisites for which

include being an attorney, except where the candidate is a member of that person's immediate family. This restriction applies fully to prohibit:

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

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

#### **4. Other**

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

#### **5. Letterhead**

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

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

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

1. As the chief spokesperson of the Bar, the President has the authority to take action to execute the policies established by the BOG, and to serve as the representative of the Bar in connection therewith.
2. The BOG Legislative Committee is specifically authorized, under the terms of these Bylaws, to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation. [The BOG Legislative Committee is further authorized to approve proposed comments to Court Rules, so long as the deadline for the comment submission occurs before the next regularly scheduled Board of Governors meeting.](#)

3. The Executive Director may communicate with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters and policies established by the BOG, and is not required to obtain prior approval from the BOG before doing so.
4. Bar employees whose job duties require them to do so, and independent counsel retained at the direction of the President or the BOG, are specifically authorized to represent the Bar, or any committee, section, or task force thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State as may be necessary to perform their job duties.

PROPOSED

# WSBA LEGISLATION AND COURT RULE COMMENT POLICY

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*(Amended November 13, 2015 Board of Governors Meeting)*

\*Please see *Sections Legislative Comment Policy*, adopted June 2020, for policy as applicable to Sections.

**Purpose:** This policy governs Panel, Committee, Division or Council (hereinafter collectively referred to as 'Entity') authority to comment publicly on state and federal court rules and legislation, and clarifies the conditions under which such Washington State Bar Association (WSBA) entities can comment publicly on state and federal court rules, legislation, executive orders, administrative rulemaking, and international treaties. For purposes of this policy, to “comment” means to take a position (for example, expressing support, concerns, or opposition) with or without accompanying statements explaining the position; it also means to provide input (for example, suggested amendments, recommendations, analysis, or comments to the media) without taking a position.

**Policy:** The Board of Governors, the Executive Director, the WSBA Legislative Committee, the Board of Governors Legislative Committee, and the Legislative Affairs Manager, are authorized to refer legislative proposals (including bills, initiatives, referenda, and resolutions) or proposed court rule changes<sup>1</sup> to Entities of the WSBA for their consideration. Entities are authorized to appear before or otherwise publicly comment on legislation to the Legislature or Congress, or a committee of the Legislature or Congress, or to publicly comment on any proposed state rule change pursuant to Washington Supreme Court General Rule (GR) 9(f), or to publicly comment on any federal proposed rule change, only under the following conditions:

1. The Entity may not comment publicly on federal legislation or federal court rules without prior written authorization of the Board of Governors, and such authorization may be subject to limitations established by the Board of Governors.
2. The Entity may not publicly comment unless: (a) at least 75% of the total membership of the Entity's governing body has first determined that the matter under consideration meets GR 12; and (b) after determining that the matter meets GR 12, that the comments are the opinion of at least 75% of the total membership of the governing body of the Entity. A subcommittee or other subset of an Entity may not publicly communicate its comments on proposed legislation or court rules.

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<sup>1</sup> The WSBA Court Rules and Procedures Committee routinely vets proposed Court Rules to various WSBA Entities, scrubs the proposals, and then either supports or opposes having the Board of Governors recommend those proposals to the Supreme Court Rules Committee. This process continues to be permitted under this Policy.

3. The Entity shall not publicly communicate comments on a legislative or rule proposal that are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.
4. The Entity shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to publically communicating with anyone. If authorization is granted, Entities must clearly state that their comments are solely those of the Entity, and not the official comments of the WSBA. In order to officially comment on behalf of the WSBA, the Entity must have the prior written approval of the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. Entities are not permitted to comment on local or municipal policies or legislation.
5. The Entity is responsible for advising the Executive Director, the Board of Governors, the Board of Governors Legislative Committee, and the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the Entity. The Entity shall advise the Legislative Affairs Manager of any proposed action intended to publicly communicate its comments on legislation in advance of taking such action. Unless otherwise authorized by the Executive Director, the Board of Governors, or the Board of Governors Legislative Committee, the Entity shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action.
6. In all cases, the Entity representatives shall cease to publicly communicate the comments of the Entity if requested to do so by the Executive Director, the Board of Governors, the Board of Governor's Legislative Committee, or the President of the Bar; and, in the case of comments on legislative proposals, the Entity representatives shall also cease to publicly communicate the comments of the Entity if requested to do so by the Legislative Affairs Manager.
7. Entities are prohibited from joining or affiliating with groups or associations whose legislative advocacy reaches beyond the areas allowable under GR 12.

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Nam Nguyen, Diversity Committee Co-Chair  
Gov. Sunitha Anjilvel, Diversity Committee Co-Chair  
**DATE:** June 27, 2022  
**RE:** SECOND READ: Diversity Committee's Proposal to Become a Council

---

**SECOND READ AND REQUEST FOR APPROVAL:** The Diversity Committee is requesting a second read and approval of its proposal to become the Diversity, Equity and Inclusion (DEI) Council.

The Diversity Committee presented the proposal to become a council for a first read at your Board of Governors meeting in Spokane on May 19, 2022.

At your May meeting, you received and discussed our proposal, which included the draft DEI Council Charter and accompanying draft changes to the WSBA Bylaws and Committees and Board Policy.

We request a second read and approval of the proposal at your July meeting. We are grateful for the BOG's consideration of our proposal and look forward to our discussion.

Attachments

Memo and Proposal dated May 2, 2022

Proposed DEI Council Charter

Proposed Bylaw Amendments

Proposed Committee and Board Policy Amendments

Memo to BOG Dated September 14, 2021 (which includes as an attachment 2012 memo about the merger of the BOG Diversity Committee and WSBA Diversity Committee)

Letter of Support from Pro Bono Council

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Nam Nguyen, Diversity Committee Co-Chair  
Gov. Sunitha Anjilvel, Diversity Committee Co-Chair  
**DATE:** May 2, 2022  
**RE:** Diversity Committee's Proposal to Become a Council

---

**FIRST READ:** The Diversity Committee is requesting a first read of its proposal to become the Diversity, Equity and Inclusion (DEI) Council. The proposal includes its draft DEI Council Charter and accompanying draft changes to the WSBA Bylaws and Committees and Board Policy.

## **PROPOSAL**

### ***What is the problem we are trying to solve?***

The current [WSBA Bylaws](#) and [Committees and Board Policy](#) do not account for the Diversity Committee's unique history, membership makeup and role, and has conflicting language about the Committee.

In 2012, the Board of Governors' Diversity Committee (made up of only BOG members) merged with the WSBA Diversity Committee (made up of only non-BOG members). It appears that when this merger occurred, the WSBA Bylaws and Committees and Board Policy were not changed to reflect the merger. As a result, there is conflicting language.

WSBA Bylaw IV(C)(1) provides that the Diversity Committee is one of the BOG standing committees and indicates that only Governors may vote on standing committees. The Committees and Board Policy, however, describes the Diversity Committee among the nine other committees outside of the standing committees. The Policy provides that all members of all committees shall be active members with the exception of the Diversity Committee who includes both general members and members of the BOG.

The conflicting language has not only created confusion on who can be a member of the Committee and who can vote, but it also limits the diversity of the committee's membership. Given the Committee's purpose – to promote diversity, equity and inclusion in the legal profession and legal system, it is problematic that the Committee's voting membership is limited to only BOG members and membership is limited to only active members.

### ***What is the proposed solution?***

We propose that the Diversity Committee become a council under WSBA Bylaw XI(C) which provides that "councils are created and authorized by the BOG to serve as advisory committees to the BOG on matters and issues of particular import of the Bar." Diversity, equity and inclusion have been and are part of the WSBA Strategic Goals which are consistent with the Bar's purposes in General Rule 12.2. WSBA Bylaw XI(C) provides that charters can set for a council's membership, duties and tasks. Attached is our draft charter which outlines our duties and tasks and membership.

The chart provides a broader diversity of voting members who would include not only active members and BOG members, but also judicial status members, pro bono status members, law students, faculty and staff as well as members of the public.

**How is the solution expected to solve the problem?**

Approval of the Diversity Committee becoming a council and its charter would resolve the conflicting language and make clear the Committee’s duties and tasks, provide for a greater diversity in its voting membership and ultimately better advance the WSBA’s Strategic Goal to advance diversity, equity and inclusion.

**What are the suggested next steps?**

We propose that the BOG engage in a first reading of our proposal which includes our draft charter and accompanying changes to the Bylaws and Committees and Board Policy. We are open to the BOG’s feedback to inform the second reading which we request be done at the BOG’s July 2022 meeting.

**BACKGROUND**

In September 2021, the Diversity Committee reported to the BOG that it would be exploring the possibility of becoming a council (see attached memo to BOG dated September 14, 2021). We provided the reasons for this exploration which are outlined in the memo and the problem section above.

Since then, we have concluded that becoming a council is the best solution for solving the problems outlined above and in our September 2021 memo. We considered staying a committee and proposing changes to the Bylaws and Committees and Board Policy that would clarify the Committee’s membership and role but concluded that a council structure is better suited given the history and unique nature of the Committee.

We applied an equity lens in our analysis and determined that becoming a council would promote equity in the Bar and the legal system. Equity is about policies and practices that create fairer outcomes. Changing the WSBA Bylaws and Committees and Board Policy to allow the Committee to become the DEI Council would result in fairer outcomes; we would have a much more diverse voting membership of people who experience systemic oppression and marginalization as underrepresented people in the legal profession and larger community.

**STAKEHOLDER INPUT**

We shared the first draft of the DEI Council charter with many stakeholders including the Minority Bar Associations, the Washington law schools, the Superior Court Judges Association, the District & Municipal Court Judges Association, members of the Alliance for Equal Justice and others in the equity and justice community like the JustLead Washington’s Leadership Academy alumni who include legal professionals (both attorneys and non-attorneys) and community members from organizations such as the Northwest Justice Project, City of Spokane Human Rights Commission, ACLU-WA, Clark County Volunteer Lawyer Program, QLaw Foundation, Family Violence Appellate Project, Fair Work Center, Multicultural Families, Disability Rights WA, Working Washington, and the Office of Public Defense.

We received a joint letter from the Washington State Pro Bono Council, which is the consortium of all 16 county based volunteer lawyer programs throughout the state (see attached). The letter states, in part:

“Many of the Pro Bono Council members (the county-based volunteer lawyer programs) have already transitioned to include non-attorney members of their governing boards. The input of these individuals, *especially* those with lived experiences and those from systemically disadvantaged groups, provides valuable perspective to improve the quality and accessibility of legal services to clients, which should be our ultimate goal.

The addition of law students, judicial officers, and members of the public to the WSBA Diversity Committee could similarly better support historically underrepresented and under-resourced communities in accordance with the Washington Supreme Court’s June 4, 2020 directive to the members of the legal community.

As the WSBA Diversity Committee continues to build relationships and partnerships with community and legal organizations, it will be important for them to make time and space to amplify, follow, and lead with the voices of the most impacted at the forefront.”

After the first reading of our proposal, we would like to expand our outreach to get input from more stakeholders to inform the second draft for the second reading.

## **CONCLUSION**

We are grateful for the BOG’s consideration of our proposal and look forward to our discussion at the BOG’s May meeting.

*WSBA RISK ANALYSIS: This section is to be completed by the Office of General Counsel, with input from the proposing entity or individual.*

The current structure of the Board Diversity Committee was created when two committees merged into one. The new structure created a BOG Committee but did not conform the structure to the Bylaw requirements or amend the Bylaws to accommodate the created structure. The proposed new structure will comply with the Bylaws. Continuing to operate in the current structure creates risks based on failure to comply with the current Bylaws. The Committee has modified its operating procedures to comply as closely as possible to the Bylaws while seeking a new structure. The proposed new structure eliminates these risks. In sum, the risks of the new structure are low than the risks of maintaining the current structure.

The following rules provide direction from the Washington Supreme Court for the WSBA to include diversity and inclusion in the Bar’s authorized purposes and activities, including specifically in delegated regulatory activities.

GR 12.1(j)

Legal services providers must be regulated in the public interest. S

GR 12.2(a)(6)

In general, the Washington State Bar Association strives to promote diversity and equality in the courts and the legal profession.

WSBA FISCAL ANALYSIS: *This section is to be completed by the Finance Department, with input from the proposing entity or individual.*

The current structure of the Diversity Committee has 18 members, 4 BOG members and 14 active WSBA members. With the proposed new structure as a DEI Council, the total number of members will remain 18. Therefore, we do not anticipate a fiscal impact.

#### Attachments

Proposed DEI Council Charter

Proposed Bylaw Amendments

Proposed Committee and Board Policy Amendments

Memo to BOG Dated September 14, 2021 (which includes as an attachment 2012 memo about the merger of the BOG Diversity Committee and WSBA Diversity Committee)

Letter from Pro Bono Council

## CHARTER OF THE DIVERSITY, EQUITY, AND INCLUSION COUNCIL

### **Background**

Under the delegated authority of the Washington Supreme Court and consistent with the WSBA mission, the DEI Council's purpose is to advance diversity, equity and inclusion in the legal profession and legal system.

Specifically, under Washington General Rule 12(1)(j), in regulating the practice of law, one of the Washington Supreme Court's objectives includes "diversity and inclusion among legal service providers and freedom from discrimination for those receiving legal services and in the justice system." Further, under Washington General Rule 12.2(6), the Washington Supreme Court has expressly delegated to the WSBA the responsibility to "promote diversity and equality in the courts and the legal profession."

In addition to carrying out the objectives and responsibilities outlined in the General Rules and other commitments like the Washington Race and Equity Justice Initiative [commitments](#), the Council also carries out the mission of the WSBA – 'to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice' – by advancing diversity, equity and inclusion in the legal profession and legal system.

### **Purpose**

To advance diversity, equity and inclusion and address the problems of bias, systemic inequities and underrepresentation in the legal profession, the Council's work includes but is not limited to:

- Increasing and supporting members from underrepresented communities by developing and supporting diversity pipeline and mentorship programs and partnering with schools, students and members from underrepresented communities.
- Developing diversity, equity and inclusion educational content and programs for members, volunteers and members of the public.
- Developing diversity, equity and inclusion educational content and programs designed to offer members opportunities to learn, gain skills and fulfill the MCLE ethics requirement on the mitigation of bias.
- Implementing and updating the WSBA Diversity and Inclusion Plan.
- Supporting and collaborating with the Minority Bar Associations to promote mutual goals to advance diversity, equity and inclusion in the legal profession.
- Promoting leadership opportunities in the WSBA, legal profession and legal system by engaging in outreach to underrepresented members and the public, promoting diversity in the judiciary, and recommending candidates for At-Large Governors on the WSBA Board of Governors (BOG).
- Advising the BOG on examining issues through a diversity, equity and inclusion lens and fulfilling its responsibilities outlined in General Rule 12.2(a)(6), WSBA Strategic Goals, the Race and Equity Justice Initiatives commitments, and approved resolutions concerning diversity, equity and inclusion.

The Council shall work with a variety of stakeholders to ensure it centers underrepresented members and communities, and will work collaboratively with WSBA staff who manage diversity, equity and inclusion programs.

## **Governance and Membership**

The Council shall consist of up to 18 members, who will include four BOG members and 14 members who may be WSBA active members, WSBA pro bono status members, WSBA judicial status members and judicial officers, law students, law school faculty and staff, and members of the public. Of the 14 non-BOG members, at least eight shall be active members.

The membership terms for non-BOG members shall be two years, renewable for a second consecutive term. Non-BOG members who serve two consecutive terms may serve again after at least a two-year hiatus.

The membership terms for BOG members shall be a one-year term, renewable with no limit on the number of terms.

The Council shall be co-chaired by a member of the BOG and a member of the Committee who is not on the BOG. If an individual is appointed as the non-BOG co-chair but is not a new or returning member of the committee, they will be appointed as a member for one year, which may temporarily increase the size of the committee to 19.

In accordance with WSBA Bylaw Article IX.C, selection of persons to be appointed to the Council will be made by the President with confirmation by the Board of Governors.

Applications to serve on the Council shall be in accordance with WSBA Bylaws, policies, and procedures.

## **Voting**

All members of the Council are eligible to vote. Judicial members may choose to recuse themselves from voting relating to any matters. If judicial members choose to recuse themselves from votes relating to court rules or legislation, on those occasions, and only on those occasions, the membership of the Council, for purposes of determining whether a supermajority have voted in favor or against a proposition, shall be reduced by the number of judges who have recused themselves. This provision does not apply if a judicial member is merely absent.

## **Membership Expectations**

Council members are expected to serve on at least one Council workgroup. Council members who have three consecutive unexcused absences in any 12-month period will be considered as resigned from the Council. Council members may be excused for good cause by either co-chair; such an excuse should be sought prior to the meeting. The Council may seek a replacement member through the regular WSBA volunteer process, unless the absent member was nominated by the WSBA President. In that case, the WSBA President will be asked to appoint a replacement.

This edition of the Bylaws of the Washington State Bar Association includes the comprehensive review of the Bylaws adopted by the Board of Governors on September 24, 2010, and all other amendments approved by the Board of Governors through January 6, 2022.

**TABLE OF CONTENTS**

**I. FUNCTIONS .....1**

    A. PURPOSES: IN GENERAL ..... 1

    B. SPECIFIC ACTIVITIES AUTHORIZED ..... 1

    C. ACTIVITIES NOT AUTHORIZED ..... 2

**II. DEFINITIONS AND GENERAL PROVISIONS .....2**

    A. HEADQUARTERS ..... 2

    B. SEAL..... 3

    C. FILING PAPERS WITH THE BAR..... 3

    D. COMPUTATION OF TIME ..... 3

    E. DEFINITIONS AND USE OF TERMS ..... 3

**III. MEMBERSHIP .....4**

    A. MEMBER LICENSE TYPES ..... 4

    B. STATUS CLASSIFICATIONS ..... 4

        1. Active..... 4

        2. Inactive ..... 5

        3. Judicial ..... 5

        4. Pro Bono ..... 7

        5. Suspended ..... 7

    C. REGISTER OF MEMBERS ..... 7

    D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE ..... 8

    E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE ..... 11

    F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL..... 11

    G. CHANGE OF MEMBERSHIP STATUS TO PRO BONO ..... 11

    H. VOLUNTARY RESIGNATION ..... 12

I.	ANNUAL LICENSE FEES AND ASSESSMENTS .....	12
1.	License Fees .....	12
2.	Assessments .....	13
3.	Deadline and Late Payment Fee .....	14
4.	Rebates /Apportionments .....	14
5.	License Fee and Assessment Exemptions Due to Hardship .....	14
6.	License Fee Referendum .....	14
J.	SUSPENSION .....	14
1.	Interim Suspension .....	14
2.	Disciplinary Suspension .....	14
3.	Administrative Suspension .....	15
4.	Multiple Suspensions .....	16
K.	CHANGING STATUS AFTER SUSPENSION.....	16
L.	REINSTATEMENT AFTER DISBARMENT OR REVOCATION .....	17
M.	REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISCIPLINE, DISBARMENT, OR REVOCATION ....	17
N.	READMISSION AFTER VOLUNTARY RESIGNATION.....	17
O.	EXAMINATION REQUIRED .....	18
<b>IV.</b>	<b>GOVERNANCE .....</b>	<b>19</b>
A.	BOARD OF GOVERNORS .....	19
B.	OFFICERS OF THE BAR .....	21
C.	BOARD OF GOVERNORS COMMITTEES .....	23
D.	POLITICAL ACTIVITY.....	24
E.	REPRESENTATION OF THE BAR .....	26
<b>V.</b>	<b>APPROPRIATIONS AND EXPENSES .....</b>	<b>27</b>
A.	APPROPRIATIONS.....	27
B.	EXPENSES; LIMITED LIABILITY .....	27
<b>VI.</b>	<b>ELECTIONS .....</b>	<b>27</b>
A.	ELIGIBILITY FOR MEMBERSHIP ON BOARD OF GOVERNORS.....	27
B.	NOMINATIONS AND APPLICATIONS .....	28
C.	ELECTION OF GOVERNORS .....	28
D.	ELECTIONS BY BOARD OF GOVERNORS .....	31
1.	Office of President-Elect.....	31

2.	Treasurer .....	31
3.	Election Procedures for President and President-elect .....	32
E.	NEW GOVERNOR ORIENTATION .....	32
F.	MEMBER RECALL OF GOVERNORS .....	33
G.	2020 ELECTIONS.....	33
<b>VII.</b>	<b>MEETINGS .....</b>	<b>33</b>
A.	GENERAL PROVISIONS; DEFINITIONS.....	33
1.	Definitions .....	33
2.	Order of Business.....	34
B.	OPEN MEETINGS POLICY .....	34
C.	MEETINGS OF THE BOARD OF GOVERNORS.....	36
1.	Regular Meetings .....	36
2.	Special Meetings .....	36
3.	Emergency Meetings.....	37
4.	Agenda .....	37
5.	Parliamentary Procedure .....	37
D.	EXECUTIVE COMMITTEE OF THE BOG.....	37
E.	FINAL APPROVAL OF ACTION BY THE BOARD OF GOVERNORS.....	38
<b>VIII.</b>	<b>MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP .....</b>	<b>38</b>
A.	MEMBER REFERENDA .....	38
B.	BOG REFFERALS TO MEMBERSHIP.....	39
C.	BALLOT PREPARATION .....	39
D.	VOTING PROCEDURES.....	39
E.	EFFECT OF VOTE .....	39
<b>IX.</b>	<b>COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES .....</b>	<b>40</b>
A.	GENERALLY .....	40
B.	COMMITTEES AND OTHER BAR ENTITIES.....	40
C.	COUNCILS .....	42
<b>X.</b>	<b>REGULATORY BOARDS .....</b>	<b>42</b>
<b>XI.</b>	<b>SECTIONS.....</b>	<b>42</b>
A.	DESIGNATION AND CONTINUATION.....	42
B.	ESTABLISHING SECTIONS.....	43

C.	MEMBERSHIP.....	43
D.	DUES.....	43
E.	BYLAWS AND POLICIES.....	43
F.	SECTION EXECUTIVE COMMITTEE .....	44
G.	NOMINATIONS AND ELECTIONS.....	45
H.	VACANCIES AND REMOVAL.....	45
I.	OTHER COMMITTEES .....	46
J.	BUDGET .....	46
K.	SECTION REPORTS.....	46
L.	TERMINATING SECTIONS.....	46
<b>XII.</b>	<b>YOUNG LAWYERS.....</b>	<b>47</b>
A.	PURPOSE .....	47
B.	DEFINITION.....	47
<b>XIII.</b>	<b>RECORDS DISCLOSURE &amp; PRESERVATION.....</b>	<b>47</b>
<b>XIV.</b>	<b>INDEMNIFICATION .....</b>	<b>50</b>
A.	GENERALLY .....	50
B.	CUMULATIVE, NON-EXCLUSIVE RIGHT.....	51
<b>XV.</b>	<b>KELLER DEDUCTION.....</b>	<b>51</b>
<b>XVI.</b>	<b>AMENDMENTS.....</b>	<b>53</b>
<b>XVII.</b>	<b>EMERGENCY AMENDMENT; PRESIDENTIAL AUTHORITY DURING COVID-19 EMERGENCY (Expires April 24, 2020) .....</b>	<b>53</b>

## **I. FUNCTIONS**

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

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

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

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

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

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

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

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

**C. ACTIVITIES NOT AUTHORIZED**

The Washington State Bar Association will not:

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

**II. DEFINITIONS AND GENERAL PROVISIONS**

**A. HEADQUARTERS**

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

## II. DEFINITIONS AND GENERAL PROVISIONS

### B. SEAL

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

### C. FILING PAPERS WITH THE BAR

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

### D. COMPUTATION OF TIME

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

### E. DEFINITIONS AND USE OF TERMS

Unless otherwise specifically stated herein,

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

### III. MEMBERSHIP

#### III. MEMBERSHIP

##### A. MEMBER LICENSE TYPES

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

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

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

##### B. STATUS CLASSIFICATIONS

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

###### 1. Active

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

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

### III. MEMBERSHIP

#### 2. Inactive

Inactive members must not practice law in Washington, nor engage in employment or duties that constitute the practice of law. Inactive members are not eligible to vote in Bar matters or hold office therein, or serve on any committee or board, 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,
  - 2) Continue their affiliation with the Bar;
  - 3) Change their membership status to Active pursuant to these Bylaws and any applicable court rule;
  - 4) Request a free subscription to the Bar's official publication; and
  - 5) Receive member benefits available to Inactive members.
- b. Types of Inactive membership:
  - 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
  - 2) Disability: Disability inactive members are not required to pay a license fee, or earn or report MCLE credits while in this status, but they may choose to do so, and they may be required to earn and report MCLE credits to return to Active membership.
  - 3) Honorary: All members who have been Active or Judicial, or a combination of Active and Judicial, members for 50 years may elect to become Honorary members of the Bar. Honorary members are not required to pay a license fee. A member who otherwise qualifies for Honorary membership but wants to continue to practice law in any manner must be an Active member or, if applicable, a Pro Bono member.

#### 3. Judicial

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

### III. MEMBERSHIP

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

### III. MEMBERSHIP

- 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;

### III. MEMBERSHIP

- 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

### III. MEMBERSHIP

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.

### III. MEMBERSHIP

- 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

### III. MEMBERSHIP

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.

### III. MEMBERSHIP

#### H. VOLUNTARY RESIGNATION

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

#### I. ANNUAL LICENSE FEES AND ASSESSMENTS

##### 1. License Fees

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

##### a. Active Members

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

### III. MEMBERSHIP

- 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.

### III. MEMBERSHIP

#### 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.

### III. MEMBERSHIP

#### 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

### III. MEMBERSHIP

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

### III. MEMBERSHIP

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

### III. MEMBERSHIP

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

### III. MEMBERSHIP; IV. GOVERNANCE

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

## IV. GOVERNANCE

### A. BOARD OF GOVERNORS

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

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

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

#### 2. Duties

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

## IV. GOVERNANCE

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

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

### 3. Term

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

### 4. Vacancy

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

## IV. GOVERNANCE

### B. OFFICERS OF THE BAR

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

#### 1. President

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

#### 2. President-elect

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

#### 3. Immediate Past President

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

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

#### 4. Treasurer

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

#### 5. Executive Director

#### IV. GOVERNANCE

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

##### 6. Terms of Office

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

##### 7. Vacancy

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

#### IV. GOVERNANCE

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

#### C. BOARD OF GOVERNORS COMMITTEES

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

#### IV. GOVERNANCE

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

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

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

#### D. POLITICAL ACTIVITY

##### 1. Board of Governors

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

#### IV. GOVERNANCE

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

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

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

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

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

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

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

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

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

## IV. GOVERNANCE

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

### 4. Other

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

### 5. Letterhead

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

## E. REPRESENTATION OF THE BAR

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

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

## V. APPROPRIATIONS AND EXPENSES; VI. ELECTIONS

### V. APPROPRIATIONS AND EXPENSES

#### A. APPROPRIATIONS

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

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

#### B. EXPENSES; LIMITED LIABILITY

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

### VI. ELECTIONS

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

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

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

## VI. ELECTIONS

months after the conclusion of that term of service. Any disputes regarding the eligibility of a member to serve on the Board of Governors shall be addressed by the Board of Governors.

2. At Large Governors: There will be a total of three At Large Governor positions.
  - a. Two At Large (“Member At Large Governor”) Positions: Any Active member of the Bar, except a person who has previously served as a Governor for more than 48 consecutive months, may be nominated or apply.
  - b. One Young Lawyer (“Young Lawyer At Large Governor”) Position: Any Active lawyer member of the Bar who qualifies as a Young Lawyer as set forth in these Bylaws, except for a person who has previously served as a Governor for more than 48 consecutive months, may be nominated or apply.
3. Filing of nominations and applications must be in accordance with this Article.

### B. NOMINATIONS AND APPLICATIONS

1. Applications for the Board of Governors elected from Congressional Districts must be filed in the office of the Bar not later than 5:00 p.m., on the 15th day of February of the year in which the election is to be held. If this deadline falls on a day in which the office of the Bar is closed, the deadline will be 5:00 p.m. of the following business day.
2. Applications and nominations for At Large Governor positions must be filed in the office of the Bar not later than 5:00 p.m. on the 15<sup>th</sup> day of April of the year in which the election or nomination is to be held.
3. Applications for the position of President-elect must be filed by the deadline set forth in the notice published in the Bar’s official publication and posted on the Bar’s website. Notice must be given not less than 30 days before the filing deadline.
4. In the event no application is made for a seat, the position will be treated, advertised, and filled by Board appointment until the next election cycle only, in which the position will be included in the election cycle for the remainder of the term.

### C. ELECTION OF GOVERNORS

1. Election of one Governor from each Congressional District and for the At Large positions will be held every three years as follows:
  - a. Third, Sixth, Eighth Congressional Districts and the North region of the Seventh Congressional District and one At Large Member Governor – 2014 and every three years thereafter.
  - b. First, Fourth, Fifth Congressional Districts and the South region of the Seventh Congressional District and one At Large Young Lawyer Governor – 2015 and every three years thereafter.
  - c. Second, Ninth and Tenth Congressional Districts and one At Large Member Governor – 2013 and every three years thereafter.
2. Voting in the Election of Governors from Congressional Districts will be conducted in the following manner:
  - a. Eligibility to Vote. All Active members, as of March 1st of each year, are eligible to vote in the BOG election for their district, subject to the election schedule shown above. Active

## VI. ELECTIONS

members residing in the State of Washington may only vote in the district in which they reside. Active members residing outside the State of Washington may only vote in the district of the address of the agent they have designated within the State of Washington for the purpose of receiving service of process as required by APR 13, or, if specifically designated to the Executive Director, within the district of their primary Washington practice.

- b. Ballots. On March 15th of each election year, the Executive Director will ensure delivery of ballots containing the names of all candidates for Governor for each District in which an election is to be held to each Active member eligible to vote in that District. Elections will be conducted electronically using a secure process (“electronic voting”). Active members who are eligible to vote in an election may request a paper ballot to be used in place of the electronic ballot. Electronic ballots will be sent to active members eligible to vote in an election, and will include information about how to vote by electronic voting. Should any Active member eligible to vote fail to receive a ballot, or receive a defective ballot, the member may obtain a replacement ballot by furnishing proof of eligibility to the Executive Director, and upon returning the defective ballot if the member received a paper ballot.
- c. Voting Procedure. Each Active member eligible to vote in the election may vote in one of the following ways. Each member has only one vote. Only one vote will be counted from any member who inadvertently votes both by paper ballot and by electronic means:
  - 1) By paper ballot. Paper ballots will be available upon request. The member must submit the request by March 15<sup>th</sup> and cause the envelope containing the ballot to be delivered to the office of the Bar by no later than 5:00 p.m. (PDT) on April 1st of that election year. Alteration of or addition to the ballot, other than the marking of the member's choice, invalidates the ballot.
  - 2) By electronic voting. Voters will be sent links to their ballots via email. Voting must be completed by no later than 5:00 p.m. (PDT) on April 1st of that election year.
- d. Voting System. In any election for membership on the BOG, if there is only one qualified candidate nominated, then that candidate will be declared elected. If there are only two candidates for a position, then the candidate receiving the highest number of votes will be declared elected. If there are more than two candidates, and if no candidate receives more than 50% of the total vote, the two candidates receiving the highest number of votes will participate in a run-off election. In the event of a tie for the second highest vote total, all candidates who are tied will participate in the run-off election along with the candidate who received the most votes.

If a run-off election is necessary, the Executive Director in consultation with the President will designate the date for delivering the ballots and the deadline for voting, which will be no later than 5:00 p.m. (PDT), 10 days after the date the ballots are delivered. The candidate receiving the highest number of votes will be declared elected.

- e. Checking and Custody of Ballots. The Executive Director will maintain custody of all satisfactorily identified and signed paper ballot envelopes, segregated as to position. The

## VI. ELECTIONS

paper ballot will remain in the custody of the Executive Director until counted. Any paper ballots not enclosed in an envelope, satisfactorily identified and signed, will not be counted.

- f. Electronic votes must be verified and securely stored by the online voting vendor.
- g. Counting of Ballots. Paper ballots will be counted by the Executive Director or their designee under the supervision of the Election Board, and electronic ballots will be counted by the online voting vendor. The ballot verification process will be supervised by an Election Board of not less than three Active members appointed by the President. At least two members of the Election Board must be present (in person or by video conference) at any count of paper ballots. Any Active member of the Bar may be present at such count of paper ballots.

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

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

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

### 3. Eligibility Requirements: Election of At-Large Governors

At-Large Governors shall be elected by the Members as follows:

- a. Member At Large Governors: After notice of the position has been adequately provided to all members, the Diversity, Equity and Inclusion (DEI) Committee Council shall forward at least three candidates who have the experience and knowledge of the needs of those members whose membership is or may be historically underrepresented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the BOG will be a more diverse and representative body than the results of the election of Governors based solely on Congressional Districts may allow. Underrepresentation and diversity may be based upon, but not be limited to age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor will be determinative. The Executive Director shall then place all candidates forwarded by the Diversity Committee DEI Council on the ballot to be elected by all eligible voting members. If the Diversity Committee DEI Council

## VI. ELECTIONS

forwards less than three candidates by May 1, the Executive Director shall notify the BOG, which may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Diversity Committee/DEI Council on the ballot to be elected by all eligible voting members.

- b. Young Lawyer At Large Governor: By May 1, the Washington Young Lawyers Committee shall forward at least three candidates to the BOG who qualify as Young Lawyers as defined by Article XII(B) of these Bylaws in the year of the election. The BOG shall then place all candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these Bylaws. If the Washington Young Lawyers Committee forwards less than three candidates by May 1, the Executive Director shall notify the BOG, which may, at its option, select additional qualifying candidates on its own or place only those candidates forwarded by the Washington Young Lawyers Committee on the ballot to be elected by a vote of all Young Lawyer Members as defined in section XII(B) of these Bylaws.
4. Voting in the Election of Member At Large Governor positions will be conducted in the following manner:
- a. Voting Procedure for the At Large Governor positions shall follow the procedures described above with the exception of the dates of the election.
  - b. Election will begin on May 15.
  - c. Voting must be completed no later than 5:00 p.m. (PDT) on June 1 of that election year.

## D. ELECTIONS BY BOARD OF GOVERNORS

### 1. Office of President-Elect.

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

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

### 2. Treasurer

The Treasurer must be a current lawyer Governor and will be nominated and elected by the BOG at the second to the last regularly scheduled BOG meeting of the fiscal year. The Treasurer will be elected by

## VI. ELECTIONS

simple majority of Governors voting. In the event there is more than one nomination, the vote will be by secret written ballot.

### 3. Election Procedures for President and President-elect

Elections of President and President-elect elections, and any other elections held by the BOG under these Bylaws, are conducted as follows:

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

### E. NEW GOVERNOR ORIENTATION

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

## VI. ELECTIONS; VII. MEETINGS

### F. MEMBER RECALL OF GOVERNORS

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

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

### G. 2020 ELECTIONS

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

## VII. MEETINGS

### A. GENERAL PROVISIONS; DEFINITIONS

#### 1. Definitions

As used in this Article unless the context indicates otherwise:

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

## VII. MEETINGS

- d. "Final action" means a collective positive or negative consensus, or an actual vote of the voting members present, whether in person or by electronic means, at the time of the vote, upon a motion, proposal, resolution, or order.
- e. "Minutes" means, at a minimum, recording the members of the Bar entity in attendance, the date and time of the meeting, the agenda of the meeting, the subject and results of any final action taken, and a reasonable summary of the issues and points raised during discussion.

### 2. Order of Business

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

## B. OPEN MEETINGS POLICY

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

## VII. MEETINGS

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

### 7. Executive Session

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

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

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

## VII. MEETINGS

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

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

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

### C. MEETINGS OF THE BOARD OF GOVERNORS

#### 1. Regular Meetings

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

#### 2. Special Meetings

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

## VII. MEETINGS

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

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

### 3. Emergency Meetings

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

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

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

### 4. Agenda

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

### 5. Parliamentary Procedure

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

## D. EXECUTIVE COMMITTEE OF THE BOG

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

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

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

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

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

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

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

**A. MEMBER REFERENDA**

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

## VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP

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

### B. BOG REFFERALS TO MEMBERSHIP

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

### C. BALLOT PREPARATION

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

### D. VOTING PROCEDURES

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

### E. EFFECT OF VOTE

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

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

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

#### A. GENERALLY

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

#### B. COMMITTEES AND OTHER BAR ENTITIES

##### 1. Committees

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

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

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

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

### **2. Other Bar Entities**

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

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

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

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

**IX. COMMITTEES, COUNCILS, AND OTHER BAR ENTITIES;  
X. REGULATORY BOARDS; XI. SECTIONS**

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

**C. COUNCILS**

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

**X. REGULATORY BOARDS**

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

**XI. SECTIONS**

**A. DESIGNATION AND CONTINUATION**

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

## XI. SECTIONS

### 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 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

## XI. SECTIONS

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.

## XI. SECTIONS

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,

## XI. SECTIONS

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.

**XI. SECTIONS; XII. YOUNG LAWYERS**  
**XIII. RECORDS DISCLOSURE & PRESERVATION**

7. Any funds remaining in the treasury of a section at the time of termination will be transferred to the Bar's general operating fund unless otherwise designated by the BOG. Funds in the treasury of combined sections will be combined.

**XII. YOUNG LAWYERS**

**A. PURPOSE**

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

**B. DEFINITION**

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

**XIII. RECORDS DISCLOSURE & PRESERVATION**

- A. These Bylaws apply to Bar records created before July 1, 2014. Access to Bar records created on or after July 1, 2014, is governed by GR 12.4.
- B. The Bar, in accordance with published rules, shall make available for its members and/or public inspection and copying all Bar records, unless the record falls within the specific exemptions of these bylaws or is made confidential by the Rules of Professional Conduct, the Rules for Enforcement of Lawyer Conduct, the Admission and Practice Rules, the Rules for Enforcement of Limited Practice Officer Conduct, GR 25, or any other applicable statute or rule. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by these bylaws or the above-referenced rules or statutes, the Bar shall delete identifying details in a manner consistent with those rules when it makes available or publishes any Bar record; however, in each case, the justification for the deletion shall be explained fully in writing.
  1. The Bar shall establish, maintain, and make available for its members and/or public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of Bar records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.
  2. No fee shall be charged for the inspection of Bar records. No fee shall be charged for locating Bar records or documents and making them available for copying unless the request

### XIII. RECORDS DISCLOSURE & PRESERVATION

entails a substantial use of staff time to locate and gather the documents. In no event may the Bar charge a per page cost greater than an actual per page cost established by the Bar.

3. The Bar shall not distinguish among persons requesting records and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate a statute, court order, or rule which exempts or prohibits disclosure of specific information or records to certain persons. Bar facilities shall be made available to any person for the copying of Bar records except when and to the extent that this would unreasonably disrupt the operations of the Bar. The Bar shall honor requests received by mail for identifiable Bar records unless exempted by provisions of these bylaws or other rules.
4. Bar records shall be available for inspection and copying during the customary office hours of the Bar.
5. The following are exempt from public inspection and copying:
  - a. Personal information in files maintained for employees, appointees, or elected officials of the Bar to the extent that disclosure would violate their right to privacy.
  - b. Specific information, records, or documents relating to lawyer or Limited Practice Officer discipline that is not expressly classified as public information or confidential information by court rule.
  - c. Information revealing the identity of persons who have assisted a Bar investigation or filed grievances or complaints with the Bar, if disclosure would endanger any person's life, physical safety, or property.
  - d. Test questions, scoring keys, and other examination data used by the Bar to administer a license, employment, or academic examination.
  - e. The contents of real estate appraisals made by the Bar relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.
  - f. Valuable formulae, designs, drawings, and research data obtained by the Bar within five years of the request for disclosure when disclosure would produce private gain and loss to the Bar.
  - g. Preliminary or intra-Bar memoranda, notes, and e-mails, and other documents in which recommendations or opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when referenced during an open meeting or cited by the Bar in connection with any of its actions.
  - h. Manuals, policies, and procedures, developed by Bar staff, that are directly related to the performance of investigatory, disciplinary, or regulatory functions, except as may be specifically made public by court rule;
  - i. Applications for employment with the Bar, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

### XIII. RECORDS DISCLOSURE & PRESERVATION

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

**XIII. RECORDS DISCLOSURE & PRESERVATION;  
XIV. INDEMNIFICATION**

of employment or, when specifically requested, the Executive Director's current annual compensation; and

- y. Any other documents or records made confidential by statute, court rule, or court order.

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

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

**XIV. INDEMNIFICATION**

**A. GENERALLY**

- 1. The Bar shall provide indemnification to qualified indemnitees for liabilities arising out of qualified actions.
  - a. A qualified indemnitee is a person who is or was an officer, member of the Board of Governors, member of the staff of the Bar, or is serving at the request or appointment of the Bar as a member of any board, committee, task force, or other WSBA entity.
  - b. A qualified action is an action in good faith within the course and scope of the authority expressly or impliedly delegated by applicable Supreme Court Rule, policy adopted by the Board of Governors, or by the Executive Director within his or her authority.
- 2. Each qualified indemnitee who is a party to, or is threatened to be made a party to, or is involved in any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the indemnitee, or a person of whom the indemnitee is a legal representative, is, or was, an officer or member of the Board of Governors, member of the staff of the Bar, or a member of a board, committee, task force, or other WSBA entity formed by the Board of Governors, shall be defended, indemnified, and held harmless by the Bar against all expenses, liability, and losses (including, but not limited

#### **XIV. INDEMNIFICATION; XV. KELLER DEDUCTION**

to, attorneys' fees, judgments, fines, and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith. The Board of Governors shall have the right, as a condition of granting indemnification, to approve in advance the choice of counsel as well as any settlement by the person requesting indemnification. The Board shall not unreasonably withhold its approval.

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

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

#### **XV. KELLER DEDUCTION**

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

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

## XV. KELLER DEDUCTION

challenged. Delivery may be made in person or by first-class mail, and mailed demands will be deemed delivered upon mailing. Demands shall include the name and address of the member or members demanding arbitration, a brief statement of the claim or objection, identifying each challenged activity with such specificity as to allow the Bar to respond, and the signature of each objecting member.

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

**XV. KELLER DEDUCTION; XVI. AMENDMENTS;**

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

7. The arbitrator will have no authority to add, subtract, set aside, or delete from any court rule or these Bylaws.
8. The scope of the arbitration is limited to reviewing the challenged activities specified for the purpose of determining whether the Bar has correctly calculated the Keller deduction, and the sole relief potentially available through arbitration is a change in the amount of the named parties' Keller deduction for that licensing year.
9. The arbitration will be binding and the decision of the arbitrator final, with no right of trial de novo or appeal.

**XVI. AMENDMENTS**

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

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

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

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

Bylaws. This specifically include the authority to authorized Governors and Officers to attend Board meetings remotely.

D. Provisions of this amendment shall be rescinded on April 24, 2020.



Washington State Bar Association  
Board of Governors  
**Committees and Boards Policy**

(Effective with 1993-94 Committee Appointments)

(Amended July 19, 1996; Amended March 28, 1997; Amended February 13, 1999, Amended May 19, 2000, Amended January 19, 2002, Amended October 2002, Amended April 2003, Amended February 2004, Amended March 11, 2005, Amended January 2012, Amended September 2012, Amended January 2013, Amended July 2013, Amended September 2015, Amended September 2020)

1. **Diversity:** To further the WSBA policy of advancing and promoting diversity, equality, and cultural understanding, the Board of Governors shall take into consideration the makeup of a committee or board in terms of diversity when considering appointments to it. (Committee Membership Selection Advisory Policy.) To assist the Board in fulfilling this policy, all applicants and appointees to committees and boards will be required to complete the Committee/Board/Panel Application Form. This form shall, 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, and number of lawyers in law firm.
  
2. **Size of Committees and Boards:**
  - a) Committees:
    - Amicus Curiae Brief Committee: 14
    - Committee on Professional Ethics: 9
    - Continuing Legal Education Committee: 18
    - Court Rules and Procedures Committee: 28
    - Editorial Advisory Committee: 14
    - Judicial Recommendation Committee: 22
    - Legislative Review Committee: 35 maximum
    - Pro Bono and Public Service Committee: 18
    - Washington Young Lawyers Committee: 18
    - ~~WSBA Diversity Committee: 18~~
  
  - b) Boards:
    - Board of Bar Examiners: 50 maximum
    - Character and Fitness Board: 10 WSBA members minimum (at least one from each district) and 3 public members (APR 23(a))
    - Law Clerk Board: 11 lawyers
    - Client Protection Board: 11 WSBA members and 2 public members (APR 15(b)(2))
  
3. **Membership Requirements:** All members of WSBA committees and boards must be active members of the WSBA, with the following exceptions: (a) Up to two Emeritus/Pro Bono members are permitted to serve on the Pro Bono and Public Service Committee and may be appointed to serve as the Chair, Co-Chair or Vice-Chair. (WSBA Bylaws IX.B.1.a.) (b) Members

of the Character and Fitness Board must have been members of the WSBA for seven years before their term begins. (APR20(b), ELC2.3(b)(2).) (c) Members of the Washington Young Lawyers Committee must meet the WSBA young lawyer criteria on the start date of their term (WSBA Bylaws XIIB). (d) Faculty of Washington state law schools who are not active members of the WSBA are permitted to serve on the Committee on Professional Ethics (WSBA Bylaws IX.B.1.a.) No WSBA staff member will be appointed to serve as a WSBA committee or board member. ~~(e) The WSBA Diversity Committee includes both general WSBA members and members of the Board of Governors.~~

4. **Selection of Members:** Nominations for open positions on each standing committee and board will be made by a nomination team comprising the chair, vice-chair or chair-elect, staff liaison and BOG liaison, in consultation with WSBA diversity and inclusion staff. In addition, each district-based BOG member may nominate one applicant from his or her district to any committee or board that does not have a continuing member from that district. At large BOG members may, as a group, nominate one applicant to each committee or board. If this process results in more nominations than there are open positions on a committee or board, nominations from BOG members will take priority over nominations from the nomination teams. If nominations from BOG members alone exceed the number of open positions, the nomination teams will make recommendations to the BOG as a whole. Exceptions: The Judicial Recommendation Committee, Washington Young Lawyers Committee, Legislative Committee and Committee on Professional Ethics have unique member selection procedures which are described in separate policy documents. The nomination teams will make recommendations for non-lawyer appointments, as these nominations are made by the BOG as a whole and forwarded to the Supreme Court for appointment. (APR 20(a), ELC 2.3(b)(1).) The Board of Governors will make most committee and board appointments (and nominations of non-lawyers to the two boards cited above) at the July Board of Governors meeting. At the same time, the Board of Governors will approve a list of alternate appointees for each committee and board. The alternate lists will be effective for one year. If any committee or board member positions remain open after the July Board of Governors meeting, they will be filled as soon as possible.
5. **Definition of Membership:** Although WSBA committees operate under an "open meeting" policy that allows any member of the WSBA or public to attend a meeting (See (12) below), in order to be recognized as a member of a committee or board an individual must be appointed to the committee or board.
6. **Selection of Chair and Vice-Chair:** The President-elect shall nominate committee and board Chairs, Co-Chairs, and Vice-Chairs for appointment by the Board of Governors for the year in which the President-elect will serve as President. (WSBA Bylaws, IX.B.1.c.) Committee chairs are generally limited to a single year term, except in unusual circumstances, in which they may be appointed for an additional year. If an individual is appointed as committee Chair but is not a new or returning member of the committee, he or she will also be appointed as a member for one year, which may temporarily increase the size of the committee. Exception: The Washington Young Lawyers Committee has a member position set aside for leadership described in a separate policy document. ~~Note: The WSBA Diversity Committee has two co-chairs, one drawn from the general membership and one drawn from the Board of Governors.~~

The President-elect shall commit to diversity in nominating Chairs, Co-Chairs and Vice-Chairs, taking into consideration the makeup of a committee or board and the potential impact of appointing a particular individual as Chair.

7. **Expenses:** Committee and board member expenses shall be reimbursed in accordance with the WSBA Expense Reimbursement Policy as adopted by the Board of Governors. Reimbursement of travel expenses for out-of-state committee or board members to attend committee or board meetings is limited to the approximate cost of in-state travel. Participation in meetings by telephone conference call or videoconferencing is encouraged when possible because it saves significant travel time and expense.
8. **Terms:** Except as indicated below, committee appointments shall be for 2-year terms. A member's service on any committee shall be limited to two consecutive terms, after which the member cannot be reappointed to that committee for three years, subject to individual exceptions as approved by the Board of Governors. Appointments to the WSBA Legislative Committee shall be made pursuant to the written Board of Governors policy for that committee. (WSBA Bylaws, IX.B.1.b.)

The following committees and boards shall have more than a 2-year term:

- Board of Bar Examiners: 4 years, no limit on number of terms (subject to Chair approval and completion of mandatory training)
  - Character and Fitness Board: 3 years (APR 20(i)) (one-term limit)
  - Committee on Professional Ethics: 3 years (two-term limit)
  - Continuing Legal Education Committee: 3 years
  - Judicial Recommendation Committee: 3 years (JRC Guidelines I(A)(1))
  - Law Clerk Board: 3 years (two-term limit)
  - Client Protection Board: 3 years, no limit on number of terms (APR 15)
  - Washington Young Lawyers Committee: 3 years
9. **Recommendations for Discipline-System Appointments:** Under ELC 2.2(c), a former WSBA officer, WSBA executive director, or Board of Governors member may not serve as a hearing officer, Disciplinary Board member, or Conflicts Review Officer until three years have expired after the former officer or member's departure from office. To ensure the proper implementation of the policy underlying ELC 2.2(c), the Board of Governors shall not recommend a former WSBA officer, WSBA Executive Director, or Board of Governors member for appointment as a hearing officer, Disciplinary Board member, or Conflicts Review Officer sooner than two years following such an individual's departure from office.
  10. **Vacancies and Removal:** In the event of the resignation, death or removal of the Chair of a committee, the Board of Governors may appoint a successor to serve for the unexpired term. (WSBA Bylaws, IX.B.1.d.) In the event of the resignation, death or removal of a member of a committee or board, the nomination team may appoint a replacement from the alternate list that has been pre-approved by the Board of Governors. If there is no candidate on the alternate list that meets the committee's or board's needs, the nomination team may recruit a new applicant to be appointed by the Board of Governors.
 

Any member who fails to attend two consecutive regularly called meetings of the committee may be removed by the Board of Governors, in the absence of an excuse approved by the Chair of the committee or board. (WSBA Bylaws, IX.B.3.g.2.)
  11. **Notice of Vacancies:** The annual Committee/Board/Panel application form will be available in myWSBA and on the WSBA website starting in early January, and publicized via *NWLawyer* and broadcast email. Notice of non-lawyer committee and board openings also will be sent to nonlawyer organizations each winter. Mid-year vacancies will be publicized only if suitable applicants cannot be identified from the existing applicant pool.

12. **Exceptions:** These policies as a whole do not apply to the following entities, although individual provisions may apply: (a) WSBA panels; (b) The Supreme Court-created boards administered by the WSBA; (c) The Council on Public Defense; (d) discipline-system appointments, except as addressed in item (9); (e) WSBA state bar delegates to the ABA House of Delegates who are eligible for reappointment to three consecutive two-year terms; (f) Boards or commissions or other outside organizations to which the WSBA nominates or appoints members or representatives; **(g) Diversity, Equity and Inclusion Council.**
  
13. **Open Meetings:** The WSBA is committed to conducting the regular and special meetings of the WSBA, its Board of Governors, and its divisions, committees, boards, task forces, and sections in an open and public manner. Through such openness, the WSBA intends to make information available to the people of Washington that will allow them to become informed about matters regarding the provision of legal services and other matters falling under the WSBA’s authority. Exceptions to the “open meeting” policy are stated in court rules and regulations and the WSBA Bylaws. (WSBA Bylaws, VII.B.) Meetings and materials related to boards generally are governed by court rules and regulations that in many cases require confidentiality of all or parts of the meetings and all or parts of the board materials.

**MEMO**

**To:** Board of Governors

**From:** Governor Sunitha Anjilvel, Diversity Committee Co-Chair  
Andrea Jarmon, Diversity Committee Co-Chair

**Date:** September 14, 2021

**Re:** Diversity Committee’s Exploration of Proposing a Council Structure

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We are writing to inform the Board of Governors (BOG) that the Diversity Committee will be exploring the possibility of becoming a council. If we decide to submit a proposal to become a council, we will develop a proposed charter. Prior to submitting a proposal to the BOG, we will be sure to seek stakeholder input. We are exploring the possibility of the Diversity Committee becoming a council because the current Bylaws and Committee and Board Policy do not account for the Diversity Committee’s unique history, membership makeup and role.

**History**

Prior to 2012, there were two different diversity focused committees, the Board of Governors’ Diversity Committee and the WSBA Committee for Diversity. The Board of Governors’ Diversity Committee’s purpose was to focus on diversity policy established by the BOG. This committee “served to further the guiding principles of advancing and promoting diversity, equality and cultural understanding throughout the legal community and to reflect the ever changing face of the legal profession.” This committee’s membership was limited to BOG members only. The WSBA Committee for Diversity’s purpose was to focus on increasing diversity within the membership and leadership of WSBA, to promote opportunities for appointment or election of diverse members to the bench, to support and encourage opportunities for minority attorneys, and to raise awareness of the benefits of diversity. This committee’s membership was open to any WSBA member.

In 2012, the WSBA Board of Governors voted to merge these two committees into one to become what is known today as the WSBA Diversity Committee (see attached Memo dated 2/24/2012).

**Membership Makeup**

The Diversity Committee’s membership makeup consists of four BOG members and 14 non-BOG members. It is a unique WSBA entity, in that BOG members are not just liaisons to the committee, but voting members of the committee appointed by the incoming president. The Diversity Committee is led by co-chairs – one BOG member and one non-BOG member. The bylaws do not account for the unique structure of this entity.

Further, the Bylaws and the Committee and Board Policy are in conflict when applying them to the Diversity Committee. The Bylaws provide that the Diversity Committee is a standing committee of the

BOG but then later state that only governors may vote on standing committees (see Bylaw IV (c)(1)). Further, the WSBA Committee and Board Policy states under Section 2(a) that the Diversity Committee will be made up of 18 members and under Section 3(e) that “the WSBA Diversity Committee includes both general WSBA members and members of the Board of Governors.”

When looking at both the WSBA Bylaws and the Committee and Boards Policy, there appears to be a discrepancy regarding whether or not the Committee is a standing BOG committee or a committee constituted of both general members and BOG members. When we look at the Bylaws and Committee and Boards Policy together, they do not accurately reflect the actual makeup of Bar members and BOG members working collaboratively to promote diversity, equity, and inclusion in the legal profession. Part of our exploration in becoming a council will be to have clear membership makeup so there is not confusion in how we are constituted.

### **Role**

The work of the Diversity Committee is focused on assisting underrepresented and historically marginalized groups to enter, thrive, and advance to leadership roles in the legal profession. This is accomplished through collaborative relationships with the Minority Bar Associations; community partnerships with other organizations; and supporting programming at our legal institutions (see memos dated 7/12/2021 and 8/5/2021 for detailed information on the work of the Committee). This is all done with the recognition that a credible legal profession reflects the diversity of the communities and populations served.

Given the unique role and scope of work of the Committee, we believe it is vital to have a diversity of voices within the committee. The current Bylaws and Committee and Board Policy limit membership to active members only. They do not allow for representation from the judiciary, law students, and other types of status.

Given the unique history, makeup and role of the Diversity Committee, we believe it is prudent to begin exploring a different structure such as a council. We will keep you posted on our exploration.



MICHAEL TERASAKI  
PRO BONO COUNCIL MANAGER  
(425) 495-0132  
[MICHAEL@PROBONOCOUNCIL.ORG](mailto:MICHAEL@PROBONOCOUNCIL.ORG)

KATELYN MONACO  
PRO BONO COUNCIL COORDINATOR  
425-521-0054  
[KATELYN@PROBONOCOUNCIL.ORG](mailto:KATELYN@PROBONOCOUNCIL.ORG)

April 13, 2022

Washington State Bar Association Diversity Committee

Re: Request for Stakeholder Feedback- WSBA Diversity Committee  
Proposed Council Charter

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Dear WSBA Diversity Committee:

The Washington State Pro Bono Council (PBC) is the consortium of all the 16 county based volunteer lawyer programs (VLPs) around the state. The PBC's mission is to further access to justice by supporting and advocating on behalf of the VLPs.

