

MEETING AGENDA

April 12, 2024, at 10:00 A.M.

Remote Meeting Via Zoom

OPEN SESSION

1. Welcome and Introductions
2. Review/Approval of Minutes from Meeting on January 19, 2024
3. Discussion on DEI Video
4. Audit Reports (Katie and Merri)
5. MCLE Board Chair Nomination
6. MCLE Updates – TAXICAB, budget, certification numbers, Board recruitment

CLOSED SESSION

1. LLP Activity Review
2. Hardship Petitions

Adjourn

Minutes

January 19, 2024

The meeting of the Mandatory Continuing Legal Education Board was called to order by Board Chair Efrem Krisher at 10:00 A.M. on Friday, January 19, 2024. The meeting was held via videoconference. Board members in attendance were:

Efrem Krisher, Chair
Christopher Bueter
Ayanna Coleman
Darryl Coleman
Katie Denmark
Merri Hartse

Liaisons and Staff in attendance:

Ransom Smith	MCLE Analyst
Adelaine Shay	MCLE Staff Liaison
Bobby Henry	RSD Associate Director
Kevin Fay	Board of Governors Liaison

Proposition to Expand Eligibility Criteria for Structured Mentoring Programs

Jessica Bejerea, DEI Committee Chair of the WSBA Taxation Section, delivered a presentation advocating for the expansion of mentoring credit eligibility to mentoring programs that include law student mentees who intend to become members of the bar and currently inactive members of the bar. The presentation underscored the professional development and diversity benefits of law student mentoring programs and the role that mentoring credit could play in incentivizing member participation in these programs. Such an expansion would require an amendment to the MCLE Board policy controlling standards for structured mentoring programs. As such, the Board unanimously formed a subcommittee (composed of Board members Katherine Denmark, Ayanna Colman, and Darryl Colman) to further investigate the viability and advisability of a policy amendment and tabled any motion to amend pending the report of the subcommittee to be presented at its next scheduled April 12, 2024, meeting.

TAXICAB Joint Administration Policy

The Board reviewed and discussed the most recent draft of the TAXICAB policy (Task Force Administering Xenial Involvement with Court Appointed Boards) which is a policy document designed to coordinate collaborative conduct and mutual understanding of mission among Court Appointed Boards. Currently

these Boards include the Access to Justice Board, Disciplinary Board, Limited License Legal Technician Board, Limited Practice Board, Mandatory Continuing Legal Education Board, and the Practice of Law Board. The Board took a vote to endorse the current version of the policy which met unanimous approval.

Discussion: Sponsor Application Denial Review

The Board had before it a request to review a MCLE staff denial of a Hagens Berman Sobol Shapiro all-staff anti-harassment training entitled Respect in the Workplace Training 2023 (Activity ID 2002340). After discussing APR 11(h)(1) intended audience standards, the Board unanimously upheld the denial decision.

MCLE Updates

The MCLE Staff Liaison provided updates of import to the Board including MCLE compliance and noncompliance percentages for the 2022-2023 reporting period, the status of the new MCLE online system including the development of a feature allowing for the claiming of Law Clerk Tutoring credit, the Washington Supreme Court publication for comment of the proposed Mental Health and Technology Security amendments to APR 11, and current MCLE budgetary overview.

MCLE Board Staff Liaison Decisions

The MCLE Board decided reviewed and approved by motion on 26 staff liaison undue hardship petition decisions. No further information is provided to protect member confidentiality.

MCLE Board Member Activity Application Review

The MCLE Board reviewed and decided by motion upon one member activity application. No further information is provided to protect member confidentiality.

MCLE Board Undue Hardship Petition Review

The MCLE Board reviewed and decided by motion on two petitions and one special circumstances review request made by the MCLE Staff Liaison. No further information is provided to protect member confidentiality.

Adjournment

There being no further business at hand, the meeting was adjourned at 11:24 AM. The next regularly scheduled MCLE Board meeting will be held at 10:00 AM on Friday April 12, 2024.

