

WASHINGTON STATE BAR ASSOCIATION

BOG Legislative Committee

June 3 2020

4:00 p.m.

Via Zoom

Approval of 5/27 Meeting Minutes

All

Section Legislative Comment Policy

All

NEXT MEETING: TBD



WASHINGTON STATE BAR ASSOCIATION

Real Property, Probate and Trust Section

June 2, 2020

WSBA BOG Legislative Committee Members
Sanjay Walvekar, WSBA Legislative Affairs Manager
PJ Grabicki, RPPT BOG Liaison

RE: Draft WSBA Sections Legislative Policy

Dear Committee Members, Mr. Walvekar and Mr. Grabicki:

The WSBA Real Property Probate and Trust Section ("RPPT") submits these comments following the committee's meeting on May 27, 2020 in which the "May 21 draft policy" was discussed.

It is our understanding, based on the discussion at that meeting, that the Committee postponed a vote on the May 21 draft policy until this Wednesday for the sole purpose of considering very limited revisions. Consistent with that understanding, RPPT has restricted its proposed changes to related issues in three paragraphs of the May 21 draft policy -- paragraphs 3, 4, and 6. If, however, the Committee is willing, now or in the future, to entertain more extensive comments, we would commend to your consideration the policy proposed by the WSBA Family Law Section Executive Committee in its memorandum to you dated May 26, 2020. In our view, that policy is a thoughtful, clear, comprehensive, and practical rewrite of the existing policy set forth in "WSBA Legislation and Court Rule Comment Policy" as amended November 13, 2015 (the "2015 Policy"). There is much in the policy proposed by the Family Law Section that RPPT would endorse.

Here then, are RPPT's comments on the May 21 draft policy.

I. Paragraph 3 of the May 21 Draft Policy

For the reasons explained below and as set forth in the marked copy of the May 21 draft policy submitted with this letter, RPPT proposes that the second sentence of paragraph 4 of the 2015 Policy be restored to what is otherwise the identical provision in the May 21 draft policy.

The "Notes" section of the May 21 draft policy says:

An issue remains with this draft as to whether a Section may comment on its own and state that its position is not that of the WSBA. This was a request of the RPPT section but was not a part of the prior draft.

That was NEVER meant to be the request of RPPT. To the contrary, RPPT went to great lengths to explain that it has always worked with the Legislative Affairs Manager, in a productive way, prior to presenting any public position. No current member of RPPT's executive committee can remember -- and we hope no other person can point to -- a time that RPPT initiated testimony or any public position in front of the Legislature without working with and through the WSBA Legislative Affairs Manager.

The only point that RPPT wishes to highlight, is the ambiguity inherent in the draft policy between three different types of "comment" that a section may make and the varying standards of approval required for each. The draft policy provides as follows:

3. The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to **publically** communicating its comments on a Matter. In order to **officially** comment on behalf of the WSBA, the Section must have the prior written approval of the Board Legislative Committee or the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. If authorization is granted, Entities may represent that the comments are the official comments of the WSBA. Entities are not permitted to comment on local or municipal policies or legislation. ...

6. A Section may provide **technical drafting comments** such as pointing out issues (typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in a bill, and suggested amendatory language) without a GR 12 analysis or obtaining approval of the comments. The Legislative Affairs Manager shall be advised of and copied on such comments in a timely manner.

(May 21, Draft Policy; emphasis added.) The draft policy thus contemplates three different types of "comment" that a section might make ... public, official and technical drafting. RPPT's first concern stems from the lack of clarity between "public" and "official" comments. The existing, 2015 Policy, uses these same terms but includes a sentence that clarifies the distinction. A public comment is made only on behalf of the Section and **ONLY AFTER AUTHORIZATION FROM THE LEGISLATIVE AFFAIRS MANAGER**. Specifically, the 2015 existing policy says: "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." The existing policy goes on to explain that if a Section wants to testify that its comments are the opinion of the entire Bar Association, the section must obtain approval from the BOG.

The distinction between "public" and "official" comments is clear in the existing policy and recognizes both the requirement for a Section to work with and through the WSBA Legislative Affairs Manager and the short time period in which to do so. To make a "public" comment, the Section **MUST** first gain authorization from the Legislative Affairs Manager. A Section may never comment "on its own". However, in the absence of full

BOG approval, the Section may not comment on behalf of the Bar Association. Thus, the sentence in the existing policy, "If authorization is granted [from the Legislative Affairs Manager], Entities must clearly state that their comments are solely those of the Entity, and not the official comments of the WSBA", (2015 Policy, para. 4) distinguishes the testimony that may be given after the Legislative Affairs Manager has authorized the testimony but prior to approval by the BOG, which, in reality, is the only testimony given by Sections regarding the day-to-day bills considered by the Legislature.