Many of the Pro Bono Council members (the county-based volunteer lawyer programs) have already transitioned to include non-attorney members of their governing boards. The input of these individuals, *especially* those with lived experiences and those from systemically disadvantaged groups, provides valuable perspective to improve the quality and accessibility of legal services to clients, which should be our ultimate goal.

The addition of law students, judicial officers, and members of the public to the WSBA Diversity Committee could similarly better support historically underrepresented and under-resourced communities in accordance with the Washington Supreme Court's June 4, 2020 directive to the members of the legal community.<sup>1</sup>

As the WSBA Diversity Committee continues to build relationships and partnerships with community and legal organizations, it will be important for them to make time and space to amplify, follow, and lead with the voices of the most impacted at the forefront.

Sincerely,  
Michael Terasaki  
Pro Bono Council Manager

Katelyn Monaco  
Pro Bono Council Coordinator

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<https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Travis Stearns, Chair, Council on Public Defense  
**DATE:** July 1, 2022  
**RE:** Council on Public Defense Statement Regarding Public Defense Workloads

**ACTION:** Approve the attached *Revised Public Defense Workloads Statement* for broad distribution to public defenders and administrators statewide

The Council on Public Defense (CPD) drafted the attached *Revise Public Defense Workloads Statement* as a tool to assist public defenders and administrators in bringing concerns to their funders about workloads exceeding capacity due to the pandemic.

The CPD has been discussing the impact of the COVID-19 pandemic on the public defense system statewide. The CPD's Standards Committee met with public defense directors from across the state to learn how the pandemic has been impacting their offices and the delivery of services. A key takeaway from the discussion revealed that the pandemic has contributed to increased caseloads. The Board of Governors has previously approved a request from the CPD to distribute the attached advisory notice *Response to the Emergency Caused by Pandemic Driven: Increased Public Defender Caseloads* and the *Public Defense Workloads Statement* to bring attention to these issues with policy makers and funders.

The Office of Public Defense has also conducted surveys with public defenders statewide to learn about the impact of the pandemic on the delivery of services. The Office of Public Defense report [Defending Clients in the COVID-19 Environment: Survey Results from Private and Public Defense Counsel](#) provides survey results and analysis that further highlights how the pandemic is having an adverse effect on providing effective counsel as workloads grow beyond capacity.

It has become clear that public defense offices are struggling to keep up with the workloads, and that is having a detrimental effect on providing effective public defense counsel. The purpose of the Statement is to give public defenders a tool to talk with their funders and other leaders about the caseload issue and how it can be addressed. The CPD appreciates the Board's consideration of this request.

**WSBA RISK ANALYSIS:** *This section is to be completed by the Office of General Counsel, with input from the proposing entity or individual.*

1. This statement falls within the GR 12 stated purposes of the WSBA. The statement does not relate to a political or social issue.
2. As written, this statement could be used to support an argument that individual public defenders are not complying with the ethical obligations because the public defender has an unmanageable workload. The

statement's focus on individual public defenders and RPC obligations – as opposed to the obligation of public defender agencies—could have unintended consequences.

#### GR 12

This statement relates to the following purposes and authorized activities of the WSBA:

- Promote an effective legal system, accessible to all (GR 12.2(a)(2));
- Foster and maintain high standards of competence, professionalism, and ethics among its members (GR 12.2(a)(4));
- 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 (GR 12.2(a)(11))
- Support the judiciary in maintaining and integrity and fiscal stability of an independent and effective judicial system (GR 12.2(b)(2));

This statement is not prohibited by GR 12.2(c). The statement does not take a position on political or social issues which do not relate to or affect the practice of law or the administration of justice.

**WSBA FISCAL ANALYSIS:** *This request does not have a financial component and does not require a fiscal analysis.*

#### Attachments

- *Revised Public Defense Workloads Statement* (for action)
- *Public Defense Workloads Statement* (approved January 2022)
- *Response to the Emergency Caused by Pandemic Driven: Increased Public Defender Caseloads* (approved March 2021)

## **Statement: Public Defense Lawyers Should Seek Relief from Excessive Workloads**

*Unmanageable public defense attorney workloads threaten their clients' right to representation.* Public defense lawyers in Washington face a workload crisis, threatening their clients' right to effective representation and the well-being of the lawyers and their staffs. In March 2022 the Washington Defender Association asked public defenders across the state about their workloads and needed resources. More than 250 public defenders from 35 counties and numerous cities across the state responded. Primary reasons for the workload crisis include:

- Inability to recruit and retain sufficient numbers of public defense lawyers to handle the total workload;<sup>1</sup>
- Inadequate resources, such as support staff, investigators and social workers; and
- Inability to resolve cases, particularly the complex cases, in a timely manner in order to offset new case assignments, in part due to the pandemic.<sup>2</sup>

Other states have similar challenges. A 2022 American Bar Association (ABA) workload study found that Oregon has only 31% of the public defense attorneys needed to handle its adult and juvenile caseloads.<sup>3</sup> A similar study in New Mexico found that the state public defender has only 33% of the attorneys needed to provide reasonably effective assistance of counsel to its clients.<sup>4</sup> A preliminary, similar assessment applied to Washington's current caseload standards supports the conclusion that Washington only has about one-third of the public defense lawyers needed.

*Washington public defense lawyers have few tools to address unmanageable workloads.*

Earlier this year, recognizing that a growing backlog of cases threatened the right to counsel the Washington State Bar Association (WSBA) Board of Governors issued a *Statement on Workloads* noting:

When workload exceeds an attorney's capacity, then public defense attorneys and offices can request funding to hire additional attorneys, decline appointment to new cases, and work with others in the legal system to divert and/or reduce the number of cases in the system.<sup>5</sup>

ABA Opinion 06-441 makes clear what a lawyer with too many cases must do:

If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments.<sup>6</sup>

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<sup>1</sup> ["Lawyers coping with attorney shortage in Yakima County"](#), Yakima Herald Republic, May 6, 2022.

<sup>2</sup> Washington Office of Public Defense, [Defending Clients in the COVID Environment: Survey Results from Private and Public Defense Counsel](#) (2021).

<sup>3</sup> American Bar Association, [The Oregon Project](#) (2022).

<sup>4</sup> American Bar Association, [The New Mexico Project](#) (2022). The ABA, the National Center for State Courts, and the Rand Corporation are developing both a meta study of all the public defense workload reports in the past eight years and a recommended set of national caseload standards for public defense lawyers. Those standards should be published this summer.

<sup>5</sup> Council on Public Defense [Statement on Workloads](#) (Adopted by the WSBA Board of Governors 1/13/2022).

<sup>6</sup> American Bar Association, Formal Opinion 06-441 [Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation](#), May 13,

Washington defenders and assigned counsel can and should seek relief from excessive workloads, declining to accept new appointments, working with others to develop and increase diversion programs, and seeking new or improved resources.

Court-ordered relief is a final option. (A successful example of such court-ordered relief can be found at Order on Motion to Withdraw, *Arizona v. Lopez et. al*, Superior Court for the County of Mohave, December 17, 2007).

Public defense lawyers seeking relief will find support in WSBA Board of Governor's statements addressing workload<sup>7</sup>. See Advisory Ethics Opinion 1713 (1997):

If the problem with complying the RPC 1.2, 1.3, and 1.4 is the volume of cases the attorney accepts, then such cases should be declined. ...If the attorney cannot comply with RPC 1.2, then the attorney should not take the case. See ABA Committee on Ethics and Professional Responsibility and Formal Opinion 347 (1981).

See also, the ABA *Eight Guidelines of Public Defense Related to Excessive Workloads*,<sup>8</sup> and Washington Supreme Court rules implementing *Standards for Indigent Defense*. The Court's *Standards* specifically provide: "Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation."<sup>9</sup> Standard 3.3 provides that when a public defender's workload becomes more difficult or time-consuming, per-attorney caseloads should be reduced.<sup>10</sup>

The American Bar Association president has made it clear that:

... ABA policy and well-established legal principles support public defenders in assertively seeking relief from excessive workloads. Courts, in turn, should provide relief when excessive caseloads threaten to lead to representation lacking in quality or to the breach of professional obligations. *To do otherwise, not only harms individual defendants but our entire justice system.*<sup>11</sup> *Emphasis added.*

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2006. See also, Oregon State Bar Association, Formal Opinion No 2007-178 [Competence and Diligence: Excessive Workloads of Indigent Defense Providers](#) and [American Council of Chief Defenders Statement on Caseloads and Workloads](#) (2007), including, at p. 2: "Excessive public defender caseloads and workloads threaten the ability of even the most dedicated lawyers to provide effective representation to their clients." Introduction.

<sup>7</sup> See, in addition to *Statement on Workloads*, supra fn. 5, Two Council on Public Defense Advisory Notices Approved by the WSBA Board of Governors September 18, 2020 and May 21, 2021, respectively: [Implementation of the Standards for Indigent Defense During the Coronavirus Emergency](#) and [Response to the Emergency Caused by Pandemic Driven Increased Public Defender Caseloads](#). The *Response* document includes an Appendix with options for attorneys with excessive workloads.

<sup>8</sup> [ABA Eight Guidelines of Public Defense Related to Excessive Workloads](#) (2009).

<sup>9</sup> [CrR 3.1 Sids, Standard 3.2](#).

<sup>10</sup> The Washington Supreme Court has emphasized the importance of complying with workload standards. [State v. Graham](#), 194 Wn.2d 965, 968, 970 (2019).

<sup>11</sup> [ABA SCLAID finds resource deficiencies in its workload study of New Mexico public defense system](#), January 14, 2022.

## **Council on Public Defense Statement on Workloads**

(Adopted by the WSBA Board of Governors 1/13/2022)

As the pandemic continues, public defense counsel across Washington increasingly have **workloads** that threaten their ability to provide effective representation, even if the number of cases they are assigned comports with the annual case assignment limits set by the Washington Supreme Court.

Washington’s applicable court rule makes clear that lawyers should not “accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.” CrR 3.1 Stds.<sup>1</sup> When defenders’ workloads exceed their ability to provide effective representation, the attorneys should not be given, and should not accept, new clients until their workload has been reduced to a level that permits providing quality representation.

The pandemic has forced many courts to stop or severely limit trials. Public defense attorneys, now required to work remotely, have struggled to communicate with clients, many of whom do not have technology for secure online communication. Obtaining discovery has become time consuming. Pretrial offers from prosecutors to resolve cases without a trial have been far fewer as a result.

During the pandemic period, prosecutors have tended to prioritize the most serious charges when filing new cases, thereby increasing the complexity of public defense attorney workloads. Some prosecutors are filing lower-level felonies as misdemeanors, increasing the seriousness of attorneys’ misdemeanor cases.

During that same period the rate at which cases get resolved has significantly decreased. Statewide, total criminal-case resolutions decreased by 33% in the Covid-19 period (March-

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<sup>1</sup> This is consistent with the [American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 06-441, which states](#), “If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients.” The Formal Opinion also addresses the responsibility of those who supervise individual attorneys by stating that “lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.” The Opinion concludes, “If a supervisor knows that a subordinate’s workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, **the supervisor is responsible for the subordinate’s violation of the Rules of Professional Conduct.**” (Emphasis added.)



December, 2020) compared to same period during the previous year.<sup>2</sup> The adverse impact of delayed resolutions has resulted in increases in the seriousness of attorneys' caseloads. This impact is exacerbated by counties' current difficulty, and in some cases inability, to hire and retain experienced public defense attorneys.

As a result, **open caseloads – in both number and complexity - now make demands that even experienced defenders sometimes cannot meet.** When workload exceeds an attorney's capacity, then public defense attorneys and offices can request funding to hire additional attorneys, decline appointment to new cases, and work with others in the legal system to divert and/or reduce the number of cases in the system.

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<sup>2</sup> COVID-19 and Adult Criminal Justice: A Quantitative Look at Affected Systems, Washington State Institute for Public Policy, July, 2021, pp. 9-10, [https://www.wsipp.wa.gov/ReportFile/1739/Wsipp\\_COVID-19-and-Adult-Criminal-Justice-A-Quantitative-Look-at-Affected-Systems\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1739/Wsipp_COVID-19-and-Adult-Criminal-Justice-A-Quantitative-Look-at-Affected-Systems_Report.pdf)

**Advisory Notice by the WSBA Council on Public Defense  
Response to the Emergency Caused by Pandemic Driven Increased  
Public Defender Caseloads**

**Public defenders struggle to represent their clients** because of a **combination of a surge of newly filed cases, unresolved cases open for longer than average, backlogs of trials, and a push to re-open jury trials** has resulted in overwhelming public defenders. Many lawyers have felony caseloads of over 100 open felonies.

**Counties and Cities must provide public defense resources to address increased workloads and should address the backlog as a systemic issue.**

Recommendations include:

- Using the newly available federal funds to increase defender resources.
- Meeting with public defense providers to reconsider the number of cases assigned to ensure adequate time to work on each case during this emergency.
- Working with courts, defenders, and prosecutors to consider creative alternatives.
- Comparing the open, unresolved case numbers with pre-pandemic caseloads.
- Respecting the defenders’ assessment of their workloads and the resources they need to have adequate time for each client.

**Public defender caseloads continue to increase as cases take longer to resolve.**

Felony case resolutions in 2020 were 28% less than in 2019. Simultaneously, many prosecutors chose to “hold” cases until the pandemic eased and are now filing them.<sup>1</sup> One county prosecutor had more than 700 cases holding to file.

<b>County</b>	<b>Felony resolutions</b>	<b>Felony Filings</b>
<b>Benton</b>	Decreased 31%	Decreased 4%
<b>Cowlitz</b>	Decreased 51%	Decreased 10%
<b>King</b>	Decreased 29%	Decreased 11%
<b>Whatcom</b>	Decreased 34%	Increased 4%

Courts suspended jury trials and deferred hearings. In many jurisdictions, many cases remain unresolved. This delay has increased workloads for defenders who struggle to represent new clients and meet their obligations for existing clients.

<sup>1</sup> Administrative Office of the Courts and King County Felony Filing and Case Resolution data



A recent survey by the Office of Public Defense documented the strain defenders across the state are experiencing. The report stated: “The COVID-related backlog of criminal and juvenile cases in the courts uniquely impacts defense attorneys.”<sup>2</sup>

Highlights include:

- 90% of the attorneys reported interviews and trials are more difficult.
- 69% spend more time per case during the pandemic.
- 90% report witness interviews and trial preparation are more difficult.
- 65% have seen their pending caseloads increase.
- 58% of respondents with felony caseloads have a higher percentage of serious or violent cases.

Survey responses included the following:

- “The volume of cases means less time for all of my clients. I find too that clients need more attention and contact during this time.”
- “We cannot resolve cases in a fair and efficient manner.”
- “The court flooded our dockets with the backlog of arraignments and pre-trials, which meant we were required to provide attorney coverage every day which left us little time to do other work such as research, or client meetings.”
- “Prosecutors keep filing non-violent cases and judges continue issuing warrants. Both actions make the case backlog worse, burden public defense, and increase the number of people in our courthouses and jails. Prosecutors need to take the lead in reducing cases in the system and being very bold about resolving the ones in the system.”

**Public defenders must comply with their ethical obligations to provide diligent representation.**<sup>3</sup> If a lawyer has an excessive workload, “the lawyer should not accept new clients.” Washington’s Standards require the same. Public defense attorneys should not accept “workloads that, by reason of their excessive size, interfere with the rendering of quality representation.”<sup>4</sup>

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<sup>2</sup> Defending Clients in the COVID-19 Environment: Survey Results from Private and Public Defense Counsel, Washington State Office of Public Defense; [https://www.opd.wa.gov/documents/00847-2021\\_DefendingClients.pdf](https://www.opd.wa.gov/documents/00847-2021_DefendingClients.pdf)

<sup>3</sup> Formal Opinion 06-441 *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation*, American Bar Association Standing Committee on Ethics and Professional Responsibility [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ethics\\_opinion\\_defender\\_caseloads\\_06\\_441.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf)

<sup>4</sup> Washington Supreme Court, Indigent Defense Standard 3.2 <https://www.opd.wa.gov/standards>

**The conditions the federal court condemned and led to financial liability for municipalities in *Wilbur v. City of Mount Vernon*<sup>5</sup> are happening again.** Defenders have not been able to meet confidentially with in-custody clients or to conduct investigations consistently. These conditions seriously undermine the ability of the defenders to give each client the time and effort necessary to ensure constitutionally adequate representation. As the Federal Court noted, “actual innocence could conceivably go unnoticed and unchampioned.”<sup>6</sup> Without additional resources, cities and counties could face tremendous financial liability because of the denial of effective representation to thousands of indigent clients.

**Local efforts to address excessive public defense workload may include these and other systemic approaches:**<sup>7</sup>

- Delay filing or diverting some cases to be resolved non-criminally.
- Reduce reliance on pre-trial incarceration.
- Reserve show cause and review hearings for the most serious allegations.
- Adjust case assignments.
- Increase public defense attorney and staff resources.

For public defense attorneys who are compensated per case or on a flat monthly fee, the contracted number of cases may exceed a reasonable workload because of a surge in cases and the backlog of pending cases. In that case, caseloads should be adjusted downward.

Local officials could review the Advisory Notice by WSBA Council on Public Defense on Implementation of the Standards for Indigent Defense During the Coronavirus Emergency.<sup>8</sup>

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<sup>5</sup> *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013).

<sup>6</sup> *Wilbur v. City of Mount Vernon and City of Burlington*, 989 F. Supp. 2d 1122, 1126 (2013)

<sup>7</sup> ABA Eight Guidelines of Public Defense Related to Excessive Workloads (2009).

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_eight\\_guidelines\\_of\\_public\\_defense.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf).

<sup>8</sup> Available at [https://www.opd.wa.gov/documents/00804-2020\\_WSBAnotice.pdf](https://www.opd.wa.gov/documents/00804-2020_WSBAnotice.pdf).

**Advisory Notice by WSBA Council on Public Defense**

**Implementation of the Standards for Indigent Defense  
During the Coronavirus Emergency**

- **Coronavirus impact on public defense attorney workloads.**

COVID-19 and the restrictions imposed to limit exposure to the virus have dramatically altered how public defense attorneys can hold confidential meetings with clients, go to court safely, investigate, and prepare cases. Attorneys must ensure that their clients' due process rights are protected, but also must protect their clients, themselves, their staff, and their families from exposure to the novel Coronavirus.

As courts begin to resume hearings and trials, and as prosecutors start to file a backlog of cases, public defense attorneys face an increased volume of cases and an increased complexity in their work. For example, the public defense workload becomes more complicated when attorneys must utilize time-consuming telephone/video conferences for client meetings and court appearances, or when social distancing requirements hamper an attorney-client communication during in-person court activities.

These new conditions require courts and public defense attorneys to pay close attention to the Standards for Indigent Defense adopted by the Washington Supreme Court, which establish minimum requirements for public defense representation. *See* CrR 3.1 Stds, CrRLJ 3.1 Stds, and JuCR 9.2 Stds. Attorneys who represent persons in other assigned cases will also be impacted by the current crisis, including involuntary treatment commitment, 71.09 commitment, family defense, status cases, support enforcement, and appeals.

The purpose of this notice is to assist public defense agencies, contract and list appointed attorneys, courts, and local contracting authorities in interpreting and applying the Standards for Indigent Defense during the Coronavirus emergency and ongoing recovery efforts. Additional guidance can be found in the WSBA performance guidelines, WSBA Standards for Indigent Defense, Washington Defender Association Standards for Public Defense Services, and the pending involuntary treatment guidelines.



- **Applying the standards during the coronavirus emergency and recovery.**

The Standards for Indigent Defense identify numeric caseload limits and require that caseloads must be reduced to accommodate unusual circumstances or increased workload.

Consistent with obligations under these Standards, public defense agencies, courts, and contracting authorities, in consultation with public defense attorneys, should reconsider the number of cases assigned to ensure adequate time to work on each case during this emergency.

- **Reduced caseloads may be necessary to maintain compliance with the standards.**

**Standard 3.2** establishes that public defense attorneys may not accept cases beyond their ability to provide quality representation to all their clients.

The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.

**Standard 3.3** limits the number of cases lawyers can handle and recognizes that if there is a “surge” of cases beyond normal expectations or if the cases assigned become more complex, the caseload must be reduced. The standards state that:

Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort.

Caseload limits assume a reasonably even distribution of cases throughout the year.

Reasonably even distribution of cases throughout the year means that lawyers will not be assigned more than 1/12 of their annual maximum caseload in any given month. For felonies, this is 12 cases per month. For misdemeanors, it should be no more than 33 misdemeanor cases per month.

Standard 3.3 also requires that when the public defense workload becomes more difficult or time-consuming due to work circumstances, per-attorney caseloads should be reduced.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources.

- **Attorneys should determine ability to handle caseload.**

Each attorney should evaluate and determine their capacity to provide quality representation to all clients within the typical numeric caseload limits. If an attorney determines that they are not able to provide quality representation within the typical caseload, they should be presumed to be correct, and the caseload should be adjusted.

In 2019, the Washington Supreme Court held that a lower court had abused its discretion when it sanctioned a public defender for seeking a time accommodation that the defender determined was necessary to comply with “his constitutional obligations and the Standards of Indigent Defense.” *State v. Graham*, 194 Wn.2d 965, 968, 454 P.3d 114 (2019). The Court credited the defender’s assessment of his own caseload and recognized that:

...where counsel needs an extension of time to fulfill his obligations of representation, it is appropriate to grant an extension without the imposition of sanctions. Recent cases have highlighted the constitutional importance of maintaining proper caseloads in indigent defense cases. *See, e.g., Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013); *State v. A.N.J.*, 168 Wn.2d 91, 102, 225 P.3d 956 (2010).

*Graham*, 194 Wn.2d at 970.

The Court emphasized the importance of adhering to the Standards:

The Standards for Indigent Defense provide that the caseload of public defenders must allow each lawyer to give each client the time and effort necessary to ensure effective representation.

*Graham*, 194 Wn.2d at 969.

Options to address increased workload may include adjusting case assignments, increasing resources including additional public defenders and staff, as well as other systemic approaches, as presented in the appendix.

Some attorney contracts pay based on each case assigned or pay a flat monthly fee for a specific number of cases. In these situations, as courts resume hearings and trials, the contracted number of cases may exceed a reasonable workload because of a surge in cases and the backlog of pending cases. Defenders are also less able to resolve cases, complete investigations, and meet with clients in the way they would have before the coronavirus crisis. If the workload required to provide quality representation increases, because of delays and barriers in investigating cases and meeting with clients, the caseload should be adjusted downward. Basic contract principles require that when circumstances change significantly, the parties should be open to renegotiation and amendment of contracts. Public defense providers should accept fewer cases or be compensated additionally to hire more staff. Additional resources for public defender services may also be necessary to re-open courts for trial and disposition hearings.

- **Coronavirus funding and resources should be directed to public defense.**

Many local governments are receiving significant emergency funding from federal and state Coronavirus mitigation sources. These emergency resources can and should be used to support public defense services.

For example, CARES Act funding may be used to increase the number of public defense attorneys and staff to address surging workloads, as well as to provide personal protective equipment for public defense attorneys, staff, and clients. Emergency funding may also be used to provide new technology to public defense attorneys, their clients, and jails to facilitate effective participation in court-conducted hearings, permit confidential attorney-client communications and to allow for timely electronic filing of pleadings.

- **Appendix One**

In considering how to address the emergency, the American Bar Association's *Eight Guidelines of Public Defense Related to Excessive Workloads* (2009) should guide public defense providers, local governments, and the courts.

**Possible systemic options to address coronavirus impacts on public defense workload.**

- Contract with additional attorneys to spread out new case assignments more equitably.
- Charge low level, non-violent adult felony offenses as gross misdemeanors.
- Charge low level, non-violent misdemeanor and gross misdemeanor offenses as infractions.
- Increase the use of pre-filing diversion for adult criminal and juvenile offender cases.
- Enhance prosecutorial review of cases filed by law enforcement officers, to minimize the number of cases that might otherwise result in early dismissal.
- Continue to minimize the number of in-custody defendants.
- Reduce status hearings for pre-trial and compliance hearings.
- Allow counsel to waive their client's appearances for non-essential hearings.
- Expand diversion alternatives.
- Reduce the issuance of warrants for failures to appear and allow defendants and youth to appear for hearings remotely.
- Reserve show cause and probation review hearings for the most serious allegations.
- Encourage courts to accept ex-parte orders with electronic signatures in all non-testimonial matters.
- Request that courts that have not initiated remote hearings begin doing so to reduce backlog.
- Consult with the Washington State Office of Public Defense or experienced practitioners in how to implement the Standards.

**TO:** WSBA Board of Governors

**FROM:** Bryce Sinner, At-Large Member on behalf of the WSBA Construction Law Section Executive Committee Meeting  
Julianne Unite, WSBA Member Services and Engagement Manager  
Carolyn MacGregor, WSBA Sections Program Specialist

**RE:** WSBA Construction Law Section – Amendments to the Existing Model Residential Construction Contracts and Proposing the Addition of Two New Model Residential Construction Contracts

**DATE:** July 11, 2022

**ACTION:** Approve the WSBA Construction Law Section’s Proposed Amendments to the Existing Model Residential Construction Contracts and Proposed Addition of Two New Model Residential Construction Contracts

- Brief Summary/Purpose of the request
  - The Construction Law Section formed a subcommittee consisting of then Chair and current Immediate Past Chair, Brett Hill, and At-Large Members, Masaki Yamada, Scott Campbell, and Bryce Sinner to review the existing Model Residential Construction Contracts, including the (1) Lump Sum Contract, (2) Cost Plus Contract, (3) Design Build Lump Sum Contract, and (4) Design Build Cost Plus Contract, and to draft two new contracts, including the (5) Cost Plus Contract with a Guaranteed Maximum Price; and (6) Design Build Cost Plus Contract with a Guaranteed Maximum Price. The subcommittee reviewed the existing contracts and drafted the new contracts based on the existing contracts. The subcommittee reached out to industry experts to provide comments on the design build and guaranteed maximum price contracts. Upon completion of its review and drafting of the new contracts, the subcommittee ran comparisons to ensure consistency among the contracts.
- Process under which the section discussed and voted to approve these amendments
  - The subcommittee proposed the amendments to the existing Model Residential Construction Contracts and proposed addition of two new Model Residential Construction Contracts to the WSBA Construction Law Section’s Executive Committee. The Executive Committee met and approved the subcommittee’s proposal by a majority vote of the voting members once quorum was established on December 8, 2021.
- Stakeholder analysis/feedback, if any
  - None



- Financial impact/analysis, if any
  - No financial impact
  
- Rule compliance, if any e.g. GR12 analysis
  - Publication of the Model Residential Construction Contracts, along with the proposed changes and addition thereto, is consistent with WSBA’s purpose of promoting an effective legal system, accessible to all, by providing competently drafted contract forms at no cost to its members or the public, as well as providing this service to its members and the public. See GR 12.2(a)(2) and (3). This activity is authorize by GR 12.2(b)(20) as it provides a service to its members.
  
- Implementation implications, if any
  - The WSBA Construction Law Section proposes implementing this action by publishing the amendments to the existing Model Residential Construction Contracts and the additional Model Residential Construction Contracts on its website. The Section will review the contracts every 5 years to see if any updates should be made to conform with changes in law and, at a minimum, will update the contracts every 10 years.

*WSBA RISK ANALYSIS: This section is to be completed by the Office of General Counsel, with input from the proposing entity or individual.*

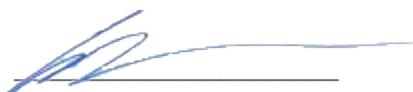
Publishing these model contracts supports the purposes of the WSBA and is not prohibited by GR 12.2(c).

Potential Concerns for Discussion

In April 2010 when the first set of model construction contracts were published, the Board discussed the risks of providing contract templates and whether the WSBA should engage in this activity There is always some risk in providing legal documents that others will use and interpret. It appears that the Board balanced the risk of providing the contract templates with the benefits of educating and serving members. In recognition of this risk, the documents currently available on the WSBA website contain the following language:

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Construction Contract to help homeowners and builders allocate risk and responsibilities. This form contract document (the “Document”) does not constitute legal advice or recommendations and there is no substitute for careful review by the parties and their attorneys. The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document

The contracts provided to the Board with this memorandum appear to be updates of the documents currently available on the website. The disclaimer language has been clarified to specifically list the WSBA. The Board may wish to discuss whether any additional mitigating steps are advisable. Other risk mitigation steps could include a schedule for updating the terms in these model contracts in the event of law changes.



Colm P. Nelson

Attachments:

- Clean version of the following Model Residential Construction Contracts
  - (1) Lump Sum Contract,
  - (2) Cost Plus Contract,
  - (3) Design Build Lump Sum Contract,
  - (4) Design Build Cost Plus Contract,
  - (5) Cost Plus Contract with a Guaranteed Maximum Price, and
  - (6) Design Build Cost Plus Contract with a Guaranteed Maximum Price

# Welcome to the Model Residential Construction Contract Lump Sum

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Construction Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document:

1. Relationship between the Parties: The Document contemplates that the Owner is supplying the Contractor with plans, specifications and/or design documents for the project. Without modification, this Document is not suitable for a design-build project.

Established case precedent holds that the Owner warrants that the plans and specifications are accurate and that, if followed, the plans and specifications are adequate to accomplish the purpose of the project. If there is a problem encountered that is attributable to the design, the Owner bears responsibility as between the Owner and Contractor.

2. Lump Sum Contract: This Document is written to be a **lump sum contract**. The lump sum amount is the total amount to be paid by the Owner to the Contractor for Contractor’s performance of the scope of work required by the Construction Contract. Changes to the scope of work could lead to an increase or decrease in the lump sum amount through a change order. Because this is a lump sum contract, the actual costs incurred by the Contractor in performing the work are not disclosed by the Contractor or audited by the Owner. Absent changes in the scope of work, performance of the contractually defined scope of work entitles the Contractor to the lump sum amount, irrespective of whether the Contractor’s actual costs are higher or lower than the lump sum amount.

3. Progress Payments: The Document does not permit the Owner to review the Contractor’s cost records (such as material purchase receipts, subcontractor invoices, and labor costs) each time the Contractor submits a monthly progress billing. Rather, the Contractor is paid based upon the percentage of work completed through the date of the payment application. A Schedule of Values at Exhibit B to the Contract provides the Owner and Contractor a basis for measuring the ratio of the percentage of work completed to the value for the Work set forth in a line item in the Schedule of Values to determine the amount due the Contractor under the Contract.

4. Damages for Late Performance: The Document requires the Contractor to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner’s only remedy for late completion of the project. The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner’s actual damages from delay.

5. Bonds, Insurance, Registration: The Contractor and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Contractor is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential contractor's registration and insurance with the Washington Department of Labor and Industries at [www.lni.wa.gov](http://www.lni.wa.gov). This Document does not require the Contractor to obtain a payment and performance bond in the amount of the cost of the Work.

6. Contractor's Warranty: In the documents, the Contractor warrants to the Owner that the construction Work will be in accordance with contract documents, performed in a workmanlike manner, and free of material structural defects.

7. Owner's Notice of Claims After Completion: The Document incorporates Washington statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedure set forth in RCW 64.50 if they have a claim.

8. Revisions: The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

**RESIDENTIAL CONSTRUCTION CONTRACT (Lump Sum)**

Parties: \_\_\_\_\_  
Contractor

\_\_\_\_\_  
Owner

Property: \_\_\_\_\_  
Address

\_\_\_\_\_  
Tax Parcel No.

Date: \_\_\_\_\_

**I. THE WORK**

1.1 Contractor’s Duties. Contractor shall furnish the material, labor, equipment, tools, and supervision (the “Work”) necessary to construct or renovate a single-family residence (the “Project”) for Owner on the Property in compliance with the plans and specifications supplied by Owner (the “Plans”). The Plans are attached as **Exhibit A**. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.” If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

Contractor agrees to immediately inform Owner in writing of any discrepancies, errors, or omissions in the Plans or materially changed or unanticipated conditions and not to proceed with any work affected by such discrepancy until Owner directs Contractor to do so.

1.2 Permits. [Choose Owner or Contractor] shall obtain the governmental approvals of the Plans and all permits for construction of the Project. Owner is responsible for cost of the building permit and other necessary permits“, which [Choose “is” or “is not”] included in the Lump Sum Amount, defined below.

**II. LUMP SUM PRICE AND PAYMENT**

2.1 Lump Sum Amount. Contractor shall perform the Work for the Lump Sum Price of \_\_\_\_\_ Dollars (\$) (\_\_\_\_\_) (“Contract Price”). The Contract Price is detailed by scope and trades in the Schedule of Values at **Exhibit B**. The Lump Sum Amount [choose: does or does not] include Washington State Sales Tax.

2.2 Down Payment. Owner shall pay Contractor a down payment of \_\_\_\_\_ Dollars (\$) prior to commencement of the Work. The down payment shall be credited against the Contract

Price beginning with Contractor's first Progress Payment. Owner warrants that he/she has sufficient funds, either personal or through lender financing, in an amount equal to the Contract Price. Proof of sufficient funds may be requested by the Contractor.

2.3 Progress Payments. On the first business day of every month, Contractor shall present to Owner an Application for Payment to Owner. Each Application for Payment shall be based on the Schedule of Values at Exhibit B. The Schedule of Values shall allocate the entire Contract Price among the various portions of the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Schedule of Values shall be used as a basis for reviewing Contractor's Applications for Payment. Contractor's Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Owner shall make payment to Contractor based on the percentage of the Work completed for the period covered by the Application for Payment date plus sales tax, less previous payments and less retainage specified in Section 2.4. Owner shall make payment no later than \_\_\_\_\_ (\_\_\_\_) (Twenty-Five if not filled in) calendar days from the date of receipt of each Application for Payment. With each Application for Payment, the Owner shall have the right to require Contractor to provide documentation to support the claimed percentage of the Work completed. Contractor shall apply Owner's payment only to the costs and fees of this Project.

2.4 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the "Retainage"). Retainage shall be released to Contractor at the time of Final Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Contractor; (ii) for the payment of persons who supplied materials or who worked on the Project and were not paid by Contractor; and (iii) for damages incurred due to other breaches of the Contract.

2.5 Lien Release. Owner shall not be required to make any payment to Contractor unless and until Contractor provides Owner with a conditional waiver and lien release form signed by Contractor and by each subcontractor and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment. A form lien release is attached as **Exhibit C-1**.

2.6 Final Payment. Within ten (10) days after Contractor notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List"). The Punch List and other Work shall be finished by Contractor within \_\_\_\_\_ (\_\_\_\_) [Twenty-One if not filled in] days of Contractor's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Contractor (1) completes the Work in accordance with the Contract Documents; and, (2) provides Owner with final lien releases from Contractor and all subcontractors and suppliers, conditioned only on receipt of Final Payment attached as **Exhibit C-2**. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner can legally occupy and has full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Contractor.

2.7 Failure of Payment. If Owner fails to pay Contractor amounts due within fourteen (14) days of the time required by Section 2.3, Contractor may, upon providing seven (7) days written notice to Owner, suspend the Work until the amounts due have been received. If the failure of payment remains uncured for fourteen (14) days after the first written notice, Contractor may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.8 Contractor's Registration. A Contractor's Disclosure Statement / Notice to Customer ("Notice") is attached as **Exhibit D**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Contractor's compliance with the disclosure requirements.

### **III. CHANGES**

3.1 Nature of Change. If Owner or Contractor requests, or one of the parties believes that a change is necessary, (a "Change"), then the parties shall comply with the following procedure to reflect a Change in the Work:

- a. The Party requesting or noting the Change shall write a description of the Change and give the other Party that writing (the "Change Notice");
- b. Before proceeding with the changed work, unless excused by an emergency involving safety or property damage, the Contractor shall provide Owner with a fixed-price written estimate of the cost and time impact of the requested Change;
- c. Owner and Contractor shall execute a Change Order confirming their agreement with the Change, the fixed-price cost, and the extension of the Substantial Completion date, if any. If an adjustment to the Contract Price cannot be determined at the time of the Change Order, the Change Order shall identify the agreed method of determining the adjustment to the Contract Price.

3.2 Change Order Format. A blank Change Order form is included in this Contract as **Exhibit E**.

### **IV. SCHEDULE**

4.1 Commencement and Completion of the Work. Contractor shall commence the Work within ten (10) calendar days of receipt of a building permit. Subject to the permitted extensions and delays provided herein, Contractor shall Substantially Complete the Work within \_\_\_\_\_ (\_\_\_\_\_) calendar days after the commencement date. With its first Application for Payment, Contractor shall provide a schedule indicating proposed Work activity sequences and durations, deadlines for Owner's decisions on material selections, and milestones for delivery of materials. The schedule is included in this Contract as **Exhibit F**.

4.2 Construction Time and Liquidated Damages. Contractor agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Contractor's schedule, provides sufficient time for the expeditious and practical execution of the Work. If Contractor fails to

achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Contractor agree that if Contractor fails to meet the Substantial Completion date, then *Contractor shall pay Owner liquidated damages at a daily rate of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)*. The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Contractor.

4.3 Delay. If the Project is delayed by the act, neglect or default of Owner, Owner's agent, Owner's design professional, Owner's lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason or reasons beyond Contractor's reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Contract Documents (the "Excusable Delay"), then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

4.4 Notice of Delay. Within a reasonable time following the date Contractor knows, or within reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Contractor shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Contractor's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

## **V. INSURANCE**

Before commencing the Work and as a condition of payment, Contractor shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A- 1 or better, that will protect it from bodily injury or property damage claims arising out of its operations under this Contract, whether the operations are by Contractor, Contractor's consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, Ongoing Operations, and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
2. Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned and hired automobiles.
3. If the Owner requires that Contractor's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must check the appropriate box: Owner [ ] Contractor [ ].
4. Owner shall be included as an additional insured under the CGL policy.

Prior to starting work, Contractor shall provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy that documents the Owner's additional insured status.

Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and, including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work), miscellaneous materials and supplies incidental to the Work and temporary structures. If work is to be performed on an existing residential structure, the Owner may retain an all risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

Owner and Contractor hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Contractor shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Contractor's negligence.

## **VI. CONTRACTOR'S WARRANTY**

6.1 Contractor's Warranty. Contractor warrants that the Work shall be in accordance with the Contract Documents, performed in a workmanlike manner and free from material structural defects and shall return and repair any Work not in accordance with the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period"). All product warranties, if any, are deemed assigned from Contractor to Owner.

6.2 Cure of Defect. If a defect is discovered within the Warranty Period, then Owner must promptly notify Contractor in writing following the discovery of that defect (the "Warranty Defect Notice") and must provide Contractor with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as estimated by Contractor. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. In no event shall Contractor's liability exceed the fair and reasonable cost of repair or replacement of the warranted defect. Contractor shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Contractor has been notified in writing and has been afforded the opportunity to cure the claimed defect or to pay the sums specified herein. Nothing contained in Sections 6.1 and 6.2 herein shall be construed to establish a period of limitation with respect to Contractor's other obligations under the Contract Documents

6.3 Notice of Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST CONTRACTOR. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Contractor and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and
- (b) damages incurred by Contractor for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 9. Nothing contained in this Section 6.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each other term, covenant or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

## **VII. SAFETY**

Contractor and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Contractor shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Contractor or its subcontractors of any tier. Contractor and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Contractor shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

## **VIII. INDEMNITY**

Contractor agrees to defend, indemnify, and hold harmless (the "Indemnity Duty") Owner and its agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) (the "Harm"), provided, however, that the Contractor owes no Indemnity Duty if the Harm was caused by or results from the sole negligence of the Owner or its agents or both, and provided further that in the event of concurrent negligence (i) by Contractor or the Contractor's subcontractors agents or employees, or both and (ii) by the Owner or its agents, or both, then the Contractor's Indemnity Duty is valid and enforceable only to the extent of the negligence of Contractor, its agents, and its employees.

Contractor further agrees to defend, indemnify, and hold Owner harmless from all WISHA or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor's failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder. Contractor further agrees to defend, indemnify and hold Owner harmless from any liens or claims of payment from Contractor's subcontractors, suppliers, and laborers, provided Owner has complied with its payment obligations hereunder.

For purposes of the foregoing indemnification provision only, and only to the extent of claims against Contractor by Owner under such indemnification provision, Contractor specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

By initialing here, the parties agree that this clause was mutually negotiated:

\_\_\_\_\_ Contractor      \_\_\_\_\_ Owner

## **IX. TERMINATION**

9.1 Termination by Owner for Cause. Owner may, after giving Contractor seven (7) days written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Contractor violates any material provision of this Contract or:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors; or
- (c) persistently disregards laws, ordinances, rules, regulations or orders of public authorities having jurisdiction; or
- (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the date of Substantial Completion; or
- (e) persistently fails or refuses to perform the Work in accordance with the Contract Documents.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- (a) take possession of the site and of all materials, equipment, and
- WSBA Residential Construction Contract #2 Lump Sum 0910*

machinery thereon owned by Contractor;

- (b) accept assignment of subcontracts;
- (c) finish the Work using reasonable methods. Upon Contractor's request, Owner shall furnish to Contractor a detailed accounting of the costs Owner incurs in finishing the Work; and

- (d) charge Contractor the costs of completion in excess of the amounts due to Contractor.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Contractor shall:

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Contractor shall be entitled to receive payment for Work executed prior to the effective date of termination, based on the percentage of the Work completed compared to the Schedule of Values at Exhibit B, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c), above.

9.3 Termination by Contractor for Cause. In addition to Contractor's right to terminate the Contract pursuant to Section 2.7, the Contractor may terminate the Contract for cause if the Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this Section, Contractor shall first provide Owner seven (7) days written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, the Contractor may terminate the Contract.

## **X. MEDIATION**

The parties agree to attempt to resolve any dispute through good faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this Section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA"). Either party may give written notice to the other party requesting mediation and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

**XI. GENERAL**

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 Entire Agreement. The Contract Documents contain the entire agreement between the parties with respect to construction of the Project. All other agreements, oral or written, are hereby superseded by this Contract. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties. No verbal or other agreements modify or affect this Contract.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

11.4 Assignment. Neither party shall assign nor transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

CONTRACTOR:

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Contractor Registration No.: \_\_\_\_\_

- Exhibits:
- A – Plans
  - B – Schedule of Values
  - C-1 – Conditional Lien Release Form
  - C-2 – Conditional Lien Release On Final Payment Form
  - D – Disclosure Statement / Notice to Customer
  - E – Change Order Form
  - F – Project Schedule

## **EXHIBIT A**

### **PLANS**

List of Plans provided by Owner:

- 1.
- 2.
- 3.
- 4.

## **EXHIBIT B**

### SCHEDULE OF VALUES

(To be provided by Contractor)

**EXHIBIT C-1**  
**CONDITIONAL WAIVER AND RELEASE**  
**UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_  
for labor, services, equipment, or material furnished to \_\_\_\_\_ on the job of  
\_\_\_\_\_  
(Owner) (Job Description)  
(Maker of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

**EXHIBIT C-2**

**CONDITIONAL WAIVER AND RELEASE UPON  
FINAL PAYMENT**

Upon receipt by the undersigned of a check from \_\_\_\_\_ in the  
(Maker of Check)  
sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the check  
(Payee)  
has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall  
become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job  
of \_\_\_\_\_ located at \_\_\_\_\_.  
(Owner) (Job Description & Address)

This release covers the final payment to undersigned for all labor, services, equipment, or material furnished  
on the job. Before any recipient of this document relies on it, the party should verify evidence of payment  
to the undersigned.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

**EXHIBIT D**

**DISCLOSURE STATEMENT / NOTICE TO CUSTOMER**

This Contractor is registered with the State of Washington, Registration No. \_\_\_\_\_ and has posted with the state a bond or deposit of \$\_\_\_\_\_ for the purpose of satisfying claims against the Contractor for breach of contract including negligent or improper work in the conduct of the Contractor’s business. The expiration date of this Contractor’s Registration is \_\_\_\_\_.

**THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

This bond or deposit is not for your exclusive use because it covers all work performed by this Contractor. The bond or deposit is intended to pay valid claims up to \$\_\_\_\_\_ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

**FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.**

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

**YOUR PROPERTY MAY BE LIENED.**

If a supplier of materials used in your construction project or an employee or subcontractor of your Contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

**FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL “LIEN RELEASE” DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.**

The Contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_  
Signature of Customer

The Contractor must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

**EXHIBIT E**

**CHANGE ORDER**

- 1. Number: \_\_\_\_\_ Date: \_\_\_\_\_
- 2. Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_
- 3. Job Description: \_\_\_\_\_
- 4. Property Address or Legal Description:  
\_\_\_\_\_  
\_\_\_\_\_
- 5. Contractor hereby agrees to make the change(s) specified below:  
\_\_\_\_\_ See Attachment "A" \_\_\_\_\_
- 6. Fixed Price of Change(s):                      Add:                      \$ \_\_\_\_\_  
   Deduct:                      \$ \_\_\_\_\_
- 7. Previous Change Orders:    \$ \_\_\_\_\_
- 8. Reason for Change: \_\_\_\_\_ See Attachment "A" \_\_\_\_\_
- 9. Contract Time Extension: \_\_\_\_\_
- 10. New Completion Date: \_\_\_\_\_

ACCEPTANCE: The terms of this change order are satisfactory and are hereby accepted:

OWNER APPROVAL \_\_\_\_\_  
DATE \_\_\_\_\_

CONTRACTOR APPROVAL \_\_\_\_\_  
DATE \_\_\_\_\_

**EXHIBIT F**  
**PROJECT SCHEDULE**

**Attachment “A”**  
**Change Order No. \_\_\_\_\_**

# Welcome to the Model Residential Construction Contract Cost Plus

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Construction Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document:

1. Relationship between the Parties: The Document contemplates that the Owner is supplying the Contractor with plans, specifications and/or design documents for the project. Without modification, this Document is not suitable for a design-build project.

Established case precedent holds that the Owner warrants that the plans and specifications are accurate and that, if followed, the plans and specifications are adequate to accomplish the purpose of the project. If there is a problem encountered that is attributable to the design, the Owner bears responsibility as between the Owner and Contractor.

2. Cost Plus Contract: This Document is written to be a **cost plus contract**. It is not a “fixed price” contract. The Contractor estimates the project cost, but the actual project cost is ultimately determined by the actual costs of labor and materials supplied by the Contractor. The actual costs of construction may be higher, equal to, or lower than the cost estimated by the Contractor. This is not a “fixed price” or guaranteed maximum price under which the Owner is protected by a lump sum or guaranteed maximum amount. Rather, the Owner is responsible to pay for actual expenditures by the Contractor and for comparing expenditures to the amounts estimated by the Contractor. The Owner is to be provided a “control estimate” and is entitled to receive notice if the Contractor’s reimbursable costs exceed the control estimate by a certain percentage.

3. Components of Costs: Different contractors have different billing practices. For instance, a Contractor’s listed hourly rate charged for an employee is usually not what the employee is actually paid. Therefore, the Document allows the parties to define reimbursable costs (Option A of Section 2.2) or identify such terms in an exhibit (Option B of Section 2.2). It is left to the parties to negotiate and agree upon what constitutes reimbursable costs and how much the Contractor will be paid for the Work.

4. Cost Auditing: The Document permits the Owner to review the Contractor’s cost records (such as material purchase receipts, subcontractor invoices and labor costs) each time the Contractor submits a monthly progress billing. Because there is no fixed price or guaranteed maximum price, the Owner should carefully review payment applications and supporting documentation. In addition, lien release forms have been provided as Exhibits to the Document.

5. Damages for Late Performance: The Document requires the Contractor to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner’s only remedy for late completion of the project. The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner’s actual damages from delay.

6. Bonds, Insurance, Registration: The Contractor and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Contractor is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential contractor’s registration and insurance with the Washington Department of Labor and Industries at [www.lni.wa.gov](http://www.lni.wa.gov). This Document does not require the Contractor to obtain a payment and performance bond in the amount of the cost of the Work.

7. Contractor’s Warranty: In the documents, the Contractor warrants to the Owner that the Work will be in accordance with contract documents, performed in a workmanlike manner and free of material structural defects.

8. Owner’s Notice of Claims After Completion: The Document incorporates Washington statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedure set forth in RCW 64.50 if they have a claim.

9. Revisions: The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

**RESIDENTIAL CONSTRUCTION CONTRACT (Cost Plus)**

Parties: \_\_\_\_\_  
Contractor

\_\_\_\_\_  
Owner

Property: \_\_\_\_\_  
Address

\_\_\_\_\_  
Tax Parcel No.

Date: \_\_\_\_\_

**I. THE WORK**

1.1 Contractor’s Duties. Contractor shall furnish the material, labor, equipment, tools, and supervision (the “Work”) necessary to construct or renovate a single-family residence (the “Project”) for Owner on the Property in compliance with the plans and specifications supplied by Owner (the “Plans”). The Plans are attached as **Exhibit A**. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.” If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

Contractor agrees to immediately inform Owner in writing of any discrepancies, errors, or omissions in the Plans or materially changed or unanticipated conditions and not to proceed with any work affected by such discrepancy until Owner directs Contractor to do so.

1.2 Permits. [Choose Owner or Contractor] shall obtain the governmental approvals of the Plans and all permits for construction of the Project. Owner is responsible for cost of the building permit and other necessary permits, “, which [Choose “is” or “is not”] included in the Cost of the Work, defined below.

**II. PRICE AND PAYMENT**

2.1 Estimated Project Cost. Contractor estimates the total cost of the Work to be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as set forth in **Exhibit B** (the “Estimated Project Cost”). The Estimated Project Cost is organized by trade categories and systems. Exhibit B is an estimate only and it is based upon the Plans provided by Owner. The actual total cost of the Work may be higher or lower than the Estimated Project Cost.

2.2 The Cost of the Work (Cost Plus Fee). Owner shall pay Contractor for the performance of the Work a sum equal to Contractor’s Actual Costs (defined below) plus a fee of \_\_\_\_\_ percent ( \_\_\_%) of the Actual Costs (the “Contractor’s Fee”), plus sales tax, which

are collectively referred to as the Cost of the Work.

[Option A] “Actual Costs” include the following:

- (a) On-site Project personnel costs, but limited to those persons necessary for the proper performance of the Work, at the following hourly rates: (list by job title and hourly rate);
- (b) The costs paid for the purchase, installation and/or use of all materials, structural accessories, machinery, equipment or other items for the performance of the Work;
- (c) The costs paid for all insurance and governmental fees for the Project;
- (d) The costs paid to subcontractors for their performance of the Work; and
- (e) Actual Costs do not include costs incurred because of Contractor error.

[Option B] “Actual Costs” are listed in an attachment provided by Contractor and incorporated herein by this reference.

2.3 Down Payment. Owner shall pay Contractor a down payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) prior to commencement of the Work. The down payment shall be credited against the Cost of the Work beginning with Contractor’s first Progress Payment. Owner warrants that he/she has sufficient funds, either personal or through lender financing, in an amount equal to the Estimated Project Cost. Proof of sufficient funds may be requested by the Contractor.

2.4 Progress Payments. On the first business day of every month, Contractor shall present to Owner an Application for Payment based on the Actual Costs incurred to that date plus the Contractor’s Fee and plus sales tax, less previous payments. Owner shall pay the full amount billed, less retainage, no later than \_\_\_\_\_ (\_\_\_\_\_) (Twenty-Five if not filled in) calendar days from the date of receipt of each Application for Payment. With each Application for Payment the Owner shall have the right to require Contractor to provide documentation to support those Actual Costs. Contractor shall apply Owner’s payment only to the costs and fees of this Project.

2.5 Anticipated Actual Costs Exceeding Estimated Project Costs. If Contractor reasonably believes that anticipated Actual Costs will exceed any Work component of the Estimated Project Cost in Exhibit B by more than ten percent (10%), then Contractor shall give prior written notice to Owner of the anticipated increase before completing that Work component.

2.6 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the “Retainage”). Retainage shall be released to Contractor at the time of Final Payment. The Retainage is a fund for the protection of the Owner: (i) from incomplete or defective work by

Contractor; (ii) for the payment of persons who supplied materials or who worked on the Project and were not paid by Contractor; and (iii) damages incurred due to other breaches of the Contract.

2.7 Lien Release. Owner shall not be required to make any payment to Contractor unless and until Contractor provides Owner with a conditional waiver and lien release form signed by Contractor and by each subcontractor and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment. A form lien release is attached as **Exhibit C-1**.

2.8 Final Payment. Within ten (10) days after Contractor notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List"). The Punch List and other Work shall be finished by Contractor within \_\_\_\_\_ (\_\_) [Twenty-One if not filled in] days of Contractor's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Contractor (1) completes the Work in accordance with the Contract Documents; (2) provides Owner with final lien releases from Contractor and all subcontractors and suppliers, conditioned only on receipt of Final Payment attached as **Exhibit C-2**; and (3) makes available the cost records supporting the final Cost of the Work if requested by Owner. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner can legally occupy and have full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Contractor.

2.9 Failure of Payment. If Owner fails to pay Contractor amounts due within fourteen (14) days of the time required by Section 2.4, Contractor may, upon providing seven (7) days written notice to Owner, suspend the Work until the amounts due have been received. If the failure of payment remains uncured for fourteen (14) days after the first written notice, Contractor may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.10 Contractor's Registration. A Contractor's Disclosure Statement Notice to Customer ("Notice") is attached as **Exhibit D**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Contractor's compliance with the disclosure requirements.

### **III. CHANGES**

3.1 Nature of Change. If Owner or Contractor requests, or one of the parties believes that a change is necessary, (a "Change"), then the parties shall comply with the following procedure to reflect a Change in the Work:

- a. The Party requesting or noting the Change shall write a description of the Change and give the other Party that writing (the "Change Notice");

- b. Before proceeding with the changed work, unless excused by an emergency involving safety or property damage, the Contractor shall provide Owner with a fixed-price written estimate of the cost and time impact of the requested Change;
- c. Owner and Contractor shall execute a Change Order confirming their agreement with the Change, the fixed-price cost, and the extension of the Substantial Completion date, if any. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

3.2 Change Order Format. A blank Change Order form is included in this Contract as Exhibit E.

#### **IV. SCHEDULE**

4.1 Commencement and Completion of the Work. Contractor shall commence the Work within ten (10) calendar days of receipt of a building permit. Subject to the permitted extensions and delays provided herein, Contractor shall Substantially Complete the Work within \_\_\_\_\_ (\_\_\_\_) calendar days after the commencement date. With its first Application for Payment, Contractor shall provide a schedule indicating proposed Work activity sequences and durations, deadlines for Owner's decisions on material selections, and milestones for delivery of materials. The schedule is included in this Contract as **Exhibit F**.

4.2 Construction Time and Liquidated Damages. Contractor agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Contractor's schedule, provides sufficient time for the expeditious and practical execution of the Work. If Contractor fails to achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Contractor agree that if Contractor fails to meet the Substantial Completion date, then *Contractor shall pay Owner liquidated damages at a daily rate of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)*. The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Contractor.

4.3 Delay. If the Project is delayed by the act, neglect or default of Owner, Owner's agent, Owner's design professional, Owner's lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason or reasons beyond Contractor's reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Contract Documents (the "Excusable Delay"), then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

4.4 Notice of Delay. Within a reasonable time following the date Contractor knows, or within reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Contractor shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Contractor's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

## V. INSURANCE

Before commencing the Work and as a condition of payment, Contractor shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A-,VII or better, that will protect it from bodily injury or property damage claims arising out of its operations under this Contract, whether the operations are by Contractor, Contractor's consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, Ongoing Operations and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
2. Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned and hired automobiles.
3. If the Owner requires that Contractor's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must check the appropriate box: Owner [ ] Contractor [ ].
4. Owner shall be included as an additional insured under the CGL policy.

Prior to starting work, Contractor shall provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy that documents the Owner's additional insured status.

Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and, including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work), miscellaneous materials and supplies incidental to the Work and temporary structures. If work is to be performed on an existing residential structure, the Owner may retain an all risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

Owner and Contractor hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Contractor shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Contractor's negligence.