Respectfully submitted,

Adelaine Shay
MCLE Board Staff Liaison

MEMORANDUM

TO: MCLE Board

FROM: Katie Denmark

RE: CLE Audit Report

COURSE SPONSOR: Practising Law Institute (PLI)

COURSE TITLE: Drafting and Negotiating Corporate Agreements 2024

COURSE DATE(S): Recorded on 01/10/2024

ACTIVITY ID#: 2003456

ACCREDITATION: Currently fulfills 5.50 Law & Legal Credits and 1.0 General Ethics Credit for a total of 6.5 Credits

DATE OF REPORT: March 25, 2024

Sponsor

This course was sponsored by PLI. PLI is a nonprofit learning organization that educates attorneys and other professionals. PLI is chartered by the Regents of the University of the State of New York and was founded in 1933 by Harold P. Seligson. The organization provides accredited continuing legal and professional education programs in a variety of formats. They are delivered by more than 4,000 volunteer faculty including prominent lawyers, judges, investment bankers, accountants, corporate counsel, and U.S. and international government regulators. PLI also publishes a comprehensive library of treatises, course handbooks, answer books, and journals.

Nature of the Program

This 6.5-hour recorded program featured multiple speakers over the course of six sessions. The intended audience for this course is lawyers in or interested in corporate practice.

Faculty

Alyssa A. Grikscheit (Sidley Austin LLP) has a diverse corporate practice that currently emphasizes complex transactions and alternative investment funds. Her experience also includes private equity and hedge funds, mergers and acquisitions, strategic alliances, and restructurings. Grikscheit represents domestic and foreign clients making cross-border investments. She also represents buyers and sellers in acquisitions, dispositions, strategic alliances, restructurings, and financings, including transactions in regulated industries such as the healthcare, pharmaceutical, energy, telecommunications, and defense.

K. Mallory Brennan (Shearman & Sterling LLP) focuses on representing global corporations and financial institutions in mergers and acquisitions litigation and transactional disputes, securities litigation, and other complex commercial disputes, including bankruptcy and antitrust actions. She also has experience counseling multinational corporations in connection with both internal and regulatory investigations.

Michael Brueck (Kirkland & Ellis LLP) focuses his practice on representing buyers, sellers, and boards of directors in a wide range of mergers and acquisitions transactions. He also regularly advises public companies and their boards of directors in connection with corporate governance, securities, and strategic matters, including takeover preparedness and shareholder activism defense. Some of Brueck's clients have included Advance Auto Parts, Avis Budget Group, Baxalta, Charter Communications, Danaher, Equity One, GLP, Ventas, Vitamin Shoppe, and WellCare Health Plans.

Kristen V. Campana (Morgan Lewis & Bockius LLP) represents a wide variety of direct and alternative lenders, including private debt funds, hedge funds, specialty finance companies, business development companies, private equity investors, and issuers in domestic and cross-border financings across the capital structure in connection with acquisitions, leveraged buyouts, convertible debt, equity investments, letters of credit, and project financings. Campana has experience in bankruptcy reorganizations and liquidations, workouts, and distressed debt purchases and sales, as well as second lien and mezzanine financings, and other subordinated debt financings. She represents debtors, debtor-in-possession lenders, pre-petition lenders, and unsecured creditors' committees, as well as other creditors in bankruptcy proceedings.

Ackneil M. Muldrow III (Weil Gotshal & Manges LLP) advises corporations, sovereign wealth groups, and private equity sponsors around the world on market-leading transactions, including cross-border merger, buyout, SPAC, spinout, carve-out, and divestiture transactions. Muldrow also has a well-recognized practice in asset manager mergers and acquisitions and complex secondaries transactions.

Mike Riela (Genworth Financial) provides business, practical, and legal counsel across Genworth's investments function. In particular, he advises investment teams with respect to new investments and with respect to consent requests, amendments, and restructurings. He also advises Genworth's investment teams overseeing the Commercial Real Estate, Public Securities, and Structured Finance asset classes with respect to bankruptcies, restructurings, and workouts.

J. Richard Supple, Jr. (Clyde & Co US LLP) represents law firms and lawyers in professional ethics-related litigation, including disciplinary and legal malpractice cases, partnership and fee disputes, internal investigations, and disqualification and sanctions motions. He advises clients on regulatory compliance issues, litigation finance, lateral movement, and formation and dissolution matters. As a former prosecutor and defense counsel, Supple regularly tries, arbitrates, and mediates cases in federal and state courts, and has argued dozens of appeals. He is also frequently retained as an expert witness.

Michael Traube (Hughes Hubbard & Reed LLP) has substantive experience on a broad range of corporate matters, including public and private mergers and acquisitions, joint ventures, strategic investments, alliances and collaborations, PIPEs, spin-offs, commercial transactions and services arrangements (including tech-focused arrangements), venture capital transactions, Section 363 sales, corporate restructurings, reclassifications, and corporate finance. Traube has led technology and media-focused deals around the world, including in Europe, Asia, and Latin America, for both local and international clients.