The existing 2015 Policy drives this point home when it says: "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." (2015 Policy, para. 4; emphasis added.) The existing 2015 Policy never authorizes a Section to "comment" without authority of the Legislative Affairs Manager. Instead, it recognizes a distinction between the substance of testimony that is offered by a Section only versus testimony offered on behalf of the WSBA while acknowledging that with the time constraints inherent in a Legislative session, it is not possible to get BOG approval in time for a Section to timely comment on a proposed bill. The existing 2015 Policy also recognizes that it is not necessary (probably not even helpful) to get BOG approval for the day-to-day testimony a Section may offer. Remembering that Sections are the subject matter experts, the distinction between "public" and "official" comment in the existing 2015 Policy allows subject matter experts to comment on a bill and assist the Legislature to make quality public policy in a timely manner.

All that RPPT is asking, with respect to this issue, is that the sentence from the existing policy be included in any revised policy so that it is clear that a Section may testify to a Legislative Committee without having to gain the approval of the BOG or the BOG's Legislative Committee.

II. Paragraph 6 of the May 21 Draft Policy

For the reasons explained below and as set forth in the marked copy of the May 21 draft policy submitted with this letter, RPPT proposes that paragraph 6 of the May 21 draft policy be deleted.

The third category of "comment" created by the draft policy allows a section to "comment" without a GR 12 analysis or any approval of the Bar Association, including the Legislative Affairs Manager. Instead, all that is apparently required is the assessment of a single section member that the member's comment relates to: "typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in a bill, and suggested amendatory language" and with that, the Section member may represent that he or she is testifying on behalf of the WSBA and the Section. How simple would it be for a Section member, well-intended or otherwise, to argue that his or her comment to the Legislature that a word such as "not" was missing from a bill, it was clearly a typo and notwithstanding that inclusion of the word would reverse the meaning of the bill, the member was free to testify on behalf of the

Section and the Bar Association? A similar argument can be made with respect to the other categories of "technical drafting comments" allowed by the draft policy.

Simply put, no entity of the WSBA should be allowed to make any "comment" without a GR 12 analysis and 75% approval of the entity's leadership along with authorization from the Legislative Affairs Manager. Paragraph 6 of the May 21 draft policy should be stricken.

III. Paragraph 4 of the May 21 Draft Policy

For the reasons set forth in our letter to the Committee of May 5, as repeated below, RPPT proposes that paragraph 4 of the May 21 draft policy be deleted, so that obtaining authorization to comment on legislation will be governed by paragraph 3 of the May 21 draft policy, revised as requested above. If the Committee decides to retain paragraph 4 of the May 21 draft policy, then RPPT suggests that it be revised as set forth in the marked copy submitted with this letter.

Paragraph (3) of the existing May 21 draft policy says, in part:

The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to publically communicating its comments on a Matter. ...

Compare that to the language in paragraph 4 of the May 21 draft policy:

The Section will notify the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after the decision is made by the Section on pending or proposed legislation, that the Section supports it, opposes it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position. The Section will also notify the Legislative Affairs Manager at least 24 hours in advance of a hearing before a legislative committee on a given bill, if the Section wishes to testify regarding that bill. The Section may do nothing more until the Legislative Affairs Manager gives permission to testify or to move forward with the position being taken by the Section, which permission may be given either verbally or in writing. The Legislative Affairs Manager will bring it to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the Section's position, unless there is a good and articulable reason to deny the request, which shall be explained to the Section. The Legislative Affairs Manager will notify the Board's Legislative Committee as soon as possible thereafter.

It is not clear what purpose paragraph 4 of the draft policy serves that is not already accomplished by paragraph 3. Paragraph 3 requires a section to seek authorization from the Legislative Affairs Manager. If the goal of paragraph 4 is to establish the protocols for a section to seek the Manager's authorization, it is the opinion of RPPT that the protocols are too rigid. If paragraph 4 of the draft policy is simply redundant of the requirement created in paragraph 3, paragraph 4 should be deleted.