## **VI. CONTRACTOR'S WARRANTY**

6.1 Contractor's Warranty. Contractor warrants that the Work shall be in accordance with the Contract Documents, performed in a workmanlike manner and free from material structural defects and shall return and repair any Work not in accordance with the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period"). All product warranties, if any, are deemed assigned from Contractor to Owner.

6.2 Cure of Defect. If a defect is discovered within the Warranty Period, then Owner must promptly notify Contractor in writing following the discovery of that defect (the "Warranty Defect Notice") and must provide Contractor with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as estimated by Contractor. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. In no event shall Contractor's liability exceed the fair and reasonable cost of repair or replacement of the warranted defect. Contractor shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Contractor has been notified in writing and has been afforded the opportunity to cure the claimed defect or to pay the sums specified herein. Nothing contained in Sections 6.1 and 6.2 herein shall be construed to establish a period of limitation with respect to Contractor's other obligations under the Contract Documents

6.3 Notice of Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST CONTRACTOR. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Contractor and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and,

- (b) damages incurred by Contractor for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 9. Nothing contained in this Section 6.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each other term, covenant or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

## **VII. SAFETY**

Contractor and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Contractor shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Contractor or its subcontractors of any tier. Contractor and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Contractor shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

## **VIII. INDEMNITY**

Contractor agrees to defend, indemnify, and hold harmless (the "Indemnity Duty") Owner and its agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) (the "Harm"), provided, however, that the Contractor owes no Indemnity Duty if the Harm was caused by or results from the sole negligence of the Owner or its agents or both, and provided further that in the event of concurrent negligence (i) by Contractor or the Contractor's subcontractors agents or employees, or both and (ii) by the Owner or its agents, or both, then the Contractor's Indemnity Duty is valid and enforceable only to the extent of the negligence of Contractor, its agents, and its employees.

Contractor further agrees to defend, indemnify, and hold Owner harmless from all WISHA or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor's failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder. Contractor further agrees to defend, indemnify and hold Owner harmless from any liens or claims of payment from Contractor's subcontractors, suppliers, and laborers, provided Owner has complied with its payment obligations in accordance with this Agreement.

For purposes of the foregoing indemnification provision only, and only to the extent of claims against Contractor by Owner under such indemnification provision, Contractor specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

By initialing here, the parties agree that this clause was mutually negotiated:

\_\_\_\_\_ Contractor      \_\_\_\_\_ Owner

### **IX. TERMINATION**

9.1 Termination by Owner for Cause. Owner may, after giving Contractor seven (7) days written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Contractor violates any material provision of this Contract or:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors; or
- (c) persistently disregards laws, ordinances, rules, regulations or orders of public authorities having jurisdiction; or
- (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the date of Substantial Completion; or
- (e) persistently fails or refuses to perform the Work in accordance with the Contract Documents.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- (a) take possession of the site and of all materials, equipment, and machinery thereon owned by Contractor;
- (b) accept assignment of subcontracts;
- (c) finish the Work using reasonable methods. Upon Contractor's request, Owner shall furnish to Contractor a detailed accounting of the costs Owner incurs in finishing the Work; and

*WSBA Residential Construction Contract #1 Cost Plus 0910*

- (d) charge Contractor the costs of completion in excess of the amounts due to Contractor.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Contractor shall:

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Contractor shall be entitled to receive payment for Work executed to the effective date of termination, including Actual Costs and Contractor's Fee, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c), above.

9.3 Termination by Contractor for Cause. In addition to Contractor's right to terminate the Contract pursuant to Section 2.9, the Contractor may terminate the Contract for cause if the Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this Section, Contractor shall first provide Owner seven (7) days written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, the Contractor may terminate the Contract.

## **X. MEDIATION**

The parties agree to attempt to resolve any dispute through good faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this Section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA"). Either party may give written notice to the other party requesting mediation and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

**XI. GENERAL**

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 Entire Agreement. The Contract Documents contain the entire agreement between the parties with respect to construction of the Project. All other agreements, oral or written, are hereby superseded by this Contract. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties. No verbal or other agreements modify or affect this Contract.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

11.4 Assignment. Neither party shall assign nor transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

CONTRACTOR:

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Contractor Registration No.: \_\_\_\_\_

- Exhibits:
- A – Plans
  - B – Estimated Project Cost dated \_\_\_\_\_
  - C-1 – Conditional Lien Release Form
  - C-2 – Conditional Lien Release On Final Payment Form
  - D – Disclosure Statement Notice to Customer
  - E – Change Order Form
  - F – Project Schedule

## **EXHIBIT A**

### **PLANS**

List of Plans provided by Owner:

- 1.
- 2.
- 3.
- 4.

**EXHIBIT B**

ESTIMATED PROJECT COST

(To be provided by Contractor)

**EXHIBIT C-1**  
**CONDITIONAL WAIVER AND RELEASE**  
**UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_  
for labor, services, equipment, or material furnished to \_\_\_\_\_ on the job of  
\_\_\_\_\_  
(Owner) (Job Description)

located at \_\_\_\_\_  
(Owner) (Job Description)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent: This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

**EXHIBIT C-2**

**CONDITIONAL WAIVER AND RELEASE UPON  
FINAL PAYMENT**

Upon receipt by the undersigned of a check from \_\_\_\_\_ in the  
(Maker of Check)  
sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the check  
(Payee)  
has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall  
become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job  
of \_\_\_\_\_ located at \_\_\_\_\_.  
(Owner) (Job Description & Address)

This release covers the final payment to undersigned for all labor, services, equipment, or material furnished  
on the job. Before any recipient of this document relies on it, the party should verify evidence of payment  
to the undersigned.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

**EXHIBIT D**

**DISCLOSURE STATEMENT / NOTICE TO CUSTOMER**

This Contractor is registered with the State of Washington, Registration No. \_\_\_\_\_ and has posted with the state a bond or deposit of \$\_\_\_\_\_ for the purpose of satisfying claims against the Contractor for breach of contract including negligent or improper work in the conduct of the Contractor’s business. The expiration date of this Contractor’s Registration is \_\_\_\_\_.

**THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

This bond or deposit is not for your exclusive use because it covers all work performed by this Contractor. The bond or deposit is intended to pay valid claims up to \$\_\_\_\_\_ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

**FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.**

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

**YOUR PROPERTY MAY BE LIENED.**

If a supplier of materials used in your construction project or an employee or subcontractor of your Contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

**FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL “LIEN RELEASE” DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.**

The Contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_  
Signature of Customer

The Contractor must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

**EXHIBIT E**  
**CHANGE ORDER**

1. Number \_\_\_\_\_ Date \_\_\_\_\_
2. Contractor \_\_\_\_\_  
Address \_\_\_\_\_
3. Job Description \_\_\_\_\_
4. Property Address or Legal Description:  
\_\_\_\_\_  
\_\_\_\_\_
5. Contractor hereby agrees to make the change(s) specified below:  
\_\_\_\_\_  
                          See Attachment "A"
6. Fixed Price of Change(s)           Add:                     \$ \_\_\_\_\_  
   Deduct:                 \$ \_\_\_\_\_
7. Previous Change Orders   \$ \_\_\_\_\_
8. Reason for Change:                     See Attachment "A" \_\_\_\_\_
9. Contract Time Extension: \_\_\_\_\_
10. New Completion Date: \_\_\_\_\_

ACCEPTANCE: The terms of this change order are satisfactory and are hereby accepted:

OWNER APPROVAL \_\_\_\_\_  
DATE \_\_\_\_\_

CONTRACTOR APPROVAL \_\_\_\_\_  
DATE \_\_\_\_\_

**Attachment “A”**  
**Change Order No. \_\_\_\_\_**

## **Welcome to the Model Residential Design-Build Contract (Lump Sum)**

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Design-Build Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations, and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document.

1. Relationship Between the Parties. The Document contemplates that the Owner is supplying the Design-Builder with design criteria setting forth the Owner’s desired parameters for the project, that the Design-Builder will rely upon those criteria in creating a design for the project, which, after approval by the Owner, the Design-Builder will then use to construct the project.

2. Lump-Sum Contract. This Document is written to be a **lump-sum contract**. The lump-sum amount is the total amount to be paid by the Owner to the Design-Builder for the Design-Builder’s performance of the scope of work required by this Design-Build Contract. Changes to the Owner’s design criteria could lead to an increase or decrease in the lump-sum amount through a change order. Because this is a lump-sum contract, the actual costs incurred by the Design-Builder in performing the work are not disclosed by the Design-Builder or audited by the Owner. Absent changes in the Owner’s design criteria, performance of the contractually defined scope of work entitles the Design-Builder to the lump-sum amount, irrespective of whether the Design-Builder’s actual costs are higher or lower than the lump-sum amount.

3. Progress Payments. The Document does not permit the Owner to review the Design-Builder’s cost records (such as material purchase receipts, subcontractor invoices, overhead and labor costs) each time the Design-Builder submits a monthly progress billing. Rather, the Design-Builder is paid based upon the percentage of work completed through the date of the payment application. A Schedule of Values at Exhibit B to this Document provides the Owner and the Design-Builder a basis for measuring the ratio of the percentage of work completed to the value for the Work set forth in a line item in the Schedule of Values to determine the amount due the Design-Builder under the Document. However, the Document does allow the Owner to examine the Design-Builder’s cost records for changes to the project.

4. Damages for Late Performance. The Document requires the Design-Builder to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner’s only remedy for late completion of the project. The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner’s actual damages from delay.

5. Bonds, Insurance, Registration. The Design-Builder and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Design-Builder is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential subcontractor's registration and insurance with the Washington Department of Labor and Industries at [www.lni.wa.gov](http://www.lni.wa.gov). This Document does not require the Design-Builder to obtain a payment and performance bond in the amount of the cost of the Work.

6. Design-Builder's Warranty. In the documents, the Design-Builder warrants to the Owner that the construction Work will be in accordance with the Contract Documents, performed in a workmanlike manner, and free of material structural defects.

7. Owner's Notice of Claims After Completion. The Document incorporates Washington's statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedures set forth in RCW 64.50 if they have a claim.

8. Revisions. The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

**RESIDENTIAL DESIGN-BUILD CONTRACT (Lump Sum)**

Parties: \_\_\_\_\_  
Design-Builder

\_\_\_\_\_

Owner

Property: \_\_\_\_\_

Address

\_\_\_\_\_

Tax Parcel No.

Date: \_\_\_\_\_

**I. THE WORK**

1.1 Owner's Duties. Owner shall provide Design-Builder with Design Criteria setting forth Owner's desired parameters to construct or renovate a single-family residence (the "Project") for Owner on the Property. Owner's Design Criteria are attached hereto as **Exhibit A**. Owner shall consult with Design-Builder in the development of plans and specifications based upon those criteria and shall approve the final plans and specifications prior to application for permits or commencement of construction. Owner's approval is for general compliance with the Design Criteria, and Owner's approval shall not be deemed to transfer any design liability to Owner. Owner shall provide all reviews and approvals in a timely fashion so as not to delay Design-Builder's schedule. Owner shall make payments to Design-Builder for the design and construction of the Project as set forth herein.

1.2 Design-Builder's Duties. Based upon Owner's Design Criteria, Design-Builder, who shall be properly licensed, shall prepare plans and specifications ("Construction Documents") for Owner's approval using design professionals ("Design Consultants") who are properly licensed and otherwise qualified to perform architectural, engineering, and other design work. The Construction Documents shall be consistent with Owner's Design Criteria and any changes thereto. Design-Builder shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Design-Builder agrees that each Design Consultant shall be fully bound to Design-Builder in the same manner as Design-Builder is bound to Owner for all material requirements of the Design-Build Contract that are applicable to the Design Consultant's scope of services. Design-Builder shall at all times be responsible for the services performed by its Design Consultants and shall coordinate the services of its Design Consultants to satisfy Design-Builder's obligations under the Design-Build Contract.

1.2.1 Nothing in this Agreement shall relieve Design-Builder from responsibility for the services performed by its Design Consultants or create any legal or contractual relationship between Owner and any Design Consultant.

1.2.2 The standard of care for all design and engineering services (“Professional Services”) performed by Design-Builder and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

1.2.3 All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be the property of Design-Builder, and provided Owner pays Design-Builder in full for all Work (defined below) performed, Owner is granted a limited license to use such Work Product solely for the Project to which this Design-Build Contract pertains. If Owner uses the Work Product on any other project, he/she shall do so at his/her sole risk and without liability or legal exposure to Design-Builder, its Design Consultants or anyone working through them. Owner further agrees that he/she shall defend, indemnify and hold harmless Design-Builder and its Design Consultants from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, arising out of or resulting from 1) use of the Work Product on another project or 2) use of the Work Product on this Project if Design-Builder is terminated prior to Substantial Completion.

1.2.4 Design-Builder shall furnish the material, labor, equipment, tools, and supervision necessary to construct the Project for Owner on the Property in compliance with Owner’s Design Criteria in Exhibit A and the plans and specifications approved by Owner (the “Construction Documents”). The design and construction of the Project constitutes the “Work” under this Design-Build Contract. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.” If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

1.3 Permits. Design-Builder shall obtain the governmental approvals of the Plans and all permits for construction of the Project and shall be responsible for the cost thereof.

## **II. LUMP-SUM PRICE AND PAYMENT**

2.1 Lump-Sum Amount. Design-Builder shall perform the Work for the Lump-Sum Price of \_\_\_\_\_ dollars (\$\_\_\_\_\_) (the “Contract Price”). The Contract Price is detailed by scope and trades in the Schedule of Values at **Exhibit B**. The Lump-Sum Amount [choose: does or does not] include Washington State Sales Tax.

2.2 Down Payment. Owner shall pay Design-Builder a down payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_) prior to commencement of the Work. The down payment shall be credited against the Contract Price beginning with Design-Builder’s first Progress Payment. Owner warrants that he/she has sufficient funds, either personal or through lender financing, in an amount equal to the Contract Price. Proof of sufficient funds may be requested by Design-Builder.

2.3 Progress Payments. On the first business day of every month, Design-Builder shall present to Owner an Application for Payment. Each Application for Payment shall be based on the Schedule of Values at **Exhibit B**. The Schedule of Values shall allocate the entire Contract Price among the various portions of the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as Owner may require. The Schedule of Values shall

be used as a basis for reviewing Design-Builder's Applications for Payment. Design-Builder's Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Owner shall make payment to Design-Builder based on the percentage of the Work completed for the period covered by the Application for Payment date plus sales tax, less previous payments and less retainage specified in Section 2.4. Owner shall make payment no later than \_\_\_\_\_ (\_\_\_\_) (twenty-five if not filled in) days from the date of receipt of each Application for Payment. With each Application for Payment, Owner shall have the right to require Design-Builder to provide documentation to support the claimed percentage of the Work completed. Design-Builder shall apply Owner's payment only to the costs and fees of this Project.

2.4 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the "Retainage"). Retainage shall be released to Design-Builder at the time of Final Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Design-Builder; (ii) for the payment of persons who supplied materials or who worked on the Project and were not paid by Design-Builder; and (iii) damages incurred due to other breaches of the Contract.

2.5 Lien Releases. Owner shall not be required to make any payment to Design-Builder unless and until Design-Builder provides Owner with a conditional waiver and lien release form signed by Design-Builder and by each Design Consultant, subcontractor, and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment. A form conditional waiver and lien release is attached as **Exhibit C-1**.

2.6 Final Payment. Within ten (10) days after Design-Builder notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Design-Builder and deliver to Design-Builder a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List.") The Punch List and other Work shall be finished by Design-Builder within \_\_\_\_\_ (\_\_\_\_) [twenty-one if not filled in] days of Design-Builder's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Design-Builder (1) completes the Work in accordance with the Contract Documents; and (2) provides Owner with final lien releases from Design-Builder and all subcontractors and suppliers, conditioned only on receipt of Final Payment, in the form attached as **Exhibit C-2**. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner can legally occupy and full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Design-Builder.

2.7 Failure of Payment. If Owner fails to pay Design-Builder amounts due within fourteen (14) days of the time required by Section 2.3, Design-Builder may, upon providing seven (7) days' written notice to Owner, suspend the Work until the amounts due have been received. If the failure of payment remains uncured for fourteen (14) days after the first written notice, Design-Builder may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.8 Design-Builder's Registration. A Contractor's Disclosure Statement / Notice to Customer ("Notice") is attached as **Exhibit D**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Design-Builder's compliance with the disclosure requirements.

### **III. CHANGES**

3.1 Nature of Change. If Owner or Design-Builder requests, or one of the parties believes that a change in the Work is necessary (a “Change”), then the parties shall comply with the following procedure to reflect a Change in the Work:

- (a) the party requesting or noting the Change shall write a description of the Change and give the other party that writing (the “Change Notice”);
- (b) before proceeding with the Change work, unless excused by an emergency involving safety or property damage, the Design-Builder shall provide Owner with a written estimate of the cost and time impact of the requested Change; and
- (c) Owner and Design-Builder shall execute a Change Order confirming their agreement with the Change, the resulting increase or decrease in the Contract Price (including how the Change is priced), and the change in the Substantial Completion date, if any. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

3.2 Change Order Format. A blank Change Order form is included in this Contract as **Exhibit E**.

#### IV. SCHEDULE

4.1 Commencement and Completion of the Work. Design-Builder shall commence the design portion of the Work within ten (10) days of receipt of Owner’s execution of this Contract and shall commence the construction portion of the Work within ten (10) days of the issuance of the building permit. Subject to the permitted extensions and delays provided herein, Design-Builder shall Substantially Complete the Work within \_\_\_\_\_ (\_\_\_\_) days after the commencement date for the construction portion of the Work. With its first Application for Payment, Design-Builder shall provide a schedule indicating proposed Design Consultants’ and Work activity sequences and durations, deadlines for Owner’s decisions on preliminary plans and specifications, and milestones for delivery of final plans and completion of various portions of the Work. A form schedule is included in this Contract as **Exhibit F**.

4.2 Construction Time and Liquidated Damages. Design-Builder agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Design-Builder's schedule, provides sufficient time for the expeditious and practical execution of the Work. If Design-Builder fails to achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Design-Builder agree that if Design-Builder fails to meet the Substantial Completion date, then *Design-Builder shall pay Owner liquidated damages at a daily rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) until Substantial Completion is achieved.* The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Design-Builder.

4.3 Delay. If the Project is delayed by the act, neglect, or default of Owner, Owner's agent, Owner's Design Consultant (if any), Owner's lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason(s) beyond Design-Builder's reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Design Criteria ("Excusable Delay,") then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

4.4 Notice of Delay. Within a reasonable time following the date Design-Builder knows or with reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Design-Builder shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Design-Builder's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

## V. INSURANCE

5.1 Before commencing the Work and as a condition of payment, and as part of the Lump-Sum Amount, Design-Builder shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A- or better, that will protect Design-Builder from bodily-injury or property-damage claims arising out of its operations under this Contract, whether the operations are by Design-Builder, Design-Builder's Consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- .1 Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, Ongoing Operations and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
- .2 Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned, and hired automobiles.
- .3 If Owner requires that Design-Builder's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must initial the appropriate box: Owner [\_\_\_\_\_] Design-Builder [\_\_\_\_\_].

- 4 Owner shall be included as an additional insured under the CGL policy. Prior to starting Work, Design-Builder shall provide a copy of the actual additional-insured endorsement or blanket additional-insured policy wording to the CGL policy that documents Owner's additional-insured status.
- 5 Design-Builder shall require its Design Consultants, sub-consultants, and subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in paragraphs (a)-(d) above.
- 6 Design-Builder's and its Design Consultants', sub-consultants', and subcontractors' insurance coverages set forth in paragraphs (a)-(d) above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery on the Project.
- 7 Design-Builder and/or any Design Consultants to Design-Builder shall provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or its Design Consultants. The coverage limits, duration, and other specifics of such insurance shall be as set forth in **Exhibit G** hereto. Such professional liability insurance shall specifically delete any exclusion for design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder and shall be maintained for a period of not less than six years following Substantial Completion.

5.2 Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work), miscellaneous materials and supplies incidental to the Work and temporary structures. If work is to be performed on an existing residential structure, the Owner may retain an all risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

5.3 With the exception of professional liability insurance and worker's compensation coverage, Owner and Design-Builder hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Design-Builder shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Design-Builder's negligence.

## **VI. DESIGN-BUILDER'S WARRANTY**

6.1 Design-Builder's Warranty. Design-Builder warrants that the Professional Services shall be performed in accordance with the degree of care and skill set forth in Section 1.2.2. Design-Builder warrants that the construction work shall be in accordance with the Contract Documents, performed in a workmanlike manner, and free from material structural defects. Design-Builder shall return and repair any Work not in accordance with applicable laws and the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period"). All product warranties, if any, are deemed assigned from Design-Builder to Owner, and Design-

Builder shall reasonably assist Owner in enforcing such product warranties.

6.2 Cure of Defect. If a warranted defect is discovered within the Warranty Period, then Owner must promptly notify Design-Builder in writing following the discovery of that defect (the“Warranty Defect Notice,”) and must provide Design-Builder with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as reasonably estimated by Design-Builder. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. Design-Builder shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Design-Builder has been notified in writing and has been afforded the opportunity to cure the claimed defect or to pay the sums specified herein. Nothing contained in Sections 6.1 and 6.2 herein shall be construed to establish a period of limitation with respect to Design-Builder’s other obligations under the Contract Documents.

6.3 Notice of Defect Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST DESIGN-BUILDER. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO DESIGN-BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE DESIGN-BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY DESIGN-BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER’S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Design-Builder and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and
- (b) damages incurred by Design-Builder for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Section 9. Nothing contained in this Section 6.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each other term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

## **VII. SAFETY**

7.1 Design-Builder and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Design-Builder shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees,

personnel, equipment, and materials within the care, custody, or control of Design-Builder or its subcontractors of any tier. Design-Builder and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Design-Builder shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

## **VIII. INDEMNITY**

8.1 Design-Builder agrees to defend, indemnify, and hold harmless (the "Indemnity Duty") Owner and its agents from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or injury to or destruction of tangible property (other than the Work itself) (the "Claim"), provided, however, that the Design-Builder owes no Indemnity Duty if the Claim was caused by or results from the sole negligence of the Owner or his/her agents or both. In the event of concurrent negligence (i) by Design-Builder or the Design-Builder's subcontractors, agents, or employees, or both; and (ii) by the Owner or its agents, or both, then the Design-Builder's Indemnity Duty is valid and enforceable only to the extent of the negligence of Design Builder, its agents, and its employees. Further, Design-Builder agrees to indemnify, but not defend, Owner and its agents from and against damages, losses, liabilities, and expenses, including but not limited to attorneys' fees and costs and expenses, to the extent arising out of or resulting from the negligent performance or nonperformance of the Professional Services.\

8.2 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions

8.3 Design-Builder further agrees to defend, indemnify, and hold Owner harmless from all WISHA or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Design-Builder's failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder.

8.4 Design-Builder further agrees to defend, indemnify and hold Owner harmless from any liens or claims of payment from Design Builder's consultants, subcontractors, suppliers, and laborers, provided Owner has complied with its payment obligations in accordance with this Agreement.

8.5 For purposes of this indemnification provision only, and only to the extent of claims against Design-Builder by Owner under such indemnification provision, Design-Builder specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third

party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

8.6 By initialing here, the parties agree that this Indemnity section was mutually negotiated:

\_\_\_\_\_ Design-Builder                      \_\_\_\_\_ Owner

## **IX. TERMINATION**

9.1 Termination by Owner for Cause. Owner may, after giving Design-Builder seven (7) days' written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Design Builder violates any material provision of this Contract or Design-Builder:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Design-Builder and the subcontractors; or
- (c) persistently disregards laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction; or
- (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the date of Substantial Completion; or
- (e) persistently fails or refuses to perform the Work in accordance with the Contract Documents.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- .1 take possession of the site and of all materials, equipment, and machinery thereon owned by Design-Builder;
- .2 accept assignment of subcontracts, which Design-Builder shall assign to Owner if requested by Owner;
- .3 finish the Work using reasonable methods. Upon Design-Builder's request, Owner shall furnish to Design-Builder a detailed accounting of the costs Owner incurs in finishing the Work; and
- .4 charge Design-Builder the costs of completion in excess of the amounts due to Design-Builder.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Design-Builder shall:

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Design-Builder shall be entitled to receive payment for Work executed to the effective date of termination, based on the percentage of the Work completed compared to the Schedule of Values at **Exhibit B**, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c) above.

9.3 Termination by Design-Builder for Cause. In addition to Design-Builder's right to terminate the Contract pursuant to Section 2.7, Design-Builder may terminate the Contract for cause if Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this section, Design-Builder shall first provide Owner seven (7) days' written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, Design-Builder may terminate the Contract.

## **X. MEDIATION**

10.1 The parties agree to attempt to resolve any dispute through good-faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this Section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA"). Either party may give written notice to the other party requesting mediation, and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

## **XI. GENERAL**

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 Entire Agreement. In entering into this Agreement, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other party except for those expressly contained in this Agreement. The Contract Documents contain the entire agreement between the parties with respect to design and construction of the Project. All other agreements, oral or written, are hereby superseded by this Contract. There are no other agreements that modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof

are in writing and signed by both parties.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto and their heirs, successors, executors, administrators, and assigns.

11.4 Assignment. Neither party shall assign or transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

DESIGN-BUILDER:

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Registration No.: \_\_\_\_\_

Exhibits:     A - Owner's Design Criteria  
               B - Schedule of Values  
               C-1 - Conditional Lien Release Form  
               C-2 - Conditional Lien Release On Final Payment Form  
               D - Disclosure Statement / Notice to Customer  
               E - Change Order Form  
               F - Project Schedule Form  
               G - Errors & Omissions Insurance

**EXHIBIT A**  
**OWNER'S DESIGN CRITERIA**

Owner's Design Criteria:

- 1.
- 2.
- 3.
- 4.

**EXHIBIT B**  
**SCHEDULE OF VALUES**

(To be provided by Design-Builder)

**EXHIBIT C-1**

**CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_  
for labor, services, equipment, or material furnished to \_\_\_\_\_ on the job of  
(Maker of Check)  
\_\_\_\_\_ located at \_\_\_\_\_  
(Owner) (Job Description)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Design-Builder)

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

**EXHIBIT C-2**

**CONDITIONAL WAIVER AND RELEASE UPON  
FINAL PAYMENT**

Upon receipt by the undersigned of a check from \_\_\_\_\_ in the  
(Maker of Check)  
sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the check  
(Payee)  
has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall  
become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job  
of \_\_\_\_\_ located at \_\_\_\_\_.  
(Owner) (Job Description & Address)

This release covers the final payment to undersigned for all labor, services, equipment, or material furnished  
on the job. Before any recipient of this document relies on it, the party should verify evidence of payment  
to the undersigned.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Design-Builder)

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

**EXHIBIT D**

**DISCLOSURE STATEMENT / NOTICE TO CUSTOMER**

This Design-Builder is registered with the State of Washington, Registration No. \_\_\_\_\_ and has posted with the state a bond or deposit of \$\_\_\_\_\_ for the purpose of satisfying claims against the Design-Builder for breach of contract including negligent or improper work in the conduct of the Design-Builder's business. The expiration date of this Design-Builder's Registration is\_\_\_\_\_.

**THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

This bond or deposit is not for your exclusive use because it covers all work performed by this Design-Builder. The bond or deposit is intended to pay valid claims up to \$\_\_\_\_\_ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

**FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.**

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

**YOUR PROPERTY MAY BE LIENED.**

If a supplier of materials used in your construction project or an employee or subcontractor of your Design-Builder or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

**FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE DESIGN BUILDER TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.**

The Design-Builder is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_  
Signature of Customer

The Design-Builder must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

**EXHIBIT E**  
**CHANGE ORDER**

1. Number: \_\_\_\_\_ Date: \_\_\_\_\_
  
2. Design-Builder: \_\_\_\_\_  
Address: \_\_\_\_\_
  
3. Job Description: \_\_\_\_\_
  
4. Property Address or Legal Description:  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Design-Builder hereby agrees to make the change(s) specified below:  
\_\_\_\_\_  
See Attachment "A" \_\_\_\_\_
  
6. Price of Change(s):

Add:	\$	_____
Deduct:	\$	_____
  
7. Previous Change Orders \$ \_\_\_\_\_
  
8. Reason for Change: See Attachment "A" \_\_\_\_\_
  
9. Contract Time Extension: \_\_\_\_\_
  
10. New Completion Date: \_\_\_\_\_

ACCEPTANCE: The terms of this Change Order are satisfactory and are hereby accepted:

OWNER APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

DESIGN-BUILDER APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT E**

**ATTACHMENT "A"  
CHANGE ORDER NO. \_\_\_\_\_**

**EXHIBIT F**  
**PROJECT SCHEDULE**

**EXHIBIT G**  
**ERRORS & OMISSIONS INSURANCE**

# Welcome to the Model Residential Design-Build Contract (Cost Plus)

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Design-Build Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations, and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document.

1. Relationship Between the Parties. The Document contemplates that the Owner is supplying the Design-Builder with design criteria setting forth the Owner’s desired parameters for the project, that the Design-Builder will rely upon those criteria in creating a design for the project, which, after approval by the Owner, the Design-Builder will then use to construct the project.

2. Cost-Plus Contract. This Document is written to be a **cost-plus contract**. This is not a “fixed price” or “guaranteed maximum price” contract under which the Owner is protected by a lump sum or guaranteed maximum cost. Rather, the Owner is responsible to pay for the actual costs of design services, labor, and materials supplied by the Design-Builder. The Design-Builder estimates the project cost, but the actual project cost may be higher, equal to, or lower than the cost estimated by the Design-Builder. The Owner is to be provided a “control estimate” and is entitled to receive notice if the Design-Builder’s reimbursable costs exceed the control estimate by a certain percentage.

3. Components of Costs. Different Design-Builders have different billing practices. For instance, a Design-Builder’s listed hourly rate charged for an employee is usually not what the employee is actually paid. Therefore, the Document allows the parties to define reimbursable costs (Option A of Section 2.2) or identify such terms in an exhibit (Option B of Section 2.2). It is left to the parties to negotiate and agree upon what constitutes reimbursable costs and how much the Design-Builder will be paid for the Work.

4. Cost Auditing. The Document permits the Owner to review the Design-Builder’s cost records (such as design consultant invoices, subcontractor invoices, and labor and material costs) each time the Design-Builder submits a monthly progress billing. Because there is no fixed price or guaranteed maximum price, the Owner should carefully review payment applications and supporting documentation. In addition, lien release forms have been provided as Exhibits to the Document.

5. Damages for Late Performance. The Document requires the Design-Builder to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner’s only remedy for late completion of the project.

The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner's actual damages from delay.

6. Bonds, Insurance, Registration. The Design-Builder and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Design-Builder is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential subcontractor's registration and insurance with the Washington Department of Labor and Industries at [www.lni.wa.gov](http://www.lni.wa.gov). This Document does not require the Design-Builder to obtain a payment and performance bond in the amount of the cost of the Work.

7. Design-Builder's Warranty. In the documents, the Design-Builder warrants to the Owner that the construction Work will be in accordance with the Contract Documents, performed in a workmanlike manner, and free of material structural defects.

8. Owner's Notice of Claims After Completion. The Document incorporates Washington's statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedures set forth in RCW 64.50 if they have a claim.

9. Revisions. The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

**RESIDENTIAL DESIGN-BUILD CONTRACT (Cost Plus)**

Parties: \_\_\_\_\_  
Design-Builder

\_\_\_\_\_

Owner

Property: \_\_\_\_\_

Address

\_\_\_\_\_

Tax Parcel No.

Date: \_\_\_\_\_

**I. THE WORK**

1.1 Owner's Duties. Owner has provided Design-Builder with Design Criteria setting forth Owner's desired parameters to construct or renovate a single-family residence (the "Project") for Owner on the Property. Owner's Design Criteria are attached hereto as **Exhibit A**. Owner shall consult with Design-Builder in the development of plans and specifications based upon those criteria and shall approve the final plans and specifications prior to application for permits or commencement of construction. Owner's approval is for general compliance with the Design Criteria, and Owner's approval shall not be deemed to transfer any design liability to Owner. Owner shall provide all reviews and approvals in a timely fashion so as not to delay Design-Builder's schedule. Owner shall pay Design-Builder for the design and construction of the Project as set forth herein.

1.2 Design-Builder's Duties. Based upon Owner's Design Criteria, Design-Builder, who shall be properly licensed, shall prepare plans and specifications ("Construction Documents") for Owner's approval using design professionals ("Design Consultants") who are properly licensed and otherwise qualified to perform architectural, engineering, and other design work. The Construction Documents shall be consistent with Owner's Design Criteria and any changes thereto. Design-Builder shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Design-Builder agrees that each Design Consultant shall be fully bound to Design-Builder in the same manner as Design-Builder is bound to Owner for all material requirements of the Design-Build Contract that are applicable to the Design Consultant's scope of services. Design-Builder shall at all times be responsible for the services performed by its Design Consultants and shall coordinate the services of its Design Consultants to satisfy Design-Builder's obligations under the Design-Build Contract.

1.2.1 Nothing in this Agreement shall relieve Design-Builder from responsibility for the services performed by its Design Consultants or create any legal or contractual relationship between Owner and any Design Consultant.

1.2.2 The standard of care for all design and engineering services (“Professional Services”) performed by Design-Builder and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

1.2.3 All drawings, specifications, and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be the property of Design-Builder, and provided Owner pays Design-Builder in full for all Work (defined below) performed, Owner is granted a limited license to use such Work Product solely for the Project to which this Design-Build Contract pertains. If Owner uses the Work Product on any other project, he/she shall do so at his/her sole risk and without liability or legal exposure to Design-Builder, its Design Consultants or anyone working through them. Owner further agrees that he/she shall defend, indemnify, and hold harmless Design-Builder and its Design Consultants from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, arising out of or resulting from 1) use of the Work Product on another project or 2) use of the Work Product on this Project if Design-Builder is terminated prior to Substantial Completion.

1.2.4 Design-Builder shall furnish the material, labor, equipment, tools, and supervision necessary to construct the Project for Owner on the Property in compliance with Owner’s Design Criteria in Exhibit A and the plans and specifications approved by Owner (the “Construction Documents”). The design and construction of the Project constitutes the “Work” under this Design-Build Contract. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.” If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

1.3 Permits. [Choose: \_\_\_ Owner or \_\_\_ Design-Builder] shall obtain the governmental approvals of the Plans and all permits for construction of the Project and shall be responsible for the cost thereof.

## **II. PRICE AND PAYMENT**

2.1 Estimated Project Cost. Design-Builder estimates the total cost of the Work to be \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as set forth in **Exhibit B** (the “Estimated Project Cost”). The Estimated Project Cost is organized by trade categories and systems. Exhibit B is an estimate only and is based upon the Design Criteria provided by Owner. The actual total cost of the Work may be higher or lower than the Estimated Project Cost.

2.2 The Cost of the Work (Cost Plus Fee). Owner shall pay Design-Builder for the performance of the Work a sum equal to Design-Builder’s Actual Costs (defined below) plus a fee of \_\_\_\_\_ percent (\_\_\_\_\_% ) of the Actual Costs (the “Design-Builder’s Fee”), plus sales tax.

**[Option A]** “Actual Costs” include the following:

- (a) the costs paid to Design Consultants for the design of the Project;
- (b) on-site Project personnel costs, but limited to those persons necessary for the proper performance of the Work, at the following hourly rates: (list by job title and hourly rate);
- (c) the costs paid for the purchase, installation and/or use of all materials, structural accessories, machinery, equipment or other items for the performance of the Work;
- (d) the costs paid for all insurance and governmental fees for the Project;
- (e) the costs paid to subcontractors for their performance of the Work;  
and

Actual Costs do not include costs incurred because of Design-Builder error.

**[Option B]** “Actual Costs” are listed in an attachment provided by Design-Builder and incorporated herein by this reference.

2.3 Down Payment. Owner shall pay Design-Builder a down payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) prior to commencement of the Work. The down payment shall be credited against the Cost of the Work beginning with Design-Builder’s first Progress Payment. Owner warrants that he/she has sufficient funds, either personal or through lender financing, in an amount equal to the Estimated Project Cost. Proof of sufficient funds may be requested by Design-Builder.

2.4 Progress Payments. On the first business day of every month, Design-Builder shall present to Owner an Application for Payment based on the Actual Costs incurred to that date plus the Design-Builder’s Fee and sales tax, less previous payments. Owner shall pay the full amount billed, less Retainage (defined below), no later than \_\_\_\_\_ (\_\_\_\_) (twenty-five if not filled in) days from the date of receipt of each Application for Payment. With each Application for Payment, the Owner shall have the right to require Design-Builder to provide documentation to support those Actual Costs. Design-Builder shall apply Owner’s payment only to the costs and fees of this Project.

2.5 Anticipated Actual Costs Exceeding Estimated Project Costs. If Design-Builder reasonably believes that anticipated Actual Costs of any Work component will exceed the estimated cost of that Work component in Exhibit B by more than ten percent (10%), then, at the earliest possible opportunity and in any event before completion of that Work component, Design-Builder shall give written notice to Owner of the anticipated increase.

2.6 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the “Retainage”). Retainage shall be released to Design-Builder at the time of Final Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Design-Builder; (ii) for the payment of persons who supplied materials or who worked on

the Project and were not paid by Design-Builder; and (iii) for damages incurred due to other breaches of the Contract.

2.7 Lien Releases. Owner shall not be required to make any payment to Design-Builder unless and until Design-Builder provides Owner with a conditional waiver and lien release form signed by Design-Builder and by each Design Consultant, subcontractor, and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment. A form conditional waiver and lien release is attached as **Exhibit C-1**.

2.8 Final Payment. Within ten (10) days after Design-Builder notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Design-Builder and deliver to Design-Builder a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List.") The Punch List and other Work shall be finished by Design-Builder within \_\_\_\_\_ ( ) [twenty-one if not filled in] days of Design-Builder's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Design-Builder (1) completes the Work in accordance with the Contract Documents; (2) provides Owner with final lien releases from Design-Builder and all subcontractors and suppliers, conditioned only on receipt of Final Payment, in the form attached as **Exhibit C-2**; and (3) makes available the cost records supporting the final Cost of the Work if requested by Owner. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner can legally occupy and full and unrestricted use and benefit of the Project for its intended purpose, with only minor incidental work or correction or repair remaining to be performed by Design-Builder.

2.9 Failure of Payment. If Owner fails to pay Design-Builder amounts due within fourteen (14) days of the time required by Section 2.4, Design-Builder may, upon providing seven (7) days' written notice to Owner, suspend the Work until the amounts due have been received. If the failure of payment remains uncured for fourteen (14) days after the first written notice, Design-Builder may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.10 Design-Builder's Registration. A Contractor's Disclosure Statement / Notice to Customer ("Notice") is attached as **Exhibit D**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Design-Builder's compliance with the disclosure requirements.

### **III. CHANGES**

3.1 Nature of Change. If Owner or Design-Builder requests, or one of the parties believes that a change is necessary (a "Change"), then the parties shall comply with the following procedure to reflect a Change in the Work:

- (a) the party requesting or noting the Change shall write a description of the Change and give the other party that writing (the “Change Notice”);
- (b) before proceeding with the Change work, unless excused by an emergency involving safety or property damage, the Design-Builder shall provide Owner with a written estimate of the cost and time impact of the requested Change; and
- (c) Owner and Design-Builder shall execute a Change Order confirming their agreement with the Change, the resulting increase or decrease in the Cost of the Work (including how the Change is priced), and the change in the Substantial Completion date, if any. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

3.2 Change Order Format. A blank Change Order form is included in this Contract as **Exhibit E.**

#### **IV. SCHEDULE**

4.1 Commencement and Completion of the Work. Design-Builder shall commence the design portion of the Work within ten (10) days of receipt of Owner’s execution of this Contract and shall commence the construction portion of the Work within ten (10) days of the issuance of the building permit. Subject to the permitted extensions and delays provided herein, Design-Builder shall Substantially Complete the Work within \_\_\_\_\_ (\_\_\_\_) days after the commencement date for the construction portion of the Work. With its first Application for Payment, Design-Builder shall provide a schedule indicating proposed Design Consultants’ and Work activity sequences and durations, deadlines for Owner’s decisions on preliminary plans and specifications, and milestones for delivery of final plans and completion of various portions of the Work. A form schedule is included in this Contract as **Exhibit F.**

4.2 Construction Time and Liquidated Damages. Design-Builder agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Design-Builder’s schedule, provides sufficient time for the expeditious and practical execution of the Work. If Design-Builder fails to achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Design-Builder agree that if Design-Builder fails to meet the Substantial Completion date, then *Design-Builder shall pay Owner liquidated damages at a daily rate of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) until Substantial Completion is achieved.* The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Design-Builder.

4.3 Delay. If the Project is delayed by the act, neglect, or default of Owner, Owner’s agent, Owner’s Design Consultant (if any), Owner’s lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason(s)

beyond Design-Builder's reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Design Criteria ("Excusable Delay"), then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

4.4 Notice of Delay. Within a reasonable time following the date Design-Builder knows or within reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Design-Builder shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Design-Builder's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

## V. INSURANCE

5.1 Before commencing the Work and as a condition of payment, Design-Builder shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A- or better, that will protect Design-Builder from bodily-injury or property-damage claims arising out of its operations under this Contract, whether the operations are by Design-Builder, Design-Builder's Consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- (a) Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, Ongoing Operations and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
- (b) Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned, and hired automobiles.
- (c) If Owner requires that Design-Builder's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must check the appropriate box: Owner  Design-Builder .
- (d) Owner shall be included as an additional insured under the CGL policy.
- (e) Design-Builder shall require its Design Consultants, sub-consultants, and subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in paragraphs (a)-(d) above.
- (f) Design-Builder's and its Design Consultants', sub-consultants', and subcontractors' insurance coverages set forth in paragraphs (a)-(d) above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery on the Project.
- (g) Design-Builder and/or any Design Consultants to Design-Builder shall provide

professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or its Design Consultants. The coverage limits, duration, and other specifics of such insurance shall be as set forth in **Exhibit G** hereto. Such professional liability insurance shall specifically delete any exclusion for design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder and shall be maintained for a period of not less than six (6) years following Substantial Completion.

5.2 Prior to starting work, Design-Builder shall provide a copy of the actual additional-insured endorsement or blanket additional-insured policy wording to the CGL policy that documents Owner's additional-insured status.

5.3 Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work), miscellaneous materials and supplies incidental to the Work, and temporary structures. If work is to be performed on an existing residential structure, Owner may retain an all-risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

5.4 With the exception of professional liability insurance and worker's compensation coverage, Owner and Design-Builder hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Design-Builder shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Design-Builder's negligence.

## **VI. DESIGN-BUILDER'S WARRANTY**

6.1 Design-Builder's Warranty. Design-Builder warrants that the Professional Services shall be performed in accordance with the degree of care and skill set forth in Section 1.2.2. Design-Builder warrants that the construction work shall be in accordance with the Contract Documents, performed in a workmanlike manner, and free from material structural defects. Design-Builder shall return and repair any Work not in accordance with applicable laws and the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period"). All product warranties, if any, are deemed assigned from Design-Builder to Owner, and Design-Builder shall reasonably assist Owner in enforcing such product warranties.

6.2 Cure of Defect. If a warranted defect is discovered within the Warranty Period, then Owner must promptly notify Design-Builder in writing following the discovery of that defect (the "Warranty Defect Notice,") and must provide Design-Builder with an opportunity to inspect and an opportunity either to cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as reasonably estimated by Design-Builder. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. Design-Builder shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Design-Builder has been notified in writing and has been afforded the opportunity to

cure the claimed defect or to pay the sums specified herein. Nothing contained in Sections 6.1 and 6.2 herein shall be construed to establish a period of limitation with respect to Design-Builder's other obligations under the Contract Documents.

6.3 Notice of Defect Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST DESIGN-BUILDER. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO DESIGN-BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE DESIGN-BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY DESIGN-BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Design-Builder and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and
- (b) damages incurred by Design-Builder for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 9. Nothing contained in this Section 6.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each other term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

## **VII. SAFETY**

7.1 Design-Builder and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Design-Builder shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Design-Builder or its subcontractors of any tier. Design-Builder and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Design-Builder shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

## **VIII. INDEMNITY**

8.1 Design-Builder agrees to defend, indemnify, and hold harmless (the “Indemnity Duty”) Owner and its agents from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees and costs and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or injury to or destruction of tangible property (other than the Work itself) (the “Claim”), and provided, however, that Design-Builder owes no Indemnity Duty if the Claim was caused by or results from the sole negligence of Owner or his/her agents or both. In the event of concurrent negligence (i) by Design-Builder or Design-Builder’s subcontractors, agents, or employees, or both; and (ii) by Owner or its agents, or both, then Design-Builder’s Indemnity Duty is valid and enforceable only to the extent of the negligence of Design Builder, its agents, and its employees. Further, Design-Builder agrees to indemnify, but not defend, Owner and its agents from and against damages, losses, liabilities, and expenses, including but not limited to attorneys’ fees and costs and expenses, to the extent arising out of or resulting from the negligent performance or nonperformance of the Professional Services.

8.2 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys’ fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

8.3 Design-Builder further agrees to defend, indemnify, and hold Owner harmless from all WISHA or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Design-Builder’s failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder.

8.4 Design-Builder further agrees to defend, indemnify and hold Owner harmless from any liens or claims of payment from Design Builder’s consultants, subcontractors, suppliers, and laborers, provided Owner has complied with its payment obligations in accordance with this Agreement.

8.5 For purposes of this indemnification provision only, and only to the extent of Claims against Design-Builder by Owner under such indemnification provision, Design-Builder specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

8.6 By initialing here, the parties agree this Indemnity section was mutually negotiated:

\_\_\_\_\_ Design-Builder      \_\_\_\_\_ Owner

## **IX. TERMINATION**

9.1 Termination by Owner for Cause. Owner may, after giving Design-Builder seven (7) days' written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Design Builder violates any material provision of this Contract or:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Design-Builder and the subcontractors; or
- (c) persistently disregards laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction; or
- (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the date of Substantial Completion; or
- (e) persistently fails or refuses to perform the Work in accordance with the Contract Documents.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- .1 take possession of the site and of all materials, equipment, and machinery thereon owned by Design-Builder;
- .2 accept assignment of subcontracts, which Design-Builder shall assign to Owner if requested by Owner;
- .3 finish the Work using reasonable methods. Upon Design-Builder's request, Owner shall furnish to Design-Builder a detailed accounting of the costs Owner incurs in finishing the Work; and
- .4 charge Design-Builder the costs of completion in excess of the amounts due to Design-Builder.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Design-Builder shall:

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and

- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Design-Builder shall be entitled to receive payment for Work executed prior to the effective date of termination, including Actual Costs and Design-Builder's Fee, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c) above.

9.3 Termination by Design-Builder for Cause. In addition to Design-Builder's right to terminate the Contract pursuant to Section 2.9, Design-Builder may terminate the Contract for cause if Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this section, Design-Builder shall first provide Owner seven (7) days' written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, Design-Builder may terminate the Contract.

## **X. MEDIATION**

10.1 The parties agree to attempt to resolve any dispute through good-faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA"). Either party may give written notice to the other party requesting mediation, and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

## **XI. GENERAL**

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 Entire Agreement. In entering into this Agreement, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other party except for those expressly contained in this Agreement. The Contract Documents contain the entire agreement between the parties with respect to design and construction of the Project. All other agreements, oral or written, are hereby superseded by this Contract. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto and their heirs, successors, executors, administrators, and assigns.

11.4 Assignment. Neither party shall assign or transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

DESIGN-BUILDER:

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Registration No.: \_\_\_\_\_

- Exhibits:
- A – Owner’s Design Criteria
  - B – Estimated Project Cost, dated \_\_\_\_\_
  - C-1 – Conditional Lien Release Form
  - C-2 – Conditional Lien Release On Final Payment Form
  - D – Disclosure Statement / Notice to Customer
  - E – Change Order Form
  - F – Project Schedule Form
  - G – Errors & Omissions Insurance

**EXHIBIT A**  
**OWNER'S DESIGN CRITERIA**

Owner's Design Criteria:

- 1.
- 2.
- 3.
- 4.

**EXHIBIT B**  
**ESTIMATED PROJECT COST**

(To be provided by Design-Builder)

**EXHIBIT C-1**

**CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for labor, services, equipment, and/or materials furnished to \_\_\_\_\_ on the job of \_\_\_\_\_

(Maker of Check)

(Owner)

located at \_\_\_\_\_ and when the check has been \_\_\_\_\_  
(Job Description & Address)

properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above-referenced job to the following extent. This release covers a progress payment for labor, services, equipment, and/or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order that has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, and/or materials covered by this release if that furnished labor, services, equipment, and/or materials were not compensated by the progress payment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Design-Builder)

By: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

**EXHIBIT C-2**

**CONDITIONAL WAIVER AND RELEASE UPON  
FINAL PAYMENT**

Upon receipt by the undersigned of a check from  
\_\_\_\_\_ in the sum of \$ \_\_\_\_\_ payable to  
(Maker of Check)

\_\_\_\_\_ and when the check has been properly endorsed  
(Payee)

and has been paid by the bank upon which it is drawn, this document shall become effective  
to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of

\_\_\_\_\_ located at  
(Owner)

\_\_\_\_\_  
(Job Description & Address)

This release covers the final payment to the undersigned for all labor, services, equipment,  
and/or materials furnished on the job. Before any recipient of this document relies on it,  
the party should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Design-Builder)

By: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

**EXHIBIT D**

**DISCLOSURE STATEMENT / NOTICE TO CUSTOMER**

This Design-Builder is registered with the State of Washington, Registration No. \_\_\_\_\_ and has posted with the state a bond or deposit of \$ \_\_\_\_\_ for the purpose of satisfying claims against the Design-Builder for breach of contract including negligent or improper work in the conduct of the Design-Builder's business. The expiration date of this Design-Builder's Registration is \_\_\_\_\_.

**THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

This bond or deposit is not for your exclusive use because it covers all work performed by this Design-Builder. The bond or deposit is intended to pay valid claims up to \$ \_\_\_\_\_ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

**FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.**

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

**YOUR PROPERTY MAY BE LIENED.**

If a supplier of materials used in your construction project or an employee or subcontractor of your Design-Builder or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

**FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE DESIGN-BUILDER TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.**

The Design-Builder is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_  
Signature of Customer

The Design-Builder must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

**EXHIBIT E**  
**CHANGE ORDER**

1. Number: \_\_\_\_\_ Date: \_\_\_\_\_

2. Design-Builder: \_\_\_\_\_

Address: \_\_\_\_\_

3. Job Description: \_\_\_\_\_

4. Property Address or Legal Description:  
\_\_\_\_\_  
\_\_\_\_\_

5. Design-Builder hereby agrees to make the change(s) specified below:

\_\_\_\_\_ See Attachment "A" \_\_\_\_\_

6. Price of Change(s): Add: \$ \_\_\_\_\_

Deduct: \$ \_\_\_\_\_

7. Previous Change Orders \$ \_\_\_\_\_

8. Reason for Change: See Attachment "A" \_\_\_\_\_

9. Contract Time Extension: \_\_\_\_\_

10. New Completion Date: \_\_\_\_\_

ACCEPTANCE: The terms of this Change Order are satisfactory and are hereby accepted:

OWNER APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

DESIGN-BUILDER APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT E**

**ATTACHMENT "A"  
CHANGE ORDER NO. \_\_\_\_**

**EXHIBIT F**  
**PROJECT SCHEDULE FORM**

**EXHIBIT G**  
**ERRORS & OMISSIONS INSURANCE**

## **Welcome to the Model Residential Construction Contract (Cost Plus w/ Guaranteed Maximum Price)**

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Construction Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document:

1. Relationship between the Parties: The Document contemplates that the Owner is supplying the Contractor with plans, specifications and/or design documents for the project. Without modification, this Document is not suitable for a design-build project. Established case precedent holds that the Owner warrants that the plans and specifications are accurate and that, if followed, the plans and specifications are adequate to accomplish the purpose of the project. If there is a problem encountered that is attributable to the design, the Owner bears responsibility as between the Owner and Contractor.

2. Cost Plus Contract: This Document is written to be a cost plus contract with a maximum price. It is not a “fixed price” contract. The Owner is responsible for the actual cost of construction incurred by the Contractor, plus the Contractor’s fee and sales tax, up to the guaranteed maximum price amount. The Owner is not responsible for costs that exceed the guaranteed maximum price unless the Owner and the Contractor have agreed to increase the guaranteed maximum price amount via change order during the project.

3. Components of Costs: Different contractors have different billing practices. For instance, a Contractor’s listed hourly rate charged for an employee is usually not what the employee is actually paid. Therefore, the Document allows the parties to define reimbursable costs (Option A of Section 2.1) or identify such terms in an exhibit (Option B of Section 2.1). It is left to the parties to negotiate and agree upon what constitutes reimbursable costs and how much the Contractor will be paid for the Work.

4. Cost Auditing: The Document permits the Owner to review the Contractor’s cost records (such as material purchase receipts, subcontractor invoices, and labor costs) each time the Contractor submits a monthly progress billing. The Owner should carefully review payment applications and supporting documentation. In addition, lien release forms have been provided as Exhibits to the Document.

5. Damages for Late Performance: The Document requires the Contractor to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner’s only remedy for late completion of the project. The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner’s actual damages from delay.

6. Bonds, Insurance, Registration: The Contractor and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Contractor is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential contractor’s registration and insurance with the Washington Department of Labor and Industries at [www.lni.wa.gov](http://www.lni.wa.gov). This Document does not require the Contractor to obtain a payment and performance bond in the amount of the cost of the Work.

7. Contractor’s Warranty: In the documents, the Contractor warrants to the Owner that the construction Work will be in accordance with contract documents, performed in a workmanlike manner, and free of material structural defects.

8. Owner’s Notice of Claims After Completion: The Document incorporates Washington statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedure set forth in RCW 64.50 if they have a claim.

9. Revisions: The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

**RESIDENTIAL CONSTRUCTION CONTRACT (Cost Plus with a  
Guaranteed Maximum Price)**

Parties: \_\_\_\_\_  
Contractor

\_\_\_\_\_

Owner

Property: \_\_\_\_\_  
Address

\_\_\_\_\_

Tax Parcel No.

Date: \_\_\_\_\_

**I. THE WORK**

1.1 Contractor's Duties. Contractor shall furnish the material, labor, equipment, tools, and supervision (the "Work") necessary to construct or renovate a single-family residence (the "Project") for Owner on the Property in compliance with the plans and specifications supplied by Owner (the "Plans"). The Plans are attached as **Exhibit A**. This Contract and all of its Exhibits, and all Change Orders after execution, are the "Contract Documents." If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

Contractor agrees to immediately inform Owner in writing of any discrepancies, errors, or omissions in the Plans or materially changed or unanticipated conditions and not to proceed with any work affected by such discrepancy until Owner directs Contractor to do so.

1.2 Permits. [Choose Owner or Contractor] shall obtain the governmental approvals of the Plans and all permits for construction of the Project. Owner is responsible for cost of the building permit and other necessary permits, which [Choose "is" or "is not"] included in the Guaranteed Maximum Price, defined below.

**II. PRICE AND PAYMENT**

2.1 The Cost of the Work (Cost Plus Fee). Subject to the GMP, Owner shall pay Contractor for the performance of the Work a sum equal to Contractor's Actual Costs (defined below) plus a fee of \_\_\_\_\_ percent (\_\_\_%) of the Actual Costs (the "Contractor's Fee"), plus sales tax, which are collectively referred to as the Cost of the Work.

**[Option A]** "Actual Costs" include the following:

- (a) On-site Project personnel costs, but limited to those persons necessary for the proper performance of the Work, at the following hourly rates: (list by job title and hourly rate);
- (b) The costs paid for the purchase, installation and/or use of all materials, structural accessories, machinery, equipment or other items for the performance of the Work;
- (c) The costs paid for all insurance and governmental fees for the Project;
- (d) The costs paid to subcontractors for their performance of the Work; and
- (e) Actual Costs do not include costs incurred because of Contractor error.

**[Option B]** “Actual Costs” are listed in an attachment provided by Contractor and incorporated herein by this reference.