Location/Time

This webcast was recorded on 01/10/2024 in New York City. All but one presenter appeared in person. One presenter appeared remotely.

Facilities

N/A

List of Presenters and Their Qualifications

See above presenter biographies.

Written Materials

The written materials consisted of an eight-chapter downloadable course handbook. Attendees could download the handbook in its entirety, or as individual session chapters. Slides featured during each session were also available to download.

Attendance

PLI provides an attendance certificate after the attendee views the webcast and submits their electronic request for proof of certification. PLI course presenters submitted periodic survey questions to the attendees (for those participating in real time) and electronic “click” prompts to verify participation (for those watching the recordings) to track/monitor attendance.

SUMMARY

This course meets the requirements of APR 11. It is appropriately accredited for 5.5 Law & Legal Credits and 1.0 General Ethics Credit.

DISCUSSION

This course was divided into six segments: (1) Universal Issues and Preliminary Documents in Drafting and Negotiating Corporate Agreements, (2) Drafting and Negotiating Corporate Acquisition Agreements, (3) Specialty Agreements – Equity Agreements, (4) Specialty Agreements – Credit Agreements and Indentures, (5) When the Deal Goes Wrong: Enforcing Corporate Agreements and the Importance of Boilerplate, and (6) Ethical Issues in Drafting Corporate Agreements. Each segment was led by one or two presenters and featured slides outlining the substantive information covered by each presenter.

Universal Issues and Preliminary Documents in Drafting and Negotiating Corporate Agreements (60 minutes) covered the following topics: controlling the drafting, drafting in context, structuring first to minimize redrafting, understanding and addressing the client’s special needs, drafting the appropriate time horizon, relying on forms, drafting agreements that work well together, listening before negotiating, adopting an effective negotiating style, prioritizing issues and understanding interrelationships, studying your counterparty, deciding whether to tackle small or big issues first, and communicating with your client and formulating an effective strategy. The presenter did an effective job of introducing the basic elements of and considerations required in drafting and negotiating corporate agreements, as well as offering specific, real-world examples of how these elements might arise in practice.

Drafting and Negotiating Corporate Acquisition Agreements (106 minutes) covered topics such as the basic principles of confidentiality agreements (including standstill agreements) and of letters of intent and exclusivity agreements. The presenters focused primarily on legal issues relating to these agreements/documents from a New York law perspective but referenced case law from a variety of U.S. jurisdictions. The presenters offered tips applicable to newer, less experienced lawyers in this area (for example, they utilized an “anatomy of an acquisition agreement,” graphics illustrating the flow of an agreement pre- and post-merger), as well as provided a useful overview of more nuanced material for those who have experience practicing in this area (for example, the subtle difference in semantics one can use when describing assets and liabilities). The presenters did an effective job discussing the practical realities of making certain decisions while drafting and the basic tensions that may arise when a buyer’s and a seller’s objectives conflict.

Specialty Agreements – Equity Agreements (61 minutes) covered topics such as types of equity agreements, “traps for the wary,” maintaining relationships between parties after a transaction closes, the rights investors seek (governance rights, liquidity provisions), drafting practical provisions such as filling vacancies or who can call a meeting, how confidential information will be used in the future, and the importance of understanding the governance structure you are buying. As with the previous segments, the presenter here did a nice job clearly presenting this information in a practical and concise manner.

Specialty Agreements – Credit Agreements and Indentures (61 minutes) covered basic principles such as the different types of agreements, the difference between secured and unsecured liens, payment features, the parties involved in such agreements, and covenants. The presenter did an effective job of covering both basic principles for less experienced lawyers, as well as discussing more complex aspects of drafting and negotiating these types of agreements.

When the Deal Goes Wrong: Enforcing Corporate Agreements and the Importance of Boilerplate (45 minutes) covered the best time to contact your litigator (at the outset, during drafting, or when a dispute arises) and the importance of knowing your client (their role as it impacts dispute-related considerations) and of thinking ahead to subjects that may lead to future disputes. The presenters discussed when boilerplate provisions or agreements can be useful and when they may not provide sufficient protections against potential future disputes.