It has been the experience of RPPT that, in practice, the existing 2015 Policy, captured in paragraph 3 of the May 21 draft policy, fosters cooperation between sections and the Legislative Affairs Manager, but we fear that paragraph 4 of the May 21 draft policy will compartmentalize them. Paragraph 3 of the May 21 draft policy requires a section to "seek authorization" from the Manager, without specifying how that is to be done. In practice, it happens naturally when sections and the Manager work cooperatively, as partners in a common endeavor, trying to understand proposed legislation and inform law makers of relevant issues. For example, when the Manager brings bills to the attention of the section, that initial communication sparks dialog between the Manager and the section. The section determines which bills are significant and talks to the Manager about concerns. The Manager likely visits with relevant legislators and reports back regarding the political landscape. As necessary, that dialog evolves into written or oral testimony from the section to the Legislature that the Manager shepherds. In that way, authorization from the Manager to the section is clearly given even if not formally requested.


Compare that to the mechanistic approach established by paragraph 4 of the proposed May 21 draft policy. The section will "notify" the Manager *after* the decision is made by the Section". Instead of a partnership between the Manager and the section that organically evolves into testimony, the Manager is "notified" that the section made a decision after the decision is made. This sets-up both the section and the Manager for failure. The section will reach conclusions in the absence of input from the Manager. The Manager will then be expected, possibly within 24 hours of first learning about an issue, to assess the ramifications of the comment in the full context of the Legislature's priorities, the WSBA's priorities and the substance of the issue. In addition to anything else the Manger is handling, including comment requests from other sections, the Manager will have to: schedule and consult with sponsoring Legislators or their staff to understand the politics surrounding the issue; learn the basics of the issue for comparison to WSBA priorities; consult with the Legislative Affairs Committee (as necessary); and report a decision back to the section. This approach is unrealistic given the time pressures that dominate a legislative session including the, often, short fuse between introduction of a bill and a hearing on the bill.

The approach also fosters inefficiencies in the volunteer-led sections. Sections will devote time to developing comments that the WSBA may not allow, that are unnecessary because of the political landscape or that are rejected by the Manager who cannot react quickly enough to approve the comment. Paragraph 4 of the May 21 draft policy creates an "us and them" relationship between sections and the Manager rather than a partnership.

While it would be RPPT's preference to delete paragraph 4 of the May 21 draft policy and continue working with the Legislative Affairs Manager under the existing terms of the 2015 policy (that is, under paragraph 3 of the May 21 draft revised to conform to the 2015 Policy as requested above), if that is not acceptable to the Committee then RPPT requests that paragraph 4 of the May 21 draft policy be revised to be more flexible and to better accommodate the realities of the legislative process. Our suggested changes in that regard are set forth in the marked copy of the May 21 draft policy submitted with this letter.

We appreciate the opportunity to submit these comments and will be happy to discuss them with you in the course of Wednesday's meeting.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Stephanie Taylor', written over the typed name.

Stephanie Taylor
Chair, WSBA Real Property Probate and Trust Section

SECTIONS LEGISLATION COMMENT POLICY

May 21, 2020 discussion draft

Notes: This is a blend of the March 13, 2020 Sections Legislative Policy draft and the existing November 13, 2015 WSBA Legislation & Court Rule Comment Policy, with thanks to the RPPT Section for their significant participation. It is broader than the prior draft insofar as it covers not only state legislation but federal legislation as well as court rules, executive orders, administrative rulemaking, and international treaties, all of which were the subject of the adopted 2015 policy. If adopted, this Legislation Policy would supersede and replace the 2015 policy.

An issue remains with this draft as to whether a Section may comment on its own and state that its position is not that of the WSBA. This was a request of the RPPT section but was not a part of the prior draft. Whether there is a way to address this so that the legislature does not receive potentially conflicting positions should be addressed by the Board Legislative Committee when considering this draft.

Purpose: This Policy governs the authority of Sections of the Washington State Bar Association to comment publicly on state legislation, executive orders, and administrative rulemaking (hereinafter “Matter”). 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. The reason for this Policy is to insure that Sections do not take positions that publicly oppose each other in front of the legislature, and to provide a mechanism for divergent positions on legislation to be reconciled with the assistance of the Legislative Affairs Manager if there is time to do so.

Additionally, Sections are the experts in their fields, and attorneys and other members

of the WSBA expect that their sections will monitor legislation, take positions when appropriate, educate the legislators with regard to proposed legislation, recommend changes to previously passed legislation or technical corrections to existing legislation. The WSBA also needs to know about Section legislative activity so that the WSBA Outreach & Legislative Affairs Manager (“Legislative Affairs Manager”) can help avoid divergent positions and unnecessary expenditure of political capital by the WSBA and the Sections. Training should be provided by the WSBA to at least one designee of each Section’s Executive Committee, with other committee members welcome and encouraged to attend, on how to implement and handle these policies, to be given annually. The Legislative Affairs Manager shall be made available to Section Executive Committees as a resource for any questions as a Section works on a legislative matter in accordance with this policy.