2.2 Down Payment. Owner shall pay Contractor a down payment of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) prior to commencement of the Work. The down payment shall be credited against the Cost of the Work beginning with Contractor’s first Progress Payment. Owner warrants that he/she has sufficient funds, either personal or through lender financing, in an amount equal to the GMP. Proof of sufficient funds may be requested by the Contractor.

2.3 Guaranteed Maximum Price. The Contract Sum is guaranteed by Contractor not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price (“GMP”). The GMP is based on the Contract Documents. Contractor represents that it has adequately investigated the site and examined the Contract Documents, and the scope of the Work is sufficiently clear to provide an accurate GMP and Project Schedule. Contractor shall perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP, as adjusted by Change Order. Unless specifically set forth in writing, the Contractor does not guarantee any specific line item set forth in the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. If the Cost of the Work exceeds the GMP, such overruns shall be paid solely by Contractor without reimbursement from Owner. If the Cost of the Work is less than the GMP, as adjusted by Change Order, then the savings shall go to Owner.

2.4 Progress Payments. On the first business day of every month, Contractor shall present to Owner an Application for Payment based on the Actual Costs incurred to that date plus the Contractor’s Fee and plus sales tax, less previous payments. Owner shall pay the full amount billed, less retainage, no later than \_\_\_\_\_ (\_\_\_\_\_) (Twenty-Five if not filled in) calendar days from the date of receipt of each Application for Payment. With each Application for Payment the Owner shall have the right to require Contractor to provide documentation to support those Actual

Costs. Contractor shall apply Owner's payment only to the costs and fees of this Project.

2.5 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the "Retainage"). Retainage shall be released to Contractor at the time of Final Payment. The Retainage is a fund for the protection of the Owner: (i) from incomplete or defective work by Contractor; (ii) for the payment of persons who supplied materials or who worked on the Project and were not paid by Contractor; and, (iii) for damages incurred due to other breaches of the Contract.

2.6 Lien Release. Owner shall not be required to make any payment to Contractor unless and until Contractor provides Owner with a conditional waiver and lien release form signed by Contractor and by each subcontractor and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment. A form lien release is attached as **Exhibit C-1**.

2.7 Final Payment. Within ten (10) days after Contractor notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List"). The Punch List and other Work shall be finished by Contractor within \_\_\_\_\_ (\_\_\_\_) [Twenty-One if not filled in] days of Contractor's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Contractor: (1) completes the Work in accordance with the Contract Documents; (2) provides Owner with final lien releases from Contractor and all subcontractors and suppliers, conditioned only on receipt of Final Payment attached as Exhibit C-2; and (3) makes available the cost records supporting the final Cost of the Work if requested by Owner. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner can legally occupy and has full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Contractor.

2.8 Failure of Payment. If Owner fails to pay Contractor amounts due within fourteen (14) days of the time required by Section 2.4, Contractor may, upon providing seven (7) days written notice to Owner, suspend the Work until the amounts due have been received. If the failure of payment remains uncured for fourteen (14) days after the first written notice, Contractor may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.9 Contractor's Registration. A Contractor's Disclosure Statement Notice to Customer ("Notice") is attached as **Exhibit D**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Contractor's compliance with the disclosure requirements.

### **III. CHANGES**

3.1 Nature of Change. If Owner or Contractor requests, or one of the parties believes that a change is necessary, (a "Change"), then the parties shall comply with the following procedure to reflect a Change in the Work:

- a. The Party requesting or noting the Change shall write a description of the Change and give the other Party that writing (the "Change *WSBA Residential Construction Contract #1 Cost Plus 0910*").

Notice”);

- b. Before proceeding with the changed work, unless excused by an emergency involving safety or property damage, the Contractor shall provide Owner with a fixed-price written estimate of the cost and time impact of the requested Change;
- c. Owner and Contractor shall execute a Change Order confirming their agreement with the Change, the fixed-price cost, and the extension of the Substantial Completion date, if any. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

3.2 Change Order Format. A blank Change Order form is included in this Contract as Exhibit E.

#### **IV. SCHEDULE**

4.1 Commencement and Completion of the Work. Contractor shall commence the Work within ten (10) calendar days of receipt of a building permit. Subject to the permitted extensions and delays provided herein, Contractor shall Substantially Complete the Work within \_\_\_\_\_ (\_\_\_\_) calendar days after the commencement date. With its first Application for Payment, Contractor shall provide a schedule indicating proposed Work activity sequences and durations, deadlines for Owner’s decisions on material selections, and milestones for delivery of materials. The schedule is included in this Contract as **Exhibit F**.

4.2 Construction Time and Liquidated Damages. Contractor agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Contractor’s schedule, provides sufficient time for the expeditious and practical execution of the Work. If Contractor fails to achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Contractor agree that if Contractor fails to meet the Substantial Completion date, then *Contractor shall pay Owner liquidated damages at a daily rate of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)*. The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Contractor.

4.3 Delay. If the Project is delayed by the act, neglect or default of Owner, Owner’s agent, Owner’s design professional, Owner’s lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason or reasons beyond Contractor’s reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Contract Documents (the “Excusable Delay”), then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

4.4 Notice of Delay. Within a reasonable time following the date Contractor knows, or  
*WSBA Residential Construction Contract #1 Cost Plus 0910*

within reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Contractor shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Contractor's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

## **V. INSURANCE**

5.1 Before commencing the Work and as a condition of payment, Contractor shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A-,VII or better, that will protect it from bodily injury or property damage claims arising out of its operations under this Contract, whether the operations are by Contractor, Contractor's consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, Ongoing Operations and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
2. Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned and hired automobiles.
3. If the Owner requires that Contractor's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must check the appropriate box: Owner [ ] Contractor [ ].
4. Owner shall be included as an additional insured under the CGL policy.

5.2 Prior to starting work, Contractor shall provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy that documents the Owner's additional insured status.

5.3 Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and, including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work), miscellaneous materials and supplies incidental to the Work and temporary structures. If work is to be performed on an existing residential structure, the Owner may retain an all risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

5.4 Owner and Contractor hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Contractor shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim

arises out of Contractor's negligence.

## **VI. CONTRACTOR'S WARRANTY**

6.1 Contractor's Warranty. Contractor warrants that the Work shall be in accordance with the Contract Documents, performed in a workmanlike manner, and free from material structural defects and shall return and repair any Work not in accordance with the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period"). All product warranties, if any, are deemed assigned from Contractor to Owner.

6.2 Cure of Defect. If a defect is discovered within the Warranty Period, then Owner must promptly notify Contractor in writing following the discovery of that defect (the "Warranty Defect Notice") and must provide Contractor with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as estimated by Contractor. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. In no event shall Contractor's liability exceed the fair and reasonable cost of repair or replacement of the warranted defect. Contractor shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Contractor has been notified in writing and has been afforded the opportunity to cure the claimed defect or to pay the sums specified herein. Nothing contained in Sections 6.1 and 6.2 herein shall be construed to establish a period of limitation with respect to Contractor's other obligations under the Contract Documents

6.3 Notice of Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST CONTRACTOR. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Contractor and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and,
- (b) damages incurred by Contractor for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 9. Nothing contained in this Section 6.4 shall

*WSBA Residential Construction Contract #1 Cost Plus 0910*

be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each other term, covenant or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

## **VII. SAFETY**

7.1 Contractor and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Contractor shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Contractor or its subcontractors of any tier. Contractor and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Contractor shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

## **VIII. INDEMNITY**

8.1 Contractor agrees to defend, indemnify, and hold harmless (the "Indemnity Duty") Owner and its agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) (the "Harm"), provided, however, that the Contractor owes no Indemnity Duty if the Harm was caused by or results from the sole negligence of the Owner or its agents or both, and provided further that in the event of concurrent negligence (i) by Contractor or the Contractor's subcontractors agents or employees, or both and (ii) by the Owner or its agents, or both, then the Contractor's Indemnity Duty is valid and enforceable only to the extent of the negligence of Contractor, its agents, and its employees.

8.2 Contractor further agrees to defend, indemnify, and hold Owner harmless from all WISHA or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor's failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder. Contractor further agrees to defend, indemnify and hold Owner harmless from any liens or claims of payment from Contractor's subcontractors, suppliers, and laborers, provided Owner has complied with its payment obligations hereunder.

8.3 For purposes of the foregoing indemnification provision only, and only to the extent of claims against Contractor by Owner under such indemnification provision, Contractor specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other

employee benefit acts.

By initialing here, the parties agree that this clause was mutually negotiated:

\_\_\_\_\_ Contractor      \_\_\_\_\_ Owner

## **IX. TERMINATION**

9.1 Termination by Owner for Cause. Owner may, after giving Contractor seven (7) days written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Contractor violates any material provision of this Contract or:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors; or
- (c) persistently disregards laws, ordinances, rules, regulations or orders of public authorities having jurisdiction; or
- (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the date of Substantial Completion; or
- (e) persistently fails or refuses to perform the Work in accordance with the Contract Documents.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- (a) take possession of the site and of all materials, equipment, and machinery thereon owned by Contractor;
- (b) accept assignment of subcontracts;
- (c) finish the Work using reasonable methods. Upon Contractor's request, Owner shall furnish to Contractor a detailed accounting of the costs Owner incurs in finishing the Work; and
- (d) charge Contractor the costs of completion in excess of the amounts due to Contractor.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Contractor shall:

*WSBA Residential Construction Contract #1 Cost Plus 0910*

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Contractor shall be entitled to receive payment for Work executed prior to the effective date of termination, including Actual Costs and Contractor's Fee, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c), above.

9.3 Termination by Contractor for Cause. In addition to Contractor's right to terminate the Contract pursuant to Section 2.9, the Contractor may terminate the Contract for cause if the Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this Section, Contractor shall first provide Owner seven (7) days written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, the Contractor may terminate the Contract.

## **X. MEDIATION**

10.1 The parties agree to attempt to resolve any dispute through good faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this Section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA"). Either party may give written notice to the other party requesting mediation and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

## **XI. GENERAL**

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 Entire Agreement. The Contract Documents contain the entire agreement between the  
*WSBA Residential Construction Contract #1 Cost Plus 0910*

parties with respect to construction of the Project. All other agreements, oral or written, are hereby superseded by this Contract. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties. No verbal or other agreements modify or affect this Contract.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

11.4 Assignment. Neither party shall assign nor transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

SIGNATURES ON THE FOLLOWING PAGE

CONTRACTOR:

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*WSBA Residential Construction Contract #1 Cost Plus 0910*

Contractor Registration No.: \_\_\_\_\_

- Exhibits:
- A – Plans
  - B – Estimated Project Cost dated \_\_\_\_\_
  - C-1 – Conditional Lien Release Form
  - C-2 – Conditional Lien Release On Final Payment Form
  - D – Disclosure Statement Notice to Customer
  - E – Change Order Form
  - F – Project Schedule

## **EXHIBIT A**

### **PLANS**

List of Plans provided by Owner:

- 1.
- 2.
- 3.
- 4.

**EXHIBIT B**

**GUARANTEED MAXIMUM PRICE**

(To be provided by Contractor)

**EXHIBIT C-1**  
**CONDITIONAL WAIVER AND RELEASE**  
**UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for labor, services, equipment, or material furnished to \_\_\_\_\_ on the job of \_\_\_\_\_ (Maker of Check) \_\_\_\_\_ located at \_\_\_\_\_ (Owner) \_\_\_\_\_ (Job Description)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent: This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_ (Contractor)

By \_\_\_\_\_ (Print Name)  
\_\_\_\_\_ (Title)

**EXHIBIT C-2**

**WAIVER AND RELEASE UPON FINAL  
PAYMENT**

Upon receipt by the undersigned of a check from \_\_\_\_\_ in the  
(Maker of Check)

sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the  
check  
(Payee)

has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall

become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on  
the job of \_\_\_\_\_ located at \_\_\_\_\_.  
(Owner) (Job Description & Address)

This release covers the final payment to undersigned for all labor, services, equipment, or material furnished on the job. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
(Title)

**EXHIBIT D**

**DISCLOSURE STATEMENT / NOTICE TO CUSTOMER**

This Contractor is registered with the State of Washington, Registration No. \_\_\_\_\_ and has posted with the state a bond or deposit of \$\_\_\_\_\_ for the purpose of satisfying claims against the Contractor for breach of contract including negligent or improper work in the conduct of the Contractor's business. The expiration date of this Contractor's Registration is \_\_\_\_\_.

**THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

This bond or deposit is not for your exclusive use because it covers all work performed by this Contractor. The bond or deposit is intended to pay valid claims up to \$\_\_\_\_\_ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

**FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.**

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

**YOUR PROPERTY MAY BE LIENED.**

If a supplier of materials used in your construction project or an employee or subcontractor of your Contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

**FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.**

The Contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_

Signature of Customer

The Contractor must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

**EXHIBIT E**  
**CHANGE ORDER**

1. Number \_\_\_\_\_ Date \_\_\_\_\_
2. Contractor \_\_\_\_\_  
Address \_\_\_\_\_
3. Job Description \_\_\_\_\_
4. Property Address or Legal Description:  
\_\_\_\_\_  
\_\_\_\_\_
5. Contractor hereby agrees to make the change(s) specified below:  
    See Attachment "A" \_\_\_\_\_
6. Fixed Price of Change(s) Add: \$ \_\_\_\_\_  
    Deduct: \$ \_\_\_\_\_
7. Previous Change Orders \$ \_\_\_\_\_
8. Reason for Change: \_\_\_\_\_ See Attachment "A" \_\_\_\_\_
9. Contract Time Extension: \_\_\_\_\_
10. New Completion Date: \_\_\_\_\_

ACCEPTANCE: The terms of this change order are satisfactory and are hereby accepted:

OWNER APPROVAL \_\_\_\_\_

DATE \_\_\_\_\_

CONTRACTOR APPROVAL \_\_\_\_\_

DATE \_\_\_\_\_

**Attachment "A"**  
**Change Order No. \_\_\_\_**

## **Welcome to the Model Residential Design-Build Contract (Cost Plus w/ Guaranteed Maximum Price)**

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Design-Build Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations, and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document:

1. Relationship Between the Parties: The Document contemplates that the Owner is supplying the Design-Builder with design criteria setting forth the Owner’s desired parameters for the project, that the Design-Builder will rely upon those criteria in creating a design for the project, which, after approval by the Owner, the Design-Builder will then use to construct the project.

2. Cost-Plus Contract: This Document is written to be a **cost-plus contract with a maximum price**. The Owner is responsible for the actual costs of design services, labor, and materials supplied by the Design-Builder, plus the Design-Builder’s fee and sales tax up to the guaranteed maximum price amount. The Owner is not responsible for costs that exceed the guaranteed maximum price unless Owner and Design-Builder have agreed to increase the guaranteed maximum price amount via change order during the project.

3. Components of Costs: Different Design-Builders have different billing practices. For instance, a Design-Builder’s listed hourly rate charged for an employee is usually not what the employee is actually paid. Therefore, the Document allows the parties to define reimbursable costs (Option A of Section 2.1) or identify such terms in an exhibit (Option B of Section 2.1). It is left to the parties to negotiate and agree upon what constitutes reimbursable costs and how much the Design-Builder will be paid for the Work.

4. Cost Auditing: The Document permits the Owner to review the Design-Builder’s cost records (such as design consultant invoices, subcontractor invoices, and labor and material costs) each time the Design-Builder submits a monthly progress billing. The Owner should carefully review payment applications and supporting documentation. In addition, lien release forms have been provided as Exhibits to the Document.

5. Damages for Late Performance: The Document requires the Design-Builder to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner’s only remedy for late completion of the project. The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner’s actual damages for delay.

6. Bonds, Insurance, Registration: The Design-Builder and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Design-Builder is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential contractor's registration and insurance with the Washington Department of Labor and Industries at [www.lni.wa.gov](http://www.lni.wa.gov). This Document does not require the Design-Builder to obtain a payment and performance bond in the amount of the cost of the Work.

7. Design-Builder's Warranty: In the documents, the Design-Builder warrants to the Owner that the construction Work will be in accordance with Contract Documents and free of material structural defects.

8. Owner's Notice of Claims After Completion: The Document incorporates Washington statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedure set forth in RCW 64.50 if they have a claim.

9. Revisions: The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

**RESIDENTIAL DESIGN-BUILD CONTRACT (Cost Plus)**

Parties: \_\_\_\_\_  
Design-Builder

\_\_\_\_\_

Owner

Property: \_\_\_\_\_

Address

\_\_\_\_\_

Tax Parcel No.

Date: \_\_\_\_\_

**I. THE WORK**

1.1 Owner’s Duties. The Owner has provided the Design-Builder with Design Criteria setting forth the Owner’s desired parameters to construct or renovate a single-family residence (the “Project”) for the Owner on the Property. The Owner’s Design Criteria are attached hereto as **Exhibit A**. The Owner shall consult with the Design-Builder in the development of plans and specifications based upon those criteria and shall approve the final plans and specifications prior to application for permits or commencement of construction. The Owner’s approval is for general compliance with the Design Criteria, and Owner’s approval shall not be deemed to transfer any design liability to Owner. The Owner shall provide all reviews and approvals in a timely fashion so as not to delay the Design-Builder’s schedule. The Owner shall pay the Design-Builder for the design and construction of the Project as set forth herein.

1.2 Design-Builder’s Duties. Based upon the Owner’s Design Criteria, the Design-Builder shall prepare plans and specifications (“Construction Documents”) for the Owner’s approval using design professionals (“Design Consultants”) who are properly licensed and otherwise qualified to perform architectural, engineering, and other design work. The Construction Documents shall be consistent with the Owner’s Design Criteria and any changes thereto. Design Builder shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Design-Builder agrees that each Design Consultant shall be fully bound to Design-Builder in the same manner as Design-Builder is bound to Owner for all material requirements of the Design-Build Contract which are applicable to the Design Consultant’s scope of services. Design-Builder shall at all times be responsible for the services performed by its Design Consultants and shall coordinate the services of its Design Consultants to satisfy Design-Builder’s obligations under the Design-Build Contract.

1.2.1 Nothing in this Agreement shall relieve Design-Builder from responsibility for the services performed by its Design Consultants or create any legal or contractual relationship between Owner and any Design Consultant.

1.2.2 The standard of care for all design and engineering services (“Professional Services”) performed by Design-Builder and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

1.2.3 All drawings, specifications, and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be the property of Design-Builder, and provided Owner pays Design-Builder for all undisputed amounts, Owner is granted a limited license to use such Work Product solely for the Project to which this Design-Build Contract pertains. If Owner uses the Work Product on any other project, he/she shall do so at his/her sole risk and without liability or legal exposure to Design-Builder or its Design Consultants, or anyone working through them. Owner further agrees that he/she shall defend, indemnify, and hold harmless the Design-Builder and its Design Consultants from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, arising out of or resulting from 1) use of the Work Product on another project; and 2) use of the Work Product on this Project if Design-Builder is terminated prior to Substantial Completion.

1.2.4 Design-Builder shall furnish the material, labor, equipment, tools, and supervision necessary to construct the Project for Owner on the Property in compliance with the Owner’s Design Criteria in Exhibit A and the plans and specifications approved by Owner (the “Construction Documents.”) The design and construction of the Project constitutes the “Work” under this Design-Build Contract. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.” If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

1.3 Permits. [Choose \_\_\_ Owner or \_\_\_ Design-Builder] shall obtain the governmental approvals of the Plans and all permits for construction of the Project and shall be responsible for the cost thereof.

## **II. PRICE AND PAYMENT**

2.1 The Cost of the Work (Cost Plus Fee). Owner shall pay Design-Builder for the performance of the Work a sum equal to Design-Builder’s Actual Costs (defined below) plus a fee of \_\_\_\_\_ percent (\_\_\_\_\_% ) of the Actual Costs (the “Design-Builder’s Fee,”) plus sales tax.

[Option A] “Actual Costs” include the following:

- (a) the costs paid to Design Consultants for the design of the Project;
- (b) on-site Project personnel costs, but limited to those persons necessary for the proper performance of the Work, at the following hourly rates: (list by job title and hourly rate);

- (c) the costs paid for the purchase, installation and/or use of all materials, structural accessories, machinery, equipment or other items for the performance of the Work;
- (d) the costs paid for all insurance and governmental fees for the Project;
- (e) the costs paid to subcontractors for their performance of the Work;  
and

Actual Costs do not include costs incurred because of Design-Builder error.

**[Option B]** “Actual Costs” are listed in an attachment provided by Design-Builder and incorporated herein by this reference.

2.2 Down Payment. Owner shall pay Design-Builder a down payment of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) prior to commencement of the Work. The down payment shall be credited against the Cost of the Work beginning with Design-Builder’s first Progress Payment. Owner warrants that he/she has funds, either personal or through lender financing, in an amount equal to the Guaranteed Maximum Price. Proof of sufficient funds may be requested by Design-Builder.

2.3 Guaranteed Maximum Price. The Contract Sum is guaranteed by Design-Builder not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The GMP is based on the Owner’s Design Criteria set forth in Exhibit A. Design-Builder represents that it has adequately investigated the site and the project parameters, the Owner’s Design Criteria in Exhibit A is sufficiently defined to provide an accurate GMP and Project Schedule, and the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP, as adjusted by Change Order. Unless specifically set forth in writing, the Design-Builder does not guarantee any specific line item set forth in the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. The cost to complete the Work which would cause the GMP to be exceeded shall be paid solely by the Contractor without reimbursement by the Owner. If the Cost of the Work is less than the GMP, as adjusted by Change Order, then the savings shall go to the Owner.

2.4 Progress Payments. On the first business day of every month, Design-Builder shall present to Owner an Application for Payment based on the Actual Costs incurred to that date plus the Design-Builder’s Fee and plus sales tax, less previous payments. Owner shall pay the full amount billed, less Retainage, no later than \_\_\_\_\_ (\_\_\_\_) (twenty-five if not filled in) days from the date of receipt of each Application for Payment. With each Application for Payment, the Owner shall have the right to require Design-Builder to provide documentation to support those Actual Costs. Design-Builder shall apply Owner’s payment only to the costs and fees of this Project.

2.5 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the “Retainage.”) Retainage shall be released to Design-Builder at the time of Final

Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Design-Builder; (ii) for the payment of persons who supplied materials or who worked on the Project and were not paid by Design-Builder; and (iii) damages incurred due to other breaches of the Contract.

2.6 Lien Release. Owner shall not be required to make any payment to Design-Builder unless and until Design-Builder provides Owner with a conditional waiver and lien release form signed by Design-Builder and by each Design Consultant, subcontractor, and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment, verifying payment in full, less any retainage, from Owner's prior month's payment to Design-Builder. A form lien release is attached as **Exhibit B-1**.

2.7 Final Payment. Within ten (10) days after Design-Builder notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Design-Builder and deliver to Design-Builder a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List.") The Punch List and other Work shall be finished by Design-Builder within \_\_\_\_\_ ( ) [twenty-one if not filled in] days of Design-Builder's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Design-Builder (1) completes the Work in accordance with the Contract Documents; (2) provides Owner with final lien releases from Design-Builder and all subcontractors and suppliers, conditioned only on receipt of Final Payment attached as **Exhibit B-2**; and (3) makes available the cost records support the final Cost of the Work if requested by the Owner. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner can legally occupy and has full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Design-Builder.

2.8 Failure of Payment. If Owner fails to pay Design-Builder amounts due within fourteen (14) days of the time required by Section 2.4, Design-Builder may, upon providing seven (7) days' written notice to Owner, suspend the Work until the amounts due have been received. If the failure of payment remains uncured for fourteen (14) days after the first written notice, Design-Builder may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.9 Design-Builder's Registration. A Contractor's Disclosure Statement Notice to Customer ("Notice") is attached as **Exhibit C**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Design-Builder's compliance with the disclosure requirements.

### **III. CHANGES**

3.1 Nature of Change. If Owner or Design-Builder requests, or one of the parties believes that a change is necessary (a "Change,") then the parties shall comply with the following procedure to reflect a Change in the Work:

- (a) the party requesting or noting the Change shall write a description of the Change and give the other party that writing (the “Change Notice”);
- (b) before proceeding with the changed work, unless excused by an emergency involving safety or property damage, the Design-Builder shall provide Owner with a written estimate of the cost and time impact of the requested Change; and
- (c) Owner and Design-Builder shall execute a Change Order confirming their agreement with the Change, the cost (including how the change is priced), and the extension of the Substantial Completion date, if any. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

3.2 Change Order Format. A blank Change Order form is included in this Contract as **Exhibit D.**

#### **IV. SCHEDULE**

4.1 Commencement and Completion of the Work. Design-Builder shall commence the design portion of the Work within ten (10) days of receipt of the Owner’s execution of this Contract and shall commence the construction portion of the Work within ten (10) days of the issuance of the building permit. Subject to the permitted extensions and delays provided herein, Design-Builder shall Substantially Complete the Work within \_\_\_\_\_ (\_\_\_\_)days after the commencement date for the construction portion of the Work. With its first Application for Payment, Design-Builder shall provide a schedule indicating proposed Design Consultants’ and Work activity sequences and durations, deadlines for Owner’s decisions on preliminary plans and specifications, and milestones for delivery of final plans and completion of various portions of the Work. The schedule is included in this Contract as **Exhibit E.**

4.2 Construction Time and Liquidated Damages. Design-Builder agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Design-Builder’s schedule, provides sufficient time for the expeditious and practical execution of the Work. If Design-Builder fails to achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Design-Builder agree that if Design-Builder fails to meet the Substantial Completion date, then *Design-Builder shall pay Owner liquidated damages at a daily rate of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) until Substantial Completion is achieved.* The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Design-Builder.

4.3 Delay. If the Project is delayed by the act, neglect, or default of Owner, Owner’s agent, Owner’s Design Consultant (if any,) Owner’s lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason or

reasons beyond Design-Builder's reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Design Criteria (the "Excusable Delay,") then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

4.4 Notice of Delay. Within a reasonable time following the date Design-Builder knows, or within reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Design-Builder shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Design-Builder's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

## V. INSURANCE

5.1 Before commencing the Work and as a condition of payment, Design-Builder shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A-, VII, or better, that will protect it from bodily injury or property damage claims arising out of its operations under this Contract, whether the operations are by Design-Builder, Design-Builder's Consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- .1 Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, and Ongoing Operations and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
- .2 Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned, and hired automobiles.
- .3 If the Owner requires that Design-Builder's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must check the appropriate box: Owner  Design-Builder .
- .4 Owner shall be included as an additional insured under the CGL policy.
- .5 Design-Builder shall require its Design Consultants, sub-consultants, and subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in paragraphs .1-.4 above.
- .6 Design-Builder's and its Design Consultants', sub-consultants', and subcontractors' insurance coverages set forth in paragraphs .1-.4 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery on the Project.
- .7 Design-Builder and/or any Design Consultants to Design-Builder shall provide

professional liability insurance, covering those claims which arise out of the negligent acts, error, or omissions committed or alleged to have been committed by Design-Builder and/or any Design Consultants to Design-builder, which professional liability insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Contract and maintained for a period of no less than six years after Substantial Completion. The cost of any deductible shall be paid by the Design-Builder. Such professional liability insurance shall specifically delete any exclusion for design-build delivery of the Project.

5.2 Prior to starting work, Design-Builder shall provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy that documents the Owner's additional insured status.

5.3 Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work,) miscellaneous materials and supplies incidental to the Work, and temporary structures. If work is to be performed on an existing residential structure, the Owner may retain an all risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

5.4 With the exception of professional liability insurance and worker's compensation coverage, Owner and Design-Builder hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Design-Builder shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Design-Builder's negligence.

## **VI. DESIGN-BUILDER'S WARRANTY**

6.1 Design-Builder's Warranty. Design-Builder warrants that the Professional Services shall be performed in accordance with the degree of care and skill set forth in Section 1.2.2. Design-Builder warrants that the construction work shall be in accordance applicable laws and the Contract Documents, performed in a workmanlike manner, free from material structural defects, and shall return and repair any Work not in accordance with the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period.") All product warranties, if any, are deemed assigned from Design-Builder to Owner, and Design-Builder shall reasonably assist Owner in enforcing such product warranties.

6.2 Cure of Defect. If a defect is discovered within the Warranty Period, then Owner must promptly notify Design-Builder in writing following the discovery of that defect (the "Warranty Defect Notice,") and must provide Design-Builder with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as reasonably estimated by Design-Builder. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. Design-Builder shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Design-Builder has been notified in writing and has been afforded the opportunity to cure the claimed

defect or to pay the sums specified herein. Nothing contained in Sections 6.1 and 6.2 herein shall be construed to establish a period of limitation with respect to Design-Builder's other obligations under the Contract Documents.

6.3 Notice of Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST DESIGN-BUILDER. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO DESIGN-BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE DESIGN-BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY DESIGN-BUILDER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Design-Builder and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and
- (b) damages incurred by Design-Builder for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 9. Nothing contained in this Section 6.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each other term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

## **VII. SAFETY**

7.1 Design-Builder and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Design-Builder shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Design-Builder or its subcontractors of any tier. Design-Builder and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Design-Builder shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

## **VIII. INDEMNITY**

8.1 Design-Builder agrees to defend, indemnify, and hold harmless (the “Indemnity Duty”) Owner and its agents from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees and costs and expenses, arising out of or resulting from performance of the the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) (the “Claim,”) and provided further that the Design-Builder owes no Indemnity Duty if the Claim was caused by or results from the sole negligence of the Owner or its agents or both. In the event of concurrent negligence (i) by Design-Builder or the Design-Builder’s subcontractors, agents, or employees, or both; and (ii) by the Owner or its agents, or both, then the Design-Builder’s Indemnity Duty is valid and enforceable only to the extent of the negligence of Design-Builder, its agents, and its employees. Further, Design-Builder agrees to indemnify, but not defend, Owner and its agents from and against damages, losses, liabilities, and expenses, including but not limited to attorneys’ fees and costs and expenses, to the extent arising out of or resulting from the negligent performance or nonperformance of the Professional Services.

8.2 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys’ fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions

8.3 Design-Builder further agrees to defend, indemnify, and hold Owner harmless from all WISHA or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Design-Builder’s failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder.

8.4 Design-Builder further agrees to defend, indemnify and hold Owner harmless from any liens or claims of payment from Design-Builder’s consultants, subcontractors, suppliers, and laborers, provided Owner has complied with its payment obligations in accordance with this Agreement.

8.5 For purposes of the foregoing indemnification provision only, and only to the extent of Claims against Design-Builder by Owner under such indemnification provision, Design-Builder specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

8.6 By initialing here, the parties agree that this clause was mutually negotiated:

\_\_\_\_\_ Design-Builder      \_\_\_\_\_ Owner

## **IX. TERMINATION**

9.1 Termination by Owner for Cause. Owner may, after giving Design-Builder seven (7) days' written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Design-Builder violates any material provision of this Contract or:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
  - (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Design-Builder and the subcontractors; or
  - (c) persistently disregards laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction; or
  - (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the date of Substantial Completion.
- 
- (a) persistently fails or refuses to perform the Work in accordance with the Contract Documents.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- (a) take possession of the site and of all materials, equipment, and machinery thereon owned by Design-Builder;
- (b) accept assignment of subcontracts, which Design-Builder shall assign to Owner if requested by Owner;
- (c) finish the Work using reasonable methods. Upon Design-Builder's request, Owner shall furnish to Design-Builder a detailed accounting of the costs Owner incurs in finishing the Work; and
- (d) charge Design-Builder the costs of completion in excess of the amounts due to Design-Builder.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Design-Builder shall:

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and

- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Design-Builder shall be entitled to receive payment for Work executed prior to the effective date of termination, including Actual Costs and Design-Builder's Fee, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c) above.

9.3 Termination by Design-Builder for Cause. In addition to Design-Builder's right to terminate the Contract pursuant to Section 2.8, the Design-Builder may terminate the Contract for cause if the Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this Section, Design-Builder shall first provide Owner seven (7) days' written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, the Design-Builder may terminate the Contract.

## **X. MEDIATION**

10.1 The parties agree to attempt to resolve any dispute through good faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this Section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA.") Either party may give written notice to the other party requesting mediation, and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

## **XI. GENERAL**

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 Entire Agreement. In entering into this Agreement, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other party except for those expressly contained in this Agreement. The Contract Documents contain the entire agreement between the parties with respect to design and construction of the Project. All other agreements, oral or written, are hereby superseded by this Contract. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators, and assigns.

11.4 Assignment. Neither party shall assign nor transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

DESIGN-BUILDER:

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

E-Mail: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Registration No.: \_\_\_\_\_

- Exhibits:
- A – Owner’s Design Criteria
  - B-1 – Conditional Lien Release Form
  - B-2 – Conditional Lien Release On Final Payment Form
  - C – Disclosure Statement Notice to Customer
  - D – Change Order Form
  - E – Project Schedule

**EXHIBIT A**  
**OWNER'S DESIGN CRITERIA**

Owner's Design Criteria:

- 1.
- 2.
- 3.
- 4.

*DRAFT, SUBJECT TO REVIEW AND APPROVAL BY WASHINGTON STATE BAR ASSOCIATION*

**EXHIBIT B-1**

**CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT**

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for labor, services, equipment, or material furnished to \_\_\_\_\_ on the job of \_\_\_\_\_

\_\_\_\_\_  
(Maker of Check)

\_\_\_\_\_ located at \_\_\_\_\_  
(Owner) (Job Description)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Design-Builder)

By: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

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**EXHIBIT B-2**

**CONDITIONAL WAIVER AND RELEASE UPON  
FINAL PAYMENT**

Upon receipt by the undersigned of a check from  
\_\_\_\_\_ in the sum of \$ \_\_\_\_\_ payable to  
(Maker of Check)

\_\_\_\_\_ and when the check has been properly endorsed  
(Payee)

and has been paid by the bank upon which it is drawn, this document shall  
become effective to release any mechanic's lien, stop notice, or bond right the undersigned  
has on the job of \_\_\_\_\_

located at \_\_\_\_\_  
(Owner)

\_\_\_\_\_  
(Job Description & Address)

This release covers the final payment to undersigned for all labor, services, equipment, or  
material furnished on the job. Before any recipient of this document relies on it, the party  
should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Design-Builder)

By: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

***DRAFT, SUBJECT TO REVIEW AND APPROVAL BY WASHINGTON STATE BAR ASSOCIATION***

**EXHIBIT C**

**DISCLOSURE STATEMENT / NOTICE TO CUSTOMER**

This Design-Builder is registered with the State of Washington, Registration No. \_\_\_\_\_ and has posted with the state a bond or deposit of \$ \_\_\_\_\_ for the purpose of satisfying claims against the Design-Builder for breach of contract including negligent or improper work in the conduct of the Design-Builder’s business. The expiration date of this Contractor’s Registration is \_\_\_\_\_.

**THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.**

This bond or deposit is not for your exclusive use because it covers all work performed by this Design-Builder. The bond or deposit is intended to pay valid claims up to \$ \_\_\_\_\_ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

**FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.**

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

**YOUR PROPERTY MAY BE LIENED.**

If a supplier of materials used in your construction project or an employee or subcontractor of your Design-Builder or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

**FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE DESIGN-BUILDER TO PROVIDE YOU WITH ORIGINAL “LIEN RELEASE” DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.**

The Design-Builder is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_  
Signature of Customer

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The Design-Builder must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

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**EXHIBIT D**  
**CHANGE ORDER**

1. Number: \_\_\_\_\_ Date: \_\_\_\_\_

2. Design-Builder: \_\_\_\_\_

Address: \_\_\_\_\_

3. Job Description: \_\_\_\_\_

4. Property Address or Legal Description:  
\_\_\_\_\_  
\_\_\_\_\_

5. Design-Builder hereby agrees to make the change(s) specified below:

\_\_\_\_\_ See Attachment "A" \_\_\_\_\_

6. Price of Change(s): Add: \$ \_\_\_\_\_

Deduct: \$ \_\_\_\_\_

7. Previous Change Orders \$ \_\_\_\_\_

8. Reason for Change: See Attachment "A" \_\_\_\_\_

9. Contract Time Extension: \_\_\_\_\_

10. New Completion Date: \_\_\_\_\_

ACCEPTANCE: The terms of this Change Order are satisfactory and are hereby accepted:

OWNER APPROVAL: \_\_\_\_\_

DATE; \_\_\_\_\_

DESIGN-BUILDER APPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_

***DRAFT, SUBJECT TO REVIEW AND APPROVAL BY WASHINGTON STATE BAR ASSOCIATION***

**EXHIBIT D**

**ATTACHMENT "A"  
CHANGE ORDER NO. \_\_\_\_**

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**EXHIBIT E**  
**PROJECT SCHEDULE**

*DRAFT, SUBJECT TO REVIEW AND APPROVAL BY WASHINGTON STATE BAR ASSOCIATION*

*DRAFT, SUBJECT TO REVIEW AND APPROVAL BY WASHINGTON STATE BAR ASSOCIATION*

**TO:** WSBA Board of Governors Executive Committee  
**FROM:** Terra Nevitt, Executive Director  
Paris Eriksen, Volunteer Engagement Advisor  
**DATE:** July 13, 2022  
**RE:** Next Steps Regarding Open District 8 Seat on the Board of Governors

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**Summary:**

Following the outcome of the Governor At Large election on June 1, Governor Williams-Ruth submitted a letter of resignation from the Congressional District 8 position to be 'at the close of the Board of Governors meeting in September 2022.' The last day of the September meeting is scheduled for September 23, 2022. The last day of the September 2023 meeting is September 23, 2022. Therefore, the date of resignation is exactly 12 months from the end of term date as defined in the WSBA Bylaws and the Board of Governor has discretion as to whether to fill the position.

The WSBA Bylaws state the following in Article IV.4:

*b. Response to Vacancy*

- 1) *If a vacancy occurs for any reason and 12 months or less remain in the Governor's term, in the BOG's sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor will be elected or appointed to the position.*
- 2) *If a vacancy occurs due to resignation, death or removal of a Governor by the BOG, and more than 12 months remain in that Governor's term, the BOG must elect a candidate eligible for that position to serve as Governor until the next regularly scheduled election for that Governor position.*

**Proposed Election Process (if applicable):**

In keeping with other election precedent, the Board could provide members with no less than 30 days' notice and conduct the election at a special meeting in late August or at the next regular meeting in September.

**TO:** Board of Governors  
**FROM:** Terra Nevitt, Executive Director  
Paris Eriksen, Volunteer Engagement Advisor  
**DATE:** July 5, 2022  
**RE:** WSBA Treasurer Nomination & Voting Process

**ACTION:** Elect a current member of the WSBA Board of Governors to serve as the 2022-2023 Treasurer, for a one-year term starting at the conclusion of the Board meeting on September 22-23, 2022.

**Nomination Process:**

On June 1, we notified members of the Board of Governors of the opportunity to indicate their interest in serving as Treasurer either by (1) submitting a cover letter and resume in advance of the meeting or 2) making a nomination from the floor of the July meeting. We have received one nomination for Gov. Francis Adewale. Materials in support of his nomination are attached.

**Voting Process:**

If there is only one nominee for the position of Treasurer, no vote will take place and the single nominee will be declared Treasurer for 2022-2023.

If there is more than one candidate, election will be conducted through an electronic ballot. After an opportunity to interview the candidates and discussion, Board members will be asked to indicate their choice through the e-ballot. The President does not vote in the Treasurer election. All votes will be secret and made available only to me and two other individuals identified by President. The voting process will continue if needed until a winner is identified.

**Relevant WSBA Bylaw:**

*D. ELECTIONS BY BOARD OF GOVERNORS*

*2. Treasurer*

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

**Materials:**

1. Governor Francis Adewale, letter of interest and bio
2. Letter of Support for Governor Francis Adewale from Governor Brent Williams-Ruth
3. General Counsel Memo Re Who Votes in an Election

Francis Adewale is one of the attorneys that helped establish Spokane Community Court. Francis commitment to community lawyering is epitomized by his work on several community based board and activities in Eastern Washington. He has served as chair of Refugee Connections Spokane, co-chair of Spokane Homeless Coalition, Spokane County Regional Law & Justice Council's Racial Equity Disparity Committee, member/trustee of Spokane County Bar Association and the Volunteer Lawyers Program. He is current chair of Access to Justice Board and member of Washington State Supreme Court's Interpreters Commission and Board member of Northwest Immigrant Rights Project (NWIRP). He has been founding member of the Washington Statewide Reentry Council having been reappointed thrice by Governor Jay Inslee. Francis is the elected WSBA 5<sup>th</sup> District Governor for Eastern Washington.

Francis is a distinguished H. George Frederickson Honors Graduate of Eastern Washington University and adjunct faculty at Whitworth University. Francis was admitted to the Washington State Bar in June 2000 and has since practice as assistant public defender for the City of Spokane. A Fellow of Washington State Bar Association Leadership Institute (WLI) and ATJ Equal Justice Leadership Academy. He is also a recipient of City of Spokane Human Rights Award, Washington Criminal Defense Lawyers' President Award and Spokane County Bar Association Smithmoore P. Myers Professionalism Award. Francis, along with other team members of Spokane Community Court are recipient of 2018 WSBA Apex Award. He is the 2021 recipient of the Washington Defenders Association's President Award.

**Wednesday, June 15, 2022**

**VIA EMAIL**

Paris Eriksen  
1325 4<sup>th</sup> Ave Ste 600  
Seattle, WA 98101-2539  
parise@wsba.org

**RE: Letter of Interest to Serve as WSBA Treasurer**

I write to indicate my interest in serving as Washington State Bar Association (WSBA) Treasurer. I was elected as the 5<sup>th</sup> District Governor in 2021 and currently serve on the Budget and Audit Committee. In that capacity, I have worked closely with the current treasurer, and I am the Governor tasked with reviewing our fiscal policy. My passion for justice and the desire to continue to bring fiscal probity to our organization's finances compels me to declare my interest in serving as WSBA Treasurer.

We all learned very few things in Law school that prepared us for accounting and financial management of an organization. While serving on many communities and State boards, I have realized the importance of accounting, budgeting, bookkeeping, and financial management. Given this fact, in 2010, I enrolled in a postgraduate program in public administration. This program exposed me to nonprofit financial management, so that all the organizations I have managed since that time have benefited and derived an enormous benefit from the knowledge I gained from my advanced education. This wealth of knowledge is what I will bring to the position Treasurer if I am elected.

The position of Treasurer is more than a figurehead in an organization like WSBA. The importance of the Treasurer to the wellbeing of our members and the sustainability of WSBA cannot be overemphasized. When I ran for Governor, I informed lawyers in the 5<sup>th</sup> district that I consider the law profession a business and the last hope of humanity for leadership. In the same vein, if elected as Treasurer; I will work hard to improve WSBA asset management and build on the legacy of our past and current treasurer, Dan Clark and Bryn Peterson, in increasing our investment portfolio.

Good treasurers need to know accounting. Accounting is about following the financial rules for an organization. Financial accounting standard rules for most nonprofit and quasi-regulatory agencies such as WSBA are clearly set by FASB. Financial statements must be transparent and easy to understand for the Board of Governors so that they are able to make informed decisions that align with our Mission and our long term goals. If elected as Treasurer, I will ensure every copy of the balance sheet, income statement, cash flows, and functional expenses statement are transparent and made plain for every Governor to understand. This is what I have been doing monthly as trustee of Spokane City Credit Union, and I hope to bring the same rigor and transparency to WSBA if elected as treasurer.

I have been an active member of the Board of Governors since my swearing-in. During my first year on the board, I served not only on the Budget and Audit Committee, but I have also been active as a liaison to the Administrative Law Section, Cardozo Law Society, DMCJA, as well as co-chair of the Member Engagement Council. I have attended virtually every meeting that I had notice of and found that the common thread from our members is their concern about the management of their dues and our commitment to justice. I have also worked with many of our dedicated staff and volunteers and heard their call for a common-sense approach to expense reports, budgeting, and finance.

Our association faces myriads of challenges and requires someone with a track record of fiscal responsibility and commitment to prudent management of funds to serve as Treasurer. I have served as chair of many community boards and Supreme Court commissions, and the Access to Justice Board. In all these positions, I distinguish myself as someone committed to transparency in financial management. Under my leadership, we raised more money than in the past to support the Access to Justice Conference. We spent the funds raised prudently that we were able to leave thousands of dollars in the account for future conferences.

Accountability in the current environment requires that organizations such as WSBA have explicit policies in three areas: accountability and regulatory policies, financial and financial management policies, and data integrity policies. These are three principal areas I have devoted my attention to in our ongoing fiscal policy reform. If elected, I hope to encourage the Board of Governors to set 2-year priorities that will help guide our budget preparations as I did at the Access to Justice Board. Programs, plans, and initiatives that will be funded and supported must reflect such priorities. I have attended virtually every Board of Governors meeting since my election and seek to bring perspectives learned from 20 years of service in nonprofit board management to the office of treasurer.

My outreach efforts to our sections indicate concerns about our fiscal policies, and I have worked hard to include their voices and concerns in the ongoing fiscal policy reform that I have chaired. If elected as Treasurer, I intend to meet with section chairs and treasurers to see how we can assist them with bookkeeping, accounting, and financial ratios, such as liquidity, asset management and long-term solvency.

Even though I was born in Nigeria, West Africa, I have lived most of my adult life in Eastern Washington where I contributed to expanding opportunities for all people in our region and our state in general. As a recipient of the City of *Spokane's Human Rights Award*, Spokane County Bar Association *Smithmoore P. Myers Professionalism Award*, and one of the attorneys that helped establish Spokane Community Court, I understand the responsibilities and challenges of running regional and statewide programs with many competing interests. I take my fiduciary duties seriously and work hard to ensure that those tasked with managing our organization's finances operate with utmost responsibility and transparency within the accounting rules. If elected as Treasurer, I will work hard to ensure transparency in our accounting standard reports and increase oversight over our budget implementation.

Thank you for considering my letter of interest. I hope you will vote for me as Treasurer.  
Sincerely,

Francis Adewale  
Enc: resume and cover letter

# WASHINGTON STATE BAR ASSOCIATION

Board of Governors

Brent Williams-Ruth, Governor District 8

**TO:** Paris Eriksen, Volunteer Engagement Advisor  
**CC:** Terra Nevitt, Executive Director & Brian Tollefson, WSBA President 2021-2022  
**FROM:** Governor Brent Williams-Ruth  
**DATE:** June 15, 2022  
**RE:** Nomination of Governor Francis Adewale for WSBA Treasurer

The Treasurer of the Washington State Bar Association is more than a Governor and more than an Officer, they are the top of the fiscal food chain. They help steer the direction of the evolution and growth of the fiscal policies that impact the members, the volunteers, and the staff of the Washington State Bar Association.

Setting the tone for policy conversations comes from the experience brought from the outside world into this term of service. Experience working with personal budgets, organizational budgets, educational budgets, and yes, even helping children learn their first budgets – all of those experiences help shape the mindset and direction of the Treasurer.

It is because of the vast experience in all multitudes of engagements over years of service that I proudly nominate Governor Francis Adewale to be the 2022-2023 WSBA Treasurer.

Governor Adewale has seen finances in many forms. From small organizations that can stretch a dollar to the point of almost breaking but still covering bases. To healthy and wealthy organizations that have robust policies and plans and contingencies (with funds to back them up).

If there is one thing that I have witnessed under the service of Treasurer Peterson and President-Election Clark before him, is that budgets cannot predict the future. They cannot anticipate what will happen tomorrow. They can only set out a vision for where you want things to be and then, when needed to bring everything and everyone to come back to the middle, adjust accordingly.

I have a strong sense that Governor Adewale, given the chance, will serve in a way that creates and facilitates a place for conversation around fiscal policy all the while supporting the WSBA staff as they take the funds and apply them in such a way that we continue to strengthen and advance the mission. I cannot think of a better continuation on the solid financial footing that we currently occupy.

I look forward to casting my vote for Governor Adewale and hope that you will, too.

**To:** WSBA President Hon. Brian Tollefson (ret.), Officers, Board of Governors, and Executive Director Terra Nevitt

**From:** Julie Shankland, General Counsel

**Date:** March 18, 2022

**Re:** **Who votes in BOG elections**

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The purpose of this memo is to explain whether the WSBA President votes in elections by the Board of Governors.

### Questions and Short Answers

1. Does the President, as a member of the Board, participate in Board elections conducted by ballot?
  - a. Short Answer: The President casts a ballot for President-Elect, but not for Treasurer.
2. Does the President vote to break a tie in a Board election?
  - a. Short Answer: No.

### Analysis

#### The President Votes If the President's Vote Will Affect the Result

The President is a member of the Board of Governors.<sup>1</sup> The Board elects the President-Elect of the Bar.<sup>2</sup> The President may vote only if the President's vote will affect the result.<sup>3</sup>

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<sup>1</sup> [RCW 2.48.030](#)

There is hereby constituted a board of governors of the state bar which shall consist of not more than fifteen members, to include: The president of the state bar elected as provided by the bylaws of the association . . .

#### **WSBA Bylaws Article IV.A.1**

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

<sup>2</sup> **WSBA Bylaws Article IV.A.2.a**

The BOG elects the President-elect of the Bar.

<sup>3</sup> **WSBA Bylaws Article IV.B.1**

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

Robert's Rules of Order states that "the vote will affect the result" means: (1) when there is a tie on a vote, not by ballot, and requiring a majority, the President may vote in the affirmative to cause the motion to prevail; (2) If there is one more vote in the affirmative than in the negative, the President can create a tie by voting in the negative to cause the motion to fail; if a two-thirds vote is required, he or she may vote either to cause, or block attainment of the necessary two thirds. RONR (12th ed.) 44:12-13. (Emphasis added)

The "not by ballot" language signifies those elections are not treated the same as motion votes and, therefore, the WSBA Bylaw language limiting the President's vote does not limit the President from casting a secret ballot in an election. *Robert's Rules* explicitly states that presiding officers vote in the case of a ballot.<sup>4</sup> Because the President votes in an election, then it makes sense that the President would not cast a second ballot to break a tie in an election.

Treating votes and ballots differently makes logical sense. The President is required to maintain impartiality during Board debates and discussions. The President raises points and makes suggestions to clarify or to address misunderstandings during the meeting but must refrain from partisan statements or actions.<sup>5</sup> This explains the rules prohibiting the President from engaging in debate or generally voting on motions. However, this same need for impartiality does not exist in elections conducted by secret ballot.<sup>6</sup> So, interpreting the presidential voting limitation in the WSBA Bylaws to apply to votes, but not secret ballots is logical and consistent with the WSBA Bylaw language and is supported by *Robert's Rules*.

### **The President Does Not Vote for Treasurer Because the Bylaws Limit That Election to Governors Only**

Article VI.D of the WSBA Bylaws contain a general process for all Board elections, and in addition, separate sections specifically addressing President-Elect and Treasurer elections. The Bylaw general provisions and the specific section for President-Elect are consistent and are also consistent with Roberts Rules. The specific provision for the Treasurer election appears to limit ballots to Governors. Typically, specific rules are given more weight in the event of a conflict.<sup>7</sup>

### **Bylaw Procedures for Elections Held by the BOG Under the WSBA Bylaws (Article VI.D.3)**

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the result. The President must present a report to the membership covering the principal activities of the Bar during the President's tenure.

<sup>4</sup> Robert's Rules of Order also explain that "[t]he presiding officer, if a member of the assembly, can always vote in the case of a ballot at the time other members do. Should he fail to vote before the polls are closed, he cannot then do so without the permission of the assembly." RONR (12<sup>th</sup> ed.) 45:28

<sup>5</sup> RONR (12<sup>th</sup> Ed.) 43:29-34

<sup>6</sup> "If the presiding officer is a member of the assembly, or voting body, he has the same voting right as any other member. Except in a small board or a committee, however – unless the vote is secret (that is unless it is by ballot; -- the chair protects his impartial position by exercising his voting right only when his vote would affect the outcome. . . ." (RONR (12<sup>th</sup> Ed.) 4:56

<sup>7</sup> Roberts Rules of Order (56:68) has a nice list of principles for bylaw interpretation, including: (1) Clear, unambiguous bylaw language cannot be changed by interpretation; and ambiguous bylaws should be interpreted in harmony with other bylaws if possible; (2) bylaw provisions susceptible of two meanings should not be interpreted to render other bylaws absurd; (3) general statements always have less authority than specific statements; (4) if bylaws authorize certain things specifically, other things of the same class are thereby prohibited; (5) and (6) provisions granting privileges provide rights to any included parts of the privilege, but greater privileges are prohibited; (7) imposition of a definite penalty for an action prohibits the increase or reduction of the penalty;

Elections of President and President-elect elections, and any other elections held by the BOG under these Bylaws, are conducted as follows:

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

#### WSBA Bylaw Specific to President-Elect Process VI.D.1

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

(Provisions relating to Eastern Washington omitted)

#### WSBA Bylaws Specific to the Treasurer Election Process (Article VI.D.2)

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

The general elections provisions and the specific President-Elect Board voting procedures allow all Board members to cast secret ballots. Consequently, the President casts a ballot in the President-Elect election. The specific provision relating to the Treasurer election limits voting to Governors. Consequently, the President does not cast a ballot in the Treasurer election. Although the intent is not clear here, if there is only one candidate, the election is not by secret ballot. Consequently, the rule allowing the President to participate in secret ballot elections may not apply. Additionally, the Treasurer is required to be a Governor, while the President is not. It is possible that the election procedures are intentionally different, allowing the Governors to elect the Treasurer.

# WASHINGTON STATE BAR ASSOCIATION

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Glynnis Klinefelter Sio, HR Director and Chief Culture Officer  
**DATE:** July 12, 2022  
**RE:** Executive Director Evaluation – Next Steps

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**DISCUSSION & ACTION:** To review the scope of work proposed by the Consultant (FIT HR) who is conducting the Executive Director’s evaluation and select a designee to work on executing this project.

The Board of Governors evaluates the Executive Director’s performance every year. At the May 2022 Board of Governors Meeting, a motion was made and approved for WSBA to contract with FIT HR to conduct the evaluation. The contract with FIT HR was finalized in June 2022 and next steps must be discussed with the consultant.

FIT HR’s project lead, Rick Park, will give a 15-minute presentation to the Board regarding the project’s timeline, scope, and tools.

Following this presentation, the Board should discuss the project’s scope/timeline, and select a Governor(s) to work with Rick and the HR Director in the coming months to execute the evaluation before the end of FY22.