Ethical Issues in Drafting Corporate Agreements (61 minutes) was the final session in this presentation. The presenter offered helpful guideposts and aids practitioners can reference in practice (rules of professional conduct, ethics opinions, opinion hotlines, and commonsense), and discussed confidentiality, the role of the attorney, the duty of truthfulness, the importance of defining who the client is, and conflicts of interest. They then presented useful fact patterns regarding ethical issues that may arise when drafting and negotiating corporate agreements, as well as the different ways a practitioner might approach a deal to avoid or address such issues preventively.

CONCLUSION

My overall impression of this recorded presentation was favorable. Although they covered a lot of information, the presenters did an effective job of clearly breaking down various types of corporate agreements and addressing the practical considerations that may arise as practitioners negotiate and draft such agreements. Each segment featured informative discussions regarding the real-world issues or tensions that may arise (from both a buyer's and a seller's perspective) during this process and the ways in which practitioners can work to avoid these tensions. As a group, the presenters did an effective job clearly presenting nuanced content and applying it to specific examples that can be applied in practice. This course is appropriately accredited for 5.5 Law & Legal Credit and 1.0 General Ethics Credit in accordance with APR 11.

MEMORANDUM

TO: Mandatory Continuing Legal Education (MCLE) Board and
Adeline Shay, MCLE Board Staff Liaison

FROM: Merri Hartse, MCLE Board member

RE: Audit Report

COURSE SPONSOR: Spokane County Bar Association

COURSE TITLE: 2024 Civil Appeals CLE: An Emphasis on Preserving Error,
Stays and Supersedeas, and Ethical Considerations on Appeal

COURSE DATE(S): February 16, 2024

ACTIVITY ID#: 2010587

ACCREDITATION: 0.5 Credit (Law & Legal)
0.5 Credit (Ethics)

DATE OF REPORT: April 1, 2024

Nature of the Program

The nature of the program consists of a presenter discussing practical and ethical considerations in a civil appellant law practice in Washington state.

Faculty

One presenter, an appellate attorney, specializing in civil appeals.

Location/Time

On demand. The course is a recording available in video format. Attendees can stop and start the recording at their leisure.

Facilities

Not applicable. This is a previously recorded CLE available on demand through the Spokane County Bar Association website. The CLE was first presented in person at the Gonzaga University School of Law Moot Court Room.

List of Presenters and Their Qualifications

Gary Manca is an appellate attorney at Talmadge/Fitzpatrick, PLLC, a Seattle firm specializing in appeals. Mr. Manca has associated with trial counsel to represent clients in the Washington appellate courts and in the U.S. Court of Appeals for the Ninth Circuit. He is a graduate of the University of Washington School of Law.

Written Materials

Linked with the video recording are electronic versions of the agenda and presenter's bio, a 17-page detailed *Civil Appeals Handout* written by the presenter and another attorney at his firm, the slideshow from the presentation, and an evaluation form provided by the Spokane County Bar Association.

Attendance

This is a recording of a CLE that took place in the Moot Court Room at the Gonzaga University School of Law. The program description includes the information that it "must be viewed and reported by 02/16/2029."

SUMMARY

The overall objective of the program is to provide trial attorneys handling civil cases with basic principles of appellate practice and the legal ethics of representing clients in the appellate courts. Topics include how to preserve error before and after a verdict; enforcement of judgment while an appeal is pending, or how to stay such enforcement. It also covers the duty of competence when advising clients about appellate rights and when undertaking appeals.

DISCUSSION

Mr. Manca began with a review of the basic principle that no new issues can be raised in an appeal, as the appeals courts examine the trial record and do not consider new evidence. This principle also applies to the attorney's arguments, and he cited RAP 2.5(a) "[t]he appellate court may refuse to review any claim of error which was not raised in the trial court." Mr. Manca advises attorneys to raise every argument in the trial court that they intend to raise on appeal. He talked about how this becomes a trade-off between putting all effort into trying to win the case in Superior Court, and putting energy into preserving every error on the chance the case may be appealed. He outlined the mandatory exceptions for appeal. These include lack of trial court jurisdiction, failure to establish facts upon which relief can be granted, and manifest violations of the constitution.