Policy: Sections are authorized to appear before or otherwise publicly comment on legislation to the Legislature, or a committee of the Legislature, only under the following conditions:

1. The Section may not publicly comment unless: (a) at least 75% of the total membership of the Section’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 Section. A subcommittee or other subset of a Section may not publicly communicate its comments on a Matter.
2. The Section shall not publicly communicate comments on a Matter if such comments are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.
3. The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to publicly communicating its comments on a Matter. 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 Section must have the prior written approval of the Board Legislative Committee or the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. If

authorization is granted, Entities may represent that the comments are the official comments of the WSBA. Entities are not permitted to comment on local or municipal policies or legislation.

4. The Section and the Legislative Affairs Manager will work cooperatively and in good faith to establish a process acceptable to both by which (a) The Section will apprise/notify the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after the decision is made by the Section, to the extent reasonably requested by the Legislative Affairs Manager and in a manner appropriate to the legislative schedule, the deliberative processes of the Section and the schedule of the Legislative Affairs Manager, of the Section's deliberations on pending or proposed legislation, and whether that the Section intends to support it, opposes it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position and (b) the Legislative Affairs Manager will promptly provide the Section with advice and suggestions. The Section will also notify the Legislative Affairs Manager at least 24 hours in advance of a hearing before a legislative committee on a given bill, if the Section wishes to testify regarding that bill. The Section may do nothing more until the Legislative Affairs Manager gives permission to testify or to otherwise move forward with the position being taken by the Section to the extent such position is consistent with prior communications between the Section and Legislative Affairs Manager, provided the Legislative Affairs Manager has not expressly stated disapproval of such position, which permission may be given either verbally or in writing. The Legislative Affairs Manager will bring any such disapproval to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the Section's position, unless there is a good and articulable reason to deny the request, which shall be explained to the Section. The Legislative Affairs Manager will notify the Board's Legislative Committee as soon as possible thereafter. If the Section is providing testimony or otherwise commenting on legislation at the express request of a Legislator, the Section may proceed notwithstanding disapproval from the Legislative Affairs Manager unless the Board's Legislative Committee affirms the disapproval prior to the hearing or submission of comments.

5. A Section is responsible for advising the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the Section regarding Matters. The Section 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 Board of Governors or the Board of Governors Legislative Committee, the Section shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action.

~~6. A Section may provide technical drafting comments such as pointing out issues (typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in a bill, and suggested amendatory language) without a GR-12 analysis or obtaining approval of the comments. The Legislative Affairs Manager~~

~~shall be advised of and copied on such comments in a timely manner.~~

76. Federal Matters are defined as federal court rules and legislation, executive orders, administrative rulemaking, and international treaties. The Section may not comment publicly on a Federal Matter except with prior written authorization of the Board of Governors, and such authorization may be subject to limitations established by the Board of Governors.

87. Sections are prohibited from joining or affiliating with groups or associations whose legislative advocacy reaches beyond the areas allowable under GR 12.

98. This Policy supersedes and replaces any and all prior policies on the same subject, including but not limited to the WSBA Legislation and Court Rule Comment Policy amended November 13, 2015 by the Board of Governors.

SECTIONS LEGISLATIVE COMMENT POLICY

June 2, 2020 draft

Note: This is a revision to the May 21, 2020 draft of the Sections Legislation Comment Policy, with thanks to the RPPT and Family Law Sections for their comments. It prohibits municipal and federal comment unless authorized by the Board of Governors. If adopted, this Legislation Policy would supersede and replace the WSBA Legislation and Court Rule Comment Policy amended November 13, 2015 by the Board of Governors.

Purpose: This Policy governs the authority of Sections of the Washington State Bar Association to comment publicly on state legislation, executive orders, and administrative rulemaking (hereinafter “Matter”). 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. The reason for this Policy is to insure that Sections do not take positions that publicly oppose each other in front of the legislature, and to provide a mechanism for divergent positions on legislation to be reconciled with the assistance of the Legislative Affairs Manager if there is time to do so.