Attachment: Presentation Slides from FIT HR

# Executive Director Performance Management Project

S. Richard Park, Ph.D.



## ▶ Today's Objective

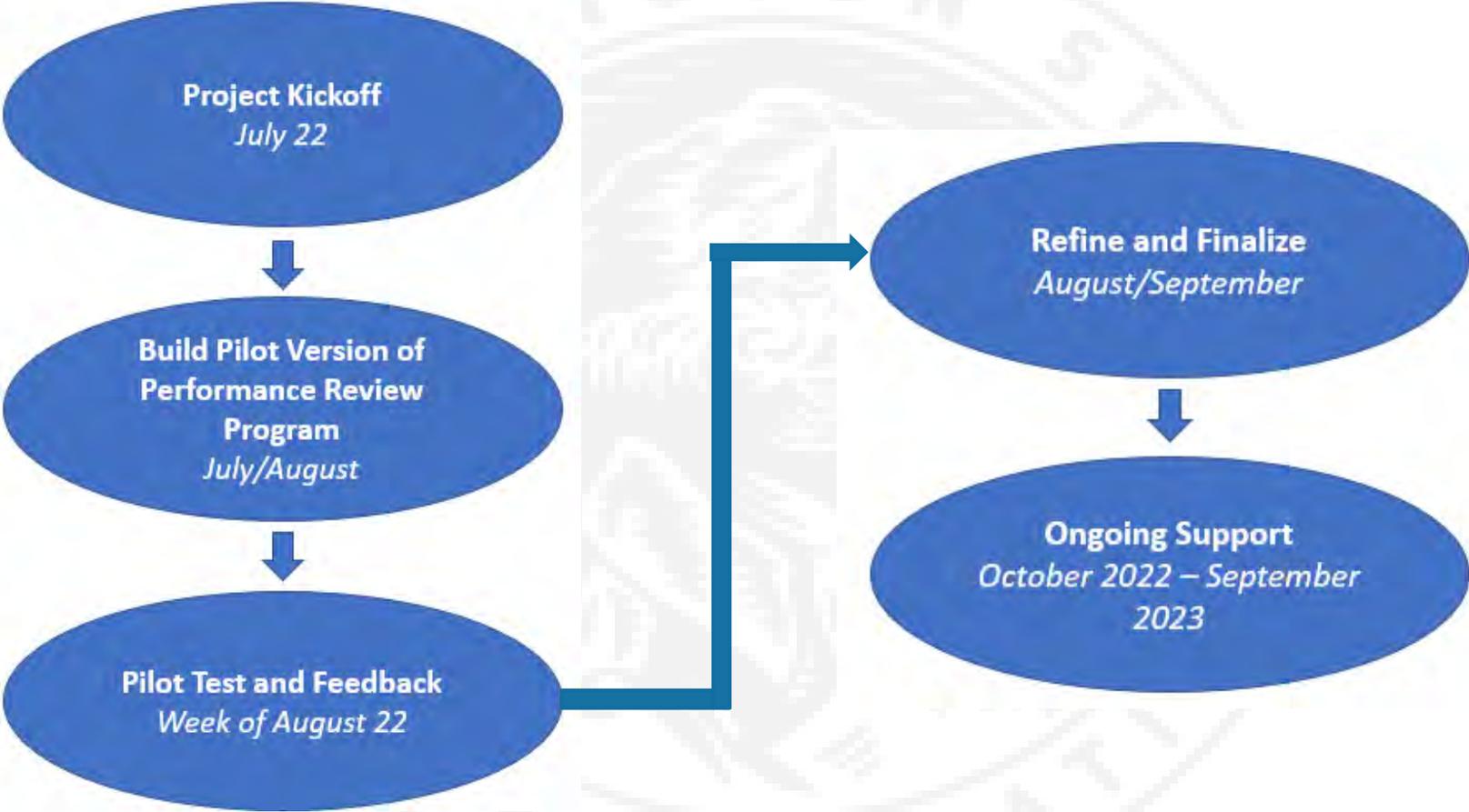
- Equip BOG to Identify a Design Partner
- Review Preliminary Ideas Regarding:
  - Process
  - Content
  - Proposed Technology

## ▶ Agenda

- Project Overview
- About Performance Reviews
- Process and Roles
- Pilot Technology



# REVISED - Overview and Timing



# Performance Management at the Core...



# Proposed Process and Roles

Activity	Pre-Evaluation Period	Throughout Evaluation Period	Post-Evaluation Period
Content Owners/Responsible for Review Content and Feedback	BOG President (Primary) ED (Secondary)	BOG President (Primary) ED (Secondary)	BOG President (Primary) ED (Secondary)
Content Reviewers – Propose Ideas to ED & President	BOG	BOG	N/A
ED & BOG President Support	HR Director (FIT HR As Needed)	HR Director (FIT HR As Needed)	HR Director (FIT HR As Needed)
Supplemental Performance Feedback (Outside of Tool)	N/A	BOG	BOG
Informed Regarding Content & Content Changes (by ED/Pres.)	N/A	BOG & Direct Reports	N/A
Propose Content Changes to ED & President	N/A	All	N/A
Record Observations Regarding ED Performance	N/A	All	N/A

## Open Issues:

- Interim Reviews – Quarterly Org Reviews; Budget Cycle/Reforecast
- Include Directs? – Rare Due to Lack of Perspective and “Politics”
  - Alternative – 360 Development Review or Employee Survey
- Separate Review for Directs v. BOG?
  - Finalize Content – Then Decide
- Will Results be Public? – Accuracy will Likely Suffer

# Preliminary Content

- ▶ Extracted from ED Job Description, Strategic Plan, and ED Contract (Potentially Combine Highlighted)

<b>Proposed Content</b>	
<b>Goals/Responsibilities/Projects</b>	
Responsibility	Program Design and Management
Responsibility	Budget Design and Management
Responsibility	Contributing to the Board
Responsibility	Supporting/Representing Membership
Responsibility	Marketing/Representing WSBA "Brand"
Project/Goal	Rural Practice Program
Project/Goal	Increase Pro and Low Bono Opportunities
<b>Knowledge/Skills/Abilities</b>	
KSA	Strategic Thinking
KSA	Leadership
KSA	Problem Solving
KSA	Communication
KSA	Political/Organizational Savvy
KSA	Promoting DEI

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Julie Shankland, General Counsel  
**DATE:** July 5, 2022  
**RE:** Proposed Conflict of Interest Policy

**[ACTION/DISCUSSION/ SECOND READ]:** Consider and Discuss Next Steps for recommended changes to the Board's Conflict of Interest Policy

### Background

The Board considered this amended Conflict of Interest Policy in May. The Policy is back on the agenda without any changes.

WSBA member Gabe Galanda raised an issue with the scope of the Board's conflict of interest policy. Given Mr. Galanda's concern, the Office of General Counsel was asked to review the current conflict policy and recommend changes.<sup>1</sup> The recommended policy changes do not address Mr. Galanda's concerns directly. Rather, the changes are based on best practices research.

My understanding of Mr. Galanda's continuing concern is that the current policy does not prevent "the appearance of conflict associated with somebody simultaneously wearing (or leveraging) three hats—(1) WSBA licensed attorney, (2) WSBA Governor/Officer, (3) Judge in Washington State—it falls short and the public's faith in the WSBA and our profession at large could further erode."<sup>2</sup>

### Summary of Changes to the Policy

The recommended policy has new definitions, a procedure to follow, and a changed annual disclosure statement. The definitions of conflict of interest are broadened to include personal and professional conflicts, in addition to financial conflicts are covered in the existing policy. A new procedure involving disclosure and a decision whether to recuse from participation is recommended. The annual disclosure statement acknowledges that the Governors and Officers have read and will abide by the policy, rather than making a list of all potential conflicts.

### Stakeholder Input

Stakeholder input has not been gathered. The Board can determine the next steps in this process.

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<sup>1</sup> Mr. Galanda initially raised this issue in the context of a client representation. On February 15, 2022, the Ninth Circuit Court of Appeals issued a nonpublished opinion resolving the client matter with no finding of a conflict of interest. Consequently, the proposed changes relate to improving the policy, not to issues in Mr. Galanda's client matter. During the May 2022 Board of Governor's meeting, Mr. Galanda stated that the underlying case was pending at the U.S. Supreme Court. The Court denied the Cert. Petition on June 21, 2022.

<sup>2</sup> Quoted from Mr. Galanda's April 25, 2022 email.

WSBA RISK ANALYSIS: Having a robust conflict of interest policy with clear definitions and an understandable process reduces risk.

WSBA FISCAL ANALYSIS: None identified.

Attachments

1. Recommended Conflict of Interest Policy
2. Current Conflict of Interest Policy

**BOARD OF GOVERNORS**  
**CONFLICT OF INTEREST POLICY**

Amended and approved by the Board of Governors [DATE]  
(Supersedes Conflict of Interest Policy Approved July 26, 2007)

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**I. Purpose**

The Board of Governors Conflict of Interest Policy is intended to protect the interests of the Washington State Bar Association (WSBA) when it is contemplating entering into a transaction, arrangement, or other action that might benefit the private interest of a Governor or an Officer of the WSBA. The proper leadership of the WSBA depends upon members of the Board of Governors (including the Officers) who give of their time and knowledge for the benefit of the WSBA and its goals. Governors and Officers have a duty of loyalty to the WSBA, which requires them to exercise their powers in the interest of the WSBA, and not in their own interests or those of another person or entity.

Governors and Officers bring varied backgrounds and interests to the work of the WSBA and may have interests that are in conflict with those of the WSBA. The purpose of this Policy is to help inform Governors and Officers about what constitutes a conflict of interest, to assist the Governors and Officers in identifying and disclosing actual and potential conflicts, and to help ensure the avoidance of known conflicts of interest.

All conflicts of interest are not necessarily prohibited or harmful to the WSBA; however, full disclosure of all conflicts is required. Governors and Officers have the continuing, affirmative duty to report any personal, financial interest, or other relationship that might affect their ability to exercise impartial, ethical, and business-based judgments in fulfilling their responsibilities to the WSBA. The existence of an actual, perceived, or potential conflict of interest should be addressed by full disclosure of the conflict to the Board of Governors. The Governor or Officer having the conflict shall withdraw from any discussion or vote on any matter in which the conflict is involved. The Board of Directors will take any action required to ensure that the conflict of interest is resolved.

The Board of Governors (Board) of the WSBA accordingly resolves as follows:

**II. Definitions**

1. “Conflicts of interest”: the term “conflict of interest” includes any actual, perceived, or potential conflict of interest (conflict). The term includes, but is not limited to, the following:



- a. any ownership or financial interest in any entity with which the WSBA has a transaction, arrangement, or other action;
  - b. any compensation arrangement with the WSBA or with any entity or individual with which the WSBA has a transaction, arrangement, or other action;
  - c. any potential ownership or financial interest in, or compensation arrangement with, any entity or individual with which the WSBA is negotiating a transaction, arrangement, or other action;
  - d. any other personal, professional, or financial interest in a matter under consideration by the Board of Governors that is of such significance to a Governor or Officer, a Governor's or Officer's immediate family, or anyone associated with a Governor or Officer, that the interest would reasonably be perceived by an objective, disinterested third party as having the potential to influence the independent, unbiased judgment of the Governor or Officer if called upon to discuss or vote on the matter;
  - e. any other circumstances where a Governor's or Officer's duties to the WSBA conflict with other commitments or obligations owed by the Governor or Officer to other persons or entities, such that the Governor or Officer cannot fully discharge their fiduciary duties or responsibilities to the WSBA.
2. "Actual conflict of interest": a situation where a Governor or Officer has a direct or indirect personal, professional, or business interest that is sufficiently connected to their duties and responsibilities as a Governor or Officer that it influences the exercise of these duties and responsibilities.
  3. "Perceived conflict of interest": a situation where well-informed persons could have a reasonable belief that a Governor or Officer has an actual conflict of interest, even where that is not the case.
  4. "Potential conflict of interest": a situation where a Governor or Officer has a direct or indirect personal, professional, or business interest that could influence the performance of their duties or responsibilities as Governor or Officer, provided that they have not yet exercised that duty or responsibility.
  5. "Immediate family": the term "immediate family" includes a sibling, parent, spouse, domestic partner, child and the child of a spouse or domestic partner of a Governor or Officer.

### **III. Procedures**

#### **1. Duty to Disclose**

It is the duty of each Governor and Officer to be conscious of any actual, perceived, or potential conflict of interest between that Governor or Officer and the WSBA, and to act with candor and care in such a situation. Governors and Officers must promptly disclose to the Board of Governors, before the Board takes any action on the matter, the existence, nature and extent of and all material facts related to any conflict of interest that the Governor or Officer, any member of their immediate family may have, whether individually, through

personal, professional, or business relationships, transactions, or otherwise. At the beginning of every meeting of the Board of Governors, the President (or the Governor presiding over the meeting) is to ask and have recorded in the minutes whether any Governor or Officer has a conflict to declare with respect to any agenda item. A Governor's or Officer's disclosure shall be noted in the minutes of the Board of Governors meeting and made a part of the records of the WSBA. The minutes of the Board of Governors must be maintained per WSBA's Records Retention Schedule.

## 2. Determining Whether a Conflict of Interest Exists

- a. After disclosure of a conflict of interest and any discussion with the Governor or Officer regarding the conflict pursuant to section 1 of these procedures, the Board of Governors shall determine whether a conflict of interest exists.
- b. A Governor or Officer having a conflict of interest must be absent from any discussion of the matter, must not use the Governor's or Officer's personal influence with respect to the matter, and must abstain from casting any vote on resolution of the conflict.
- c. The minutes of the Board of Governors must contain the name of the Governor or Officer who disclosed a conflict of interest, the nature of the conflict, the Board of Governor's determination as to whether a conflict of interest existed and any action taken by the Board of Governors to resolve the conflict. The Governor's or Officer's absence from the discussion and the vote of the Board must be noted in the minutes.

## 3. Due Diligence

This policy is not intended to prohibit or restrain the WSBA from (a) entering into transactions with a Governor or Officer or person or entity in which a Governor or Officer has an interest or (b) taking action on any other matter under consideration by the Board for which a Governor or Officer, or their immediate family member, has a significant personal interest.

Those transactions should be approved or actions taken, however, only in circumstances where the approval process is scrupulously disinterested and fair, and where the best interest of the WSBA is the clear and overriding consideration leading to the approval.

If any Governor, Officer, or WSBA member discovers that the Board has voted or acted on a proposal in ignorance of an undisclosed conflict of interest by a Governor or Officer, the Governor, Officer, or WSBA member should promptly disclose the matter to the entire Board. If the Board determines that the involvement of the said Governor or Officer influenced the decision of the matter, the Board shall promptly re-examine the matter using the procedures outlined in this Policy and may rescind, vary, or confirm its prior decision, or may take any other corrective action.

## 4. Procedures for Addressing a Conflict of Interest

- a. After determination that a conflict of interest exists pursuant section 2 of these procedures, the Board of Governors shall provide a disinterested review of the matter that is the subject of the conflict of interest.
  - b. The Board of Governors shall exercise due diligence pursuant to section 3 of these procedures before entering into any transaction with a Governor, Officer, or person or entity in which a Governor or Officer has an interest or taking action on any other matter before the Board for which a Governor or Officer, or a Governor's or Officer's immediate family member, has a significant personal interest.
  - c. The conflicted Governor or Officer must be absent from discussion on the matter for which the conflict of interest arises except as provided in section 4(d) of these procedures, must not use the Officer's or Governor's personal influence with respect to the matter, and must abstain from casting any vote on the matter for which the conflict of interest arises.
  - d. With respect to a contemplated transaction, to the extent that the Board determines that the conflicted Governor or Officer can provide information that may be useful in making the Board's decision, the Governor or Officer having the conflict may provide that information to the Board and answer pertinent questions from the other members of the Board before the Board casts its vote on matter that is the subject of the conflict of interest. After providing the requested information, the Governor or Officer having a conflict shall comply with section 4(c) of these procedures.
  - e. The minutes of the Board of Governors must contain the names of the members of the Board of Governors who were present for the discussions and vote relating to the matter for which a conflict of interest was found to exist, the content of the discussion, and a record of any votes taken on the matter that is the subject of the conflict. The conflicted Governor's or Officer's absence from the discussion and the vote of the Board must be noted in the minutes of the Board meeting.
5. Annual Conflict of Interest Policy Acknowledgement Statements: Each year each Governor and Officer shall complete and deliver to the President a Conflict of Interest Policy Acknowledgement Statement ("Statement") in the form approved by the Board. By executing the Statement each Governor and Officer shall acknowledge the Governor's or Officer's knowledge of this Policy and pledge compliance with this Policy's rules Annual Statements completed and delivered to the President pursuant to this section must be maintained per WSBA's Records Retention Schedule.
6. Review of the Policy: The Board of Governors shall review this Policy at least annually for the information and guidance of members of the Board. Each new Governor and Officer shall be advised of the Policy and asked to sign the enclosed Conflict of Interest Policy Acknowledgement Statement.

**BOARD OF GOVERNORS**  
**CONFLICT OF INTEREST POLICY ACKNOWLEDGEMENT STATEMENT**

Approved by the Board of Governors [DATE TBD]

I confirm that I have (a) received a copy of the WSBA Board of Governors Conflict of Interest Policy (the “Policy”), (b) read and understand the Policy, (c) agree to comply with the Policy.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name



# WSBA

OFFICE OF THE GENERAL COUNSEL

Robert D. Welden  
General Counsel

direct line: 206-727-8232  
fax: 206-727-8314  
e-mail: bobw@wsba.org

## BOARD OF GOVERNORS CONFLICT OF INTEREST POLICY Approved by the Board of Governors July 27, 2007

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### **Purpose and Statement of Policy:**

The Board of Governors Conflict of Interest Policy is intended to protect the interests of the Washington State Bar Association when it is contemplating entering into a transaction, arrangement, or other action that might benefit the private interest of an Officer or Governor of the WSBA. The proper leadership of the WSBA depends upon members of the Board of Governors (including the Officers) who give of their time and knowledge for the benefit of the WSBA and its goals. Governors have a duty of loyalty to the WSBA, which requires them to exercise their powers in the interest of the WSBA, and not in their own interests or those of another person or entity.

Governors bring varied backgrounds and interests to the work of the WSBA and may have interests that are in conflict with those of the WSBA. The existence of an actual or potential conflict of interest should be addressed by full disclosure of the conflict to the Board of Governors. The Governor having the conflict should withdraw from any discussion or vote on any matter in which the conflict is involved.

The Board of Governors of the WSBA accordingly resolves as follows:

### **Procedures:**

1. **Duty to Disclose:** It is the duty of each Officer and Governor to be conscious of any actual or potential conflict of interest between that Officer or Governor and the Association, and to act with candor and care in such a situation. An Officer or Governor must disclose to the Board of Governors, before the Board takes any action on the matter, the nature and extent of any direct, indirect or potential conflict of interest that the Officer or Governor, or any member of his or her immediate family may have, whether individually, through business relationships or transactions, or through investment relationships or transactions. For purposes of this policy, the term "immediate family" includes the following: (1) an Officer's or Governor's spouse or domestic partner; (2) a child of an Officer or Governor or of an Officer's or Governor's spouse or domestic partner; and (3) other dependent relatives of an Officer or Governor or of an Officer's or Governor's spouse or domestic partner if living in his or her household. Conflicts of interest that require disclosure include, but are not limited to, (a) any ownership or financial interest in any entity with which the WSBA has a transaction, arrangement or other action, (2) any compensation arrangement with the WSBA or with any entity or individual with which the WSBA

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has a transaction, arrangement or other action, and (3) any potential ownership or financial interest in, or compensation arrangement with, any entity or individual with which the WSBA is negotiating a transaction, arrangement or other action. An Officer's or Governors' disclosure shall be noted in the minutes of the Board meeting and made a part of the records of the WSBA.

2. Meeting Procedure: The Board of Governors shall provide a disinterested review of the matter that is the subject of a conflict of interest. An Officer or Governor having a conflict of interest should absent himself or herself from any discussion of the matter, should not use his or her personal influence with respect to the matter, and should abstain from casting any vote. To the extent that the remaining members of the Board determine that the Officer or Governor can provide information that may be useful, the Officer or Governor having a conflict may provide that information to the Board and answer pertinent questions from the other members of the Board before the Board casts its vote. An Officer or Governor having a conflict of interest shall not be counted as present for the purpose of determining whether a quorum is established, even if permitted by law. The Officer's or Governor's absence from the discussion and vote of the Board, and the establishment of the quorum without counting that Officer or Governor, shall be noted in the minutes of the Board meeting and made a part of the records of the WSBA.

3. Due Diligence: This policy is not intended to prohibit or restrain the WSBA from entering into transactions with an Officer or Governor or person or entity in which an Officer or Governor has an interest. Those transactions should be approved, however, only in circumstances where the approval process is scrupulously disinterested and fair, and where the best interest of the WSBA is the clear and overriding consideration leading to the approval. If any Officer or Governor discovers that the Board has acted on a proposal in ignorance of an undisclosed conflict of interest, the Officer or Governor should promptly disclose the matter to the entire Board, and the Board should promptly re-examine the matter using the procedures outlined in this policy.

4. Corporate Opportunity: Before an Officer or Governor enters into a transaction which he or she reasonably should know may be of interest to the WSBA, the Officer or Governor should disclose the transaction to the Board in sufficient detail, and with adequate advance notice, that the Board has adequate information and time to allow it to act or decline to act with respect to the transaction.

5. Annual Statements: Each year each Officer and Governor shall complete and deliver to the President a disclosure statement in the form approved from time to time. By executing the statement each Officer and Governor shall acknowledge his or her knowledge of this policy, and disclose any conflicts of interest that the Officer or Governor may have, or be likely to have, with the WSBA. All Officers' and Governors' disclosures shall be made a part of the records of the WSBA.

6. Review of this Policy: The Board of Governors shall review this policy at least annually for the information and guidance of members of the Board. Each new Officer and Governor shall be advised of the policy and asked to complete the disclosure statement.



WSBA

WASHINGTON STATE BAR ASSOCIATION

**BOARD OF GOVERNORS  
CONFLICT OF INTEREST DISCLOSURE**  
Approved by the Board of Governors July 27, 2007

Name: \_\_\_\_\_

1. I certify that I have read the WSBA Board of Governors Conflict of Interest Policy and agree to abide by it.

2. During the past 12 months, have you or any member or your immediate family as defined in the Board of Governors Conflict of Interest Policy had any ownership or financial interest in any entity with which the WSBA has a transaction, arrangement or other action? If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. During the past 12 months, have you or any member or your immediate family as defined in the Board of Governors Conflict of Interest Policy had any compensation arrangement with the WSBA or with any entity or individual with which the WSBA has a transaction, arrangement or other action? If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. During the past 12 months, have you or any member or your immediate family as defined in the Board of Governors Conflict of Interest Policy had any potential ownership or financial interest in, or compensation arrangement with, any entity or individual with which the WSBA is negotiating a transaction, arrangement or other action? If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED \_\_\_\_\_

\_\_\_\_\_  
signature

\_\_\_\_\_  
print name

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Emily Mowrey, Chair of the Law Clerk Board  
Katherine Skinner, WSBA Staff Liaison to the Law Clerk Board  
**DATE:** June 27, 2022  
**RE:** Suggested Amendment to Committees and Boards Policy

**ACTION:** The Law Clerk Board requests that Section 8 of the Committees and Boards Policy be amended to extend the number of terms Law Clerk Board members may serve to three consecutive three-year terms.

The Law Clerk Board is requesting the Board of Governors (BOG) to amend Section 8 of the Committees and Boards Policy to authorize Law Clerk Board members to serve up to three consecutive three-year terms. The Law Clerk Board believes that this amendment is reasonable and necessary to ensure that the Law Clerk Board is fully staffed to adequately administer the Law Clerk Program and will provide less turnover of Law Clerk Board liaisons. from the board.

There are currently insufficient applicants to fully staff the eleven-member Law Clerk Board. Law Clerk Board members who have completed two three-year terms have expressed interest in continuing to serve on the Law Clerk Board for a third three-year term to ameliorate the deficiency. Section 8 of the Committees and Boards Policy limits the terms of the Law Clerk Board to two three-year terms. Extending the term limits of Law Clerk Board members to three consecutive three-year terms will ensure that the Law Clerk Board is adequately staffed to administer the Law Clerk Program.

#### Background

The Law Clerk Board is a regulatory board of eleven lawyers appointed by the BOG to administer and supervise the Law Clerk Program. It takes from four to six years for a law clerk to complete the Law Clerk Program. In addition to other duties, Law Clerk Board members also serve as liaisons to individual law clerks and tutors enrolled in the Program. As liaisons, the Law Clerk Board members also interview applicants to the Law Clerk Program, review monthly exams, and assess the progress of law clerks. Law Clerk Board members are typically assigned as the liaison to twelve clerks and work approximately 8-10 hours per month on Law Clerk Board work. The extension of Law Clerk Board member terms will provide less disruption to Law Clerks enrolled in the program because there will be less turnover of Law Clerk Board liaisons during the clerks' four to six years in the Law Clerk Program.

As of the last Law Clerk Board meeting, there were not enough applications to fill all of the open positions on the Law Clerk Board. There were current and past board members who expressed a willingness to be on the Law Clerk Board for another term but cannot do so because Section 8 of the Committees and Boards Policy limits the terms of Law Clerk Board members to two consecutive three-year terms. Admission and Practice Rules (APR) 2(a)(2) and 6 contain no limits on Law Clerk Board terms.

The Law Clerk Board requests the BOG to amend Section 8 of the Committees and Boards Policy to extend the term limits from two to three consecutive three-year terms to ensure that there will be sufficient Law Clerk Board members to fully administer the Law Clerk Program. Attached is a redlined version of the proposed amendment to Section 8 of the BOG's Committees and Boards Policy.

*WSBA RISK ANALYSIS: There are no legal risks associated with increasing the number of possible terms from two to three.*

*WSBA FISCAL ANALYSIS: Provided that there is not an increase in the number of Board members, there is no anticipated fiscal impact.*

Attachments

*Proposed amendment to the BOG's Committees and Board Policy*



Washington State Bar Association  
Board of Governors  
**Committees and Boards Policy**

(Effective with 1993-94 Committee Appointments)

(Amended July 19, 1996; Amended March 28, 1997; Amended February 13, 1999, Amended May 19, 2000, Amended January 19, 2002, Amended October 2002, Amended April 2003, Amended February 2004, Amended March 11, 2005, Amended January 2012, Amended September 2012, Amended January 2013, Amended July 2013, Amended September 2015, Amended September 2020)

1. **Diversity:** To further the WSBA policy of advancing and promoting diversity, equality, and cultural understanding, the Board of Governors shall take into consideration the makeup of a committee or board in terms of diversity when considering appointments to it. (Committee Membership Selection Advisory Policy.) To assist the Board in fulfilling this policy, all applicants and appointees to committees and boards will be required to complete the Committee/Board/Panel Application Form. This form shall, 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, and number of lawyers in law firm.
2. **Size of Committees and Boards:**
  - a) Committees:
    - Amicus Curiae Brief Committee: 14
    - Committee on Professional Ethics: 9
    - Continuing Legal Education Committee: 18
    - Court Rules and Procedures Committee: 28
    - Editorial Advisory Committee: 14
    - Judicial Recommendation Committee: 22
    - Legislative Review Committee: 35 maximum
    - Pro Bono and Public Service Committee: 18
    - Washington Young Lawyers Committee: 18
    - WSBA Diversity Committee: 18
  - b) Boards:
    - Board of Bar Examiners: 50 maximum
    - Character and Fitness Board: 10 WSBA members minimum (at least one from each district) and 3 public members (APR23(a))
    - Law Clerk Board: 11 lawyers
    - Client Protection Board: 11 WSBA members and 2 public members (APR 15(b)(2))
3. **Membership Requirements:** All members of WSBA committees and boards must be active members of the WSBA, with the following exceptions: (a) Up to two Emeritus/Pro Bono members are permitted to serve on the Pro Bono and Public Service Committee and may be appointed to serve as the Chair, Co-Chair or Vice-Chair. (WSBA Bylaws IX.B.1.a.) (b) Members

of the Character and Fitness Board must have been members of the WSBA for seven years before their term begins. (APR20(b), ELC2.3(b)(2).) (c) Members of the Washington Young Lawyers Committee must meet the WSBA young lawyer criteria on the start date of their term (WSBA Bylaws XIIB). (d) Faculty of Washington state law schools who are not active members of the WSBA are permitted to serve on the Committee on Professional Ethics (WSBA Bylaws IX.B.1.a.) No WSBA staff member will be appointed to serve as a WSBA committee or board member. (e) The WSBA Diversity Committee includes both general WSBA members and members of the Board of Governors.

4. **Selection of Members:** Nominations for open positions on each standing committee and board will be made by a nomination team comprising the chair, vice-chair or chair-elect, staff liaison and BOG liaison, in consultation with WSBA diversity and inclusion staff. In addition, each district-based BOG member may nominate one applicant from his or her district to any committee or board that does not have a continuing member from that district. At large BOG members may, as a group, nominate one applicant to each committee or board. If this process results in more nominations than there are open positions on a committee or board, nominations from BOG members will take priority over nominations from the nomination teams. If nominations from BOG members alone exceed the number of open positions, the nomination teams will make recommendations to the BOG as a whole. Exceptions: The Judicial Recommendation Committee, Washington Young Lawyers Committee, Legislative Committee and Committee on Professional Ethics have unique member selection procedures which are described in separate policy documents. The nomination teams will make recommendations for non-lawyer appointments, as these nominations are made by the BOG as a whole and forwarded to the Supreme Court for appointment. (APR 20(a), ELC 2.3(b)(1).) The Board of Governors will make most committee and board appointments (and nominations of non-lawyers to the two boards cited above) at the July Board of Governors meeting. At the same time, the Board of Governors will approve a list of alternate appointees for each committee and board. The alternate lists will be effective for one year. If any committee or board member positions remain open after the July Board of Governors meeting, they will be filled as soon as possible.
5. **Definition of Membership:** Although WSBA committees operate under an "open meeting" policy that allows any member of the WSBA or public to attend a meeting (See (12) below), in order to be recognized as a member of a committee or board an individual must be appointed to the committee or board.
6. **Selection of Chair and Vice-Chair:** The President-elect shall nominate committee and board Chairs, Co-Chairs, and Vice-Chairs for appointment by the Board of Governors for the year in which the President-elect will serve as President. (WSBA Bylaws, IX.B.1.c.) Committee chairs are generally limited to a single year term, except in unusual circumstances, in which they may be appointed for an additional year. If an individual is appointed as committee Chair but is not a new or returning member of the committee, he or she will also be appointed as a member for one year, which may temporarily increase the size of the committee. Exception: The Washington Young Lawyers Committee has a member position set aside for leadership described in a separate policy document. Note: The WSBA Diversity Committee has two co-chairs, one drawn from the general membership and one drawn from the Board of Governors.

The President-elect shall commit to diversity in nominating Chairs, Co-Chairs and Vice-Chairs, taking into consideration the makeup of a committee or board and the potential impact of appointing a particular individual as Chair.

7. **Expenses:** Committee and board member expenses shall be reimbursed in accordance with the WSBA Expense Reimbursement Policy as adopted by the Board of Governors. Reimbursement of travel expenses for out-of-state committee or board members to attend committee or board meetings is limited to the approximate cost of in-state travel. Participation in meetings by telephone conference call or videoconferencing is encouraged when possible because it saves significant travel time and expense.
8. **Terms:** Except as indicated below, committee appointments shall be for 2-year terms. A member's service on any committee shall be limited to two consecutive terms, after which the member cannot be reappointed to that committee for three years, subject to individual exceptions as approved by the Board of Governors. Appointments to the WSBA Legislative Committee shall be made pursuant to the written Board of Governors policy for that committee. (WSBA Bylaws, IX.B.1.b.)

The following committees and boards shall have more than a 2-year term:

- Board of Bar Examiners: 4 years, no limit on number of terms (subject to Chair approval and completion of mandatory training)
- Character and Fitness Board: 3 years (APR 20(i)) (one-term limit)
- Committee on Professional Ethics: 3 years (two-term limit)
- Continuing Legal Education Committee: 3 years
- Judicial Recommendation Committee: 3 years (JRC Guidelines I(A)(1))
- Law Clerk Board: 3 years (three ~~two~~-term limit)
- Client Protection Board: 3 years, no limit on number of terms (APR 15)
- Washington Young Lawyers Committee: 3 years

9. **Recommendations for Discipline-System Appointments:** Under ELC 2.2(c), a former WSBA officer, WSBA executive director, or Board of Governors member may not serve as a hearing officer, Disciplinary Board member, or Conflicts Review Officer until three years have expired after the former officer or member's departure from office. To ensure the proper implementation of the policy underlying ELC 2.2(c), the Board of Governors shall not recommend a former WSBA officer, WSBA Executive Director, or Board of Governors member for appointment as a hearing officer, Disciplinary Board member, or Conflicts Review Officer sooner than two years following such an individual's departure from office.

10. **Vacancies and Removal:** In the event of the resignation, death or removal of the Chair of a committee, the Board of Governors may appoint a successor to serve for the unexpired term. (WSBA Bylaws, IX.B.1.d.) In the event of the resignation, death or removal of a member of a committee or board, the nomination team may appoint a replacement from the alternate list that has been pre-approved by the Board of Governors. If there is no candidate on the alternate list that meets the committee's or board's needs, the nomination team may recruit a new applicant to be appointed by the Board of Governors.

Any member who fails to attend two consecutive regularly called meetings of the committee may be removed by the Board of Governors, in the absence of an excuse approved by the Chair of the committee or board. (WSBA Bylaws, IX.B.3.g.2.)

11. **Notice of Vacancies:** The annual Committee/Board/Panel application form will be available in myWSBA and on the WSBA website starting in early January and publicized via *NWLawyer* and broadcast email. Notice of non-lawyer committee and board openings also will be sent to nonlawyer organizations each winter. Mid-year vacancies will be publicized only if suitable applicants cannot be identified from the existing applicant pool.

12. **Exceptions:** These policies as a whole do not apply to the following entities, although individual provisions may apply: (a) WSBA panels; (b) The Supreme Court-created boards administered by the WSBA; (c) The Council on Public Defense; (d) discipline-system appointments, except as addressed in item (9); (e) WSBA state bar delegates to the ABA House of Delegates who are eligible for reappointment to three consecutive two-year terms; (f) Boards or commissions or other outside organizations to which the WSBA nominates or appoints members or representatives.
  
13. **Open Meetings:** The WSBA is committed to conducting the regular and special meetings of the WSBA, its Board of Governors, and its divisions, committees, boards, task forces, and sections in an open and public manner. Through such openness, the WSBA intends to make information available to the people of Washington that will allow them to become informed about matters regarding the provision of legal services and other matters falling under the WSBA's authority. Exceptions to the "open meeting" policy are stated in court rules and regulations and the WSBA Bylaws. (WSBA Bylaws, VII.B.) Meetings and materials related to boards generally are governed by court rules and regulations that in many cases require confidentiality of all or parts of the meetings and all or parts of the board materials.

# WASHINGTON STATE BAR ASSOCIATION

**TO:** WSBA Board of Governors

**FROM:** Todd Alberstone, MCLE Board Chair  
Robert Malae, MCLE Board Vice Chair  
Adelaine Shay, WSBA MCLE Manager

**DATE:** June 24, 2022

**RE:** Suggested Amendment to Admission and Practice Rule (APR) 11 – FOR REVIEW

**Discussion:** The MCLE Board requests the WSBA Board of Governors to review and comment on the preliminary suggested amendment to Admission and Practice Rule (APR) 11 regarding the establishment of MCLE credit for tutors in the APR 6 Law Clerk Program.

Pursuant to APR 11(d)(2)(i), “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.”

Over the years, there have been several requests by tutors in the APR 6 Law Clerk Program to receive MCLE credit for giving their time as tutors to clerks enrolled in the Law Clerk Program. As part of the Law Clerk Program, tutors provide three hours of personal supervision each week to clerks, including substantive discussion of the law. Within each year of this four-year program, clerks are required to study six subjects and to pass monthly examinations. The exams are developed, administered, and graded by the tutors. Requests for MCLE credit for tutoring have sought credit under both “teaching” credit and “mentoring” credit provisions of APR 11. However, neither credit provision is designed to accommodate for law clerk tutoring. Tutors cannot claim teaching credit under APR 11(e)(6) as such credit is specifically limited to the teaching of law school courses. Likewise, requests for mentoring credit would also not be successful because students of the Law Clerk Program are not active members of the WSBA and therefore any supervision of them does not qualify for mentoring credit as it is defined in APR 11(e)(8).

In response to requests and the need to address this dilemma, the MCLE Board formed a workgroup—including two members of the Law Clerk Board—to explore a potential amendment to APR 11. On August 12, 2021, the workgroup met to discuss the need for an amendment and potential language. During this meeting, the workgroup members suggested that the “personal supervision” time as defined in APR 6(d)(2) should be eligible for MCLE teaching credit, and that APR 11(e)(6) should be amended accordingly. The workgroup suggested an amendment to APR 11(e)(6) (teaching credit) instead of APR 11(e)(8) (mentoring credit), as teaching law school was deemed to be the most analogous activity to Law Clerk Program tutoring.



Per APR 11(d)(2)(i), the following preliminary suggested amendment is brought before the WSBA Board of Governors for review:

**APR 11(e)(6)**

Teaching law school courses, when the instructor is not a full-time law school professor; or providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6(d)(2);

**BACKGROUND**

The purpose of MCLE is “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 . . .” (APR 11(a)). Therefore, the MCLE Board is continuing in its work to respond to the needs of the legal community, by suggesting an amendment to APR 11 that would allow tutors in the APR 6 Law Clerk Program to claim MCLE credit for their personal supervision of APR 6 law clerks. The need for this amendment is evidenced by requests from tutors in the APR 6 Law Program to receive credit for the supervisory and teaching work they perform and a current absence of a credit provision that permits them to do so. The MCLE Board believes the work performed by law clerk tutors should be recognized as valuable continuing legal education and that APR 11(e)(6) should be amended to allow those engaged in this work to receive MCLE credit for their efforts.

On February 4, 2022, the Law Clerk Board reviewed the report and recommendation at its regularly scheduled meeting. No edits or suggestions were made by the Law Clerk Board. The Law Clerk Board supports the amendment to APR 11.

On April 10, 2022, a public comment survey requesting feedback regarding the preliminary suggested amendment was posted on the WSBA website. The MCLE Board webpage also informed WSBA licensed legal professionals (and the general public) of the opportunity to make a public comment regarding the preliminary suggested amendment at the May 13, 2022, MCLE Board Meeting. The online public comment survey closed on May 6, 2022. As of May 6, 2022, the MCLE Board had received 183 survey responses. Out of those responses, respondents were largely in favor of the preliminary suggested amendment with 136 in favor and 35 not in favor. The remaining 12 respondents were partially in favor.

At its May 13, 2022, meeting, the MCLE Board reviewed and considered all feedback produced from the survey. At the same meeting, the MCLE Board opened the proposed amendment for public comment; however, no licensed legal professional or interested member of the public appeared for such purpose. After having given due consideration to any public concerns identified in the survey, the MCLE Board voted unanimously to continue to move forward with the preliminary suggested amendment by sending it to the Board of Governors for review. After review by the Board of Governors the MCLE Board will discuss any feedback provided by the Board of Governors and decide at its August 5, 2022, meeting whether to suggest the rule amendment to the Washington Supreme Court. If the MCLE Board moves forward with suggesting the amendment to the Court, the MCLE Board will ask the Board of Governors to support the amendment at its September meeting.

**FACTORS IN SUPPORT OF THE SUGGESTED AMENDMENT**

The MCLE Board reviewed and discussed the public feedback received about the preliminary suggested amendment. In response to the opposition, the MCLE Board subcommittee now presents the following as important factors in support of the amendment:

### **Value of the Law Clerk Program**

The four-year Law Clerk Program stands as a viable alternative to traditional law school that provides education through a combination of work and study under the supervision of a lawyer or judge. The lawyer or judge must have at least ten (10) years of experience to qualify as a tutor and be in good standing with the Washington State Bar Association. With these provisions for quality supervision, the Law Clerk Program increases opportunities of non-traditional law school students by offering an affordable alternative for those seeking to practice law in Washington state. Those who complete its education requirements qualify to apply for the Washington State bar exam. For this reason, the MCLE Board supports the entire preliminary suggested amendment.

### **Teaching Credit for “Personal Supervision”**

Tutors in the law clerk program spend an average of three hours per week week—over the course of the four-year program—personally instructing and advising the law clerk. As the coursework for this program includes 6 courses every 12 months, as prescribed by the Law Clerk Program Rules and Regulations, the supervision time is functionally equivalent to the “teaching” that would be done in fulfillment of APR 11(e)(6). Personal supervision is defined in APR 6(d)(2):

Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. “Personal supervision” is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.

As the personal supervision time includes exposition and discussion of the law, case recitation, and analysis of assignments as part of coursework, this time should be eligible for “teaching” credit per APR 11(e)(6). The Law Clerk Program curriculum includes “using an apprenticeship model that includes, theoretical, scholastic, and clinical components.” These components are designed to parallel the extensive and comprehensive nature of law school curriculum and include in their coverage topics such as civil procedure, contracts, property, and torts.

### **Benefit of Offering MCLE Credit**

Offering MCLE credit for supervision and instruction time may encourage lawyers to serve as tutors for the Law Clerk Program. Tutors must commit an extensive amount of time both to instruct and supervise the law clerk. The tutor is not only responsible for the personal supervision of the law clerk but also charged with the responsibilities of guiding the law clerk's study of all subjects, selecting all reading and instructional material to be used throughout the clerk's education, and assisting law clerks with the development of elective curriculum. This time is uncompensated volunteer time separate from the full-time job of the tutor. This status is analogous to that of a law school instructor claiming credit under APR 11(e)(6) who, according to the rule cannot be “a full-time law school professor.” As the tutor's full-time job is not tutoring, the MCLE credit eligibility will be consistent with this law school teaching requirement.

Recognizing law clerk program tutoring for MCLE credit, deservingly rewards the incredible time commitment and dedication to advancing the profession through this program as a law school alternative. Such a measure will hopefully increase the appeal of serving as a law clerk program tutor and ultimately affirm the WSBA’s commitment to increasing access to justice.

<b>Timeline for Suggested Amendment</b>		
January 2022		Workgroup drafts report and recommendation.
February 4, 2022	Law Clerk Board Meeting	Law Clerk Board reviews report and recommendation draft and provides feedback to workgroup. (COMPLETE)
April 8, 2022	MCLE Board Meeting	MCLE Board reviews report and recommendation and any feedback from Law Clerk Board. MCLE Board will vote whether to move forward with suggested amendment. Vote on opening for member and other stakeholder comment period. (COMPLETE)
May 6, 2022		Close written comment period. (COMPLETE)
May 13, 2022	MCLE Board Meeting	Hear member and other stakeholder comments and discuss feedback. MCLE Board to vote on whether to proceed with suggested amendment. If proceeding, MCLE Board to nominate Board members to present to Board of Governors and work on presentation materials. (COMPLETE)
June 27, 2022	Board of Governors Materials	Board of Governors materials due.
July 21-22, 2022	Board of Governors Meeting	Present to WSBA Board of Governors for review and comment.
August 5, 2022	MCLE Board Meeting	Discuss feedback from Board of Governors and vote on whether to move forward with suggested amendment. If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.
August 22, 2022		First draft due of GR 9 coversheet.
September 12, 2022		Final draft due of GR 9 coversheet.

September 22 & 23, 2022	Board of Governors Meeting	Ask Board of Governors to support suggested amendment.
October 15, 2022	Suggested Amendment Deadline	Send recommendation to Court.

**Enclosed Documents:**

- APR 11 Preliminary Suggested Amendment—Redline
- Public Comments—Collected Feedback from Survey
- MCLE Board Report and Recommendation
  - APR 6 Rule and Regulations
  - APR 11
  - Primary Tutor Application
  - Resolution of the WSBA in Affirming the Law Clerk Program Value

WSBA RISK ANALYSIS: *This will be provided in the memo for the September meeting.*

WSBA FISCAL ANALYSIS: *This will be provided in the memo for the September meeting.*

## SUGGESTED AMENDMENTS TO APR 11 (Redline)

1 **TITLE**

2 ADMISSION AND PRACTICE RULES (APR)

3 **RULE 11. MANDATORY CONTINUING LEGAL EDUCATION (MCLE)**

4 **Sections (a) – (e)(5) No Changes.**

5 **(e)(6)** Teaching law school courses, when the instructor is not a full-time law school professor, or  
6 providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6 (d)(2);

7 **Sections (e)(7) – (k) No Changes.**

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## Suggested Amendment – Collected Feedback

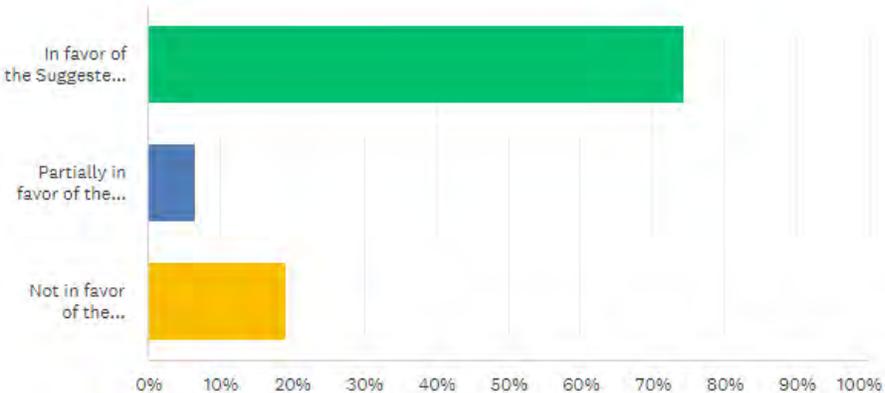
The below comments have not been edited in any way, including content, typographical errors, etc., and because the comments were submitted for consideration at a public meeting, we have included the commenters’ names but not their email addresses or other identifying information.

Based on the survey questions, comments have been assigned to one of three categories: “In Favor of the Suggested Amendment”, “Partially in Favor of the Suggested Amendment”, and “Not in Favor of the Suggested Amendment”. Within these three major groupings, comments are displayed in random order.

**As of May 6, 2022:**

### Position on the MCLE Board's Suggested Amendment to APR 11(e)(6):

Answered: 183 Skipped: 0



ANSWER CHOICES	RESPONSES	
▼ In favor of the Suggested Amendment	74.32%	136
▼ Partially in favor of the Suggested Amendment, with some changes	6.56%	12
▼ Not in favor of the Suggested Amendment	19.13%	35
<b>TOTAL</b>		<b>183</b>

TOTAL IN FAVOR OF SUGGESTED AMENDMENT - 136	
Name	Feedback/Comments
	This expansion appears to be consistent with the existing 11(e)(6) and also with the rule allowing CLE credit for hours spent volunteering for a QLSP. The one caution I give relates to a possible dilution of the original purpose of MCLE, which is to be sure that practitioners stay current in the law through training courses. Does the time spent tutoring a law clerk or advising a low-income client provide that function of educating the practitioner? Sometimes, yes, but not as effectively as an educational hour devoted to developments in the law.
Andrea O'Rourke	Awarding MCLE credit to LLPs creates an incentive structure for the Law Clerk Program that is mutually beneficial to tutors, clerks, the general public, and the state of Washington as a whole while addressing several intersecting DEI issues that affect many current and prospective LLPs throughout the course of their career in the law.
Barbara Backman	N/A
Lawrence A. Bennett	The amendment should be subject to some sort of limitation for this type of credit.
Kim Lancaster	My tutor has spent well over 1000 hours during the last four years reading a textbook and supplemental materials for each course, creating a syllabus and exam for each course, grading exams, and meeting with me to discuss the assigned reading.
Justin Mucklestone	I am a APR 6 Law Clerk Student who has been in the program since September 2020. Throughout my time in the Rule 6 program, my tutor has spent many hours along side me on a weekly basis breaking down all the nuanced concepts and practices of both federal and Washington state law. Quite often the concepts we explore together using textbooks and syllabi from ABA accredited law schools not only give me the knowledge and recourses to learn the law and analyze legal issues through appropriate case law framework, but along the way they also give my tutor a reinforced ability to do so as well in all aspects of his own legal practice. I believe it would certainly be in the best interests of the WSBA and Supreme Court to move forward in approving this suggested amendment. Thank you.
	N/A

Emanuel Jacobowitz	I have learned more from teaching most of the classes to my law clerk, than from any CLE I ever took.
	N/A
D'Adre Cunningham	N/A
Michael Savage	I think this is great idea. While it might be too late for my tutor I think this would be a nice benefit to confer under the circumstances and may encourage tutors who wouldn't otherwise. It seems only fair that they should be conferred some benefit other than good will especially considering the amount of hours they have to put into it.
	N/A
	N/A
	N/A
	N/A
David Carico	N/A
Mark J. Carroll	I think this is a good idea
Cindy Elsberry	Legal professionals who volunteer their time to teach, tutor and train other legal professionals deserve to receive MCLE credit for this work, it is similar to preparing a CLE or writing a legal article - all these endeavors equally enhance and improve the legal profession.
Elizabeth Kim	This is a really great idea that I hope will provide more access to legal education for nontraditional students. And also recognize in a tangible way these hard-working volunteer-tutors who are spending so much of their valuable time with students. The only change I would make is to find some way to provide some type of compensation for the tutors. Maybe we can't find a way to pay the tutors while still making the program affordable for low income students, but we should look at other options, such as waiving their annual WSBA dues.
	It needs to be strictly regulated with evidence of said tutoring so we know it's not all about drinking and socializing.
John Acheson	As a past chair of the tutorship program for the WSBA under 6(d){2}, I can attest to the fact that tutors spend an enormous amt of time in their responsibilities doing all that is necessary in qualifying their tutees to sit for the WSBA exam. Cheers John Acheson (6942)

Evelyn Cruz Sroufe	I served as a tutor in the WSBA Law Clerk Program in the 1980's. I also taught a quarter at the UW Law School during my first year of Law Practice. I have since presented at many CLE's--both WSBA and other forums. The preparation I did for both the tutoring and the Law School teaching were at least comparably rigorous. I believe credit for such tutoring and teaching is merited.
william gaar	This amendment would provide incentive to get volunteer teachers and it would reward those that give back to young lawyers needing mentoring and practical skill guidance. This is a no-brainer for me.
Craig Evezich	Having been a mentor, it is obvious to me that mentoring provides the best exposure to many areas of the law that I would never have exposure and makes me internalize the law through discussing it with my mentee. There is no CLE that I believe gives an attorney better exposure to knowledge, and practical use of the same, other than through the Clerkship Program.
	N/A
	N/A
	This is a wonderful idea to broaden the areas for people to help others.
Stella Edens Pederson	The work of being a tutor in the Rule 6 program far surpasses the information received in a more passive CLE environment. As a tutor and an assistant tutor, the education and review of subject matter and argument was intensely informative and useful in my practice as well. I would suggest that almost all CLE requirements be waived while one is acting as a Rule 6 tutor.
	I concur with the Benefit of Offering MCLE Credit to tutors described in the MCLE Board report. MCLE credit is an important incentive to motivate lawyers to donate time to a valuable program aimed at those who cannot afford traditional law school study. In this extremely difficult economic climate, the Bar should promote access to the legal profession through the Law Clerk Program; doing so requires the volunteer assistance of current Bar members. Incentivizing volunteer work in this case is a means toward an important end.
	I am a tutor and it is very obvious that CLE credit is merited in this situation. There is a significant amount of work involved that reinforces both basic legal principles that CLE's are intended to reinforce but also identifies where the law has changed and evolved since law school.

	To successfully tutor a Rule 6 law clerk, the tutor must essentially review all the materials and prepare discussions on all required topics. This is very similar to what a presenter would do for a CLE so it is fair that a tutor should receive similar CLE credits.
Roxanne Eberle	N/A
Kati Ortiz	I think allowing for CLE credit to APR 6 tutors is a great idea. As a tutor myself, I spend a lot of time creating lesson plans and providing direct instruction, similar to what I'd do if I were presenting a class where CLE credit was available. Thanks.
	N/A
Ann E Prezyna	N/A
Meredith Weaver	N/A
Claudia La Rose	N/A
Michael Vander Sys	Seems fair given the time, energy and preparation required to teach the course material. Must also understand and present it, very similar to teaching a CLE.
Scott Bergstedt	It is teaching credit to a limited number of individuals.
Brynjar Aaron Peterson	This is such a great program and the mentor's/tutor's spend an incredible amount of time teaching our future lawyers the law. If someone who teaches an MCLE receives credit, why would these very deserving people not receive MCLA credit. I am very much in favor of this change!!
Robert S. Apgood	I would also like to see the WSBA negotiate with the Oregon and Idaho Bar Associations to extend comity to members of the bar who completed the Rule 6 program and discontinue treating them like second class attorneys.
Greg Stadter	Great idea! Tutors perform a valuable service in sharing their expertise with future attorneys. An attorney's time is limited and valuable. MCLE credit will likely provide an opportunity and incentive for more attorneys to become tutors in the Law Clerk Program.
Donald Esau	N/A
Sarah Jones	It's a great idea!
Thomas Boeder	I believe that the proposed change is a good idea
Lynn Mounsey	N/A

	<p>Given the description in the MCLE Board report, the work done by tutors in the Law Clerk Program should be eligible for CLE credit. The work involved in preparing for a tutoring session and then performing the tutoring, appear at least analogous to preparing for and giving a presentation on a legal topic, for which a lawyer would get CLE credit. As noted in the report, another reason for providing CLE credit for the tutoring activity would be to encourage lawyers to volunteer for such tutoring activity.</p>
Andy Brassington	<p>I served on the Law Clerk Committee for 13 years, with several as Chair. I wholly endorse this Amendment. I have tutored several Law Clerks and know first hand the extra time required to perform the duties of a Tutor and the extra commitment to our Profession. This Amendment is a good idea. Andrew Brassington WSBA #18361</p>
Mark Jordan	<p>The tutors spend an enormous amount of time with the law clerks. It just makes sense giving them MCLE credits. Thank you.</p>
	N/A
Rob Tulloch, WSBA 9436	<p>I am a tutor for a law clerk who is finishing month 38 of 48. I happen to have sufficient CLEs that I do not need these, but given the massive time invested to be a tutor I am in support. The one change I would recommend (unless I am missing something) would be for Assistant Tutors to also receive credit. I have a vested interest because my law clerk works for me, but volunteers are fully just that and it would be a valuable "bonus" for them to receive CLE for the 2 month courses they teach when requested and are willing and able to volunteer.</p>
	<p>I tutored my wife, and it was a great experience for both of us. She completed the program, got the Board's approval to sit for the exam, and passed the bar exam on her first try. I spent an enormous amount of time preparing lessons and monthly exams, and grading them, and I think it makes a lot of sense to reward that time with CLE credits.</p>
	N/A
	N/A
Miriam Miller 14460	<p>Incentive to continue with WSBA in a responsible position.</p>

Barry M Meyers	I have served as a tutor in this very worthwhile and beneficial program. There is a substantial time commitment required to see a law clerk through this program from beginning to end. Offering some remuneration in the form of MCLE credits would seem reasonable and may encourage more tutor participation. The day my law clerk student was sworn in as a member of the WSBA was one of the most rewarding days of my law practice.
Asa LaMusga	Our firm has had one successful APR 6 graduate and two individuals currently in the program. Although I am not a tutor, watching others tutor demonstrates it is a ton of hard work for the tutor. MCLE credit is appropriate given the amount of time tutors must spend with the materials.
	N/A
Stephen John Henderson	We have a paralegal who is about half way through the rule 6 program. I have taught her the class in ethics and community property. The tutor winds reading more than the student as well as the one on one teaching the material. The testing, grading, and final review with the student is demanding, but quite rewarding. I would certainly welcome getting some CLE credit as a tutor. But I admit the real reward is seeing our student grow in their legal abilities. SJH
	I am surprised to learn that tutors don't get credit, especially when credit is available for prepping CLE presentations.
Thomas J. Van Norman	I have supervised law clerks before. Instructors can provide valuable training and if they do, this serves an important training and experience opportunity. Credit should be allowed in appropriate cases. Thank you.
	Makes sense and surprised this wasn't already in force.
Mel Simburg	Having served as a tutor for an aspiring lawyer, I realize that it is a lot of work and does refresh the tutor's knowledge at the same time. So, it makes sense to give CLE credit, but it should be limited to a reasonable amount.
Bob Baird-Levine	Providing incentives in the form of CLE credits for teaching future lawyers helps make clerking an easier path to becoming an attorney. Keep making becoming AND BEING an attorney less and not more costly. Way to go.

Klaus Snyder	<p>I have now been tutoring my son Brandon Snyder since September 2020 and I have to admit that the amount of time I have put in preparing for our classes and then conducting those classes which is part of the “personal supervision” of my law clerk student, it has certainly been quite a few more hours than I anticipated. However, I think it gives me A good perspective to evaluate this proposed new rule. I would say to all of you out there if you have the chance to be a tutor for a willing law clerk, expected to be a lot of hard work but expect it to be a great re-learning experience for you as a practicing lawyer. Just imagine going back and re-reading Pennoyer v. Neff and looking back at The Daubbert case regarding scientific evidence and looking back again at property law. It has been a great ongoing CLE for me and certainly has helped me be better in my practice as I’ve refreshed my memory on many of these legal concepts. It is a requirement as a supervisor that we spend at least three hours per week of personal supervision with our law clerks and I find that my son and I spend that many hours and more each and every week, not only because I enjoy tutoring him, but I think we both are gaining a lot from the process. I would highly recommend and support the passage and inclusion of this provision in the CLE rules. I certainly would benefit from it, but I think it is reflective of a lot of good “education” for the lawyer/tutor as well.</p>
David B Trujillo	Those attorneys that provide that training should receive some credit. That’s a lot of work.
Jeanette Laffoon	<p>As a tutor myself, I am cognizant of the extensive time and energy committed to the program. I devote an average of 8 hours per week to mentoring my law clerk (meeting with her, reading, researching materials and drafting exams). It would be amazing to receive credit for 3 of those hours. It would also provide welcome incentive for other qualified attorneys to co-mentor in areas of their expertise, which would increase the quality of the experience for clerks.</p>
James Roy Wood	N/A
	N/A
Pamela Egan	I was a tutor in college. It improved my grades. One learns a lot tutoring.

