WSBA SECTIONS: SESSION PRIMER

An overview of the legislative process and preparation for the 2027 session

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AGENDA

- Sections + Legislative Affairs
- Rules & Policies
- Legislative Action overview



SECTIONS + LEGISLATIVE AFFAIRS

Role

- Craft Bar-request bills
- Receive, respond, and track bills
- Provide expertise when requested/needed
  - In coordination with Legislative Affairs staff
- Provide input/comment on relevant bills of importance
  - In coordination with Legislative Affairs Manager, BOG Legislative Committee, guidelines

WSBA LEGISLATIVE AFFAIRS

Legislative goals

- **WSBA Mission**: “serve the public and members of the Bar, ensure the integrity of the legal profession, and to champion justice.”
- **Advocate**
  - Bar-sponsored legislation
  - Bar-supported legislation
  - Other issues outlined in the **2027 Legislative Priorities**
- **Respond** to all legislative-related inquiries accurately and timely to advance the overall goals of WSBA.

GR 12.2 & *KELLER*

Catherine Schur, *Assistant General Counsel*

RULES & POLICIES

General Rule 12

- Pursuant to GR 12.2(b)(17), the WSBA is authorized to "maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns."
- Pursuant to GR 12.2(c), the WSBA only takes positions on legislation that "relate(s) to or affect(s) the objectives of GR 12.1 or GR 12.2(a) or (b)."
- Excludes political or social issues of foreign nations and support/opposition for electoral candidates

GENERAL RULE 12.1

Washington Supreme Court Objectives:

- Protection of the public
- Advancement of the administration of justice and rule of law
- Access to justice in criminal and civil systems
- Affordability of legal services
- Protection of privilege
- Ethical, competent legal services and independence of professional judgment
- Regulation of legal professionals, wellness programs, and accessible civil remedies
- Diversity and inclusion in profession and freedom from discrimination for participants in justice system

GR 12.2(a), (b): WSBA PURPOSES AND ACTIVITIES

GR 12.2 (a): 11 enumerated purposes

GR 12.2 (b): 23 authorized activities

General buckets relate to:

- Administration of justice
- Independence of judiciary and professional judgment
- Legal professional competency and ethics
- Diversity and equality in courts and profession
- Admission, regulation, and discipline
- Support for rule of law
- Supporting the judiciary's integrity, independence, financial stability

WHAT ABOUT "KELLER"? – WHAT IT IS & WHY IT MATTERS

- *Keller v. CA State Bar Ass'n*, 496 US 1 (1990), and cases following address how mandatory bar dues may be used and how to address member objections to bar activities

- Mandatory bar membership and dues implicate First Amendment free speech and association rights
  - $$$ = speech

- Introduces concept of "germaneness"

"the compelled association and integrated bar is justified by the State's interest in **regulating the legal profession** and **improving the quality of legal services.** The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members."

LOWER COURTS ELABORATE ON THESE STANDARDS

Courts have interpreted "regulating the legal profession" and "improving the quality of legal services" to mean that:

- Germaneness "requires **inherent connection to the practice of law** and not mere connection to a personal matter that might impact a person who is practicing law." *Boudreaux v. La. Bar Ass'n*, 86 F.4th 620, 633 (5th Cir. 2023).

- "Activities that may be funded with compulsory dues [. . .] generally must 'revolve around the **role of the lawyer as lawyer**, rather than relying on the lawyer's more generic role as an informed and perhaps influential member of a complex society." *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620, 640 (1st Cir. 1990)

- "Just because lawyers are interested in a general social issue does not give a mandatory bar association blanket permission to promote content or speak about it." *Boudreaux*, 86 F.4th at 636.