Mr. Manca stressed timeliness in preserving error. By raising an issue in trial court, it's preserved for review. It's important to make a timely presentation of an argument to the trial court, backed with legal authority and evidence. If one waits to see how the trial court will rule or what the verdict will be, the appellate court will be much less likely to reach your argument or review your evidence. If you do not have the chance to raise the issue or did not think of it earlier, raise it as soon as possible and when there is still an opportunity for the trial court to

make a course correction. Make a record of your reasoning and what you want the judge to do. Mr. Manca reviewed areas where errors may need to be preserved for appellate review, such as jury selection, opening statements, and evidence. He provided detailed examples posed around the question “Was the Issue Preserved?” and discussed cases and rulings in Washington. Nuances and gray areas of the law were highlighted.

In discussing stays and supersedeas, Mr. Manca pointed out some clients incorrectly assume that an appeal automatically stays the case while the decision is being reviewed. No. In general, the trial court’s final orders and judgments are enforceable pending an appeal, unless a stay order is obtained, or the client posts a supersedeas bond or other security. He discussed through examples, the ins and outs of RAP 8.1 and 8.3. The issues of finding a bond or posting cash to cover the amount of a judgment and post-judgment interest and attorney fees was also highlighted.

In the ethics portion Mr. Manca cited and discussed numerous Washington State Rules of Professional Conduct covering areas such as duty of competency, ensuring supervised staff are competent, communications with clients, bringing only meritorious arguments to the Court of Appeals, the role of advisor, and conflict of interest.

Mr. Manca stressed the ethical responsibility to have uncomfortable conversations with clients and to be candid about the appeal process. Only 1 out of 3 civil appeals in Washington are successful. At best the client might get a new trial, and that will be expensive. Explain to the client that evidence will not be reweighed and the outcome in appeals court is in the hands of the judges.

An interesting discussion ensued regarding unpublished opinions and stare decisis in the Washington Court of Appeals. He said that in Washington Appellate Procedure it’s optional to cite unpublished opinions and an unpublished opinion does not have to be cited if negative. GR14.1 was cited for reference. He explained there is no horizontal stare decisis in the Washington Court of Appeals. For example, Division 1 is not bound by Division 2. And cases can be transferred amongst divisions.

He ended the ethics portion with a discussion of AI applications in appellate practice, and the shortcomings of using Google and a bot like ChatGPT instead of using a legal database. Argument must be grounded in real law. He mentioned that Westlaw is creating their own AI tool.

CONCLUSION

In summary, this is a dense, information-packed CLE presented by an experienced attorney. The insights and guidance offered are detailed and helpful for both newer and experienced attorneys. The CLE clocked in at 1 hour and 24 minutes. The first 34 minutes provided a robust

examination of preserving error, stays and supersedeas, followed by examples and discussion of applying principals in practice. The last 24 minutes were devoted to ethical responsibilities in the civil appeals process with discussion of the application of the Rules of Professional Conduct. Time between segments was provided for questions, and the presenter offered to stay over to answer individual questions. Overall, the 0.5 credit for Law & Legal and the 0.5 Ethics credit is justified.

D i s c u s s i o n :
Chair Selection

Summary: The MCLE Board should nominate a Board member to serve as the MCLE Board Chair for the 2024-2025 term.

Potential Action:

- Nominate a Board member to serve as MCLE Board Chair for the 2024-2025 term.

BACKGROUND:

Vice-Chair – The intent of the Vice-Chair position is to be a likely successor to the current Chair, as a potential candidate to recommend to the Washington Supreme Court for the next term. The Board created the Vice-Chair position to give more continuity to the functioning of the Board.

Chair Position – The Board member to fill the Chair position will be nominated by the MCLE Board members. Once a nomination has been made, candidates are reviewed by the MCLE Board nomination team. The WSBA Board of Governors nomination committee is notified of the recommendation. Ultimately, the Washington Supreme Court will appoint the MCLE Board Chair for the 2024-2025 term (October 1st – September 30th).

Role of the MCLE Board Chair – The MCLE Board Chair will lead the MCLE Board to pursue its goals and carry out its role as a Court-appointed Board, administered by the WSBA. Below are some of the specific duties of the MCLE Board Chair:

- Collaborate with the MCLE Staff Liaison to develop and approve meeting agendas and materials.
- Facilitate MCLE Board meeting discussions, keeping the Board on track and on time and ensuring full participation of Board members.
- Represent the MCLE Board (or identify who will) at Board of Governors meetings when the Board has an item on the agenda, and/or at meetings with the Court.
- Participate in nomination team (along with staff liaison and Board of Governors liaison) to recommend new MCLE Board members for appointment. At the end of their term as MCLE Board Chair, may meet with the incoming Chair to discuss scope of the role and work in progress.