D. James Tree	During the past decade I have acted as tutor for two different law clerks in the WSBA law clerk program. I found the program to be comprehensive and very time consuming. It was a rewarding experience mentoring these law clerks. I had to dive in-depth in many areas of the law. I believe the work and study necessary to be a tutor is at least equivalent to what an attorney learns through traditional CLE course, and I encourage the WSBA to allow tutors to earn credits for the hard work and service they are providing to our newest members of the bar.
Kristen Reid	As a former Law Clerk, and current Tutor, I am 100% for this. I know exactly how much work it is to be a Tutor, and it does require that I keep up on the law, and convey the concepts and rules effectively. Thanks!
	N/A
Scott F Lundberg	I was a former tutor under this program for Heather Webb - it takes a lot of time to create the syllabus and structure the outlines for each class, learn new and current law, spend and mentor with your time and then create meaningful exams. The goal is to be creative, have the mentee learn each subject, pass the bar and come out helping people solve problems. It takes a lot of time for the mentor and mentee to do it right and succeed. CLE credited for the mentor would be well earned and deserved. Scott WSBA 16178
Anthony F Menke	I believe this approach would encourage some attorneys to participate in this very worthy program. Being mentored by experienced and seasoned attorneys is a distinct advantage for law Clerks. I would respectfully recommend that there be a certain minimum number of years experience required before such attorneys may receive CLE credit.
Marya C. Noyes	This is a tremendous service to the profession. Frankly, I am surprised that it took so long to implement.
Eric Steven	The rule 6 program takes time and effort for both mentor and participant. The time spent seems like it furthers the mentors legal growth sufficient to warrant CLE credit.
Michael Graham	N/A
Adam Philipp	N/A
Doug Palmer	This is a lot of legal study/work that is verified with certification to the Bar. We're basically giving a personal, one-on-one CLE.

Gregory Hoover	I approve. The more CLE credits to members the better. It should be easier to give credits for CLEs to members. Always.
	<p>Being a tutor is a serious commitment of time and consistency; since the law clerk program is a four-year commitment, the tutor spends countless hours discussing each law subject under consideration, preparing appropriate exams for each subject, supervising the clerk's responses to the exam, reviewing/commenting on all written answers to each exam, and discussing each answer with the clerk. In addition, the tutor discusses each book which the clerk chooses for reading and written review; then the tutor reads and writes comments for discussion and analysis with the clerk. In addition, the tutor guides the clerk in all other aspects of professional rules of responsibility as the clerk learns how to serve clients responsibly and effectively. I believe this important time commitment by the tutor should be recognized for appropriate mcle consideration.</p>
Betsy Brinson	<p>I am currently supervising a Rule 6 intern. I graduated from law school 41 years ago this June and have been in a practice focused on single area of law for the last 30 years. Thus, it has been rude awakening as to how much I have forgotten and have had to relearn in order to be able to tutor my Rule 6. I've had other mentors tell me how much work tutoring a Rule 6 is, but until you do it yourself, you really don't appreciate what that means. I'm not in it for the credits, but it certainly is much more educational and intense than any CLE I've done in my 40 years of practice. It's also a much greater commitment of time than CLEs. For example, in the last 5 months I have spent between 8 and 16 hours every weekend boning up on the UCC and corporations because they are not areas that I practice in and have dealt with at most tangentially in the last 40 years. Given what the Bar has forecast about the declining numbers of attorneys in the future, offering credits for mentoring Rule 6's may be a way to counter the decline.</p>
Janet T. Kelly	<p>The proposed amendment is consistent with other teaching activities counting toward CLE requirements, and is in line with the spirit of the rule - to keep ourselves current and abreast with the law. I completed the law clerk program and have served as a tutor for about 6 months - it requires a lot of work, time and reading to serve as a tutor. My clerk successfully passed the bar.</p>
Robert C. Scanlon	

Robert Jones	I fully support this proposed change. It's a shame that this hasn't been done sooner. One of my partners has spend substantial amounts of time and effort to supervise the preparation of one of our paralegals to take the WA state bar exam this July (2022). It is a shame that my partner has not been able to claim CLE credits for the hours and hours of time he has spent in supervising this candidate.
	Supervising a Rule 6 student is a huge commitment of time and energy and requires significant knowledge and research on the part of the attorney. The 32 hours per month spent teaching and supervising dwarf the 15 hours per year required for CLEs, and if the WSBA can entice more attorneys to become Rule 6 supervisors it could help ease the financial burden of law school for many future lawyers.
Julie	This looks reasonable to me!
Timera Drake	I think this is a fantastic amendment and could boost participation in the Law Clerk program.
DEANE W MINOR, WSBA 12756	FROM MY 3+ YEARS AS A TUTOR, I CAN SAY WITH CONFIDENCE THAT I HAVE LEARNED AS MUCH FROM TUTORING AS I DO FROM THE BEST CLE'S I HAVE TAKEN -- AND MUCH MORE FROM TUTORING THAT FROM THE TYPICAL CLE. AFTER 40 YEARS, PALSGRAF MAKES SENSE!
William R. Kiendl	There should be no situation where a person devoting time to the training of aspiring professionals must do so using her / his own resources.
Alan Bornstein	The Apprenticeship program provides a path for those who wish to be lawyers, but lack the money or time to attend law school. Providing CLE credit to tutors rewards tutors for their efforts and, simultaneously, refreshes their legal knowledge.
Daniel J. Hess	I am currently tutoring a woman in the Law Clerk Program. This allows me to stay conversant with many areas of the law. I feel it should qualify for credit similar to that allowed for Law School Instructors. Dan Hess
	Teaching of law students and other legal professionals should also count for CLE credit as well so long as the teaching meet similar criteria with respect to content.
Cruz Turcott	N/A
Robert D. Gudmundson	Teaching is a great learning experience for the instructor. This amendment to allow tutors MCLE credit for time tutoring is a good idea. I support it.
Matthew McGowan	I think that's a great idea. Mentoring a Rule 6 can be hard work, and this is a reasonable and practical incentive.

	Federal Administrative Judges should have the CLE requirement waived. Other judges and state administrative judges have this waived, it does not make sense that it is not waived for federal administrative judges.
Christopher Trent Kunz	I was a tutor in the law clerk program for Alexa Ritchie. I wholeheartedly endorse this amendment. I spent many, many hours providing "personal supervision" as to all tutors in the program. A major, sometimes insurmountable, hurdle for potential law clerks to enter the program is actually finding a qualified attorney who is willing to assist as a tutor. I believe, the amendment proposed, would allow potential tutors to free up some time, by not having to take CLE's. At the time I was participating in the program, many of the tutors were the parent of the law clerk participant. It is a HUGE ask to have a family member act as a tutor in this program, there is no incentive built into the program to do so – in fact, all of the duties of the tutor in the program become disincentives to participate as a tutor. Without incentives like this, and others not yet available, I would never participate as a tutor in the law clerk program again, unless it was a child or other close family member who was the participant. I hope this is helpful. Feel free to contact me if you would like further input, 360-576-5322.
	N/A
Sherri Marie Carr	I'd also provide for changes within the applicable rules and approve the mentoring aspect, per "Requests for MCLE credit for tutoring have sought credit under both "teaching" credit and "mentoring" credit provisions of APR 11. However, teaching credit is limited to law school courses and, therefore, is not applicable to the Law Clerk Program. Requests for mentoring credit are also not applicable, as the Law Clerk Program is not approved as a "Structured Mentoring Program" because the students are not active members of the WSBA as required per APR 11(e)(8). APR 11d (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." Being instructed and learning the applicable substance of the legal profession is just a portion of what is required. Folks also critically need mentors that guide them, that they feel comfortable asking questions of, and that teach them things that are not in the "textbooks" regarding how to progress ethically, professionally, and with the requisite well-being and skills necessary to succeed in this profession.

Barry W. Brandenburg	Mentoring an APR 6 applicant is very time consuming. Time spent with the mentee takes away time from generating income for the firm as well as taking time away from the mentor to comply with the attorney's own MCLE obligations. By allowing MCLE credit for mentoring a potential new attorney, we encourage older, experienced attorneys to devote that time to the mentee.
Ada Danelo	N/A
	I am in favor of this amendment in the hope that more attorneys will be willing to supervise Rule 6 clerks. This is an extremely important alternative to law school and with the high cost of law school, this program is needed to diversify our profession.
Jennifer Jana	N/A
	As one who was a successful Rule 6 tutor, I totally support the proposal.
Dennis J. Beemer	As a current tutor, I am spending in excess of 8 hours per week reading law school textbooks and refreshing and updating my knowledge of the law. I am learning new material which significantly benefits me as a legal professional, and which I may then incorporate into my legal practice. Further, I spend approximately 12-15 hours each week in direct supervision of my student, reviewing case briefs, writing examinations, etc.. Essentially, I am assisting the next generation in their professional legal development. I believe both my knowledge and skill level has been substantially enhanced as a result of my participation in this program, which are the very essence of continuing legal education. Therefore, I believe it entirely appropriate to award CLE credits for tutors involved in this program.
KINNE HAWES	N/A
	Mentors provide many uncompensated hours and this change is a small way to support them and credit them for their work. This seems a small step, but better than not doing it.
Kate Gamble	Having studied under the APR 6 Law Clerk program, I can attest to the amount of time and attention required to be an effective tutor. Those willing to mentor not only impart the knowledge they have acquired through experience, but are actively learning themselves through the teaching process.

Jonathan Sprouffske	I've witnessed members of our firm serve as mentors to Rule 6 candidates. I think the time and attention they put into planning lessons and exams is commendable, it is likely they learn more undergoing that exercise than they would in an online CLE. I believe CLE credits would be appropriate.
	Tutors should absolutely receive MCLE teaching credit! This would provide incentives for attorneys to mentor Rule 6 clerks, thus providing more opportunities to the general public to have a shot as a lawyer without the additional financial strains of law school. It is a win-win for tutors and the public.
Matthew Campbell	This is an easy call in my opinion. Attorneys who take time from their regular practice to teach at our law schools or mentor law clerks provide a critical service to our legal community. They should receive CLE credit for that work. When I was in law school, most of my favorite professors were practicing attorneys. Their practical experience and focus on real application (vs. theoretical) was critical to my education. These attorneys made me the attorney I am today. I also came up through the law clerk program, and gained similar benefits from working with mentor attorneys. I know that these attorneys spend a significant amount of time keeping up to date to make sure they're passing on correct and accurate information. In my opinion, that work is at least as valuable, if not more, than anything we learn at a typical CLE. These attorneys add so much. They should received CLE credit for their efforts and time.
Kaustuv M. Das	Should there be some adjustment made in light of the fact that a typical law school class has more than one student? Also, would the tutor be entitled to claim another five hours of CLE credit under APR 11(e)(2) for every hour of "personal supervision?"
Brian L. Ernst	Tutors spend countless hours preparing their students by doing extensive legal research and preparation. This is akin to CLE presenters getting credit for their CLE preparations.
	N/A
	N/A
	I support this amendment. Although I went to traditional law school, I support the law clerk path to bar membership, and I believe this will encourage more lawyers to support law clerks.
Kristina Ralls	I think this amendment would encourage legal professionals to provide mentoring to rising APR 6 Law clerks

Lisa Brewer	Mentors and supervisors spend a huge amount of time overseeing Rule 11 etc students. It's like law school all over again. Plus, the WSBA would be wise to encourage volunteerism and mentoring as attorneys spend ever more time just making a living wage.
Kaylynn What	Yes! This is absolutely appropriate. Law school is great, but it's only when students get their feet wet in the field that they really understand what the practice is all about. This is so much work for the supervising attorney! They have to educate students about so many routine procedural issues, in addition to whatever area of law they are working within, and this process necessarily requires keeping up to speed with various aspects of the law, all the time, and understanding it all well enough to explain it to a person not well versed in it. This effort deserves the recognition that MCLE credit would provide.
	N/A
Salim Lewis	As a former law clerk and now lawyer, I saw the immense amount of work that goes into being a Rule 6 mentor firsthand. These lawyers are providing a service to the bar and the legal community at large and should be rewarded for that service with CLE credits.
	N/A
Erin Pierce	Teaching of any sort directed at other lawyers (through CLEs), or for students requires significant time and review of the relevant materials. It is appropriate for credit to be given for such efforts which enhance and update the teacher's knowledge in order to work with the student.
Carolyn Lake	Receiving credit is wildly appropriate recognition for the time and dedication these tutors devote to mentoring Law Clerks.
Aaron Ross	The law clerk program is a credit to the WSBA, and this change seems like it will increase interest in (and recognition for) tutoring -- it would be a welcome amendment.
Victoria Kesala	I was a tutor for two years. It is a huge time commitment and requires a lot of preparation. In my opinion, it is harder than teaching a CLE in your own subject matter area because you have to dig deep into other topics you may not have thought about much since the bar exam and make sure you understand them well enough to teach them properly to another person. It's a LOT. Offering credit is appropriate.

Malena Pinkham	I know the tutors do an enormous amount of work in their duties and learn a great deal from the material they are teaching.
	Participating in the time honored tradition of mentoring, even in this context, should be positively reinforced -- and it IS a lot of work!
Tiffany	N/A
	It completely makes sense! Particularly when the tutor is preparing the required monthly exams, they must review the law and be able to understand and apply it. That is just what the CLE is intended to do. This proposal should be approved without delay.
	N/A
Jason Pass	I think this is a great idea.
Jamie Olivares	I think this would be a wonderful amendment. I was lucky enough to have an attorney willing to clerk me. I would not have become an attorney otherwise, as the cost of law school was not an option. Giving the tutors CLE would encourage more attorneys do the law clerk program, which would result in a more diverse pool of attorneys in WA state that could not become an attorney via the traditional law school path.
	N/A
John Clynch	N/A

**TOTAL PARTIALLY IN FAVOR OF SUGGESTED AMENDMENT - 12**

Name	Feedback/Comments
Marjorie Simmons	As long as tutors are licensed attorneys
Lisa Johnson	<p>I have taught undergraduate students in law and legal studies for 18 years. No one has ever allowed me to earn MCLE credit for my teaching of substantive law to this constituency, and I have frankly felt quite disenfranchised from the WSBA because you do NOT address the important work of professors at the undergraduate level. To be absolutely honest, it is a major "hole" in the WSBA. I am a member, but I am often "left out." I am somewhat shocked at this suggestion "all of a sudden," give the - basically, what has at times seemed to be something of a dismissal of my work for the entirety of my career from this organization. I suppose the distinguishing factor is that the students considered here are law clerks, while my students are not. The objective teaching of law is the same, however. So, my suggestion is to yes, recognize it. But recognize ALL OF US who teach and allow ALL OF US to receive MCLE credit for our work.</p>
	<p>I guess I'm wondering what is different between any supervisor supervising any legal professional? Would you give a partner in a law firm CLE credit for supervising a subordinate that just joined the bar? If you're going to do one you might do the other. I don't think that I see anything special about law clerks that would set the supervisors apart and give them CLE credit and not give other supervisors silly credit. What about supervising paralegals? Should that count?</p>
Rhonna Kollenkark	<p>I think this is only fair. The amount of time devoted to properly mentor a law clerk is substantial. That said, lawyers that take time to teach a law school class have a lot more structure and objective requirements imposed on them by the institutions for whom they teach. I think the current amendment should offer either a credit limit or some firm guidelines for what will be considered acceptable to ensure a more evenly applied standard.</p>

Laird A. Pisto	The plan and changes make sense and will likely encourage attorney support for the underlying Law Clerk program. My recommendation is to place an annual "cap" on credits earned, perhaps around 8-10 CLE hours per year. The law firms supporting Law Clerk programs get a "lot" of benefit from the work performed by the clerks in their offices. Perhaps if there was more cross-training being done (teaching Law Clerks outside of the office they work in) which may be the case, where the teaching attorneys are subject-matter experts in the categories being taught, there would be less concern about a cap.
Eric Allen	Continuing legal education for presenters should be given based on the presenter having to do research or self education in order to teach others. It is not clear that personal supervision involves this. Giving credit under these circumstances does not show that the tutor is engaged in this self education.
	So many things qualify for CLE credits that it's become meaningless.
	Are there requirements for the number of hours that would qualify per credit? Please correct typo in proposed amendment.
Robert R. Fischer	I believe uncompensated tutors deserve credit for the services they are providing as "substitute" professors. However, adjunct professors who are receiving compensation should not receive credit unless being seriously underpaid, and then on a proportionate basis. For example, if an adjunct is receiving \$25 per hour then she should be some credits as determined by the board.
JIM ROHRBACK	IS THERE AN ANNUAL LIMIT ON HOW MUCH CLE CREDIT A "TUTOR" CAN GET BY SUPERVISING? I DO NOT BELIEVE THAT ALL 15 HOURS SHOULD BE ACCOMPLISHED BY THIS "TUTOR" DESIGNATION.
Neal Taylor	Any relief or benefit provided to Law Clerk Tutors will be greatly appreciated and MCLE credit is a good reward. How many MCLE credits would be granted and what will be the process for obtaining those MCLE credits? Depending on how many credits will be available, it might not be needed to ask you to find a way to provide MCLE credits for the lion's share of the time required to be a Tutor--studying the materials and creating, administering and grading the exams (one per month for 48 months)--especially those outside of the Tutor's active practice area. It has not been feasible to get Assistant Tutors for most of the classes.

	<p>Tutors should be allowed to earn credit, but should be limited as to how many credits per reporting period. For example, it would seem fair to allow up to about half of the credits be for tutoring, say 20-25 credits. The reason is that tutors should still be required to continue adding to their own continuing education, not just passing on what they know.</p>

<b>TOTAL NOT IN FAVOR OF SUGGESTED AMENDMENT - 35</b>	
<b>Name</b>	<b>Feedback/Comments</b>
	N/A
	N/A
Stephen Faust	CLE requirements are justified for lawyers and others under your jurisdiction as a means to force professionals to maintain their professional competency. Mandatory CLE is not intended to create a form of currency the bar can spend to reward individuals for supporting programs the Bar finds interesting. If supervising clerks in the WSBA program is a practice that increases lawyer competency to the degree that it meets CLE requirements and justifies an award of credits, then so is the supervisory activity of any lawyer supervising any clerk or intern in their firm. You would never allow CLE for that, nor should you. Please confine the mandatory CLE concept within the bounds that give the bar any legitimate jurisdiction to require it of us in the first place!
Douglas Scott	Not in favor
	N/A
	N/A
	N/A
Britt L Ohlig	Tutoring is not the same as teaching.
	The Rule 6 sponsor could avoid any other CLEs simply by claiming they "personally supervised" the Rule 6 clerk...which is what they are supposed to do anyway when they agree to act as a sponsor. This would not give them any new or expanded legal knowledge, which is what CLEs are for.
	Providing oversight is not CLE, but more like being a managing partner, but much less on the education side.
	N/A
	We all applaud volunteer work, but MCLE is supposed to keep attorneys up to date in their legal education.

Vicki Beyer	I feel allowing CLE credit for personal tutoring is going too far. Every practicing lawyer "tutors" junior lawyers (and law clerks) in one way or another and allowing MCLE credit for tutoring in one context seems to be introducing a potentially very slippery slope. Personal tutoring, usually conducted one-on-one, does not usually involve preparation or reading of learning materials, which is usually a key component of any MCLE.
	Sounds like bullshit to me
	I'm opposed to this provision because licensed attorneys are not allowed to receive credit when they do their own "tutoring" to clients. The flexibility in crediting attorneys for their self-taught legal education is not available. That should happen first (before extending credits for "tutoring").
	Not learning any new law by teaching a clerk how you do law
	I've see a lot of attorneys with dysfunctional law practice getting free labor teaching someone to become another lawyer with a dysfunctional practice. Getting cle credit on top of the free labor is not helping that attorney become a better attorney or stay current with developments in the law.
	Not rationally related to lawyer's own continuing legal education. Ripe for abuse.
	I think it is important for people to obtain MCLE credits from a variety of sources, and I do not think that tutoring law clerks provides enough new and unique educational perspectives.
	This does little to further an attorney's skills or education. If this is okay why not also allow CLE credit for any pro bono work?
	Countless attorneys give of their time to mentor younger lawyers within their firms and communities without expectation of CLE credit. Although volunteering as a tutor is admirable, it is volunteering and should not be given CLE credit.

Steve Gordon	Tutoring others in areas the tutor already knows would seem to have little connection to the continuing the legal education of the tutor. It seems like a good idea to provide some benefit to the tutor but changing the purpose of continuing legal education to achieve social goals seems like a bad idea & a very slippery slope. The law is always changing and lawyers should be required to keep up with the changes through continuing legal education.
	This is bad precedent. What next? CLE credit for law school professors?
	Not needed.
	This starts a slippery slope: if such a tutor receives credit, then wouldn't an attorney supervising a Rule 9 also be eligible to receive such credit. How do you track that time on either such a tutor or a Rule 9-supervising attorney? It's how many years for such a tutor? How many hours is that? Is the tutor really doing all that work or is his/her paralegals actually doing the majority of the work?
	This is a horrible amendment and I am against it.
	N/A
	N/A
	make them go to law school
James Beard	Who should have CLE requirements more than law tutors.
	This dilutes the importance of the CLE's and appears to be a "favor" to a select few.
	N/A
	N/A
	🗨️

**From:** Mandatory Continuing Legal Education Board  
**Date:** April 8, 2022  
**RE: REPORT AND RECOMMENDATION OF THE MCLE BOARD**

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### **Mandatory Continuing Legal Education Board**

The Mandatory Continuing Legal Education Board (“MCLE Board”) consists of seven members: Todd Alberstone (Chair), Robert Malae (Vice-Chair), Asia Wright, Ayanna Eagan, Christopher Bueter, Efrem Krisher, and Merri Hartse.

### **Suggested Amendment**

The MCLE Board workgroup recommends an amendment to Admission and Practice Rule (APR) 11 that would allow tutors in the APR 6 Law Clerk Program to claim MCLE credit for their personal supervision of APR 6 law clerks.

The MCLE Board recommends the following suggested amendment to APR 11:

**APR 11(e)(6)** Teaching law school courses, when the instructor is not a full-time law school professor; or providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6 (d)(2);

### **Background**

Over the years, there have been several requests by tutors in the APR 6 Law Clerk Program to receive MCLE credit for giving their time as tutors to clerks enrolled in the Law Clerk Program. As part of the Law Clerk Program, tutors provide three hours of personal supervision each week to clerks, including substantive discussion of the law. Within each year of this four-year program, clerks are required to study six subjects and to pass monthly examinations. The exams are developed, administered, and graded by the tutors. Requests for MCLE credit for tutoring have sought credit under both “teaching” credit and “mentoring” credit provisions of APR 11. However, teaching credit is limited to law school courses and, therefore, is not applicable to the Law Clerk Program. Requests for mentoring credit are also not applicable, as the Law Clerk Program is not approved as a “Structured Mentoring Program” because the students are not active members of the WSBA as required per APR 11(e)(8).

In response to these requests, the MCLE Board formed a workgroup—including two members of the Law Clerk Board—to explore a potential amendment to APR 11. On August 12, 2021, the workgroup met to discuss the need for an amendment and potential language. During this meeting, the workgroup members decided that the “personal supervision” time as defined in APR 6(d)(2) should be eligible for MCLE teaching credit, and that APR 11(e)(6) should be amended accordingly. The workgroup suggested



an amendment to APR 11(e)(6) rather than to APR 11(e)(8), as the “teaching” requirement is more analogous to Law Clerk Program tutoring.

## **Factors & Information**

### Value of the Law Clerk Program

The four-year Law Clerk Program is an alternative to traditional law school that provides education through a combination of work and study, under the supervision of a lawyer or judge. The lawyer or judge must have at least ten (10) years of experience to qualify as a tutor, and be in good standing with the Washington State Bar Association.

The Law Clerk Program increases opportunities for non-traditional law school students, by offering an affordable alternative to those seeking to practice law in Washington State. Upon completion of the Program’s education requirements, students may sit for the Washington lawyer bar examination.

### Teaching Credit for “Personal Supervision”

Tutors in the law clerk program spend an average of three hours per week—over the course of the four-year program—to personally instruct and advise the law clerk. As the coursework for this program includes 6 courses every 12 months, as prescribed by the Law Clerk Program Regulations, the supervision time can be considered “teaching” time. Personal supervision is defined in APR 6(d)(2):

“Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor’s personal supervision of the law clerk. “Personal supervision” is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk’s written assignments.”

As the personal supervision time includes exposition and discussion of the law, case recitation, and analysis of assignments as part of coursework, this time should be eligible for “teaching” credit per APR 11(e)(6). The Law Clerk Program curriculum includes “using an apprenticeship model that includes theoretical, scholastic and clinical components.” These components are designed to mirror the extensive and comprehensive nature of law school curriculum, and include law school course topics such as civil procedure, contracts, property, and torts.

### Benefit of Offering MCLE Credit

Offering MCLE credit for this supervision and instruction time may encourage lawyers to serve as tutors for the Law Clerk Program.



Tutors must commit an extensive amount of time both to instruct and to supervise the law clerk. This time is considered volunteer time that is not the full-time job of the tutor, analogous to the current requirement for teaching credit per APR 11(e)(6): “Teaching law school courses, when the instructor is not a full-time law school professor;”. As the tutor’s full-time job is not tutoring, the MCLE credit eligibility will echo that of the law school course teaching requirement.

Offering this MCLE credit benefit rewards the incredible time commitment to advancing the profession through this program’s law school alternative and, by association, affirms the WSBA’s commitment to increasing access to justice.

**Timeline**

<b>Possible Timeline for suggested amendment:</b>		
January 2022		Workgroup drafts report and recommendation.
February 4, 2022	Law Clerk Board Meeting	Law Clerk Board reviews report and recommendation draft and provides feedback to workgroup.
April 8, 2022	MCLE Board Meeting	MCLE Board reviews report and recommendation and any feedback from Law Clerk Board. MCLE Board will vote whether to move forward with suggested amendment. Vote on opening for member and other stakeholder comment period.
May 6, 2022		Close written comment period.
May 13, 2022	MCLE Board Meeting	Hear member and other stakeholder comments and discuss feedback. MCLE Board to vote on whether to proceed with suggested amendment. If proceeding, MCLE Board to nominate Board members to present to BOG and work on presentation materials.
June 27, 2022	BOG Materials	BOG materials due.
July 21-22, 2022	BOG Meeting	Present to WSBA BOG and ask for support.
August 5, 2022	MCLE Board Meeting	Discuss feedback from BOG and vote on whether to move forward with suggested amendment. If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.
August 22, 2022		First draft due of GR 9 coversheet.
September 12, 2022		Final draft due of GR 9 coversheet.
October 1, 2022	Suggested Amendment Deadline	Send recommendation to Court.



### Attachments

1. APR 6 Rule and Regulations
2. APR 11
3. Primary Tutor Application
4. Resolution of the WSBA in Affirming the Law Clerk Program Value



RULES AND REGULATIONS  
GOVERNING THE WASHINGTON STATE  
LAW CLERK PROGRAM

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Effective Date: September 1, 2017

APR 6 Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003; January 13, 2009; January 1, 2014; September 1, 2017.

Regulations approved by the Board of Governors September 26, 2013, effective January 1, 2014; amended effective May 19, 2017.



## **ADMISSION AND PRACTICE RULES (APR)**

### **RULE 6. LAW CLERK PROGRAM**

**(a) Purpose.** The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the lawyer bar examination; it is not a special admission or limited license to practice law.

**(b) Application.** Every applicant for enrollment in the law clerk program shall:

- (1) Be of good moral character and fitness, as defined in APR 20;
- (2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;
- (3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;
- (4) Submit in such form and manner as prescribed by the Bar (i) an application for enrollment in the program, (ii) the tutor's application, and, (iii) the application fee;
- (5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Bar; and
- (6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Bar may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.
- (7) Where the Bar is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or primary tutor's employer, be the law clerk's employer may be waived.

**(c) Tutors.** To be eligible to act as a tutor in the law clerk program, a lawyer or judge shall:

- (1) Act as a tutor for only one law clerk at a time;
- (2) Be an active member in good standing of the Bar, or be a judicial member who is currently elected or appointed to an elected position, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;
- (3) Have active legal experience in the practice of law as defined by APR 1 or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment. The 10 years of practice must include at least

2 years in Washington State and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;

- (4) Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and
- (5) Act as a tutor only upon the approval of the Bar which may be withheld or withdrawn for any reason.

**(d) Enrollment.** When an application for enrollment has been approved by the Bar, an enrolled law clerk shall:

- (1) Pay an annual fee as set by the Board of Governors.
- (2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.
- (3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course of study must be completed within 6 years from the initial date of enrollment.
- (4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.

**(e) Course of Study.** The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:

- (1) **Examinations.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The examination shall be graded pass/fail.
- (2) **Certificates.** The tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision within 10 business days following the month of study. If an examination is not given, the monthly certificate shall be submitted stating the reason.
- (3) **Book Reports.** The law clerk shall submit three book reports for the Jurisprudence course requirement corresponding to each year of study.
- (4) **Evaluations.** Annually, or at other intervals deemed necessary, the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.

**(f) Completion of the program.** A law clerk shall be deemed to have successfully completed the program when:

- (1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted,
- (2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the lawyer bar examination and is competent to practice law; and
- (3) The Bar has certified that all program requirements are completed.

**(g) Termination.** The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:

- (1) Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- (2) Failure of the tutor to submit the monthly examinations and certificates at the end of each month in which they are due;
- (3) Failure to comply with any of the requirements of the law clerk program; and
- (4) Any other grounds deemed pertinent.

**(h) Effective Date.** Revision of this rule shall not apply retroactively. A law clerk may complete the program under the version of the rule in effect at the start of enrollment.

**(i) Confidentiality.** Unless expressly authorized by the supreme court, the program applicant's, or a current or former law clerk's enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure, except that the fact of successful completion of the program shall be subject to disclosure.

## **APR 6 LAW CLERK BOARD REGULATIONS**

### **1-1 Authority**

#### **Regulation 1. GENERAL**

- A. The law clerk program established in APR 6 and implemented in these regulations is conducted by the Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.
- B. The good moral character and fitness of an applicant is determined by the Character and Fitness Board pursuant to Admission and Practice Rules 7 and 20 through 24.4(a).
- C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.
- D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

### **1-2 Purpose and Expectations.**

- A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.
- B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.
- C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.
- D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

### **1-3 Definitions.**

For the purpose of these regulations, the following terms are defined:

- A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.
- B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.
- C. "Bar Association" means the Washington State Bar Association.
- D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.
- E. "Board" means the Law Clerk Board.

- F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.
- G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6(b)(7).
- H. "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.
- I. "Program" means the law clerk program established by APR 6 and implemented in these regulations.
- J. "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court of general, limited, or appellate jurisdiction located in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.
- K. "Tutor" means a qualifying lawyer or judge who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

**Regulation 2. LAW CLERK BOARD**

**2-1 Responsibilities.**

The Board will make decisions regarding:

- A. Approval or rejection of an application for enrollment in the program.
- B. Approval or rejection of a lawyer or a judge to act as a tutor.
- C. A petition for advanced standing.
- D. A direction to the law clerk to change tutors.
- E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.
- F. A petition for readmission.
- G. Changes in course contents, course descriptions, or program completion requirements.
- H. Applicability of the effect of prior decisions regarding other law clerks and tutors.
- I. Recommendations to the Board of Governors regarding amendments to these regulations.
- J. Any other matter related to the program or referred to the Board by the Board of Governors.

**2-2 Board Liaisons.**

- A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.
- B. A Board liaison will make decisions regarding:
  - (1) Recommendations to the Board regarding the acceptance or rejection of an applicant.
  - (2) An annual evaluation of the law clerk's second and third years.
  - (3) Recommendations regarding any other matter related to the program or referred to the Board.

**2-3 Staff Administration.**

- A. The Board may delegate duties to staff to facilitate prompt administration of the program.
- B. The duties may regularly include but are not limited to:
  - (1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;
  - (2) Approval of assistant tutors to teach specific courses;
  - (3) Approval of leaves of absence of less than 12 months;
  - (4) Approval of petitions by law clerks to take courses or electives out of order;
  - (5) Approval of the 4<sup>th</sup> year courses; and
  - (6) Notices of involuntary withdrawal.

**2-4 Filing, general.**

All applications, petitions or requests shall be in writing and shall be directed to the Board at the Bar Association office.

**2-5 Review Procedure.**

A. Review of Right. An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:

- (1) Rejection of an application for enrollment in the program;
- (2) Termination of a law clerk's enrollment in the program; or
- (3) Requiring a law clerk to change tutors.

B. Discretionary. An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.

C. Filing. A petition requesting either review of right or discretionary review shall be:

- (1) in writing,
- (2) directed to the Board of Governors;
- (3) filed at the Bar Association office; and
- (4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

**Regulation 3. APPLICATION PROCEDURE**

**3-1 Applicants.** Every applicant for enrollment in the program shall:

A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver as defined in Reg. 1-3.

- (1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.
- (2) Approval of any relationship requiring an employment waiver is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved.

B. Submit the following with the application fee by the deadlines established by the Board:

- (1) A completed program application and all required supplemental information;
  - (2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;
  - (3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to undertake and successfully complete the program; and
  - (4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.
- C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, the Character & Fitness Board, or the Board of Governors.

**3-2 Advanced Standing.** A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

- (1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;
- (2) A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;
- (3) Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application date will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and
- (4) Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

- (1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;
- (2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and
- (3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

**3-3 Additional and Remedial Courses.** In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

**3-4 Notification.** The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. All programs shall begin the first day of the month specified in the notice. If rejected, the notification will provide the basis for the rejection.

**3-5 Acknowledgement of Enrollment.** Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to inform the Bar Association in writing of any incident that occurs while the law clerk is enrolled that might call the law clerk's moral character or fitness into question.

#### **Regulation 4. TUTORS**

##### **4-1 Tutor's Responsibilities.**

- A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.
- B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.
- C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.
- D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments, the tutor's responsibilities include:
  - (1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;
  - (2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;
  - (3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;
  - (4) Evaluating the law clerk's progress;
  - (5) Developing, administering, and grading the monthly examinations;
  - (6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 working days of the end of the month in which it was administered;
  - (7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and
  - (8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

**4-2 Assistant Tutors.** When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which he/she was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff

is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

(1) The assistant tutor may undertake the following duties for the course(s) for which he/she is approved:

- i. Choosing textbooks, casebooks, and resource materials for the course.
- ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.
- iii. Developing, administering, and grading the monthly examination.

(2) The primary tutor shall:

- i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;
- ii. Remain ultimately responsible for the conduct of the clerkship;
- iii. Complete all monthly and other certificates; and
- iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

#### **Regulation 5. COURSE OF STUDY**

##### **5-1 Structure.**

- A. The program is designed to be a four year course of study in combination with employment. Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.
- B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.
- C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

##### **5-2 Subjects.**

- A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.
- B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

<b>Course</b>	<b>Months</b>
Basic Legal Skills	2
Civil Procedure	2
Torts	2
Contracts	2
Agency & Partnerships	2
Property	2

C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

<b>Course</b>	<b>Months</b>
Community Property	1
Criminal Law	2
Constitutional Law I	2
Corporations	2
Evidence	2
Uniform Commercial Code	3

D. Third Year. To complete the third year of the program, the law clerk shall pass the following prescribed courses, in any order:

<b>Course</b>	<b>Months</b>
Constitutional Law II	2
Professional Responsibility	1
Domestic Relations	2
Wills, Estates, Trusts, Probate	3
Conflict of Laws	2
Criminal Procedure	2

E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

(1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other professional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.

(2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval

of alternative areas of study by including a detailed course description for each proposed course.

<b>Course</b>	<b>Months</b>
Administrative Law	2
Personal Federal Income Tax	2
Land Use	2
Labor Law	2
Remedies	2
Antitrust	2
Creditor-Debtor Relations	2
Securities Regulation	2
Legal Accounting	2
International Law	2
Insurance	2
Consumer Protection	2
Environmental Law	2
Real Property Security	2
American Indian Law	2
Trial Practicum	2
Elder and Disability Law	2

**5-3 Monthly Examinations.** The tutor is responsible for the content and administration of all monthly examinations.

- A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.
  - B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.
  - C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last business day of each month.
  - D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade he or she shall continue to study the subject for an additional month.
  - E. Certificates. The tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision, within 10 business days following the month of study.
- (1) If an exam is not given, the monthly certificate shall be submitted stating the reason.

(2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

**5-4 Board Evaluations.** Annually, or at such other intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The Board may at any other time, in its discretion, conduct an evaluation at which the law clerk and the tutor shall be personally present if required to do so.

A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.

B. Materials. In making its evaluation, the Board may consider:

(1) The substantive contents of all monthly examinations;

(2) The tutor's monthly certificates and timeliness of receipt;

(3) Any written course work; and

(4) Any other written or oral materials deemed to be pertinent by the Board.

C. Decision. At the conclusion of the evaluation, the Board may:

(1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;

(2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;

(3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates;

(4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;

(5) Require the law clerk to change tutors;

(6) Advise the law clerk that the law clerk's enrollment in the program is terminated.

D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

#### **Regulation 6. WITHDRAWAL AND TERMINATION OF ENROLLMENT**

##### **6-1 Withdrawal by Law Clerk.**

A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.

B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:

(1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;

(2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or

(3) The annual fee is not paid by the established deadline.

### **6-2 Withdrawal by Tutor.**

- A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2- 4.
- B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.
- C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

**6-3 Termination of Enrollment by the Board.** The Board may terminate a law clerk's participation in the program for:

- A. Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- B. The law clerk's failure to comply with the requirements of the program or a decision or order of the Board; or
- C. A determination by the Character and Fitness Board that the applicant does not meet the character or fitness requirement for enrollment in the program.

### **Regulation 7. COURSE DESCRIPTIONS**

**7-1 Jurisprudence Reading.** A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

- A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports shall be submitted every 4 months.
- B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law clerk may not begin the next year's course work until the current year's book reports are completed and submitted to the Board.

### **7-2 First Year Clerkship.**

- A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.
- B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and collateral estoppel; discovery and other pretrial devices; joinder; summary judgment;

judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.

- C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.
- D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.
- E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.
- F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint venture law.

### **7-3 Second Year Clerkship.**

- A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.
- B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.
- C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.
- D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion, formation and organization; theories of

corporations; corporate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

- E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.
- F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

#### **7-4 Third Year Clerkship.**

- A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.
- B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre-paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.
- C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.
- D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property,

intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.

- E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.
- F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

**7-5 Fourth Year Clerkship; Electives.**

- A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.
- B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.
- C. Land Use. Study of legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.
- D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.
- E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.
- F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tying arrangements, exclusive dealing and state antitrust law.
- G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal

Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

- H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.
- I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.
- J. International Law. Legal process by which interests are adjusted and authoritative decisions made on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.
- K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.
- L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn "unfair" practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.
- M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.

- N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common-law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.
- O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.
- P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and text books as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.
- Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the “story” of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.
- Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

**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 prerecorded 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 February 12, 1965; Amended effective January 1, 2016; September 1, 2017.]

**WASHINGTON STATE  
BAR ASSOCIATION**  
**PRIMARY TUTOR APPLICATION**  
**APR 6 LAW CLERK PROGRAM**

Re: \_\_\_\_\_  
Name of Law Clerk Applicant

(Please print or type)

1. Full Name: \_\_\_\_\_  
Last First Middle

2. WSBA Bar Number: \_\_\_\_\_

3. Business Address: \_\_\_\_\_  
Name of Business, Firm or Court

\_\_\_\_\_  
Street or P.O. Box

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Work Email Address

4. Work Telephone: ( ) \_\_\_\_\_

5. Is the law clerk applicant employed by you or your employer? Yes  No   
*If no, you must complete questions 13-16.*

6. Are you eligible to apply as a Primary Tutor as defined in APR 6(c)? Yes  No

7. Have you ever been disbarred, suspended, reprimanded, censured, or otherwise disciplined by any jurisdiction? *If yes, give full details on an attached sheet.* Yes  No

8. Name all jurisdictions and courts in which you have been admitted to the practice of law, including any limited practice and *pro hac vice*. Give the date of admission and current standing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Please describe your legal education. List when you completed the Law Clerk Program or law school, degrees and dates earned:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# WASHINGTON STATE BAR ASSOCIATION

10. Please attach a brief statement of your employment during the previous ten years, including the name of employer, inclusive dates, and primary area of law you practiced. You may provide a resume or CV if it covers the past ten years.
11. Please attach a brief statement explaining why you wish to act as a tutor and why you believe the applicant is suitable to enroll in the Law Clerk Program.
12. Have you read “Rules and Regulations Governing the Washington State Law Clerk Program” Yes  No   
and do you agree to abide by them?

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**Questions 13-16 are to be completed only if the applicant is applying for an  
employment waiver under APR 6(b)(7)**

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13. Does the law clerk applicant have regular, full-time, paid employment working with a lawyer or a judge (“workplace lawyer”) that meets the requirements of APR 6, the law clerk program regulations and the employment waiver guidelines, except that the employer is not the tutor or the tutor’s employer? Yes  No

14. Describe the alternative relationship between yourself, the workplace lawyer and the law clerk.  
(Use a separate sheet if necessary)

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15. Describe how client confidentiality and conflicts of interest will be resolved given the alternative relationship between yourself, the workplace lawyer and the law clerk. (Use a separate sheet if necessary)

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16. How will the purpose of the program be maintained given the alternative relationship between yourself, the workplace lawyer and the law clerk? (Use a separate sheet if necessary)

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# WASHINGTON STATE BAR ASSOCIATION

## Tutor's Certificate

I, \_\_\_\_\_, state under penalty of perjury under the laws of the State of Washington that I am an attorney at law duly admitted to practice law in the State of Washington; that I have read the foregoing application to act as a tutor and that the statements made therein are full, true and correct; and that I am eligible to act as a primary tutor.

I further certify that \_\_\_\_\_ (law clerk applicant) is employed on a regular, full-time basis: (*initial one below*)

\_\_\_\_\_ in my office in compliance with APR 6(3) and the Law Clerk Program Regulations.

\_\_\_\_\_ with the law clerk applicant's workplace lawyer in compliance with the employment waiver guidelines.

I further certify that I will instruct and examine the law clerk applicant faithfully in the branches of the law prescribed by the course of study approved by the Board of Governors, and that I will comply with the Rules and Regulations relating to the Law Clerk Program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date and City/State where signed

# WASHINGTON STATE BAR ASSOCIATION

## Office of the President

**TO:** WSBA Membership, Washington Supreme Court, General Release  
**FROM:** President Rajeev D. Majumdar  
**DATE:** June 28, 2020  
**RE:** Resolution of the WSBA in Affirming the Rule 6's Program Value and Role in Providing an Additional Path to Justice for Underrepresented Communities, and Support for Rule 6 Diploma Privilege

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*On June 26, 2020, the Washington State Bar Association adopted the following resolution:*

WHEREAS, the Washington Supreme Court's Admission and Practice Rule (APR), 6 commonly known as the "Law Clerk" Program ("Program"), is an alternative to traditional law school education that might otherwise be unattainable due to economic and institutional barriers, and,

WHEREAS, the Program is a four-year course of study designed to provide educational and practical experience through a combination of work and study with an experienced lawyer or judge with at least ten (10) years of experience and in good standing with the Washington State Bar Association ("WSBA") during their Tutoring, and

WHEREAS, the Program is operated under court supervision by the Law Clerk Board which is comprised of volunteer WSBA members, and is comprised of WSBA volunteer Law Clerk Tutors who volunteer their time teaching the law to APR Rule 6 students for no financial compensation, and

WHEREAS, the Program offers an increased opportunity for non-traditional law school students, working parents, and other members of the public that are interested in becoming an attorney to serve the public, and

WHEREAS, without the Program, the WSBA and the members of the public would be deprived of many talented, hardworking attorneys that have provided valuable legal services to clients, and

WHEREAS, the Program has consistently provided a steady stream of competent, skilled, and proficient lawyers that have practical experience from having worked directly with a licensed attorney when they pass the Washington State Bar Exam, and,

WHEREAS, given the ever-increasing costs of traditional law school debt that face the overwhelming majority of most traditional law school graduates, the Program's graduates are frequently in an advantageous position to offer pro bono and/or moderate means legal services to their clients, and

WHEREAS, the Program offers increased access to justice, increasing the public good and benefiting the citizens of the State of Washington; Now therefore,

**Be it resolved** by the Board of Governors of the WSBA that we memorialize our full and continued support for the court approved and supervised Program and urge every qualified Member of the WSBA to consider serving as a Tutor for a prospective Law Clerk student.

**Be it further resolved** that the Board of Governors respectfully encourages the Washington Supreme Court to amend the Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules dated June 12, 2020 to include qualified graduates of the Program.

**Be it further resolved** that the Board of Governors hereby thanks all of the volunteers of the APR Rule 6 Law Clerk Board, and all of the APR Rule 6 Law Clerk Tutors who have spent countless hours to make this Program an ongoing success for the benefit of the citizens of the State of Washington.

Approved by the WSBA Board of Governors on June 26, 2020.



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Rajeev D. Majumdar  
WSBA President, 2019-2020

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Gov. Brent Williams Ruth, Task Force Chair  
**DATE:** July 11, 2022  
**RE:** **MBA Task Force Proposal to Amend the BOG Action Policy**

**APPROVE:** Proposed amendment to Board of Governors Policy Re: Requests for Action

*Background*

On April 6, 2022, the Board of Governors received a letter signed by eleven Minority Bar Associations proposing a number of actions for the Board to take “to continue our dialogue and encourage the Governors in its progress and efforts on diversity, equity, and inclusion in the legal community.” In May, the Board of Governors approved the creation of a Task Force to Develop Action Items in Response to the Joint MBA Proposal to the WSBA Board of Governors (MBA Task Force). The purpose of this Task Force as set forth in the charter is to identify specific action items arising from the April 6 proposal and present those proposals to the Board.

The Task Force met on July 1. In addition to Task Force members, WSBA’s outside council for first amendment issues, Taki Flevaris, attended to provide input on the proposals being considered. The group discussed each of the points raised in the April 6 proposal and is bringing forth one proposal for action now. Additional proposals are anticipated for the September Board meeting.

*Proposal*

The Task Force proposes amending the Board of Governors Policy Re: Requests for Action to include a requirement that all action items before the Board of Governors include an equity analysis in addition to a fiscal and legal analysis.

*WSBA Risk Analysis*

Adding an equity analysis to requests for Board action is supported by the purposes of the Regulatory Objectives in GR 12.1(j) and the purposes of the WSBA in 12.2(a)(6). The equity analysis is not prohibited by GR 12.2(c). Adding additional analytical consistency for Board action considerations appears to decrease risk to the organization.

*WSBA Fiscal Analysis*

Adding an equity analysis to requests for Board action will involve additional staff time, particularly for our Chief Equity and Inclusion Officer. This is not anticipated to result in additional costs, unless and until the time involvement creates a need for additional staff support.

Attachments:

- Proposed amendment to Board of Governors Policy Re: Requests for Action (Redline)
- Proposed amendment to Board of Governors Policy Re: Requests for Action (Clean)
- MBA Task Force Charter
- Joint MBA Proposal to WSBA Board of Governors



# WSBA

## BOARD OF GOVERNORS

### **BOARD OF GOVERNORS POLICY RE: REQUESTS FOR ACTION**

Pursuant to the WSBA Bylaws, the Board of Governors (BOG) is the governing body of the Bar that determines the general policies of the Bar and approves its budget each year.

The BOG adopts this policy to set forth the preferred process for submitting matters to the Board for action. The goal of this process is to ensure that the Board had sufficient information to make a decision, including compliance with relevant rules, fiscal impact, and the input of various stakeholders.

This policy does not limit the President's or any Governor's authority under the Bylaws to establish the agenda and order of business for each BOG meeting.

1. **Initial Request.** Requests for BOG action should be submitted to the President and the Executive Director. The President and Executive Director, in consultation with WSBA General Counsel will determine whether the request is appropriately taken up under General Rule 12.2, the WSBA Bylaws and any other applicable law or order.
2. **Review by BOG Committee.** If the request is from an individual or a non-WSBA entity, the President may refer it to the appropriate BOG Committee to determine whether the matter should be explored further. If there is not a BOG Committee appropriate to the subject matter, it may be referred to the Executive Committee.
3. **Analysis.** When a matter has been requested by a WSBA entity or has been approved for further exploration by a BOG Committee, the Executive Director will ensure that the matter is analyzed, including fiscal impact, **equity analysis**, stakeholder analysis and input, rule compliance, and implementation implications. A reasonable amount of time should be provided for this analysis taking into account the scope, magnitude, and relative novelty of the request. This information will be shared, as appropriate, to aid in the Board's decision-making.

#### **Requests Requiring Amendment to the WSBA Budget**

Changes to the WSBA Budget should not be approved without a rigorous review of the pros, cons and impacts of said change. As such, any request, proposal, change or suggestion that would require a change to the WSBA budget that arises during a meeting or has not been subject to analysis as described above, should be tabled until the next BOG meeting in order to provide time for that analysis.

The review will be performed by the Treasurer, CFO, HR Director, WSBA President, and the Executive lead for the department affected. The review and potential request will be taken to the Budget and

Audit committee for discussion and analysis. The committee's recommendation(s), are intended to be completed and delivered to the BOG for approval in its next meeting.

| **Approved by the Board of Governors on January 17, 2020. Amended** .

**TO:** WSBA Board of Governors  
**CC:** Terra Nevitt, Executive Director  
**FROM:** Gov. Francis Adewale  
**DATE:** July 14, 2022  
**RE:** Recommendations to the Commission on Judicial Conduct

**ACTION:** Sign on to the attached letter making recommendations to the Commission on Judicial Conduct in light of the Supreme Court's decision to overturn the Commission's findings and admonishment of Judge David Keenan, Superior Court Judge for King County.

Attached, please find a letter signed by many legal community leaders setting forth recommendations for the Commission on Judicial Conduct. The recommendations suggest measures the Commission can take to publically examine the errors made in the *Keenan* case. I respectfully request that WSBA sign on to this letter.

**RISK ANALYSIS**

This requests action by the Board of Governors to support a resolution that (1) cites to a May 31, 2022, letter expressing concerns about a specific judicial discipline decision from the Judicial Conduct Commission that was reversed by the Washington Supreme Court; (2) creation of a Task Force to review the structure, processes, and procedures of the CJC to promote public confidence in the judiciary.

*GR 12*

The purposes of the WSBA relevant to this request for action include:

- Promote independence of the judiciary and the legal profession (GR 12.2(a)(1)).
- Promote diversity and equality in the courts and the legal profession (GR 12.2(a)(6)).
- Promote understanding of and respect for our legal system and the law (GR 12.2(a)(9)).
- 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 (GR 12.2(a)(11)).

Specifically authorized activities of the WSBA relevant to this request for action include:

- Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system (GR 12.2(b)(2)).
- None of the prohibitions in GR 12.2(c) appear to be relevant to this request for action. Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession (GR 12.2(b)(16)).

*Keller*

Compelled license fees can be used for activities germane to the compelling state interests of regulating the legal profession and improving the quality of legal services provided to the people of the state. The proposed action appears to be germane to improving the quality of legal services provided to the people of the state by promoting diversity, equality, and respect for the judiciary in Washington state.

1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539

800-945-WSBA | 206-443-WSBA | [questions@wsba.org](mailto:questions@wsba.org) | [www.wsba.org](http://www.wsba.org)

## RESOLUTION

WHEREAS, an independent judiciary is the cornerstone of our constitutional system and protection of the liberty of the people, and independent judges protect the due process rights of the people; and

WHEREAS, the judiciary and its officers of the legal profession can only succeed if the judicial process has public confidence; and

WHEREAS, public confidence can only be achieved if most people believe the judicial system is fair. This requires the judiciary and the legal profession to reflect the diversity of state and the nation. And, this is the reason why bar associations and other groups have initiated and supported diversity, equity and inclusion initiatives relating to the profession, access to justice and due process rights for all; and

WHEREAS tragic disparities in morbidity & mortality and attendant suffering faced by low-income communities, especially Black, Indigenous and other communities of color, brought into high relief by the COVID-19 pandemic and the horrific murder of George Floyd, have motivated the Washington Supreme Court and many of its affiliated entities such as the Minority & Justice Commission, Gender & Justice Commission, Interpreter Commission, Commission on Children & Youth, Access to Justice Board, Board for Judicial Administration, Legal Foundation of Washington, Office of Civil Legal Aid, Washington State Bar Association, among others, to upgrade their commitments to pro-equity/anti-racism as essential to the sustainable earning of public trust and confidence; and

WHEREAS, the Washington Supreme Court has confronted the issue of systemic racism in the legal system in its *Open Letter to the Judiciary and Legal Community*, wherein the Supreme Court called upon all components of the legal system to address the issue:

The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if we only have the courage and the will.

This call to action includes the Commission on Judicial Conduct (“CJC”), a component of the judicial branch of government and legal community; and

WHEREAS, public confidence in the judiciary also requires that judges act ethically and that there is enforcement of the ethical standards promulgated by the Washington Supreme Court, which is why we support the role and the work of the CJC; and

WHEREAS, in the aftermath of the CJC’s disciplinary prosecution of Judge David Keenan (unanimously reversed by the Washington Supreme Court upon *de novo* review) serious issues have been raised by leading members of the legal profession and minority communities (former Supreme Court justices, former presidents of the Washington State Bar Association and the King County Bar Association, judicial ethics experts and law professors, legal services leaders and providers, and a legislator) concerning the structure of the CJC which does not

separate prosecution from adjudication, its charging practices, and its apparent resistance to judicial efforts to promote diversity in the legal profession as outlined in the letter to the Commission on Judicial Conduct of May 31, 2022;

NOW, THEREFORE, IT IS RESOLVED:

1. The [ \_\_\_\_\_ Association] shares the concerns raised in the letter of May 31, 2022, and supports its recommendations; and
2. Requests the Governor, the person with responsibility to appoint the majority of the CJC members who are public members, to convene a Task Force of relevant stakeholders to review the structure, processes, and procedures of the CJC and make recommendations to appropriate entities to improve the functioning of the CJC so that it promotes public confidence in the judiciary. These include: (a) the CJC's role in addressing the issues raised by the Supreme Court's *Open Letter*, and (b) procedural reforms to the CJC via court rule, legislation or constitutional amendment if required to guarantee the judiciary of Washington is treated fairly and with customary due process rights, and promotes ethical judicial conduct and public confidence in our system of laws.

May 31, 2022

Commission on Judicial Conduct  
State of Washington  
P.O. Box 1817  
Olympia, WA 98507

Dear Commission Members:

We write as members of the bar and public concerning the recent Supreme Court decision overturning the Commission on Judicial Conduct's findings and admonishment of Judge David Keenan, Superior Court Judge for King County (*In re the Matter of The Honorable David S. Keenan*, CJC No. 96-08-F-189; *In re Keenan*, No. 201,996-0 filed 2/10/22).

As bar leaders, retired judges and concerned members of the public, we respectfully submit that considering the Supreme Court's unanimous reversal in the *Keenan* matter, the Commission should take this opportunity to reexamine its role in enforcing judicial conduct cases, and to take steps to remedy the injustice of its decision.

We wish to observe at the outset that we have great respect for the body of work undertaken by the Commission in the exercise of its independent Constitutional function of assuring ethical judicial conduct in the State of Washington. We commend you and all previously serving commissioners for volunteering your time in service of the public good and we recognize the countless hours you have spent in pursuit of this important goal. However, we are confident that you also recognize that while acting as an independent agency within the judicial branch, the Commission is not immune from constructive criticism and is accountable to the public it serves. It is in this spirit that we write to urge you to undertake a public review of your methods and procedures and that you seek to avoid repeating the serious errors evident to us in *Keenan* by undertaking training and a review of decisional procedures.

While it may be too late for the Commission to remedy the injustice caused by the improvident prosecution of Judge Keenan, the Commission should publicly acknowledge the errors in that case and renew its commitment to a fair and balanced enforcement of the Code of Judicial Conduct.