KELLER DEDUCTION

- If the bar engages in activities that are not allowed by *Keller*, members cannot be charged for them.
- Requires:
  - Adequate explanation of the fee
  - Opportunity to challenge the amount
- WSBA reviews all activities annually for germaneness and compliance with GR 12.2
  - *"We include the cost of an activity in the deduction for members if reasonable minds could disagree on whether the activity meets Keller's germaneness standard"*

- "*Keller* deduction" does not exempt WSBA from constitutional challenges or duty to comply with GR 12.2

- Unclear if deduction is a remedy for associational claims

BREAKING IT DOWN

Does mean

- WSBA's position as an organization, i.e., BOG, staff, section, committee, etc.
- Must relate to regulating the legal profession and improving the quality of legal services

Does not mean

- Member in individual capacity
- Anything that says "law" or "legal" or "justice" or that is a law lawyers use

RULES & POLICIES

Public Disclosure Commission

- Lobbyist = anyone attempting to influence state legislative action
- WSBA entities are *not authorized* to engage in lobbying activities.
- People register as lobbyists only if:
  - Activities are beyond public committee hearings; and
  - Compensation is received
- www.pdc.wa.gov

LEGISLATIVE ACTION PROCESS

Link

RULES & POLICIES

Legislation and Rulemaking Comment Policy (1501) [link]

- The Board of Governors, through the Board's Legislative Committee must determine that an issue is within the scope of permissible Bar activities before an entity can comment.
- Technical comments and responses to questions from legislators go through a more streamlined process.
- Encourages WSBA entities to speak with one voice; maintain consistency
- *Executive Director, Bar President, BOG, or BOG Legislative Committee may enforce*

RULES & POLICIES

Things to Know in Policy 1501 [link]

- Only applies to comments in a Bar entities' own name
  - Sections can respond to questions from legislators without Legislative Committee involvement but must indicate that the response is offered in individual capacities.
- Sections may provide technical drafting comments on issues outside the scope of permissible Bar activities but cannot take a position on the bill or issue.

FRAMING OUR ROLE

Our purpose is not to determine what is good or bad policy. Our purpose is to ensure that the policies that are adopted by the Legislature work for practitioners, the public, and the courts.

LEGISLATIVE ACTION: BILL REFERRAL PROCESS

Legislative Affairs staff

- Reviews bills daily during session
- Refers relevant bills to Section(s) via email
- Makes recommendations about next steps
- Communicates with legislators/staff/stakeholders
- Tracks bills of importance throughout session

LEGISLATIVE ACTION: BILL REFERRAL PROCESS

Sections

- Review referred bill(s)
- Offer **technical comments**, as appropriate (75%+ vote)*
- Take a position, **if deemed necessary** (75%+ vote)*
- Be available for questions, appropriate next steps (e.g. testimony, written correspondence, etc.)

*Session vs. non-session distinction

PLEASE CHOOSE 1 OF THESE 3 OPTIONS WHEN RESPONDING:

- **Option 1**: *We do not find this bill to be of interest or relevance to our Section*

- **Option 2**: *We would like this bill tracked but have no position at this time. Your section will receive a report on the bill at the end of the legislative session if you select this option. If you would like more information about a bill during session (for example: public hearing notifications) please indicate this in your response.*

- **Option 3**: *We would like to provide technical comments (insight regarding how a law or rule will be used by legal practitioners; drafting issues, such as typographical errors, mis-citations of statutes or other rules, or ambiguities; or identifying possible conflicts with other laws or rules)*

- **Option 4**: *We would like to follow the WSBA legislative process to take a position_____ on Bill #_____.*

Please 'Reply All' when responding.

SECTION(S): **Elder Law**
BILL #: HB 1422
SHORT TITLE: **Concerning the protection of vulnerable adults. By request: Department of Social and Health Services**
DEADLINE: **Wednesday, February 26**
NOTES: This bill was monitored by Elder Law last session.
YOUR OPTION:

LEGISLATIVE ACTION: TAKING POSITIONS ON BILLS

Before taking a position:

The Board of Governors (through the Legislative Committee) must determine that the issue meets the Bar's legal requirements

- Discuss, vote via Section executive committee (75%+)

Possible positions:

- Support
- Concerns
- Opposed

LEGISLATIVE ACTION: COMMUNICATION

WSBA Legislative Affairs

- Frequent bill emails/referrals (beginning-middle of session)
- Support throughout session

Sections

- Track bills of importance
- Keep Legislative Affairs staff apprised of all legislative activity
- Ask questions before determining action (e.g. legal requirements, other legislative communication, etc.)

QUESTIONS?

Resources

- **WSBA Legislative Affairs**: wsba.org/About-WSBA/Legislative-Affairs
- **WA State Legislature**: leg.wa.gov
  - Bill tracking
  - Committee information
  - Legislator biographies, etc.
- **TVW**: tvw.org
  - Committee hearings
  - Floor action