Sections’ work in the legislative process is valuable and important to WSBA members and requires a contribution of significant time and energy by Section Executive Committee members. Sections are the experts in their fields, and attorneys and other members of the WSBA expect that their sections will monitor legislation, take positions

when appropriate, educate the legislators with regard to proposed legislation, recommend changes to previously passed legislation or technical corrections to existing legislation. The WSBA also needs to know about Section legislative activity so that the WSBA Outreach & Legislative Affairs Manager (“Legislative Affairs Manager”) can help avoid divergent positions and unnecessary expenditure of political capital by the WSBA and the Sections. Sections also benefit from learning of the positions of other Sections on the same bills or on companion bills.

Policy:

1. Sections are encouraged to identify legislative issues within their area of expertise. The Legislative Affairs Manager will also identify bills to a Section that are within a particular Section’s expertise and will keep the Sections updated on a bill’s progress and pivotal points in the legislative process.

2. Training should be provided annually by the WSBA staff and Section members with significant experience in the legislative setting to at least one designee of each Section’s Executive Committee, with other committee members welcome and encouraged to attend, on how to implement this Policy. Such training should include how to accomplish Section goals and how to act responsibly in the legislative setting.

3. The Legislative Affairs Manager shall be made available to Section Executive Committees as a resource for any questions as a Section works on a legislative matter in accordance with this Policy. A Section and the Legislative Affairs Manager will work cooperatively to establish a process to assist the Executive Committee in the development of and consideration of any comment. Similarly, Sections should be a resource to the WSBA

on legislative matters within a Section's subject area.

4. Sections are authorized to appear before or otherwise comment on legislation to the Legislature, or a committee of the Legislature, only under the following conditions:

a. The Section may not comment unless: (a) at least 75% of the total membership of the Section'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 Section. A subcommittee or other subset of a Section may not communicate its comments on a Matter to the Legislature or a committee thereof.

b. The Section shall not communicate comments on a Matter if such comments are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.

c. The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to communicating its comments on a Matter. In order to officially comment on behalf of the WSBA, the Section must have the prior written approval of the Board Legislative Committee or the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. If authorization is granted, Entities may represent that the comments are the official comments of the WSBA.

d. A Section will apprise the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after a decision is made by the Section on pending or proposed legislation, that the Section intends to support it, oppose it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position. A Section will also notify the Legislative Affairs Manager at least 24 hours in advance of a hearing before a legislative committee on a given bill, if the Section wishes to testify regarding that bill. The Section may do nothing more until the Legislative Affairs Manager gives permission to testify or to move forward with the position being taken by the Section, which permission may be given either verbally or in writing. The Legislative Affairs Manager will bring it to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the Section's position, unless there is a good and articulable reason to deny the request, which shall be explained to the Section. The Legislative Affairs Manager will notify the Board's Legislative Committee of the decision as soon as possible thereafter.

e. An Section is responsible for advising the Legislative Affairs Manager, on an

ongoing basis, regarding decisions, comments, and actions of the Section regarding Matters. The Section shall advise the Legislative Affairs Manager of any proposed action intended to communicate its comments on legislation in advance of taking such action. Unless otherwise authorized by the Board of Governors or the Board of Governors Legislative Committee, the Section shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action. However, a Section representative may answer questions posed by legislators in a manner consistent with the Section position that has been authorized in accordance with this Policy.

f. A Section may provide technical drafting comments such as pointing out issues (typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in a bill, and suggested amendatory language) without a GR 12 analysis or obtaining approval of the comments. The Legislative Affairs Manager shall be advised of and copied on such comments in a timely manner.

g. Sections may not comment on municipal (defined as a city or county) Matters or on Federal Matters, which are defined as federal court rules and legislation, executive orders, administrative rulemaking, and international treaties. If a Section believes that comment on a municipal or Federal Matter should be undertaken, the Section may bring the Matter to the Board of Governors to seek the Board's authorization. Such authorization may be subject to such limitations as may be established by the Board of Governors.

h. Sections are prohibited from joining or affiliating with groups or associations whose legislative advocacy reaches beyond the areas allowable under GR 12.

i. This Policy supersedes and replaces any and all prior policies on the same subject, including but not limited to the WSBA Legislation and Court Rule Comment Policy amended November 13, 2015 by the Board of Governors.

mechanism for divergent positions on legislation to be reconciled with the assistance of the Legislative Affairs Manager if there is time to do so.