### **1. The Commission should Publicly Acknowledge its Erroneous Decision**

It is not necessary for us to set forth the core legal issues raised in the Commission's prosecution of Judge Keenan as these were fully set forth in the briefing<sup>1</sup> and even more clearly established in the Supreme Court's unanimous reversal of the Commission's decision, its imposed discipline and its positions on appeal.

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<sup>1</sup> These include the briefs filed on behalf of the Commission, by counsel for Judge Keenan and various amici curiae. We note that none of the signers of this letter served as counsel for Judge Keenan, although several participated in the Supreme Court appeal as amici. Neither Judge Keenan nor his lawyers approved or participated in the preparation of this letter.

While the incorrect legal theories embraced by the Commission in the *Keenan* case have been addressed by the Supreme Court, we believe the Commission has further work to do.

First, we note the Commission made little effort to publicly disclose on its website or to the media that the Supreme Court had overruled its decision and order in the *Keenan* case. In fact, for many weeks following the decision, the Commission website included only a link to the opinion but failed to update its summary of the matter to point out that its public admonishment of Judge Keenan had been reversed and vacated by the Court. Second, although the Commission issued a press release at the time it admonished Judge Keenan, it failed to issue a commensurate statement when this action was reversed by the Supreme Court. Third, while it conducted a public hearing and engaged lawyers to publicly advance its incorrect claims against Judge Keenan, the Commission has remained silent following the Supreme Court reversal.

We believe the Commission has a responsibility as an independent agency to conduct itself with transparency and fairness. Whether these acts constitute a failure in Commission oversight, procedural shortcomings, or simple negligence, we urge you to correct them to whatever extent may be possible for Judge Keenan and for the benefit of future cases. Unlike a private litigant before the Supreme Court, the Commission has a responsibility to inform the bench, bar and public of important matters under its consideration. Unlike other agencies with oversight by one of the three branches of our State government, the Commission on Judicial Conduct is self-regulating and therefore bears a special responsibility to assure the public of its integrity and faithfulness to its Constitutional mission. It should do so publicly, including acknowledging the errors in the *Keenan* case and demonstrating to the public its plans for improvement and renewed commitment to statutory and Constitutional duties.

## **2. The Commission's Prosecution of Judge Keenan Harms the Goal of Promoting Diversity, Equity and Inclusion in the Bench and Bar**

The Commission prosecuted Judge Keenan for agreeing to allow a college to encourage enrollment of students who might advocate for marginalized communities. This demonstrated a lack of understanding of the Commission's role in eradicating all forms of racism and discrimination in the judiciary and will chill future efforts by judges to ethically promote diversity, equity, and inclusion.

Among the errors in the *Keenan* case, the Commission's focus on alleged harm to judicial prestige stands out as particularly egregious. That judicial prestige did not suffer in the slightest is evident in the Supreme Court's ruling and should have been evident to the Commission before it charged Judge Keenan. What is truly shocking to us, however, is the Commission's apparent failure to consider how a decision to admonish Judge Keenan ignored our Supreme Court's call to end racism in the justice system<sup>2</sup> and, instead, punished the judge for acting in accordance with it.

The Commission claimed Judge Keenan's pursuit of the laudable goal of enhancing the pipeline of non-traditional and diverse entrants to the legal profession was beneath the dignity of a judge in this State. The Commission declared in its briefing to the Supreme Court, "Judge Keenan abused the prestige of judicial office by permitting it to be used in a commercial

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<sup>2</sup> *Open Letter of Washington Supreme Court to Members of the Judiciary and the Legal Community*, June 4, 2020

advertisement for the benefit of another, in violation of Rule 1.3.” The Commission went on to argue that such “public advocacy” by judges leaves the public to “wonder if the judge is trying to sell them something,” belittling the “*buses* rolling through the largest county in the State, advertising a specific *community college* not directly related to the law.”<sup>3</sup> The civic life we expect of judges has evolved as reflected in amendments to the rules and growing calls for greater inclusion of judges who reflect the diversity of the public they serve. The Commission’s action in this case seems oblivious to these concerns and evinces an outdated view of judicial conduct. For example, the Commission in its order expressed concern that allowing judges to work with community colleges to enhance the pipeline of non-traditional students into the legal profession, “would open the floodgates to allow judges to promote any activity that could possibly encourage students to attend law school.”<sup>4</sup> We should be so lucky as to have committed judges, such as Judge Keenan, working to promote diversity in the bench and bar at the earliest possible point in education. And, certainly, the judicial disciplinary system in our state should not work against such activities as it has in this case.

We believe the judges of Washington State are aware of the burden imposed on Judge Keenan in defending these charges and will seek to avoid conduct that might be remotely similar. Notwithstanding the Supreme Court’s reversal, this case will have (and probably already has had) a chilling effect on those judges willing to speak out publicly on these critical issues of race and equity.

We contend that the Commission has failed to heed its duty in this case by wrongfully punishing Judge Keenan and signaling to other judges that similar efforts will be scrutinized and possibly sanctioned. The Commission should immediately take steps to rectify these errors, beginning with requiring that every member of the Commission (including alternate members) read the Court’s *Open Letter* and that the entire Commission undertake a thorough program of implicit bias training.<sup>5</sup>

### **3. The Commission Forced Judge Keenan to Contest these Charges and to Appeal its Decision and Order to the Supreme Court**

Superior Court Judges in our State must either stand for election or seek reelection in contested political campaigns. The Commission took actions that required Judge Keenan, at great personal expense, to contest these charges and to successfully appeal the discipline to the Supreme Court. Much of this could and should have been avoided.

We first note that, for the reasons discussed above and in the Supreme Court opinion, the decision to proceed with charges against Judge Keenan was clearly erroneous. We believe this should have been apparent from the beginning. We also question why the Commission found it necessary to enter a finding attacking Judge Keenan’s credibility.<sup>6</sup> The entire structure of

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<sup>3</sup> Brief Replying to Amici p. 9 (emphasis added)

<sup>4</sup> *In re Keenan*, CJC Order and Decision, p. 9

<sup>5</sup> While we note that the Commission frequently imposes this requirement on judges as part of judicial discipline, Commission records indicate no training in diversity, equity and inclusion for the Commission itself. This is a startling oversight for a body charged with promoting judicial ethics.

<sup>6</sup> “Judge Keenan argues that his actions were permitted because the ad would encourage people to go to law school after attending the college. *We specifically find that this argument and the accompanying testimony from Judge Keenan lacks credibility.*” *In re Keenan*, Commission Decision and Order (2/2/21)(emphasis added)

confidentiality of complaints to the Commission until public proceedings are announced is premised upon the proposition that a judge's reputation is important and should be protected. The denigration of a judge's character should be avoided unless required by the disciplinary process. The issue of credibility of witnesses is paramount in our system of justice, and rulings based on credibility are made by judges every day. It should not need to be said that unnecessary credibility findings about a judge should be avoided. Commissioners, particularly the judges on the Commission, are surely aware that such gratuitous language, if allowed to stand, would likely be used in future political campaigns for Judge Keenan's position on the bench. For the Commission to make this finding a part of its decision and Order likely left Judge Keenan no choice but to appeal the Commission's Decision and Order to the Supreme Court. Similarly, when the Commission imposed the formal discipline of admonishment where the applicable legal standards were in dispute, any reasonable judge would recognize the political risk facing them in the next election and feel compelled to appeal.

We expect that the Commission considers the personal cost to judges in bringing charges to enforce the Rules. Among these are personal embarrassment, public humiliation, loss of esteem by fellow judges, court staff and the public. In the rare cases for which the Commission conducts public hearings on charges brought against individual judges, a fully contested hearing may require the judge to retain counsel at his or her own expense. We believe this to have been the case for Judge Keenan, who was represented by counsel at the hearing stage and before the Supreme Court. Although we don't know what his out-of-pocket costs were for defending himself against these charges, we do know that the Commission itself expended approximately \$85,000 in outside legal fees to prosecute Judge Keenan and to defend the Commission very aggressively on appeal.<sup>7</sup> We feel we can safely assume that Judge Keenan was forced to pay for his own attorney fees in a roughly commensurate amount.

In sum, the Commission worked an extremely costly injustice upon Judge Keenan and it should undertake a review of its actions and take such steps as are necessary to remedy its errors, including any restorative justice allowable under law.

#### **4. The Commission Should Adopt Procedural Reforms and Recommend Statutory Amendments to Promote Due Process and More Fair Outcomes**

We had hoped that following the Supreme Court's unanimous decision, the Commission would itself engage in a public discussion of what went wrong in the *Keenan* case. This has not occurred. In our opinion, there are three areas in need of procedural reform.

First, the Commission appears to have confused the standard required by Rule 1.3 ("lend" prestige of office vs. "abuse"). As fully developed in the briefing before the Supreme Court, this change in the Rule established that only occurrences of clear cut abuse of office are subject to disciplinary action. Going forward the Commission should recognize the ethical standard changed with the adoption of the revised Code of Judicial Conduct and actions governed by it.

Second, the Commission continues to prosecute judges in the State of Washington for violations of Canons, rather than the Rules. The Code is clear that only a Rule violation is the

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<sup>7</sup> In its response dated April 20, 2022, to a Public Records Request, the Commission Public Records Officer provided redacted fee statements from attorneys Hugh D. Spitzer and Steven A. Reisler totaling \$85,912.87

basis for discipline. Yet the Commission in its charging documents and public statements continually references Canon as well as Rule violations, unnecessarily raising the opprobrium of the alleged violation.

Third the Commission continues to proceed as a unitary commission, presiding over both the sufficiency of charges at the complaint stage, and sitting as the ultimate trier of fact and law. This stands in contrast to many other states and the Model Rules, and calls into question whether judges contesting a finding that a violation has occurred are afforded due process during the hearing stage. Judges protect the due process rights of the citizenry. Surely, they should be entitled to ordinary due process in which the prosecution function is separate from adjudication. The Commission should not cling to defending the one tier system, whether constitutional or not, but adopt internal processes so that one set of Commissioners decides on whether a case should be charged and those members do not sit in the adjudicatory phase. To the extent the Commission believes statutory or Constitutional amendments are necessary to effectuate this approach, it should seek those.

We also note that in the *Keenan* case, in whatever internal procedures were followed, the majority signing the Commission Decision and Order failed to recognize the extreme reluctance to discipline Judge Keenan expressed in the four separate opinions filed by Commission members in the case. As all four were non-judges, we question whether the majority properly considered their views, and whether, as a procedural matter, the Commission should have convened for further consideration of the proposed decision and discipline. It strikes us that these Commissioners were trying to tell their colleagues something and they were not given proper weight. Were their views given consideration before the decision and order issued? We do not know. Perhaps additional time and review of the concurrence and partial dissents in this case might have helped to avoid a 9-0 reversal by the Supreme Court.

## **5. Recommendations**

We respectfully request that the Commission undertake a public examination of the errors made in the *Keenan* case and adopt the following measures:

- Update the Commission website including all summaries to fairly and prominently reflect the reversal of the Commission and the discipline imposed on Judge Keenan
- Issue a press release with the same circulation as any release made at the time charges were made against Judge Keenan by the Commission and commit to do so in all instances in which its decisions are modified or reversed by the Supreme Court
- Publicly acknowledge the role of the Commission in combating racism and promoting diversity, equity and inclusion in the bench and bar as outlined by the Supreme Court in its *Open Letter to the Judiciary and Legal Community*
- Require all Commission members read the Supreme Court's *Open Letter* and all Commission members undertake a thorough program of implicit bias training
- If legally permissible, reimburse Judge Keenan's legal fees

- Conduct a review and hearings on the question of procedural and statutory reforms to promote and assure due process is provided to judges in all Commission proceedings

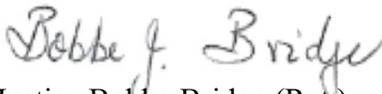
We know you share the goal of promoting an independent, fair and impartial judiciary deserving of the public confidence. Thank you for the serious consideration we trust you will give these comments and recommendations.



Aneelah Afzali, Esq.  
Executive Director  
AMERICAN MUSLIM EMPOWERMENT  
NETWORK



Jeffrey Beaver  
MILLER NASH LLP



Justice Bobbe Bridge (Ret.)



Annette Clark  
Dean and Professor of Law  
SEATTLE UNIVERSITY SCHOOL OF LAW



Joanna Boisen

KING COUNTY BAR ASSOCIATION



Kaustuv M. Das  
President, 2021-2022



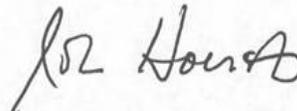
Merf Elman  
Executive Director  
COLUMBIA LEGAL SERVICES



Thomas M. Fitzpatrick  
TALMADGE/FITZPATRICK PLLC



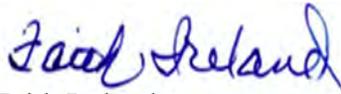
Gabriel S. Galanda  
GALANDA BROADMAN PLLC



John Hoerster  
FOSTER GARVEY PC



Mark A. Hutcheson



Faith Ireland  
Justice Washington Supreme Court (Ret.)



J. Richard Manning  
Former President  
WASHINGTON STATE BAR ASSOCIATION



Patrick McIntyre

John McKay  
Former President  
KING COUNTY BAR ASSOCIATION

Salvador A. Mungia  
GORDON THOMAS HONEYWELL

Fred Rivera  
Executive Vice President and  
General Counsel for Seattle Mariners

Steven R. Rovig  
Former President  
KING COUNTY BAR ASSOCIATION

Sharon A. Sakamoto

Ada Shen-Jaffe

Hon. Tarra Simmons  
Washington State Representative

Justice Philip A. Talmadge (Ret.)

John Strait  
Emeritus Professor of Law  
SEATTLE UNIVERSITY SCHOOL OF LAW

Michael D. McKay  
Former U.S. Attorney, Western District of  
Washington, 1989-93

César E. Torres  
Executive Director  
NORTHWEST JUSTICE PROJECT

cc:

- The Honorable Jay Inslee, Governor of Washington
- Washington State Bar Association
- Presiding Judge, Washington Court of Appeals
- Superior Court Judges' Association
- District and Municipal Court Judges' Association

# 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



**Francis Adewale**  
Governor District 5



**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 <sup>1</sup>	Yes	Majority
2. Adjourn	Closes the meeting	No	Yes	No	No	Majority
3. Recess	Establishes a brief break	No	Yes	No <sup>2</sup>	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 <sup>3</sup>
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 <sup>4</sup>	No	Majority
12. Amend a motion or resolution (primary amendment)	Proposes a change to a main motion	No	Yes	Yes <sup>4</sup>	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*



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## 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](mailto: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**  
**BAR ASSOCIATION**

# **Financial Reports**

**(Unaudited)**

**Year to Date May 31, 2022**

**Prepared by**

**Maggie Yu, Interim Finance Director & Darshita Patel, Accountant**

**Submitted by**

**Maggie Yu, Interim Finance Director**

**June 17, 2022**

**Washington State Bar Association Financial Summary  
Compared to Fiscal Year 2022 Budget  
For the Period from May 1, 2022 to May 31, 2022**

Category	Actual Revenues	Budgeted Revenues	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
Access to Justice	-	-	107,867	159,324	7,866	49,295	115,734	208,619	(115,734)	(208,619)
Administration	13,686	5,160	717,352	1,076,157	508	16,550	717,860	1,092,707	(704,174)	(1,087,547)
Admissions/Bar Exam	1,094,290	1,301,640	604,369	895,816	143,392	391,721	747,760	1,287,537	346,530	14,103
Advancement FTE	-	-	228,676	344,155	-	6,400	228,676	350,555	(228,676)	(350,555)
Bar News	417,860	643,700	226,562	338,752	205,062	430,870	431,624	769,622	(13,764)	(125,922)
Board of Governors	-	-	112,969	174,853	143,230	301,900	256,198	476,753	(256,198)	(476,753)
Character & Fitness Board	-	-	7,148	10,451	3,379	20,700	10,527	31,151	(10,527)	(31,151)
Communications Strategies	1,229	-	415,394	643,706	26,685	82,597	442,078	726,303	(440,850)	(726,303)
Communications Strategies FTE	-	-	148,622	223,276	-	-	148,622	223,276	(148,622)	(223,276)
Discipline	85,453	105,877	3,770,061	5,787,933	88,324	216,721	3,858,385	6,004,654	(3,772,932)	(5,808,777)
Diversity	135,000	145,374	192,982	288,197	13,136	150,515	206,118	438,712	(71,118)	(293,338)
EJD FTE	-	-	141,375	181,312	-	-	141,375	181,312	(141,375)	(181,312)
Foundation	-	-	82,849	123,667	1,002	5,000	83,850	128,667	(83,850)	(128,667)
Human Resources	-	-	308,180	459,421	-	-	308,180	459,421	(308,180)	(459,421)
Law Clerk Program	190,709	222,500	79,067	114,093	-	8,350	79,067	122,443	111,642	100,057
Legislative	-	-	147,093	241,985	12,181	29,950	159,275	271,935	(159,275)	(271,935)
Legal Lunchbox	41,389	22,000	30,047	50,783	-	1,700	30,047	52,483	11,342	(30,483)
Licensing and Membership Records	313,218	378,180	396,285	587,026	26,329	19,284	422,614	606,309	(109,396)	(228,129)
Licensing Fees	11,295,494	16,579,802	-	-	-	-	0	11,295,494	16,579,802	16,579,802
Limited License Legal Technician	14,783	29,961	48,455	67,783	8,289	30,000	56,744	97,783	(41,962)	(67,822)
Limited Practice Officers	158,057	208,728	68,094	94,583	6,562	31,335	74,655	125,917	83,401	82,811
Mandatory CLE	1,169,500	1,209,750	474,294	656,431	19,261	35,666	493,555	692,097	675,945	517,653
Member Wellness Program	6,750	7,000	124,087	216,105	10,026	14,962	134,113	231,067	(127,363)	(224,067)
Member Services & Engagement	53,080	10,800	271,354	411,463	2,881	32,550	274,235	444,013	(221,154)	(433,213)
Mini CLE	-	-	66,661	111,706	-	-	66,661	111,706	(66,661)	(111,706)
New Member Education	37,146	111,500	37,501	94,289	-	5,500	37,501	99,789	(20,355)	11,711
Office of General Counsel	976	-	647,509	964,701	8,197	31,337	655,706	996,039	(654,731)	(996,039)
Office of the Executive Director	-	-	334,096	481,789	3,448	-	337,544	595,200	(337,544)	(595,200)
GC-Disciplinary Board	-	-	116,344	165,580	53,690	136,711	170,034	302,291	(170,034)	(302,291)
Practice of Law Board	-	-	47,927	72,486	-	12,000	47,927	84,486	(47,927)	(84,486)
Practice Management Assistance	226	38,450	-	-	72,488	137,500	72,488	137,500	(72,262)	(99,050)
Professional Responsibility Program	-	-	184,432	273,922	513	8,263	184,945	282,184	(184,945)	(282,184)
Public Service Programs	130,000	130,000	99,808	145,402	134,232	258,280	234,400	403,682	(104,040)	(273,682)
Publication and Design Services	-	-	70,964	102,273	4,200	4,300	75,164	106,573	(75,164)	(106,573)
Regulatory Services FTE	-	-	333,668	504,908	-	9,000	333,668	513,908	(333,668)	(513,908)
Sections Administration	360,631	286,875	182,394	281,572	5,133	8,755	187,527	290,307	173,104	(3,432)
Service Center	68,806	167,600	433,705	641,836	4,985	10,600	438,690	652,436	(438,690)	(652,436)
Volunteer Engagement	-	-	61,967	94,057	1,356	20,223	63,323	114,280	(63,323)	(114,280)
Technology	-	-	1,211,600	1,813,143	-	-	1,211,600	1,813,143	(1,211,600)	(1,813,143)
<b>Subtotal General Fund</b>	<b>15,519,477</b>	<b>21,437,297</b>	<b>12,551,758</b>	<b>18,894,934</b>	<b>1,006,354</b>	<b>2,631,926</b>	<b>13,558,112</b>	<b>21,526,859</b>	<b>1,961,365</b>	<b>(89,563)</b>
Expenses using reserve funds	-	-	-	-	-	-	-	-	-	-
<b>Total General Fund - Net Result from Operations</b>									<b>1,961,365</b>	<b>(89,563)</b>
<b>Percentage of Budget</b>	<b>72%</b>		<b>1</b>		<b>38%</b>		<b>63%</b>			
CLE-Seminars and Products	1,416,814	1,904,985	681,371	1,016,093	66,709	463,396	748,280	1,479,489	668,534	425,496
CLE - Deskbooks	68,806	167,600	139,817	210,826	7,766	71,815	147,583	282,641	(78,778)	(115,041)
Total CLE	1,485,620	2,072,585	821,188	1,226,919	74,475	535,211	895,863	1,762,130	589,756	310,455
<b>Percentage of Budget</b>	<b>72%</b>		<b>67%</b>		<b>14%</b>		<b>51%</b>			
Total All Sections	602,997	637,652	-	-	441,899	899,652	441,899	899,652	161,098	(262,000)
Client Protection Fund-Restricted	701,240	830,253	107,767	156,815	20,893	503,860	128,660	660,675	572,580	169,578
<b>Totals</b>	<b>18,309,334</b>	<b>24,977,787</b>	<b>13,480,914</b>	<b>20,278,667</b>	<b>1,543,621</b>	<b>4,570,648</b>	<b>15,024,534</b>	<b>24,849,315</b>	<b>3,284,800</b>	<b>128,472</b>
<b>Percentage of Budget</b>	<b>73%</b>		<b>66%</b>		<b>34%</b>		<b>60%</b>			