ENCLOSED:

- **WSBA Entity Chairs and Liaisons: Roles and Responsibilities**

WSBA Entity Chairs and Liaisons: Roles and Responsibilities

This document applies to committees and councils created by the WSBA Board of Governors, Supreme Court boards administered by the WSBA, and WSBA regulatory boards created by Supreme Court rule. Any court or WSBA rule, order or directive pertaining to a specific committee or board that is inconsistent with this document supersedes the below. Note that "board" refers to entities performing regulatory functions and "committee" denotes entities performing professional association duties. In this document, the term "entity" is used to refer to both committees and boards.

Guiding Principles:

- Volunteers and staff work in partnership to further the mission of WSBA
- We leverage the unique experiences, knowledge and contributions of staff and volunteers
- Volunteers are central and important to accomplishing our shared goals
- Staff and volunteers share mutual respect

	Chair	Staff liaison(s)¹	Board of Governors liaison
Onboarding new members	<p>Collaborate with staff liaison to develop a new member orientation. Chair's focus is the entity's history, goals, work in process, and the entity's culture.</p> <p>Check in with new members periodically to monitor engagement and comprehension.</p>	<p>Collaborate with chair to develop a new member orientation. Staff liaison's focus is WSBA policies and procedures, entity's history and functions, Supreme Court rules, and WSBA's broader mission.</p>	<p>Participate in any new member orientation, both to learn the work of the entity and to share the work of the Board of Governors.</p>
Entity management	<p>Lead the entity to pursue its goals (as approved by the Board of Governors or the Supreme Court) by establishing subcommittees, timelines, project plans, etc.</p> <p>Help the entity refocus if changes to goals are needed, and lead entity to develop goals for following year.</p> <p>Set expectations for the entity at the start of the year and maintain expectations throughout the year regarding culture of the entity, following through on work, etc.</p> <p>Ensure that entity work is accomplished between meetings (check that tasks are being completed, nudge project and subcommittee volunteers as needed, identify if other resources are needed to</p>	<p>Advise the chair and entity on developing their goals to ensure they are consistent with the WSBA mission, priorities and commitments, and/or directives from the Supreme Court.</p> <p>Develop and manage the corresponding budget. The staff liaison is responsible for ensuring WSBA funds are spent appropriately and efficiently.</p> <p>Provide expertise as appropriate and advise the entity on WSBA policies and procedures and Supreme Court rules (e.g., GR 12, legislative/court rule commenting, open meetings).</p> <p>Connect the entity to WSBA resources</p>	<p>Be familiar with the work of the entity by reading meeting minutes and attending meetings when available to do so.</p> <p>Inform the entity of Board of Governors decisions or discussions that impact the entity's work.</p> <p>In concert with the staff liaison, bring the entity's attention to WSBA policies that are relevant to the entity's work.</p>

¹ Some entities have multiple staff liaisons, or the staff liaison may delegate some of the duties listed here to other WSBA staff.

	<p>complete a project).</p> <p>Draft documents and other entity work product (also see "Reporting" below).</p>	<p>and departments, as needed, to fulfill entity goals. Ensure that the chair has access to WSBA information/resources that are helpful in strengthening their leadership of the entity.</p> <p>Ensure administrative support including meeting scheduling and logistics; roster, web page and email list maintenance; and expense report processing.</p>	
Meeting management	<p>Collaborate with staff liaison to develop meeting agendas and materials.</p> <p>Facilitate meeting discussions, keeping them on track and on time and ensuring full participation of entity members. Identify a member to serve as back-up chair in the chair's absence.</p>	<p>Collaborate with chair to develop meeting agendas and materials. Manage and track ongoing and potential agenda items. Distribute meeting notices, agenda, materials and other communication needed by the entity in a timely manner.</p> <p>Take meeting minutes.</p>	
Succession planning	<p>Actively participate in new member recruitment (identify needs of the entity, brainstorm outreach efforts).</p> <p>Participate in nomination team (along with staff liaison and Board of Governors liaison) to propose new entity members for appointment. At the end of their term as chair, meet with new chair to discuss scope of the role and work in progress.</p>	<p>Oversee logistics of entity recruitment and appointment processes, ensuring WSBA procedures and Supreme Court rules are followed and deadlines met.</p> <p>Participate in nomination team (along with chair and Board of Governors liaison) to propose new entity members for appointment. Provide guidance regarding WSBA's commitment to diversity and inclusion.</p> <p>Advise WSBA president-elect on recruitment and selection of new entity chair. (Does not apply to Supreme Court boards.)</p>	<p>Assist with outreach and recruitment efforts to identify potential new entity members.</p> <p>Participate in nomination team (along with chair and staff liaison) to propose new entity members for appointment.</p>
Reporting	<p>Represent the entity (or identify who will) at Board of Governors meetings when the entity has an item on the agenda, and/or at meetings with the Supreme Court.</p> <p>Collaborate with staff liaison to draft the entity's annual report to the WSBA Board of Governors and any other reports.</p>	<p>Collaborate with the chair to draft the entity's reports.</p>	<p>Serve as an information conduit between Board of Governors and the entity.</p> <p>Assist the entity in preparing for presentations to the Board of Governors, taking into consideration anticipated questions from the Board and setting expectations.</p>