Additionally,

Sections' work in the legislative process is valuable and important to WSBA members and requires a contribution of significant time and energy by Section Executive Committee members. Sections are the experts in their fields, and attorneys and other members of the WSBA expect that their sections will monitor legislation, take positions when appropriate, educate the legislators with regard to proposed legislation, recommend changes to previously passed legislation or technical corrections to existing legislation. The WSBA also needs to know about Section legislative activity so that the WSBA Outreach & Legislative Affairs Manager ("Legislative Affairs Manager") can help avoid divergent positions and unnecessary expenditure of political capital by the WSBA and the Sections. Sections also benefit from learning of the positions of other Sections on the same bills or on companion bills.

Policy:

1. Sections are encouraged to identify legislative issues within their area of expertise. The Legislative Affairs Manager will also identify bills to a Section that are within a particular Section's expertise and will keep the Sections updated on a bill's progress and pivotal points in the legislative process.

2. Training should be provided annually by the WSBA staff and Section members with significant experience in the legislative setting to at least one designee of each Section's Executive Committee, with other committee members welcome and encouraged to attend, on

how to implement ~~and handle these policies, to be given annually~~this Policy. Such training should include how to accomplish Section goals and how to act responsibly in the legislative setting.

3. The Legislative Affairs Manager shall be made available to Section Executive Committees as a resource for any questions as a Section works on a legislative matter in accordance with this ~~policy~~.

~~Policy~~Policy. A Section and the Legislative Affairs Manager will work cooperatively to establish a process to assist the Executive Committee in the development of and consideration of any comment. Similarly, Sections should be a resource to the WSBA on legislative matters within a Section's subject area.

4. Sections are authorized to appear before or otherwise ~~publicly~~ comment on legislation to the Legislature, or a committee of the Legislature, only under the following conditions:

1a. The Section may not ~~publicly~~ comment unless: (a) at least 75% of the total membership of the Section'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 Section. A subcommittee or other subset of a Section may not ~~publicly~~ communicate its comments on a Matter to the Legislature or a committee thereof.

2b. The Section shall not ~~publicly~~ communicate comments on a Matter if such comments are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.

3c. The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to ~~publically~~ communicating its comments on a Matter. In order to officially comment on behalf of the WSBA, the Section must have the prior written approval of the Board Legislative Committee or the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. If authorization is granted, Entities may represent that the comments are the official comments of the WSBA. ~~Entities are not permitted to~~

~~comment on local or municipal policies or legislation.~~

~~4d.~~ The Section will ~~notify~~apprise the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after ~~the~~a decision is made by the Section on pending or proposed legislation, that the Section intends to ~~support~~ it, ~~opposes~~ it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position. The Section will also notify the Legislative Affairs Manager at least 24 hours in advance of a hearing before a legislative committee on a given bill, if the Section wishes to testify regarding that bill. ~~The~~ Section may do nothing more until the Legislative Affairs Manager gives permission to testify or to move forward with the position being taken by the Section, which permission may be given either verbally or in writing. The Legislative Affairs Manager will bring it to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the Section's position, unless there is a good and articulable reason to deny the request, which shall be explained to the Section. ~~The~~ Legislative Affairs Manager will notify the Board's Legislative Committee of the decision as soon as possible thereafter.

~~5e.~~ A Section is responsible for advising the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the Section regarding Matters. The Section 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 Board of Governors or the Board of Governors Legislative Committee, the Section shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action. However, a Section representative may answer questions posed by legislators in a manner consistent with the Section position that has been authorized in accordance with this Policy.

~~6f.~~ A Section may provide technical drafting comments such as pointing out issues (typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in a bill, and suggested amendatory language) without a GR 12 analysis or obtaining approval of the comments. The Legislative Affairs Manager shall be advised of and copied on such comments in a timely manner.

~~7.~~ g. Sections may not comment on municipal (defined as a city or county) Matters or on Federal Matters, which are defined as federal court rules and legislation, executive orders, administrative rulemaking, and international treaties. ~~The~~ If a Section ~~may not believe that~~ comment ~~publicly~~ on a municipal or Federal Matter ~~except with prior written authorization of~~ should be undertaken, the Section may bring the Matter to the Board of Governors, ~~and s~~ to seek the Board's authorization. Such authorization may be subject to such limitations as may be established by the Board of Governors.

| 8h. Sections are prohibited from joining or affiliating with groups or associations
| whose legislative advocacy reaches beyond the areas allowable under GR 12. =

| 9i. This Policy supersedes and replaces any and all prior policies on the same subject,
including but not limited to the WSBA Legislation and Court Rule Comment Policy
amended November 13, 2015 by the Board of Governors.