	Fund Balances Sept. 30, 2021	2022 Budgeted Fund Balances	Fund Balances Year to date
<b>Restricted Funds:</b>			
Client Protection Fund	4,046,246	4,215,824	4,618,826
<b>Board-Designated Funds (Non-General Fund):</b>			
CLE Fund Balance	648,792	959,247	1,238,548
Section Funds	1,508,843	1,246,843	1,669,941
<b>Board-Designated Funds (General Fund):</b>			
Operating Reserve Fund	1,500,000	1,500,000	1,500,000
Facilities Reserve Fund	1,050,000	1,050,000	1,050,000
<b>Unrestricted Funds (General Fund):</b>			
Unrestricted General Fund	4,522,174	4,432,611	6,483,539
<b>Total General Fund Balance</b>	<b>7,072,174</b>	<b>6,982,611</b>	<b>9,033,539</b>
<b>Net Change in Total General Fund Balance</b>		<b>(89,563)</b>	<b>1,961,365</b>
<b>Total Fund Balance</b>	<b>13,276,054</b>	<b>13,404,526</b>	<b>16,560,854</b>
<b>Net Change in Fund Balance</b>		<b>128,472</b>	<b>3,284,800</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>LICENSE FEES</b>						
<b>REVENUE:</b>						
LICENSE FEES	16,579,802	1,423,310	11,295,494	5,284,307	68%	242,293
<b>TOTAL REVENUE:</b>	<b>16,579,802</b>	<b>1,423,310</b>	<b>11,295,494</b>	<b>5,284,307</b>	<b>68%</b>	<b>242,293</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>ACCESS TO JUSTICE</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
SURVEYS	100	-	-	100	0%	67
ATJ BOARD RETREAT	2,000	-	-	2,000	0%	1,333
LEADERSHIP TRAINING	2,000	158	2,000	0	100%	(667)
ATJ BOARD EXPENSE	24,000	-	5,104	18,896	21%	10,896
STAFF TRAVEL/PARKING	2,700	188	188	2,512	7%	1,612
STAFF CONFERENCE & TRAINING	2,875	200	350	2,525	12%	1,567
STAFF MEMBERSHIP DUES	120	-	-	120	0%	80
PUBLIC DEFENSE	6,000	225	225	5,775	4%	3,775
RECEPTION/FORUM EXPENSE	9,500	-	-	9,500	0%	6,333
<b>TOTAL DIRECT EXPENSES:</b>	<b>49,295</b>	<b>770</b>	<b>7,866</b>	<b>41,429</b>	<b>16%</b>	<b>24,997</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.30 FTE)	88,704	7,056	61,635	27,068	69%	(2,499)
BENEFITS EXPENSE	32,556	2,551	21,561	10,995	66%	143
OTHER INDIRECT EXPENSE	38,065	2,486	24,671	13,394	65%	705
<b>TOTAL INDIRECT EXPENSES:</b>	<b>159,324</b>	<b>12,093</b>	<b>107,867</b>	<b>51,457</b>	<b>68%</b>	<b>(1,651)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>208,619</b>	<b>12,864</b>	<b>115,734</b>	<b>92,886</b>	<b>55%</b>	<b>23,346</b>
<b>NET INCOME (LOSS):</b>	<b>(208,619)</b>	<b>(12,864)</b>	<b>(115,734)</b>	<b>(92,886)</b>	<b>55%</b>	<b>23,346</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>ADMINISTRATION</b>						
<b>REVENUE:</b>						
INTEREST INCOME	5,160	8,050	13,457	(8,297)	261%	10,017
MISCELLANEOUS	-	229	229	(229)		229
<b>TOTAL REVENUE:</b>	<b>5,160</b>	<b>8,279</b>	<b>13,686</b>	<b>(8,526)</b>	<b>265%</b>	<b>10,246</b>
<b>DIRECT EXPENSES:</b>						
CONSULTING SERVICES	12,000	-	-	12,000	0%	8,000
STAFF TRAVEL/PARKING	4,200	244	326	3,874	8%	2,474
STAFF CONFERENCE & TRAINING	350	-	-	350	0%	233
MISCELLANEOUS	-	182	182	(182)		(182)
<b>TOTAL DIRECT EXPENSES:</b>	<b>16,550</b>	<b>426</b>	<b>508</b>	<b>16,042</b>	<b>3%</b>	<b>10,525</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (6.92 FTE)	686,355	45,798	460,718	225,638	67%	(3,147)
BENEFITS EXPENSE	187,178	14,921	125,826	61,352	67%	(1,041)
OTHER INDIRECT EXPENSE	202,623	13,186	130,808	71,815	65%	4,274
<b>TOTAL INDIRECT EXPENSES:</b>	<b>1,076,157</b>	<b>73,904</b>	<b>717,352</b>	<b>358,805</b>	<b>67%</b>	<b>86</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,092,707</b>	<b>74,330</b>	<b>717,860</b>	<b>374,847</b>	<b>66%</b>	<b>10,611</b>
<b>NET INCOME (LOSS):</b>	<b>(1,087,547)</b>	<b>(66,050)</b>	<b>(704,174)</b>	<b>(383,373)</b>	<b>65%</b>	<b>20,858</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>ADMISSIONS</b>						
<b>REVENUE:</b>						
EXAM SOFT REVENUE	-	-	6,995	(6,995)		6,995
BAR EXAM FEES	1,242,000	66,485	1,037,335	204,665	84%	209,335
RULE 9/LEGAL INTERN FEES	12,000	3,050	8,900	3,100	74%	900
SPECIAL ADMISSIONS	47,640	3,720	41,060	6,580	86%	9,300
<b>TOTAL REVENUE:</b>	<b>1,301,640</b>	<b>73,255</b>	<b>1,094,290</b>	<b>207,350</b>	<b>84%</b>	<b>226,530</b>
<b>DIRECT EXPENSES:</b>						
POSTAGE	1,800	-	-	1,800	0%	1,200
STAFF TRAVEL/PARKING	14,000	611	6,233	7,767	45%	3,100
STAFF MEMBERSHIP DUES	1,600	-	-	1,600	0%	1,067
SUPPLIES	1,000	539	2,710	(1,710)	271%	(2,043)
FACILITY, PARKING, FOOD	99,500	49	38,679	60,821	39%	27,655
EXAMINER FEES	36,000	-	11,500	24,500	32%	12,500
UBE EXMINATIONS	126,900	-	31,420	95,480	25%	53,180
BOARD OF BAR EXAMINERS	23,000	420	4,251	18,749	18%	11,082
BAR EXAM PROCTORS	27,000	-	13,468	13,532	50%	4,532
DISABILITY ACCOMMODATIONS	20,000	1,500	10,086	9,914	50%	3,247
CHARACTER & FITNESS INVESTIGATIONS	1,000	-	59	941	6%	607
LAW SCHOOL VISITS	1,450	-	-	1,450	0%	967
DEPRECIATION-SOFTWARE	19,524	2,038	16,370	3,154	84%	(3,354)
STAFF CONFERENCE & TRAINING	15,000	(598)	6,645	8,355	44%	3,355
ONLINE LEGAL RESEARCH	3,790	-	1,890	1,900	50%	637
LAW LIBRARY	158	-	81	77	51%	25
<b>TOTAL DIRECT EXPENSES:</b>	<b>391,721</b>	<b>4,559</b>	<b>143,392</b>	<b>248,330</b>	<b>37%</b>	<b>117,756</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (6.90 FTE)	525,082	40,078	361,076	164,006	69%	(11,021)
BENEFITS EXPENSE	168,696	13,292	112,755	55,940	67%	(292)
OTHER INDIRECT EXPENSE	202,038	13,157	130,537	71,501	65%	4,155
<b>TOTAL INDIRECT EXPENSES:</b>	<b>895,816</b>	<b>66,528</b>	<b>604,369</b>	<b>291,447</b>	<b>67%</b>	<b>(7,158)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,287,537</b>	<b>71,087</b>	<b>747,760</b>	<b>539,777</b>	<b>58%</b>	<b>110,598</b>
<b>NET INCOME (LOSS):</b>	<b>14,103</b>	<b>2,168</b>	<b>346,530</b>	<b>(332,427)</b>	<b>2457%</b>	<b>337,128</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>ADVANCEMENT FTE</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
STAFF CONFERENCE & TRAINING	6,400	-	-	6,400	0%	4,267
<b>TOTAL DIRECT EXPENSES:</b>	<b>6,400</b>	<b>-</b>	<b>-</b>	<b>6,400</b>	<b>0%</b>	<b>4,267</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.90 FTE)	224,045	18,604	149,819	74,226	67%	(455)
BENEFITS EXPENSE	64,623	5,197	43,014	21,609	67%	68
OTHER INDIRECT EXPENSE	55,487	3,617	35,843	19,644	65%	1,149
<b>TOTAL INDIRECT EXPENSES:</b>	<b>344,155</b>	<b>27,418</b>	<b>228,676</b>	<b>115,479</b>	<b>66%</b>	<b>761</b>
<b>TOTAL ALL EXPENSES:</b>	<b>350,555</b>	<b>27,418</b>	<b>228,676</b>	<b>121,879</b>	<b>65%</b>	<b>5,028</b>
<b>NET INCOME (LOSS):</b>	<b>(350,555)</b>	<b>(27,418)</b>	<b>(228,676)</b>	<b>(121,879)</b>	<b>65%</b>	<b>5,028</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>BAR NEWS</b>						
<b>REVENUE:</b>						
ROYALTIES	2,000	2,620	3,867	(1,867)	193%	2,534
DISPLAY ADVERTISING	450,000	-	223,637	226,363	50%	(76,363)
SUBSCRIPT/SINGLE ISSUES	200	36	72	128	36%	(61)
CLASSIFIED ADVERTISING	5,000	150	491	4,509	10%	(2,842)
GEN ANNOUNCEMENTS	14,000	-	7,802	6,198	56%	(1,532)
PROF ANNOUNCEMENTS	22,500	-	15,323	7,177	68%	323
JOB TARGET ADVERTISING	150,000	13,562	166,668	(16,668)	111%	66,668
<b>TOTAL REVENUE:</b>	<b>643,700</b>	<b>16,368</b>	<b>417,860</b>	<b>225,840</b>	<b>65%</b>	<b>(11,273)</b>
<b>DIRECT EXPENSES:</b>						
POSTAGE	100,000	-	66,869	33,131	67%	(202)
PRINTING, COPYING & MAILING	230,000	-	136,213	93,787	59%	17,120
DIGITAL/ONLINE DEVELOPMENT	1,500	-	160	1,340	11%	840
GRAPHICS/ARTWORK	200	-	-	200	0%	133
OUTSIDE SALES EXPENSE	98,000	-	1,730	96,270	2%	63,603
EDITORIAL ADVISORY COMMITTEE	500	-	-	500	0%	333
STAFF CONFERENCE & TRAINING	350	-	-	350	0%	233
STAFF MEMBERSHIP DUES	135	-	-	135	0%	90
SUBSCRIPTIONS	185	-	90	95	49%	33
<b>TOTAL DIRECT EXPENSES:</b>	<b>430,870</b>	<b>-</b>	<b>205,062</b>	<b>225,808</b>	<b>48%</b>	<b>82,185</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (2.76 FTE)	203,639	16,602	137,422	66,216	67%	(1,663)
BENEFITS EXPENSE	54,298	4,303	36,868	17,431	68%	(669)
OTHER INDIRECT EXPENSE	80,815	5,270	52,272	28,543	65%	1,604
<b>TOTAL INDIRECT EXPENSES:</b>	<b>338,752</b>	<b>26,175</b>	<b>226,562</b>	<b>112,190</b>	<b>67%</b>	<b>(728)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>769,622</b>	<b>26,175</b>	<b>431,624</b>	<b>337,998</b>	<b>56%</b>	<b>81,457</b>
<b>NET INCOME (LOSS):</b>	<b>(125,922)</b>	<b>(9,806)</b>	<b>(13,764)</b>	<b>(112,158)</b>	<b>11%</b>	<b>70,184</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>BOARD OF GOVERNOR</b>						
<b>REVENUE:</b>						
	_____	_____	_____	_____	_____	_____
<b>TOTAL REVENUE:</b>	-	-	-	-	-	-
<b>DIRECT EXPENSES:</b>						
	_____	_____	_____	_____	_____	_____
BOG MEETINGS	143,000	23,203	65,044	77,956	45%	30,290
BOG COMMITTEES' EXPENSES	20,000	-	202	19,798	1%	13,132
BOG RETREAT	15,000	-	66	14,934	0%	9,934
BOG CONFERENCE ATTENDANCE	25,000	13,728	30,813	(5,813)	123%	(14,146)
BOG TRAVEL & OUTREACH	25,000	569	5,139	19,861	21%	11,528
LEADERSHIP TRAINING	37,000	-	20,837	16,163	56%	3,830
BOG ELECTIONS	26,900	-	13,700	13,200	51%	4,233
MEMBER OUTREACH/ETHOS MEETINGS	-	30	7,431	(7,431)		(7,431)
BOG MEETING TRAVEL	-	(56)	-	-		-
PRESIDENT'S DINNER	10,000	-	-	10,000	0%	6,667
<b>TOTAL DIRECT EXPENSES:</b>	<b>301,900</b>	<b>37,474</b>	<b>143,230</b>	<b>158,670</b>	<b>47%</b>	<b>58,037</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.40 FTE)	101,557	8,429	64,813	36,744	64%	2,892
BENEFITS EXPENSE	32,303	2,543	21,621	10,682	67%	(86)
OTHER INDIRECT EXPENSE	40,993	2,675	26,534	14,459	65%	794
<b>TOTAL INDIRECT EXPENSES:</b>	<b>174,853</b>	<b>13,647</b>	<b>112,969</b>	<b>61,885</b>	<b>65%</b>	<b>3,600</b>
<b>TOTAL ALL EXPENSES:</b>	<b>476,753</b>	<b>51,121</b>	<b>256,198</b>	<b>220,555</b>	<b>54%</b>	<b>61,637</b>
<b>NET INCOME (LOSS):</b>	<b>(476,753)</b>	<b>(51,121)</b>	<b>(256,198)</b>	<b>(220,555)</b>	<b>54%</b>	<b>61,637</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>CHARACTER &amp; FITNESS BOARD</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>		<u>-</u>
<b>DIRECT EXPENSES:</b>						
CHARACTER & FITNESS BOARD EXP	5,700	-	123	5,577	2%	3,677
COURT REPORTERS	15,000	-	3,256	11,744	22%	6,744
<b>TOTAL DIRECT EXPENSES:</b>	<u>20,700</u>	<u>-</u>	<u>3,379.42</u>	<u>17,321</u>	<u>16%</u>	<u>10,421</u>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.05 FTE)	6,757	567	4,596	2,161	68%	(92)
BENEFITS EXPENSE	2,230	177	1,490	740	67%	(4)
OTHER INDIRECT EXPENSE	1,464	107	1,061	403	72%	(85)
<b>TOTAL INDIRECT EXPENSES:</b>	<u>10,451</u>	<u>852</u>	<u>7,148</u>	<u>3,303</u>	<u>68%</u>	<u>(180)</u>
<b>TOTAL ALL EXPENSES:</b>	<u>31,151</u>	<u>852</u>	<u>10,527</u>	<u>20,624</u>	<u>34%</u>	<u>10,240</u>
<b>NET INCOME (LOSS):</b>	<u>(31,151)</u>	<u>(852)</u>	<u>(10,527)</u>	<u>(20,624)</u>	<u>34%</u>	<u>10,240</u>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>LAW CLERK PROGRAM</b>						
<b>REVENUE:</b>						
LAW CLERK FEES	220,000	10,002	189,109	30,891	86%	42,442
LAW CLERK APPLICATION FEES	2,500	100	1,600	900	64%	(67)
<b>TOTAL REVENUE:</b>	<b>222,500</b>	<b>10,102</b>	<b>190,709</b>	<b>31,791</b>	<b>86%</b>	<b>42,376</b>
<b>DIRECT EXPENSES:</b>						
SUBSCRIPTIONS	250	-	-	250	0%	167
CHARACTER & FITNESS INVESTIGATIONS	100	-	-	100	0%	67
LAW CLERK BOARD EXPENSE	7,000	-	-	7,000	0%	4,667
LAW CLERK OUTREACH	1,000	-	-	1,000	0%	667
<b>TOTAL DIRECT EXPENSES:</b>	<b>8,350</b>	<b>-</b>	<b>-</b>	<b>8,350</b>	<b>0%</b>	<b>5,567</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.93 FTE)	66,394	5,851	47,741	18,653	72%	(3,478)
BENEFITS EXPENSE	20,614	1,625	13,814	6,799	67%	(72)
OTHER INDIRECT EXPENSE	27,085	1,765	17,513	9,572	65%	544
<b>TOTAL INDIRECT EXPENSES:</b>	<b>114,093</b>	<b>9,241</b>	<b>79,067</b>	<b>35,025</b>	<b>69%</b>	<b>(3,006)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>122,443</b>	<b>9,241</b>	<b>79,067</b>	<b>43,375</b>	<b>65%</b>	<b>2,561</b>
<b>NET INCOME (LOSS):</b>	<b>100,057</b>	<b>860</b>	<b>111,642</b>	<b>(11,584)</b>	<b>112%</b>	<b>44,937</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>CONTINUING LEGAL EDUCATION (CLE)</b>						
<b>REVENUE:</b>						
SEMINAR REGISTRATIONS	850,000	62,198	398,928	451,072	47%	(167,739)
SEMINAR-EXHIB/SPNSR/ETC	20,000	-	(27,224)	47,224	-136%	(40,558)
SHIPPING & HANDLING	-	18	117	(117)		117
COURSEBOOK SALES	10,000	115	835	9,165	8%	(5,832)
MP3 AND VIDEO SALES	1,024,985	28,851	1,044,159	(19,174)	102%	360,835
<b>TOTAL REVENUE:</b>	<b>1,904,985</b>	<b>91,182</b>	<b>1,416,814</b>	<b>488,171</b>	<b>74%</b>	<b>(208,296)</b>
<b>DIRECT EXPENSES:</b>						
POSTAGE - FLIERS/CATALOGS	8,000	-	-	8,000	0%	5,333
DEPRECIATION	1,308	109	876	432	67%	(4)
ONLINE EXPENSES	50,000	3,728	34,325	15,675	69%	(991)
ACCREDITATION FEES	3,000	(48)	1,940	1,060	65%	60
SEMINAR BROCHURES	20,000	-	-	20,000	0%	13,333
FACILITIES	196,200	6,910	22,615	173,585	12%	108,185
SURVEYS	300	-	-	300	0%	200
DISABILITY ACCOMMODATIONS	2,000	-	-	2,000	0%	1,333
SPEAKERS & PROGRAM DEVELOP	50,000	427	1,271	48,729	3%	32,062
SPLITS TO SECTIONS	110,000	-	-	110,000	0%	73,333
HONORARIA	1,500	300	3,000	(1,500)	200%	(2,000)
CLE SEMINAR COMMITTEE	250	-	-	250	0%	167
STAFF TRAVEL/PARKING	15,000	1,380	1,380	13,620	9%	8,620
STAFF CONFERENCE & TRAINING	700	-	-	700	0%	467
STAFF MEMBERSHIP DUES	1,338	-	1,145	193	86%	(253)
COST OF SALES - COURSEBOOKS	1,500	9	74	1,426	5%	926
A/V DEVELOP COSTS (RECORDING)	2,000	-	-	2,000	0%	1,333
POSTAGE & DELIVERY-COURSEBOOKS	-	8	83	(83)		(83)
STAFF TRAVEL/PARKING	300	-	-	300	0%	200
<b>TOTAL DIRECT EXPENSES:</b>	<b>463,396</b>	<b>12,823</b>	<b>66,709</b>	<b>396,687</b>	<b>14%</b>	<b>242,222</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (8.12 FTE)	563,758	48,606	386,988	176,770	69%	(11,149)
BENEFITS EXPENSE	213,333	16,710	140,950	72,383	66%	1,272
OTHER INDIRECT EXPENSE	239,002	15,487	153,633	85,369	64%	5,702
<b>TOTAL INDIRECT EXPENSES:</b>	<b>1,016,093</b>	<b>80,804</b>	<b>681,571</b>	<b>334,522</b>	<b>67%</b>	<b>(4,176)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,479,489</b>	<b>93,627</b>	<b>748,280</b>	<b>731,208</b>	<b>51%</b>	<b>238,045</b>
<b>NET INCOME (LOSS):</b>	<b>425,496</b>	<b>(2,445)</b>	<b>668,534</b>	<b>(243,038)</b>	<b>157%</b>	<b>384,870</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>COMMUNICATION STRATEGIES FTE</b>						
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.00 FTE)	154,319	12,830	103,445	50,875	67%	(565)
BENEFITS EXPENSE	39,675	3,248	26,338	13,338	66%	112
OTHER INDIRECT EXPENSE	29,281	1,899	18,839	10,441	64%	681.19
TOTAL INDIRECT EXPENSES:	<u>223,276</u>	<u>17,977</u>	<u>148,622</u>	<u>74,654</u>	<u>67%</u>	<u>229</u>
NET INCOME (LOSS):	<u>(223,276)</u>	<u>(17,977)</u>	<u>(148,622)</u>	<u>(74,654)</u>	<u>67%</u>	<u>229</u>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>COMMUNICATION STRATEGIES</b>						
<b>REVENUE:</b>						
SPONSORSHIPS	-	-	1,000	(1,000)		1,000
WSBA LOGO MERCHANDISE SALES	-	-	229	(229)		229
<b>TOTAL REVENUE:</b>	<b>-</b>	<b>-</b>	<b>1,229</b>	<b>(1,229)</b>		<b>1,229</b>
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	3,888	1,241	2,638	1,250	68%	(46)
SURVEYS	300	-	-	300	0%	200
STAFF MEMBERSHIP DUES	972	90	605	367	62%	43
SUBSCRIPTIONS	3,416	416	2,619	797	77%	(342)
DIGITAL/ONLINE DEVELOPMENT	614	-	331	283	54%	79
APEX DINNER	25,000	-	7,068	17,932	28%	9,598
50 YEAR MEMBER TRIBUTE LUNCH	11,200	-	10,507	693	94%	(3,040)
BAR OUTREACH	16,000	-	1,303	14,697	8%	9,364
COMMUNICATIONS OUTREACH	15,000	38	914	14,086	6%	9,086
STAFF CONFERENCE & TRAINING	5,000	91	131	4,869	3%	3,202
TELEPHONE	1,056	45	569	487	54%	135
CONFERENCE CALLS	151	-	-	151	0%	101
<b>TOTAL DIRECT EXPENSES:</b>	<b>82,597</b>	<b>1,922</b>	<b>26,685</b>	<b>55,913</b>	<b>32%</b>	<b>28,380</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (5.17 FTE)	367,597	29,476	234,696	132,901	64%	10,369
BENEFITS EXPENSE	124,727	9,798	83,052	41,675	67%	99
OTHER INDIRECT EXPENSE	151,382	9,844	97,646	53,736	65%	3,276
<b>TOTAL INDIRECT EXPENSES:</b>	<b>643,706</b>	<b>49,117</b>	<b>415,394</b>	<b>228,312</b>	<b>65%</b>	<b>13,743</b>
<b>TOTAL ALL EXPENSES:</b>	<b>726,303</b>	<b>51,039</b>	<b>442,078</b>	<b>284,225</b>	<b>61%</b>	<b>42,124</b>
<b>NET INCOME (LOSS):</b>	<b>(726,303)</b>	<b>(51,039)</b>	<b>(440,850)</b>	<b>(285,453)</b>	<b>61%</b>	<b>43,352</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>CLIENT PROTECTION FUND</b>						
<b>REVENUE:</b>						
CPF RESTITUTION	30,000	1,502	6,511	23,489	22%	(13,489)
CPF MEMBER ASSESSMENTS	795,753	6,316	687,346	108,407	86%	156,844
INTEREST INCOME	4,500	1,836	7,383	(2,883)	164%	4,383
<b>TOTAL REVENUE:</b>	<b>830,253</b>	<b>9,654</b>	<b>701,240</b>	<b>129,013</b>	<b>84%</b>	<b>147,738</b>
<b>DIRECT EXPENSES:</b>						
BANK FEES - WELLS FARGO	2,160	180	1,376	784	64%	64
GIFTS TO INJURED CLIENTS	500,000	12,000	19,420	480,580	4%	313,913
CPF BOARD EXPENSES	1,500	-	97	1,403	6%	903
STAFF MEMBERSHIP DUES	200	-	-	200	0%	133
<b>TOTAL DIRECT EXPENSES:</b>	<b>503,860</b>	<b>12,180</b>	<b>20,893</b>	<b>482,967</b>	<b>4%</b>	<b>315,013</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.23 FTE)	88,000	7,751	62,768	25,231	71%	(4,102)
BENEFITS EXPENSE	32,800	2,577	21,648	11,152	66%	218
OTHER INDIRECT EXPENSE	36,015	2,354	23,350	12,665	65%	660
<b>TOTAL INDIRECT EXPENSES:</b>	<b>156,815</b>	<b>12,682</b>	<b>107,767</b>	<b>49,048</b>	<b>69%</b>	<b>(3,223)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>660,675</b>	<b>24,862</b>	<b>128,660</b>	<b>532,015</b>	<b>19%</b>	<b>311,790</b>
<b>NET INCOME (LOSS):</b>	<b>169,578</b>	<b>(15,209)</b>	<b>572,580</b>	<b>(403,002)</b>	<b>338%</b>	<b>459,528</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>DESKBOOKS</b>						
<b>REVENUE:</b>						
DESKBOOK SALES	82,000	6,384	12,448	69,552	15%	(42,219)
LEXIS/NEXIS ROYALTIES	31,600	19,625	30,751	849	97%	9,684
SECTION PUBLICATION SALES	9,000	1,863	1,863	7,137	21%	(4,137)
CASEMAKER ROYALTIES	45,000	-	23,744	21,256	53%	(6,256)
<b>TOTAL REVENUE:</b>	<b>167,600</b>	<b>27,873</b>	<b>68,806</b>	<b>98,794</b>	<b>41%</b>	<b>(42,928)</b>
<b>DIRECT EXPENSES:</b>						
COST OF SALES - DESKBOOKS	64,000	-	6,414	57,586	10%	36,252
COST OF SALES - SECTION PUBLICATION	2,000	-	80	1,920	4%	1,254
SPLITS TO SECTIONS	3,150	-	11	3,139	0%	2,089
DESKBOOK ROYALTIES	200	-	126	74	63%	7
STAFF CONFRENCES & TRAINING	350	-	-	350	0%	233
ONLINE LEGAL RESEARCH	1,895	-	945	950	50%	318
STAFF MEMBERSHIP DUES	220	-	191	29	87%	(44)
<b>TOTAL DIRECT EXPENSES:</b>	<b>71,815</b>	<b>-</b>	<b>7,766</b>	<b>64,049</b>	<b>11%</b>	<b>40,110</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.50 FTE)	127,954	10,445	85,336	42,618	67%	(33)
BENEFITS EXPENSE	38,951	3,085	26,090	12,861	67%	(123)
OTHER INDIRECT EXPENSE	43,921	2,862	28,392	15,530	65%	889
<b>TOTAL INDIRECT EXPENSES:</b>	<b>210,826</b>	<b>16,392</b>	<b>139,817</b>	<b>71,009</b>	<b>66%</b>	<b>733</b>
<b>TOTAL ALL EXPENSES:</b>	<b>282,641</b>	<b>16,392</b>	<b>147,583</b>	<b>135,057</b>	<b>52%</b>	<b>40,844</b>
<b>NET INCOME (LOSS):</b>	<b>(115,041)</b>	<b>11,481</b>	<b>(78,778)</b>	<b>(36,263)</b>	<b>68%</b>	<b>(2,084)</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>DISCIPLINE</b>						
<b>REVENUE:</b>						
COPY FEES	-	-	36	(36)		36
AUDIT REVENUE	1,877	213	616	1,261	33%	(635)
RECOVERY OF DISCIPLINE COSTS	85,000	8,370	71,635	13,365	84%	14,969
DISCIPLINE HISTORY SUMMARY	15,000	1,830	13,165	1,835	88%	3,165
PRACTICE MONITOR FEES	4,000	-	-	4,000	0%	(2,667)
<b>TOTAL REVENUE:</b>	<b>105,877</b>	<b>10,412</b>	<b>85,453</b>	<b>20,424</b>	<b>81%</b>	<b>14,868</b>
<b>DIRECT EXPENSES:</b>						
PUBLICATIONS PRODUCTION	250	-	-	250	0%	167
STAFF TRAVEL/PARKING	28,000	(164)	8,436	19,564	30%	10,231
STAFF MEMBERSHIP DUES	5,145	205	3,700	1,445	72%	(270)
TELEPHONE	2,550	315	1,459	1,091	57%	241
COURT REPORTERS	31,250	1,403	25,637	5,613	82%	(4,804)
OUTSIDE COUNSEL/AIC	2,000	-	-	2,000	0%	1,333
LITIGATION EXPENSES	26,250	922	7,705	18,545	29%	9,795
DISABILITY EXPENSES	9,000	-	3,500	5,500	39%	2,500
ONLINE LEGAL RESEARCH	55,201	-	27,531	27,670	50%	9,269
LAW LIBRARY	3,606	164	3,676	(70)	102%	(1,272)
TRANSLATION SERVICES	900	-	512	388	57%	88
STAFF CONFERENCE & TRAINING	48,569	747	6,167	42,402	13%	26,212
PRACTICE MONITOR EXPENSE	4,000	-	-	4,000	0%	2,667
<b>TOTAL DIRECT EXPENSES:</b>	<b>216,721</b>	<b>3,592</b>	<b>88,324</b>	<b>128,396</b>	<b>41%</b>	<b>56,156</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (37.00 FTE)	3,658,487	289,427	2,371,335	1,287,152	65%	67,656
BENEFITS EXPENSE	1,054,328	84,368	703,801	350,527	67%	(916)
OTHER INDIRECT EXPENSE	1,075,119	70,053	694,925	380,194	65%	21,821
<b>TOTAL INDIRECT EXPENSES:</b>	<b>5,787,933</b>	<b>443,849</b>	<b>3,770,061</b>	<b>2,017,872</b>	<b>65%</b>	<b>88,561</b>
<b>TOTAL ALL EXPENSES:</b>	<b>6,004,654</b>	<b>447,441</b>	<b>3,858,385</b>	<b>2,146,269</b>	<b>64%</b>	<b>144,718</b>
<b>NET INCOME (LOSS):</b>	<b>(5,898,777)</b>	<b>(437,029)</b>	<b>(3,772,932)</b>	<b>(2,125,844)</b>	<b>64%</b>	<b>159,585</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>DIVERSITY</b>						
<b>REVENUE:</b>						
DONATIONS	135,000	-	135,000	-	100%	45,000
WORK STUDY GRANTS	10,374	-	-	10,374	0%	(6,916)
<b>TOTAL REVENUE:</b>	<b>145,374</b>	<b>-</b>	<b>135,000</b>	<b>10,374</b>	<b>93%</b>	<b>38,084</b>
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	4,000	523	523	3,477	13%	2,144
STAFF MEMBERSHIP DUES	640	-	45	595	7%	382
COMMITTEE FOR DIVERSITY	6,000	358	518	5,482	9%	3,482
DIVERSITY EVENTS & PROJECTS	18,000	81	1,762	16,238	10%	10,238
SURVEYS	50,100	-	-	50,100	0%	33,400
STAFF CONFERENCE & TRAINING	5,400	1,000	1,663	3,737	31%	1,937
CONSULTING SERVICES	66,375	2,175	8,625	57,750	13%	35,625
<b>TOTAL DIRECT EXPENSE:</b>	<b>150,515</b>	<b>4,137</b>	<b>13,136</b>	<b>137,379</b>	<b>9%</b>	<b>87,208</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (2.40 FTE)	167,436	13,290	113,665	53,771	68%	(2,041)
BENEFITS EXPENSE	50,486	3,977	33,944	16,543	67%	(286)
OTHER INDIRECT EXPENSE	70,274	4,574	45,373	24,901	65%	1,476
<b>TOTAL INDIRECT EXPENSES:</b>	<b>288,197</b>	<b>21,841</b>	<b>192,982</b>	<b>95,215</b>	<b>67%</b>	<b>(851)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>438,712</b>	<b>25,977</b>	<b>206,118</b>	<b>232,594</b>	<b>47%</b>	<b>86,357</b>
<b>NET INCOME (LOSS):</b>	<b>(293,338)</b>	<b>(25,977)</b>	<b>(71,118)</b>	<b>(222,220)</b>	<b>24%</b>	<b>124,441</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>EJD FTE</b>						
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.01 FTE)	142,324	11,862	96,153	46,170	68%	(1,271)
BENEFITS EXPENSE	37,253	3,096	26,117	11,136	70%	(1,282)
OTHER INDIRECT EXPENSE	1,735	1,926	19,105	(17,370)	1101%	(17,948)
<b>TOTAL INDIRECT EXPENSES:</b>	<b>181,312</b>	<b>16,884</b>	<b>141,375</b>	<b>39,936</b>	<b>78%</b>	<b>(20,501)</b>
<b>NET INCOME (LOSS):</b>	<b>(181,312)</b>	<b>(16,884)</b>	<b>(141,375)</b>	<b>(39,936)</b>	<b>78%</b>	<b>(20,501)</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>FOUNDATION</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
CONSULTING SERVICES	3,000	-	-	3,000	0%	2,000
PRINTING & COPYING	450	-	-	450	0%	300
STAFF TRAVEL/PARKING	100	337	337	(237)	337%	(271)
SUPPLIES	150	-	75	75	50%	25
BOARD OF TRUSTEES	1,000	-	590	410	59%	77
POSTAGE	300	-	-	300	0%	200
<b>TOTAL DIRECT EXPENSES:</b>	<b>5,000</b>	<b>337</b>	<b>1,002</b>	<b>3,998</b>	<b>20%</b>	<b>2,332</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.00 FTE)	79,925	6,631	53,751	26,174	67%	(468)
BENEFITS EXPENSE	14,461	1,166	10,258	4,203	71%	(617)
OTHER INDIRECT EXPENSE	29,281	1,899	18,839	10,442	64%	681
<b>TOTAL INDIRECT EXPENSES:</b>	<b>123,667</b>	<b>9,695</b>	<b>82,849</b>	<b>40,818</b>	<b>67%</b>	<b>(404)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>128,667</b>	<b>10,033</b>	<b>83,850</b>	<b>44,816</b>	<b>65%</b>	<b>1,927</b>
<b>NET INCOME (LOSS):</b>	<b>(128,667)</b>	<b>(10,033)</b>	<b>(83,850)</b>	<b>(44,816)</b>	<b>65%</b>	<b>1,927</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>HUMAN RESOURCES</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	1,000	386	419	581	42%	248
STAFF MEMBERSHIP DUES	1,000	-	219	781	22%	448
SUBSCRIPTIONS	3,500	-	-	3,500	0%	2,333
STAFF TRAINING- GENERAL	20,000	1,088	3,392	16,609	17%	9,942
RECRUITING AND ADVERTISING	3,000	105	1,661	1,339	55%	339
PAYROLL PROCESSING	50,000	-	30,866	19,134	62%	2,467
SALARY SURVEYS	3,000	-	-	3,000	0%	2,000
CONSULTING SERVICES	-	-	13,513	(13,513)		(13,513)
CONFERENCE CALLS	20	-	-	20	0%	13
TRANSFER TO INDIRECT EXPENSE	(81,520)	(1,578)	(50,070)	(31,450)	61%	(4,277)
<b>TOTAL DIRECT EXPENSES:</b>	-	-	-	-		-
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (3.00 FTE)	275,378	22,742	184,373	91,006	67%	(787)
BENEFITS EXPENSE	101,354	7,980	67,024	34,330	66%	545
OTHER INDIRECT EXPENSE	82,689	5,724	56,783	25,906	69%	(1,657)
<b>TOTAL INDIRECT EXPENSES:</b>	<b>459,421</b>	<b>36,446</b>	<b>308,180</b>	<b>151,241</b>	<b>67%</b>	<b>(1,899)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>459,421</b>	<b>36,446</b>	<b>308,180</b>	<b>151,241</b>	<b>67%</b>	<b>(1,899)</b>
<b>NET INCOME (LOSS):</b>	<b>(459,421)</b>	<b>(36,446)</b>	<b>(308,180)</b>	<b>(151,241)</b>	<b>67%</b>	<b>(1,899)</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>LEGISLATIVE</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	4,700	188	188	4,512	4%	2,946
STAFF MEMBERSHIP DUES	450	-	-	450	0%	300
JUD RECOMMEND COMMITTEE	4,500	-	-	4,500	0%	3,000
SUBSCRIPTIONS	2,000	-	1,985	16	99%	(651)
OLYMPIA RENT	2,500	-	-	2,500	0%	1,667
CONTRACT LOBBYIST	10,000	2,000	10,000	-	100%	(3,333)
LOBBYIST CONTACT COSTS	1,000	-	-	1,000	0%	667
LEGISLATIVE COMMITTEE	2,500	-	9	2,491	0%	1,657
BOG LEGISLATIVE COMMITTEE	300	-	-	300	0%	200
STAFF CONFERENCE & TRAINING	2,000	-	-	2,000	0%	1,333
<b>TOTAL DIRECT EXPENSES:</b>	<b>29,950</b>	<b>2,188</b>	<b>12,181</b>	<b>17,769</b>	<b>41%</b>	<b>7,785</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.70 FTE)	140,478	2,581	80,769	59,708	57%	12,883
BENEFITS EXPENSE	51,730	4,066	34,217	17,512	66%	269
OTHER INDIRECT EXPENSE	49,777	3,237	32,106	17,671	64%	1,079
<b>TOTAL INDIRECT EXPENSES:</b>	<b>241,985</b>	<b>9,883</b>	<b>147,093</b>	<b>94,892</b>	<b>61%</b>	<b>14,230</b>
<b>TOTAL ALL EXPENSES:</b>	<b>271,935</b>	<b>12,071</b>	<b>159,275</b>	<b>112,661</b>	<b>59%</b>	<b>22,015</b>
<b>NET INCOME (LOSS):</b>	<b>(271,935)</b>	<b>(12,071)</b>	<b>(159,275)</b>	<b>(112,661)</b>	<b>59%</b>	<b>22,015</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>LICENSING &amp; MEMBERSHIP RECORDS</b>						
<b>REVENUE:</b>						
STATUS CERTIFICATE FEES	26,300	2,772	20,248	6,052	77%	2,715
INVESTIGATION FEES	22,400	4,300	15,900	6,500	71%	967
PRO HAC VICE	325,000	33,434	274,332	50,668	84%	57,665
MEMBER CONTACT INFORMATION	4,200	384	2,642	1,558	63%	(158)
PHOTO BAR CARD SALES	280	12	96	184	34%	(91)
<b>TOTAL REVENUE:</b>	<b>378,180</b>	<b>40,902</b>	<b>313,218</b>	<b>64,962</b>	<b>83%</b>	<b>61,098</b>
<b>DIRECT EXPENSES:</b>						
DEPRECIATION	384	-	-	384	0%	256
POSTAGE	17,000	1,663	24,352	(7,352)	143%	(13,018)
LICENSING FORMS	1,900	-	1,977	(77)	104%	(711)
<b>TOTAL DIRECT EXPENSES:</b>	<b>19,284</b>	<b>1,663</b>	<b>26,329</b>	<b>(7,045)</b>	<b>137%</b>	<b>(13,473)</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (3.83 FTE)	360,838	29,215	247,681	113,156	69%	(7,123)
BENEFITS EXPENSE	114,188	9,022	76,165	38,023	67%	(40)
OTHER INDIRECT EXPENSE	111,999	7,302	72,438	39,561	65%	2,228
<b>TOTAL INDIRECT EXPENSES:</b>	<b>587,026</b>	<b>45,539</b>	<b>396,285</b>	<b>190,740</b>	<b>68%</b>	<b>(4,935)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>606,309</b>	<b>47,202</b>	<b>422,614</b>	<b>183,695</b>	<b>70%</b>	<b>(18,408)</b>
<b>NET INCOME (LOSS):</b>	<b>(228,129)</b>	<b>(6,300)</b>	<b>(109,396)</b>	<b>(118,734)</b>	<b>48%</b>	<b>42,691</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>LEGAL LUNCHBOX</b>						
<b>REVENUE:</b>						
SPONSORSHIPS	8,000	9,000	9,000	(1,000)	113%	3,667
MP3 SALES	4,620	-	7,056	(2,436)	153%	3,976
DIGITAL VIDEO SALES	9,380	441	25,333	(15,953)	270%	19,080
<b>TOTAL REVENUE:</b>	<b>22,000</b>	<b>9,441</b>	<b>41,389</b>	<b>(19,389)</b>	<b>188%</b>	<b>26,722</b>
<b>DIRECT EXPENSES:</b>						
SPEAKERS & DEVELOPMENT	1,500	-	-	1,500	0%	1,000
CONFERENCE CALLS	200	-	-	200	0%	133
<b>TOTAL DIRECT EXPENSES:</b>	<b>1,700</b>	<b>-</b>	<b>-</b>	<b>1,700</b>	<b>0%</b>	<b>1,133</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.43 FTE)	28,341	783	15,461	12,880	55%	3,433
BENEFITS EXPENSE	9,968	781	6,621	3,348	66%	25
OTHER INDIRECT EXPENSE	12,474	804	7,966	4,508	64%	350
<b>TOTAL INDIRECT EXPENSES:</b>	<b>50,783</b>	<b>2,368</b>	<b>30,047</b>	<b>20,736</b>	<b>59%</b>	<b>3,808</b>
<b>TOTAL ALL EXPENSES:</b>	<b>52,483</b>	<b>2,368</b>	<b>30,047</b>	<b>22,436</b>	<b>57%</b>	<b>4,941</b>
<b>NET INCOME (LOSS):</b>	<b>(30,483)</b>	<b>7,073</b>	<b>11,342</b>	<b>(41,825)</b>	<b>-37%</b>	<b>31,664</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>LIMITED LICENSE LEGAL TECHNICIAN PROGRAM</b>						
<b>REVENUE:</b>						
LLLT LICENSE FEES	14,449	1,309	9,134	5,315	63%	(498)
LLLT LATE LICENSE FEES	1,412	-	99	1,313	7%	(843)
LLLT EXAM FEES	14,100	-	5,550	8,550	39%	(3,850)
<b>TOTAL REVENUE:</b>	<b>29,961</b>	<b>1,309</b>	<b>14,783</b>	<b>15,178</b>	<b>49%</b>	<b>(5,191)</b>
<b>DIRECT EXPENSES:</b>						
LLLT BOARD	21,000	426	3,789	17,211	18%	10,211
LLLT EXAM WRITING	9,000	-	4,500	4,500	50%	1,500
<b>TOTAL DIRECT EXPENSES:</b>	<b>30,000</b>	<b>426</b>	<b>8,289</b>	<b>21,711</b>	<b>28%</b>	<b>11,711</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.48 FTE)	40,070	5,152	30,267	9,803	76%	(3,554)
BENEFITS EXPENSE	13,804	1,089	9,166	4,638	66%	36
OTHER INDIRECT EXPENSE	13,908	909	9,022	4,887	65%	251
<b>TOTAL INDIRECT EXPENSES:</b>	<b>67,783</b>	<b>7,150</b>	<b>48,455</b>	<b>19,328</b>	<b>71%</b>	<b>(3,267)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>97,783</b>	<b>7,575</b>	<b>56,744</b>	<b>41,039</b>	<b>58%</b>	<b>8,444</b>
<b>NET INCOME (LOSS):</b>	<b>(67,822)</b>	<b>(6,267)</b>	<b>(41,962)</b>	<b>41,039</b>	<b>62%</b>	<b>3,253</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>LIMITED PRACTICE OFFICERS</b>						
<b>REVENUE:</b>						
INVESTIGATION FEES	551	100	300	251	54%	(67)
MEMBER LATE FEES	-	150	8,700	(8,700)		8,700
LPO EXAMINATION FEES	28,000	2,500	32,150	(4,150)	115%	13,483
LPO LICENSE FEES	174,077	15,371	114,117	59,961	66%	(1,935)
LPO LATE LICENSE FEES	5,100	60	2,790	2,310	55%	(610)
LPO LICENSE FEES - REINSTATES	1,000	-	-	1,000	0%	(667)
<b>TOTAL REVENUE:</b>	<b>208,728</b>	<b>18,181</b>	<b>158,057</b>	<b>50,672</b>	<b>76%</b>	<b>18,904</b>
<b>DIRECT EXPENSES:</b>						
FACILITY, PARKING, FOOD	9,000	-	-	9,000	0%	6,000
EXAM WRITING	8,400	-	3,463	4,938	41%	2,138
ONLINE LEGAL RESEARCH	1,895	-	945	950	50%	318
LAW LIBRARY	3,840	-	1,959	1,881	51%	601
LPO BOARD	3,000	-	-	3,000	0%	2,000
LPO OUTREACH	5,000	-	-	5,000	0%	3,333
PRINTING & COPYING	200	-	123	77	62%	10
SUPPLIES	-	-	72	(72)		(72)
<b>TOTAL DIRECT EXPENSES:</b>	<b>31,335</b>	<b>-</b>	<b>6,562</b>	<b>24,773</b>	<b>21%</b>	<b>14,328</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.73 FTE)	54,122	7,280	41,542	12,580	77%	(5,461)
BENEFITS EXPENSE	19,232	1,512	12,754	6,478	66%	67
OTHER INDIRECT EXPENSE	21,229	1,391	13,798	7,431	65%	355
<b>TOTAL INDIRECT EXPENSES:</b>	<b>94,583</b>	<b>10,183</b>	<b>68,094</b>	<b>26,489</b>	<b>72%</b>	<b>(5,039)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>125,917</b>	<b>10,183</b>	<b>74,655</b>	<b>51,262</b>	<b>59%</b>	<b>9,290</b>
<b>NET INCOME (LOSS):</b>	<b>82,811</b>	<b>7,998</b>	<b>83,401</b>	<b>(590)</b>	<b>101%</b>	<b>28,194</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>MANDATORY CONTINUING LEGAL EDUCATION</b>						
<b>REVENUE:</b>						
ACCREDITED PROGRAM FEES	515,000	54,500	422,000	93,000	82%	78,667
FORM 1 LATE FEES	220,000	20,550	161,650	58,350	73%	14,983
MEMBER LATE FEES	300,000	43,550	420,700	(120,700)	140%	220,700
ANNUAL ACCREDITED SPONSOR FEES	39,250	-	34,500	4,750	88%	8,333
ATTENDANCE LATE FEES	95,000	5,500	86,000	9,000	91%	22,667
COMITY CERTIFICATES	40,500	850	44,650	(4,150)	110%	17,650
<b>TOTAL REVENUE:</b>	<b>1,209,750</b>	<b>124,950</b>	<b>1,169,500</b>	<b>40,250</b>	<b>97%</b>	<b>363,000</b>
<b>DIRECT EXPENSES:</b>						
DEPRECIATION	24,263	1,799	17,735	6,528	73%	(1,560)
STAFF MEMBERSHIP DUES	500	-	500	-	100%	(167)
ONLINE LEGAL RESEARCH	1,895	-	945	950	50%	318
LAW LIBRARY	158	-	80	77	51%	25
MCLE BOARD	3,250	-	-	3,250	0%	2,167
STAFF TRAVEL/PARKING	50	-	-	50	0%	33
STAFF CONFERENCE & TRAINING	5,550	-	-	5,550	0%	3,700
<b>TOTAL DIRECT EXPENSES:</b>	<b>35,666</b>	<b>1,799</b>	<b>19,261</b>	<b>16,405</b>	<b>54%</b>	<b>4,516</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (4.88 FTE)	399,930	28,370	306,899	93,032	77%	(40,279)
BENEFITS EXPENSE	113,757	8,898	75,316	38,441	66%	522
OTHER INDIRECT EXPENSE	142,744	9,283	92,079	50,665	65%	3,084
<b>TOTAL INDIRECT EXPENSES:</b>	<b>656,431</b>	<b>46,552</b>	<b>474,294</b>	<b>182,137</b>	<b>72%</b>	<b>(36,673)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>692,097</b>	<b>48,351</b>	<b>493,555</b>	<b>198,542</b>	<b>71%</b>	<b>(32,157)</b>
<b>NET INCOME (LOSS):</b>	<b>517,653</b>	<b>76,599</b>	<b>675,945</b>	<b>(158,292)</b>	<b>131%</b>	<b>330,843</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>MINI CLE</b>						
INDIRECT EXPENSES:	63,389	1,662	34,987	28,402	55%	42,240
SALARY EXPENSE (0.91 FTE)	21,671	1,702	14,426	7,245	67%	21
BENEFITS EXPENSE	26,646	1,739	17,247	9,398	65%	517
OTHER INDIRECT EXPENSE						
<b>TOTAL INDIRECT EXPENSES:</b>	<b>111,706</b>	<b>5,102</b>	<b>66,661</b>	<b>45,045</b>	<b>60%</b>	<b>42,777</b>
<b>NET INCOME (LOSS):</b>	<b>(111,706)</b>	<b>(5,102)</b>	<b>(66,661)</b>	<b>(45,045)</b>	<b>60%</b>	<b>7,810</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>MEMBER SERVICES &amp; ENGAGEMENT</b>						
<b>REVENUE:</b>						
ROYALTIES	10,800	14,744	53,080	(42,280)	491%	45,880
<b>TOTAL REVENUE:</b>	<b>10,800</b>	<b>14,744</b>	<b>53,080</b>	<b>(42,280)</b>	<b>491%</b>	<b>45,880</b>
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	1,000	188	206	794	21%	461
STAFF CONFERENCE & TRAINING	400	-	-	400	0%	267
SURVEYS	300	-	-	300	0%	200
SMALL TOWN AND RURAL COMMITTEE	2,000	-	-	2,000	0%	1,333
YLL SECTION PROGRAM	1,500	-	-	1,500	0%	1,000
WYLC OUTREACH EVENTS	1,500	159	659	841	44%	341
WYL COMMITTEE	7,500	-	39	7,461	1%	4,961
TRIAL ADVOCACY EXPENSES	3,500	-	-	3,500	0%	2,333
RECEPTION/FORUM EXPENSE	3,000	-	18	2,982	1%	1,982
WYLC SCHOLARSHIPS/DONATIONS/GRANT	5,000	-	-	5,000	0%	3,333
STAFF MEMBERSHIP DUES	850	499	649	201	76%	(82)
LENDING LIBRARY	6,000	1,016	1,311	4,690	22%	2,690
<b>TOTAL DIRECT EXPENSES:</b>	<b>32,550</b>	<b>1,861</b>	<b>2,881</b>	<b>29,669</b>	<b>9%</b>	<b>18,819</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (3.46 FTE)	237,634	19,267	157,301	80,333	66%	1,122
BENEFITS EXPENSE	72,634	5,717	48,779	23,855	67%	(356)
OTHER INDIRECT EXPENSE	101,195	6,580	65,274	35,921	65%	2,189
<b>TOTAL INDIRECT EXPENSES:</b>	<b>411,463</b>	<b>31,565</b>	<b>271,354</b>	<b>140,109</b>	<b>66%</b>	<b>2,955</b>
<b>TOTAL ALL EXPENSES:</b>	<b>444,013</b>	<b>33,426</b>	<b>274,235</b>	<b>169,778</b>	<b>62%</b>	<b>21,774</b>
<b>NET INCOME (LOSS):</b>	<b>(433,213)</b>	<b>(18,682)</b>	<b>(221,154)</b>	<b>(212,059)</b>	<b>51%</b>	<b>67,654</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>MEMBER SERVICES &amp; ENGAGEMENT (COMBINED)</b>						
<b>REVENUE:</b>						
ROYALTIES	10,800	14,744	53,080	(42,280)	491%	45,880
NMP PRODUCT SALES	80,000	237	37,146	42,854	46%	(16,187)
MP3 SALES	4,620	-	7,056	(2,436)	153%	3,976
DIGITAL VIDEO SALES	9,380	441	25,333	(15,953)	270%	19,080
SPONSORSHIPS	8,000	9,000	9,000	(1,000)	113%	3,667
SEMINAR REGISTRATIONS	16,500	-	-	16,500	0%	(11,000)
TRIAL ADVOCACY PROGRAM	15,000	-	-	15,000	0%	(10,000)
<b>TOTAL REVENUE:</b>	<b>144,300</b>	<b>24,422</b>	<b>131,615</b>	<b>12,685</b>	<b>91%</b>	<b>35,415</b>
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	1,000	188	206	794	21%	461
STAFF CONFERENCE & TRAINING	400	-	-	400	0%	267
SURVEYS	300	-	-	300	0%	200
SMALL TOWN AND RURAL COMMITTEE	2,000	-	-	2,000	0%	1,333
CONFERENCE CALLS	200	-	-	200	0%	133
YLL SECTION PROGRAM	1,500	-	-	1,500	0%	1,000
WYLC OUTREACH EVENTS	1,500	159	659	841	44%	341
SPEAKERS & PROGRAM DEVELOP	1,500	-	-	1,500	0%	1,000
WYL COMMITTEE	7,500	-	39	7,461	1%	4,961
TRIAL ADVOCACY EXPENSES	7,000	-	-	7,000	0%	4,667
RECEPTION/FORUM EXPENSE	3,000	-	18	2,982	1%	1,982
WYLC SCHOLARSHIPS/DONATIONS/GRANT	5,000	-	-	5,000	0%	3,333
STAFF MEMBERSHIP DUES	850	499	649	201	76%	(82)
LENDING LIBRARY	6,000	1,016	1,311	4,690	22%	2,690
NMP SPEAKERS & PROGRAM DEVELOPMENT	2,000	-	-	2,000	0%	1,333
<b>TOTAL DIRECT EXPENSES:</b>	<b>39,750</b>	<b>1,861</b>	<b>2,881</b>	<b>36,869</b>	<b>7%</b>	<b>23,619</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (5.58 FTE)	383,007	23,763	238,505	144,502	62%	16,833
BENEFITS EXPENSE	122,081	9,599	81,712	40,369	67%	(325)
OTHER INDIRECT EXPENSE	163,153	10,621	105,346	57,807	65%	3,422
<b>TOTAL INDIRECT EXPENSES:</b>	<b>668,240</b>	<b>43,983</b>	<b>425,562</b>	<b>242,678</b>	<b>64%</b>	<b>19,931</b>
<b>TOTAL ALL EXPENSES:</b>	<b>707,990</b>	<b>45,844</b>	<b>428,443</b>	<b>279,547</b>	<b>61%</b>	<b>43,550</b>
<b>NET INCOME (LOSS):</b>	<b>(563,690)</b>	<b>(21,422)</b>	<b>(296,828)</b>	<b>(266,862)</b>	<b>53%</b>	<b>78,966</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>MEMBER WELLNESS PROGRAM</b>						
<b>REVENUE:</b>						
DIVERSIONS	7,000	-	6,750	250	96%	2,083
<b>TOTAL REVENUE:</b>	<b>7,000</b>	<b>-</b>	<b>6,750</b>	<b>250</b>	<b>96%</b>	<b>2,083</b>
<b>DIRECT EXPENSES:</b>						
STAFF MEMBERSHIP DUES	500	226	226	274	45%	107
PROF LIAB INSURANCE	5,462	-	825	4,637	15%	2,817
WSBA CONNECTS	9,000	-	8,110	890	90%	(2,110)
STAFF CONFERENCE & TRAINING	-	-	165	(165)		(165)
SUBSCRIPTIONS	-	100	700	(700)		(700)
<b>TOTAL DIRECT EXPENSES:</b>	<b>14,962</b>	<b>326</b>	<b>10,026</b>	<b>4,936</b>	<b>67%</b>	<b>(51)</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.48 FTE)	122,085	11,553	62,999	59,086	52%	18,391
BENEFITS EXPENSE	50,630	3,968	33,228	17,403	66%	526
OTHER INDIRECT EXPENSE	43,389	2,809	27,861	15,528	64%	1,065
<b>TOTAL INDIRECT EXPENSES:</b>	<b>216,105</b>	<b>18,329</b>	<b>124,087</b>	<b>92,017</b>	<b>57%</b>	<b>19,982</b>
<b>TOTAL ALL EXPENSES:</b>	<b>231,067</b>	<b>18,655</b>	<b>134,113</b>	<b>96,954</b>	<b>58%</b>	<b>19,931</b>
<b>NET INCOME (LOSS):</b>	<b>(224,067)</b>	<b>(18,655)</b>	<b>(127,363)</b>	<b>(96,704)</b>	<b>57%</b>	<b>22,015</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>NEW MEMBER EDUCATION</b>						
<b>REVENUE:</b>						
NMP PRODUCT SALES	80,000	237	37,146	42,854	46%	(16,187)
SEMINAR REGISTRATIONS	16,500	-	-	16,500	0%	(11,000)
TRIAL ADVOCACY PROGRAM	15,000	-	-	15,000	0%	(10,000)
<b>TOTAL REVENUE:</b>	<b>111,500</b>	<b>237</b>	<b>37,146</b>	<b>74,354</b>	<b>33%</b>	<b>(37,187)</b>
<b>DIRECT EXPENSES:</b>						
TRIAL ADVOCACY EXPENSES	3,500	-	-	3,500	0%	2,333
SPEAKERS & PROGRAM DEVELOPMENT	2,000	-	-	2,000	0%	1,333
<b>TOTAL DIRECT EXPENSES:</b>	<b>5,500</b>	<b>-</b>	<b>-</b>	<b>5,500</b>	<b>0%</b>	<b>3,667</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.78 FTE)	53,643	2,050	30,756	22,887	57%	5,006
BENEFITS EXPENSE	17,807	1,399	11,885	5,921	67%	(14)
OTHER INDIRECT EXPENSE	22,839	1,498	14,859	7,980	65%	367
<b>TOTAL INDIRECT EXPENSES:</b>	<b>94,289</b>	<b>4,947</b>	<b>57,501</b>	<b>36,788</b>	<b>61%</b>	<b>5,359</b>
<b>TOTAL ALL EXPENSES:</b>	<b>99,789</b>	<b>4,947</b>	<b>57,501</b>	<b>42,288</b>	<b>58%</b>	<b>9,025</b>
<b>NET INCOME (LOSS):</b>	<b>11,711</b>	<b>(4,710)</b>	<b>(20,355)</b>	<b>32,066</b>	<b>-174%</b>	<b>(28,162)</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>OFFICE OF THE EXECUTIVE DIRECTOR</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
LEADERSHIP TRAINING	20,000	-	-	20,000	0%	13,333
WASHINGTON LEADERSHIP INSTITUTE	80,000	-	-	80,000	0%	53,333
ED TRAVEL & OUTREACH	5,000	-	946	4,054	19%	2,388
LAW LIBRARY	-	-	80	(80)		(80)
STAFF TRAVEL/PARKING	2,000	375	498	1,502	25%	835
STAFF CONFERENCE & TRAINING	5,000	(500)	247	4,753	5%	3,087
STAFF MEMBERSHIP DUES	1,111	(856)	1,346	(235)	121%	(606)
SURVEY	300	331	331	(31)	110%	(131)
<b>TOTAL DIRECT EXPENSES:</b>	<b>113,411</b>	<b>(650)</b>	<b>3,448</b>	<b>109,963</b>	<b>3%</b>	<b>72,159</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (2.00 FTE)	335,791	19,553	238,015	97,776	71%	(14,154)
BENEFITS EXPENSE	87,436	7,429	58,142	29,294	66%	148
OTHER INDIRECT EXPENSE	58,562	3,824	37,938	20,623	65%	1,103
<b>TOTAL INDIRECT EXPENSES:</b>	<b>481,789</b>	<b>30,806</b>	<b>334,096</b>	<b>147,693</b>	<b>69%</b>	<b>(12,903)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>595,200</b>	<b>30,157</b>	<b>337,544</b>	<b>257,656</b>	<b>57%</b>	<b>59,256</b>
<b>NET INCOME (LOSS):</b>	<b>(595,200)</b>	<b>(30,157)</b>	<b>(337,544)</b>	<b>257,656</b>	<b>57%</b>	<b>59,256</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>OFFICE OF GENERAL COUNSEL</b>						
<b>REVENUE:</b>						
RECORDS REQUEST FEES	-	13	976	(976)		976
<b>TOTAL REVENUE:</b>	<b>-</b>	<b>13</b>	<b>976</b>	<b>(976)</b>		<b>976</b>
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	1,000	188	262	738	26%	405
STAFF MEMBERSHIP DUES	1,500	-	254	1,246	17%	746
ONLINE LEGAL RESEARCH	11,369	-	5,670	5,699	50%	1,910
LAW LIBRARY	1,868	-	1,762	106	94%	(517)
COURT RULES COMMITTEE	-	-	0	(0)		(0)
CUSTODIANSHIPS	12,000	-	152	11,848	1%	7,848
LITIGATION EXPENSES	200	-	2	198	1%	131
STAFF CONFERENCE & TRAINING	3,400	-	95	3,305	3%	2,172
<b>TOTAL DIRECT EXPENSES:</b>	<b>31,337</b>	<b>188</b>	<b>8,197</b>	<b>23,141</b>	<b>26%</b>	<b>12,695</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (6.09 FTE)	608,154	50,780	413,718	194,436	68%	(8,282)
BENEFITS EXPENSE	178,104	14,280	118,633	59,471	67%	103
OTHER INDIRECT EXPENSE	178,443	11,609	115,158	63,285	65%	3,804
<b>TOTAL INDIRECT EXPENSES:</b>	<b>964,701</b>	<b>76,669</b>	<b>647,509</b>	<b>317,192</b>	<b>67%</b>	<b>(4,375)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>996,039</b>	<b>76,856</b>	<b>655,706</b>	<b>340,332</b>	<b>66%</b>	<b>8,319</b>
<b>NET INCOME (LOSS):</b>	<b>(996,039)</b>	<b>(76,844)</b>	<b>(654,731)</b>	<b>(341,308)</b>	<b>66%</b>	<b>9,295</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>OFFICE OF GENERAL COUNSEL - DISCIPLINARY BOARD</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSE:</b>						
STAFF MEMBERSHIP DUES	100	-	-	100	0%	67
LAW LIBRARY	953	-	486	467	51%	149
DISCIPLINARY BOARD EXPENSES	3,108	-	1	3,108	0%	2,072
CHIEF HEARING OFFICER	33,000	2,500	20,000	13,000	61%	2,000
HEARING OFFICER EXPENSES	43,000	1,128	1,203	41,797	3%	27,463
HEARING OFFICER TRAINING	550	-	-	550	0%	367
OUTSIDE COUNSEL	55,000	4,000	32,000	23,000	58%	4,667
STAFF CONFERENCE & TRAINING	1,000	-	-	1,000	0%	667
<b>TOTAL DIRECT EXPENSES:</b>	<b>136,711</b>	<b>7,628</b>	<b>53,690</b>	<b>83,021</b>	<b>39%</b>	<b>37,451</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.30 FTE)	97,274	8,687	71,471	25,803	73%	(6,622)
BENEFITS EXPENSE	30,240	2,393	20,196	10,044	67%	(36)
OTHER INDIRECT EXPENSE	38,065	2,488	24,677	13,388	65%	700
<b>TOTAL INDIRECT EXPENSES:</b>	<b>165,580</b>	<b>13,568</b>	<b>116,344</b>	<b>49,236</b>	<b>70%</b>	<b>(5,958)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>302,291</b>	<b>21,196</b>	<b>170,034</b>	<b>132,257</b>	<b>56%</b>	<b>31,493</b>
<b>NET INCOME (LOSS):</b>	<b>(302,291)</b>	<b>(21,196)</b>	<b>(170,034)</b>	<b>(132,257)</b>	<b>56%</b>	<b>31,493</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>PRACTICE OF LAW BOARD</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
PRACTICE OF LAW BOARD	12,000	-	-	12,000	0%	8,000
<b>TOTAL DIRECT EXPENSES:</b>	<b>12,000</b>	<b>-</b>	<b>-</b>	<b>12,000</b>	<b>0%</b>	<b>8,000</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.48 FTE)	46,443	3,843	31,054	15,390	67%	(92)
BENEFITS EXPENSE	11,891	976	7,852	4,039	66%	75
OTHER INDIRECT EXPENSE	14,151	909	9,022	5,130	64%	413
<b>TOTAL INDIRECT EXPENSES:</b>	<b>72,486</b>	<b>5,728</b>	<b>47,927</b>	<b>24,558</b>	<b>66%</b>	<b>397</b>
<b>TOTAL ALL EXPENSES:</b>	<b>84,486</b>	<b>5,728</b>	<b>47,927</b>	<b>36,558</b>	<b>57%</b>	<b>8,397</b>
<b>NET INCOME (LOSS):</b>	<b>(84,486)</b>	<b>(5,728)</b>	<b>(47,927)</b>	<b>(36,558)</b>	<b>57%</b>	<b>8,397</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>PRACTICE MANAGEMENT ASSISTANCE</b>						
<b>REVENUE:</b>						
ROYALTIES	38,450	-	226	38,224	1%	(25,408)
<b>TOTAL REVENUE:</b>	<b>38,450</b>	<b>-</b>	<b>226</b>	<b>38,224</b>	<b>1%</b>	<b>(25,408)</b>
<b>DIRECT EXPENSE:</b>						
STAFF MEMBERSHIP DUES	250	-	-	250	0%	167
SUBSCRIPTIONS	250	17	132	118	53%	34
CASEMAKER/FASTCASE	137,000	-	72,356	64,645	53%	18,978
<b>TOTAL DIRECT EXPENSES:</b>	<b>137,500</b>	<b>17</b>	<b>72,488</b>	<b>65,012</b>	<b>53%</b>	<b>19,179</b>
<b>INDIRECT EXPENSES:</b>						
<b>TOTAL INDIRECT EXPENSES:</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>		<b>-</b>
<b>TOTAL ALL EXPENSES:</b>	<b>137,500</b>	<b>17</b>	<b>72,488</b>	<b>65,012</b>	<b>53%</b>	<b>19,179</b>
<b>NET INCOME (LOSS):</b>	<b>(99,050)</b>	<b>(17)</b>	<b>(72,262)</b>	<b>(26,788)</b>	<b>73%</b>	<b>(6,229)</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>PROFESSIONAL RESPONSIBILITY PROGRAM</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	3,500	188	188	3,312	5%	-
STAFF MEMBERSHIP DUES	375	-	-	375	0%	-
LAW LIBRARY	638	-	325	312	51%	2,146
CPE COMMITTEE	3,750	-	-	3,750	0%	250
<b>TOTAL DIRECT EXPENSES:</b>	<b>8,263</b>	<b>188</b>	<b>513</b>	<b>7,750</b>	<b>6%</b>	<b>4,996</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.59 FTE)	169,829	14,128	116,024	53,806	68%	(2,804)
BENEFITS EXPENSE	57,462	4,551	38,164	19,298	66%	144
OTHER INDIRECT EXPENSE	46,630	3,048	30,244	16,386	65%	843
<b>TOTAL INDIRECT EXPENSES:</b>	<b>273,922</b>	<b>21,727</b>	<b>184,432</b>	<b>89,490</b>	<b>67%</b>	<b>(1,817)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>282,184</b>	<b>21,914</b>	<b>184,945</b>	<b>97,240</b>	<b>66%</b>	<b>3,178</b>
<b>NET INCOME (LOSS):</b>	<b>(282,184)</b>	<b>(21,914)</b>	<b>(184,945)</b>	<b>(97,240)</b>	<b>66%</b>	<b>3,178</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>PUBLIC SERVICE PROGRAMS</b>						
<b>REVENUE:</b>						
DONATIONS & GRANTS	130,000	-	130,000	-	100%	43,333
<b>TOTAL REVENUE:</b>	<b>130,000</b>	<b>-</b>	<b>130,000</b>	<b>-</b>	<b>100%</b>	<b>43,333</b>
<b>DIRECT EXPENSES:</b>						
DONATIONS/SPONSORSHIPS/GRANTS	250,280	8,000	132,390	117,891	53%	34,464
STAFF TRAVEL/PARKING	2,700	188	188	2,512	7%	1,612
SURVEYS	100	-	-	100	0%	67
PRO BONO & PUBLIC SERVICE COMMITTEE	2,000	-	-	2,000	0%	1,333
STAFF CONFERENCE & TRAINING	1,200	-	-	1,200	0%	800
PRO BONO CERTIFICATES	2,000	-	1,655	345	83%	(322)
<b>TOTAL DIRECT EXPENSES:</b>	<b>258,280</b>	<b>8,188</b>	<b>134,232</b>	<b>124,048</b>	<b>52%</b>	<b>37,954</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (1.30 FTE)	75,255	6,126	54,075	21,180	72%	(3,905)
BENEFITS EXPENSE	32,083	2,498	21,056	11,026	66%	332
OTHER INDIRECT EXPENSE	38,065	2,488	24,677	13,388	65%	700
<b>TOTAL INDIRECT EXPENSES:</b>	<b>145,402</b>	<b>11,112</b>	<b>99,808</b>	<b>45,594</b>	<b>69%</b>	<b>(2,873)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>403,682</b>	<b>19,300</b>	<b>234,040</b>	<b>169,642</b>	<b>58%</b>	<b>35,081</b>
<b>NET INCOME (LOSS):</b>	<b>(273,682)</b>	<b>(19,300)</b>	<b>(104,040)</b>	<b>(169,642)</b>	<b>38%</b>	<b>78,414</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>PUBLICATION &amp; DESIGN SERVICES</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>		<u>-</u>
<b>DIRECT EXPENSES:</b>						
SUBSCRIPTIONS	200	-	100	100	50%	34
IMAGE LIBRARY	4,100	-	4,100	-	100%	(1,367)
<b>TOTAL DIRECT EXPENSES:</b>	<u>4,300</u>	<u>-</u>	<u>4,200</u>	<u>100</u>	<u>98%</u>	<u>(1,333)</u>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (0.89 FTE)	58,142	5,151	42,129	16,013	72%	(3,368)
BENEFITS EXPENSE	18,072	1,420	12,119	5,953	67%	(71)
OTHER INDIRECT EXPENSE	26,060	1,685	16,716	9,344	64%	657
<b>TOTAL INDIRECT EXPENSES:</b>	<u>102,273</u>	<u>8,255</u>	<u>70,964</u>	<u>31,309</u>	<u>69%</u>	<u>(2,782)</u>
<b>TOTAL ALL EXPENSES:</b>	<u>106,573</u>	<u>8,255</u>	<u>75,164</u>	<u>31,410</u>	<u>71%</u>	<u>(4,115)</u>
<b>NET INCOME (LOSS):</b>	<u>(106,573)</u>	<u>(8,255)</u>	<u>(75,164)</u>	<u>(31,410)</u>	<u>71%</u>	<u>(4,115)</u>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>REGULATORY SERVICES FTE</b>						
<b>REVENUE:</b>						
<b>TOTAL REVENUE:</b>	-	-	-	-		-
<b>DIRECT EXPENSES:</b>						
STAFF CONFERENCE & TRAINING	9,000	-	-	9,000	0%	6,000
<b>TOTAL DIRECT EXPENSES:</b>	<b>9,000</b>	<b>-</b>	<b>-</b>	<b>9,000</b>	<b>0%</b>	<b>6,000</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (2.78 FTE)	327,439	26,882	216,787	110,652	66%	1,506
BENEFITS EXPENSE	96,215	7,691	64,344	31,871	67%	(201)
OTHER INDIRECT EXPENSE	81,254	5,296	52,538	28,717	65%	1,632
<b>TOTAL INDIRECT EXPENSES:</b>	<b>504,908</b>	<b>39,869</b>	<b>333,668</b>	<b>171,240</b>	<b>66%</b>	<b>2,937</b>
<b>TOTAL ALL EXPENSES:</b>	<b>513,908</b>	<b>39,869</b>	<b>333,668</b>	<b>180,240</b>	<b>65%</b>	<b>8,937</b>
<b>NET INCOME (LOSS):</b>	<b>(513,908)</b>	<b>(39,869)</b>	<b>(333,668)</b>	<b>(180,240)</b>	<b>65%</b>	<b>8,937</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>SERVICE CENTER</b>						
<b>REVENUE:</b>						
	_____	_____	_____	_____	_____	_____
<b>TOTAL REVENUE:</b>	-	-	-	-	-	-
<b>DIRECT EXPENSES:</b>						
	_____	_____	_____	_____	_____	_____
TRANSLATION SERVICES	8,500	383	4,949	3,551	58%	717
STAFF CONFERENCE & TRAINING	2,100	-	36	2,064	2%	1,364
<b>TOTAL DIRECT EXPENSES:</b>	<b>10,600</b>	<b>383</b>	<b>4,985</b>	<b>5,615</b>	<b>47%</b>	<b>2,081</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (5.71 FTE)	344,434	29,793	239,608	104,826	70%	(9,985)
BENEFITS EXPENSE	130,208	10,170	86,102	44,106	66%	703
OTHER INDIRECT EXPENSE	167,194	10,887	107,994	59,199	65%	3,468
<b>TOTAL INDIRECT EXPENSES:</b>	<b>641,836</b>	<b>50,849</b>	<b>433,705</b>	<b>208,131</b>	<b>68%</b>	<b>(5,814)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>652,436</b>	<b>51,232</b>	<b>438,690</b>	<b>213,746</b>	<b>67%</b>	<b>(3,733)</b>
<b>NET INCOME (LOSS):</b>	<b>(652,436)</b>	<b>(51,232)</b>	<b>(438,690)</b>	<b>(213,746)</b>	<b>67%</b>	<b>(3,733)</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>SECTIONS ADMINISTRATION</b>						
<b>REVENUE:</b>						
REIMBURSEMENTS FROM SECTIONS	286,875	1,781	360,631	(73,756)	126%	169,381
<b>TOTAL REVENUE:</b>	<b>286,875</b>	<b>1,781</b>	<b>360,631</b>	<b>(73,756)</b>	<b>126%</b>	<b>169,381</b>
<b>DIRECT EXPENSES:</b>						
STAFF TRAVEL/PARKING	1,000	188	209	791	21%	457
SUBSCRIPTIONS	350	331	331	19	95%	(97)
SECTION/COMMITTEE CHAIR MTGS	1,000	-	-	1,000	0%	667
DUES STATEMENTS	5,935	-	4,593	1,342	77%	(636)
STAFF CONFERENCE & TRAINING	200	-	-	200	0%	133
STAFF MEMBERSHIP DUES	250	-	-	250	0%	167
<b>TOTAL DIRECT EXPENSES:</b>	<b>8,735</b>	<b>518</b>	<b>5,133</b>	<b>3,602</b>	<b>59%</b>	<b>690</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (2.58 FTE)	149,495	12,168	96,179	53,316	64%	3,484
BENEFITS EXPENSE	56,533	4,412	37,392	19,141	66%	296
OTHER INDIRECT EXPENSE	75,545	4,922	48,823	26,722	65%	1,540
<b>TOTAL INDIRECT EXPENSES:</b>	<b>281,572</b>	<b>21,501</b>	<b>182,394</b>	<b>99,178</b>	<b>65%</b>	<b>5,321</b>
<b>TOTAL ALL EXPENSES:</b>	<b>290,307</b>	<b>22,020</b>	<b>187,527</b>	<b>102,780</b>	<b>65%</b>	<b>6,011</b>
<b>NET INCOME (LOSS):</b>	<b>(3,432)</b>	<b>(20,238)</b>	<b>173,104</b>	<b>(176,536)</b>	<b>-5044%</b>	<b>175,392</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>SECTIONS OPERATIONS</b>						
<b>REVENUE:</b>						
SECTION DUES	439,178	2,765	547,851	(108,673)	125%	255,065
SEMINAR PROFIT SHARE	147,494	-	128,884	18,610	87%	30,555
INTEREST INCOME	910	-	-	910	0%	(607)
PUBLICATIONS REVENUE	4,000	-	645	3,355	16%	(2,022)
OTHER	46,070	5,335	27,277	18,793	59%	(3,437)
CLE SECTION SPLITS PROJECTIONS	-	-	(101,660)	101,660		(101,660)
<b>TOTAL REVENUE:</b>	<b>637,652</b>	<b>8,100</b>	<b>602,997</b>	<b>34,655</b>	<b>95%</b>	<b>177,895</b>
<b>DIRECT EXPENSES:</b>						
DIRECT EXPENSES OF SECTION ACTIVITIES	612,229	18,181	81,268	530,961	13%	326,885
REIMBURSEMENT TO WSBA FOR INDIRECT EXPENSES	287,423	1,781	360,631	(73,208)	125%	(169,016)
<b>TOTAL DIRECT EXPENSES:</b>	<b>899,652</b>	<b>19,962</b>	<b>441,899</b>	<b>457,753</b>	<b>49%</b>	<b>157,869</b>
<b>NET INCOME (LOSS):</b>	<b>(262,000)</b>	<b>(11,862)</b>	<b>161,098</b>	<b>(423,098)</b>	<b>-61%</b>	<b>335,765</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>TECHNOLOGY</b>						
<b>REVENUE:</b>						
	_____	_____	_____	_____	_____	_____
<b>TOTAL REVENUE:</b>	-	-	-	-	-	-
<b>DIRECT EXPENSES:</b>						
	_____	_____	_____	_____	_____	_____
CONSULTING SERVICES	110,000	795	34,142	75,858	31%	39,192
STAFF TRAVEL/PARKING	2,500	385	1,823	677	73%	(157)
STAFF MEMBERSHIP DUES	450	-	-	450	0%	300
TELEPHONE	85,000	10,454	50,095	34,905	59%	6,572
COMPUTER HARDWARE	65,000	14,239	51,569	13,431	79%	(8,236)
COMPUTER SOFTWARE	205,000	4,966	159,621	45,379	78%	(22,954)
HARDWARE SERVICE & WARRANTIES	50,000	-	38,671	11,329	77%	(5,337)
SOFTWARE MAINTENANCE & LICENSING	370,000	14,838	346,640	23,360	94%	(99,974)
COMPUTER SUPPLIES	2,000	-	3,103	(1,103)	155%	(1,769)
THIRD PARTY SERVICES	40,000	1,200	14,776	25,224	37%	11,891
STAFF CONFERENCE & TRAINING	10,000	-	-	10,000	0%	6,667
TRANSFER TO INDIRECT EXPENSES	(939,950)	(46,878)	(700,440)	(239,510)	75%	73,807
<b>TOTAL DIRECT EXPENSES:</b>	-	-	-	-	-	-
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (13.00 FTE)	1,233,346	94,620	832,122	401,224	67%	(9,891)
BENEFITS EXPENSE	376,478	29,827	252,447	124,031	67%	(1,462)
CAPITAL LABOR & OVERHEAD	(155,000)	(30,638)	(118,675)	(36,325)	77%	(15,342)
OTHER INDIRECT EXPENSE	358,319	24,769	245,707	112,612	69%	(6,827)
<b>TOTAL INDIRECT EXPENSES:</b>	<b>1,813,143</b>	<b>118,578</b>	<b>1,211,600</b>	<b>601,542</b>	<b>67%</b>	<b>(33,522)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>1,813,143</b>	<b>118,578</b>	<b>1,211,600</b>	<b>601,542</b>	<b>67%</b>	<b>(33,522)</b>
<b>NET INCOME (LOSS):</b>	<b>(1,813,143)</b>	<b>(118,578)</b>	<b>(1,211,600)</b>	<b>(601,542)</b>	<b>67%</b>	<b>(2,839)</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>VOLUNTEER ENGAGEMENT</b>						
REVENUE:						
TOTAL REVENUE:	-	-	-	-		-
DIRECT EXPENSES:						
VOLUNTEER SUPPORT	12,000	-	-	12,000	0%	8,000
STAFF MEMBERSHIP DUES	389	856	856	(467)	220%	(596)
STAFF CONFERENCE & TRAINING	4,000	500	500	3,500	13%	2,167
SECTION/COMMITTEE CHAIR MEETINGS	500	-	-	500	0%	333
ABA DELEGATES	3,334	-	-	3,334	0%	2,223
<b>TOTAL DIRECT EXPENSES:</b>	<b>20,223</b>	<b>1,356</b>	<b>1,356</b>	<b>18,867</b>	<b>7%</b>	<b>12,126</b>
INDIRECT EXPENSES:						
SALARY EXPENSE (0.60 FTE)	57,909	4,668	38,415	19,494	66%	191
BENEFITS EXPENSE	18,580	1,469	12,402	6,177	67%	(16)
OTHER INDIRECT EXPENSE	17,569	1,125	11,150	6,419	63%	563
<b>TOTAL INDIRECT EXPENSES:</b>	<b>94,057</b>	<b>7,262</b>	<b>61,967</b>	<b>32,090</b>	<b>66%</b>	<b>738</b>
<b>TOTAL ALL EXPENSES:</b>	<b>114,280</b>	<b>8,618</b>	<b>63,323</b>	<b>50,957</b>	<b>55%</b>	<b>738</b>
<b>NET INCOME (LOSS):</b>	<b>(114,280)</b>	<b>(8,618)</b>	<b>(63,323)</b>	<b>(50,957)</b>	<b>55%</b>	<b>12,864</b>

**Washington State Bar Association**

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>	<b>% USED OF BUDGET</b>	<b>YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)</b>
<b>INDIRECT EXPENSES:</b>						
SALARIES	12,308,996	967,346	8,092,487	4,216,509	66%	113,511
TEMPORARY SALARIES	222,756	13,012	286,102	(63,346)	128%	(137,598)
CAPITAL LABOR & OVERHEAD	(155,000)	(30,638)	(118,675)	(36,325)	77%	(15,342)
EMPLOYEE ASSISTANCE PLAN	4,800	1,200	4,000	800	83%	(800)
EMPLOYEE SERVICE AWARDS	1,840	280	945	895	51%	282
FICA (EMPLOYER PORTION)	743,343	72,191	615,083	128,260	83%	(119,521)
L&I INSURANCE	49,414	-	37,953	11,461	77%	(5,010)
WA STATE FAMILY MEDICAL LEAVE (EMPLOYER PORTION)	30,807	1,547	12,336	18,471	40%	8,202
MEDICAL (EMPLOYER PORTION)	1,657,574	127,108	1,019,036	638,538	61%	86,013
RETIREMENT (EMPLOYER PORTION)	1,256,547	97,133	802,857	453,690	64%	34,841
TRANSPORTATION ALLOWANCE	47,733	(442)	23,120	24,613	48%	8,702
UNEMPLOYMENT INSURANCE	70,000	6,867	52,250	17,750	75%	(5,583)
<b>TOTAL SALARY &amp; BENEFITS EXPENSE:</b>	<b>16,238,811</b>	<b>1,255,603</b>	<b>10,827,494</b>	<b>5,411,317</b>	<b>67%</b>	<b>(32,304)</b>
WORKPLACE BENEFITS	45,000	841	9,764	35,236	22%	20,236
HUMAN RESOURCES POOLED EXP	81,520	1,578	50,070	31,450	61%	4,277
MEETING SUPPORT EXPENSES	10,000	1,449	3,724	6,276	37%	2,942
RENT	2,029,301	155,334	1,375,373	653,929	68%	(22,505)
PERSONAL PROP TAXES-WSBA	6,466	472	3,942	2,524	61%	369
FURNITURE, MAINT, LH IMP	13,419	445	15,608	(2,189)	116%	(6,662)
OFFICE SUPPLIES & EQUIPMENT	32,741	2,600	11,672	21,069	36%	10,155
FURN & OFFICE EQUIP DEPRECIATION	43,009	4,525	33,825	9,184	79%	(5,152)
COMPUTER HARDWARE DEPRECIATION	24,114	2,847	20,509	3,605	85%	(4,433)
COMPUTER SOFTWARE DEPRECIATION	80,904	7,805	67,717	13,187	84%	(13,781)
INSURANCE	238,839	18,627	149,014	89,825	62%	10,212
WORK HOME FURNITURE & EQUIP	63,000	2,845	21,664	41,336	34%	20,336
PROFESSIONAL FEES-AUDIT	40,000	-	33,000	7,000	83%	(6,333)
PROFESSIONAL FEES-LEGAL	250,000	13,408	78,575	171,425	31%	88,091
TELEPHONE & INTERNET	21,600	1,340	7,547	14,053	35%	6,853
POSTAGE - GENERAL	24,000	2,309	12,629	11,371	53%	3,371
RECORDS STORAGE	30,000	1,510	15,689	14,311	52%	4,311
BANK FEES	48,000	2,681	35,423	12,577	74%	(3,423)
PRODUCTION MAINTENANCE & SUPPLIES	16,692	(9)	7,234	9,458	43%	3,894
COMPUTER POOLED EXPENSES	941,250	46,878	700,440	240,810	74%	(72,940)
<b>TOTAL OTHER INDIRECT EXPENSES:</b>	<b>4,039,856</b>	<b>267,487</b>	<b>2,653,419</b>	<b>1,386,437</b>	<b>66%</b>	<b>39,818</b>
<b>TOTAL INDIRECT EXPENSES:</b>	<b>20,278,667</b>	<b>1,523,090</b>	<b>13,480,914</b>	<b>6,797,754</b>	<b>66%</b>	<b>38,198</b>

## Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

**67% OF YEAR COMPLETE**

<b>SUMMARY PAGE</b>	<b>FISCAL 2022 BUDGET</b>	<b>CURRENT MONTH</b>	<b>YEAR TO DATE</b>	<b>REMAINING BALANCE</b>
ACCESS TO JUSTICE	(208,619)	(12,864)	(115,734)	(92,886)
ADMINISTRATION	(1,087,547)	(66,050)	(704,174)	(383,373)
ADMISSIONS/BAR EXAM	14,103	2,168	346,530	(332,427)
ADVANCEMENT FTE	(350,555)	(27,418)	(228,676)	(121,879)
BAR NEWS	(125,922)	(9,806)	(13,764)	(112,158)
BOARD OF GOVERNORS	(476,753)	(51,121)	(256,198)	(220,555)
CLE - PRODUCTS	818,413	12,688	904,348	(85,935)
CLE - SEMINARS	(392,917)	(15,133)	(235,814)	(157,102)
CLIENT PROTECTION FUND	169,578	(15,209)	572,580	(403,002)
CHARACTER & FITNESS BOARD	(31,151)	(852)	(10,527)	(20,624)
COMMUNICATIONS	(726,303)	(51,039)	(440,850)	(285,453)
COMMUNICATIONS FTE	(223,276)	(17,977)	(148,622)	(74,654)
DESKBOOKS	(115,041)	11,481	(78,778)	(36,263)
DISCIPLINE	(5,898,777)	(437,029)	(3,772,932)	(2,125,844)
DIVERSITY	(293,338)	(25,977)	(71,118)	(222,220)
EJD FTE	(181,312)	(16,884)	(141,375)	(39,936)
FOUNDATION	(128,667)	(10,033)	(83,850)	(44,816)
HUMAN RESOURCES	(459,421)	(36,446)	(308,180)	(151,241)
LAW CLERK PROGRAM	100,057	860	111,642	(11,584)
LEGISLATIVE	(271,935)	(12,071)	(159,275)	(112,661)
LEGAL LUNCHBOX	(30,483)	7,073	11,342	(41,825)
LICENSE FEES	16,579,802	1,423,310	11,295,494	5,284,307
LICENSING AND MEMBERSHIP	(228,129)	(6,300)	(109,396)	(118,734)
LIMITED LICENSE LEGAL TECHNICIAN	(67,822)	(6,267)	(41,962)	(25,861)
LIMITED PRACTICE OFFICERS	82,811	7,998	83,401	(590)
MANDATORY CLE ADMINISTRATION	517,653	76,599	675,945	(158,292)
MEMBER WELLNESS PROGRAM	(224,067)	(18,655)	(127,363)	(96,704)
MINI CLE	(111,706)	(5,102)	(66,661)	(45,045)
MEMBER SERVICES & ENGAGEMENT	(433,213)	(18,682)	(221,154)	(212,059)
NEW MEMBER EDUCATION	11,711	(4,710)	(20,355)	32,066
OFFICE OF GENERAL COUNSEL	(996,039)	(76,844)	(654,731)	(341,308)
OFFICE OF THE EXECUTIVE DIRECTOR	(595,200)	(30,157)	(337,544)	(257,656)
OGC-DISCIPLINARY BOARD	(302,291)	(21,196)	(170,034)	(132,257)
PRACTICE OF LAW BOARD	(84,486)	(5,728)	(47,927)	(36,558)
PRACTICE MANAGEMENT ASSISTANCE	(99,050)	(17)	(72,262)	(26,788)
PROFESSIONAL RESPONSIBILITY PROGRAM	(282,184)	(21,914)	(184,945)	(97,240)
PUBLIC SERVICE PROGRAMS	(273,682)	(19,300)	(104,040)	(169,642)
PUBLICATION & DESIGN SERVICES	(106,573)	(8,255)	(75,164)	(31,410)
REGULATORY SERVICES FTE	(513,908)	(39,869)	(333,668)	(180,240)
SECTIONS ADMINISTRATION	(3,432)	(20,238)	173,104	(176,536)
SECTIONS OPERATIONS	(262,000)	(11,862)	161,098	(423,098)
SERVICE CENTER	(652,436)	(51,232)	(438,690)	(213,746)
TECHNOLOGY	(1,813,143)	(118,578)	(1,211,600)	(601,542)
VOLUNTEER EDUCATION	(114,280)	(8,618)	(63,323)	(50,957)
INDIRECT EXPENSES	20,278,667	1,523,090	13,480,914	6,797,754
<b>TOTAL OF ALL</b>	<b>(20,407,139)</b>	<b>(1,765,835)</b>	<b>(16,765,713)</b>	<b>(3,641,426)</b>
<b>NET INCOME (LOSS)</b>	<b>128,472</b>	<b>242,744</b>	<b>3,284,800</b>	<b>(3,156,328)</b>

**Washington State Bar Association  
Analysis of Cash Investments  
As of May 31, 2022**

**Checking & Savings Accounts**

**General Fund**

**Checking**

<b><u>Bank</u></b>	<b><u>Account</u></b>	<b><u>Amount</u></b>
Wells Fargo	General	\$ 1,141,870

Total

<b><u>Investments</u></b>	<b><u>Rate</u></b>	<b><u>Amount</u></b>
Wells Fargo Money Market	0.03%	\$ 14,688,024
UBS Financial Money Market	0.04%	\$ 1,081,405
Morgan Stanley Money Market	0.05%	\$ 3,357,290
Merrill Lynch Money Market	0.03%	\$ 1,983,706

**General Fund Total \$ 22,252,295**

**Client Protection Fund**

**Checking**

<b><u>Bank</u></b>	<b><u>Amount</u></b>
Wells Fargo	\$ 413,335

<b><u>Investments</u></b>	<b><u>Rate</u></b>	<b><u>Amount</u></b>
Wells Fargo Money Market	0.03%	\$ 4,410,323
Morgan Stanley Money Market	0.04%	\$ 106,959

**Client Protection Fund Total \$ 4,930,617**

**Grand Total Cash & Investments \$ 27,182,912**