DISCUSSION:
MCLE Updates

The MCLE Staff Liaison will provide general updates to the MCLE Board

Discussion Topics:

- **MCLE Board Recruitment**

Applications for volunteer positions through the WSBA, including the MCLE Board, opens May 1. Priority will be given to applicants who apply by May 31st.

- **TAXICAB**

The Task Force Team Administering Xenial Involvement with Court Appointed Boards (TAXICAB) is seeking the Board of Governors' approval to propose the attached policy for WSBA's administration of Supreme Court boards ("the Boards") to the Washington Supreme Court for adoption. This policy was presented for discussion at the March 3-4, 2023 BOG meeting, for a first reading at the June 23-24, 2023 BOG meeting, and is now being presented for a second reading. TAXICAB presentation is scheduled to take place during the May 2-3 Board of Governors meeting, which will be in Richland, WA. Once the timing is confirmed, the hope is an MCLE Board representative will be able to participate in that discussion either in person or remotely.

- **MCLE Certification**

MCLE certification for the 2022-2023 reporting period and 2024 WSBA license renewal began on November 1, 2023. On March 1, 2024, a notice of presuspension was sent to 366 licensed legal professionals who had not completed their MCLE requirements. These individuals were notified via certified mail that they have until April 30, 2024, at 4:00 p.m. to complete all MCLE and Licensing requirements. Additionally, an email and an attempt to call non-compliant individuals was made. Failure to complete the requirements will result in a recommendation from the WSBA to the WA Supreme Court for administrative suspension under APR 17. As of April 10, 2024, approximately 97.9% of licensed legal professionals in the 2022-2023 reporting period are MCLE compliant leaving a remainder of 212 who are not yet MCLE compliant, which is approximately 32 less than the previous year at this time.

- **MCLE Online System**

The new MCLE system went live on October 16, 2023. MCLE staff continues to work with WSBA IT on fixing postproduction bugs and developing the remaining features for the system.

- **Suggested Amendments to APR 11 re Mental Health and Technology Security**

The MCLE Board's suggested amendments to APR 11 for a new MCLE credit requirement in both mental health and technology security were submitted to the Washington Supreme Court together with the GR 9 cover memo. The Court has published the proposed amendment for comment. Comments can be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

- **In-Person Meetings for FY 2025**

MCLE Staff Liaison is preparing the MCLE Budget for next year and needs to know the number of in-person meetings the MCLE Board would like to schedule for next fiscal year (October 2024 – September 2025).

- **Budget**

The MCLE Board Staff Liaison will provide a brief overview of the current MCLE Budget Summary.

Attachments:

- MCLE Budget Summary
- TAXICAB Draft

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2024 to February 29, 2024

42% OF YEAR COMPLETE

	FISCAL 2024 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
MANDATORY CONTINUING LEGAL EDUCATION						
REVENUE:						
ACTIVITY APPLICATION FEE	550,000	62,600	306,500	243,500	56%	77,333
ACTIVITY APPLICATION LATE FEE	220,000	22,850	118,700	101,300	54%	27,033
MCLE LATE FEES	190,000	113,775	206,175	(16,175)	109%	127,008
ANNUAL ACCREDITED SPONSOR FEES	36,000	-	36,000	-	100%	21,000
ATTENDANCE LATE FEES	90,000	5,050	65,300	24,700	73%	27,800
COMITY CERTIFICATES	27,800	2,700	23,597	4,203	85%	12,014
TOTAL REVENUE:	1,113,800	206,975	756,272	357,528	68%	292,189
DIRECT EXPENSES:						
DEPRECIATION	130,449	10,736	48,312	82,137	37%	6,042
STAFF MEMBERSHIP DUES	500	-	-	500	0%	208
MCLE BOARD	5,000	-	-	5,000	0%	2,083
STAFF TRAVEL/PARKING	50	-	-	50	0%	21
STAFF CONFERENCE & TRAINING	4,000	600	600	3,400	15%	1,067
TOTAL DIRECT EXPENSES:	139,999	11,336	48,912	91,087	35%	9,421
INDIRECT EXPENSES:						
SALARY EXPENSE (5.88 FTE) **	454,500	46,196	215,842	238,658	47%	(26,467)
BENEFITS EXPENSE	144,327	12,299	59,717	84,611	41%	420
OTHER INDIRECT EXPENSE	177,078	17,857	72,352	104,726	41%	1,431
TOTAL INDIRECT EXPENSES:	775,905	76,351	347,911	427,994	45%	(24,617)
TOTAL ALL EXPENSES:	915,904	87,687	396,823	519,081	43%	(15,196)
NET INCOME (LOSS):	197,896	119,288	359,450	(161,554)	182%	276,993

**Budget reallocations apply to this line item. For details, see FY24 Budget Reallocations memo(s) included in the Board of Governors meeting materials.

**Task Force Team Administering Xenial Involvement
with Court Appointed Boards Meeting Agenda**

February 8, 2024 – 10AM to 11AM

[Zoom Link](#) || Meeting ID: 860 7151 9827 || Passcode: 137595

1. Welcome and Recap, Chair Kyle Sciuchetti
2. Discussion of Revised Proposed Policy 10
3. Discussion of BOG Memo 2

WASHINGTON STATE
BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Kyle Sciuchetti, Chair of the Task Force Team Administering Xenial Involvement with Court Appointed Boards and Terra Nevitt, Executive Director

DATE: DATE PENDING FINAL DRAFT

RE: Proposed Policy for WSBA's Administration of Supreme Court Boards.

SECOND READ/ACTION: Approve Proposed Policy for WSBA's Administration of Supreme Court Boards for Consideration by the Washington Supreme Court

The Task Force Team Administering Xenial Involvement with Court Appointed Boards (TAXICAB) is seeking the Board of Governors' approval to propose the attached policy for WSBA's administration of Supreme Court boards ("the Boards") to the Washington Supreme Court for adoption. This policy was presented for discussion at the March 3-4, 2023 BOG meeting, for a first reading at the June 23-24, 2023 BOG meeting, and is now being presented for a second reading.

The policy has been revised since it was presented in June based on stakeholder input and numerous discussions with interested parties. A redline version of the policy is attached to highlight those changes.

Background

[Washington General Rule 12.3](#) charges WSBA with the "authority and responsibility to administer certain boards and committees established by court rule 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." WSBA administers several such entities and over the years, challenges have arisen in terms of the application of GR 12.2 and other WSBA policies, budget and staff allocations, the ability to hire and direct staff, the scope and meaning of "administration," conflicting policy objectives, and decision-making authority.

TAXICAB was created by the Board of Governors on April 17, 2020, to assess WSBA's role in administering the Boards, work with the Court to ensure that such administration is consistent with the Court's intent, and to convey to the Court information about the boards and member concerns. After identifying the recurring challenges and determining that a lack of clarity in how GR 12.3 is to be carried out as one of the causes behind those challenges, the task force determined that a policy, approved by the Supreme Court, that detailed WSBA's administration of the Boards, would help to alleviate some of the recurring challenges.

TAXICAB is comprised of six then-members of the Board of Governors and six representatives from the Boards. The representatives provided regular updates and opportunities to review the draft policy to their boards throughout the process of developing the process. The proposed policy was unanimously adopted for recommendation to the Board of Governors at its February 8, 2023, meeting. The attached revisions were shared with current members of those Boards in January 2024. Input was solicited and discussed by members of TAXICAB on.....

When this policy was first presented to the Board of Governors for an initial discussion at the [March 3-4, 2023 meeting](#), there were no questions raised or input provided by members of the Board of Governors. However, the Board did receive feedback from Nancy Hawkins on behalf of the Family Law Section in opposition to the policy and expressing concern that the policy favors Boards and should include sections in addition to Boards. These concerns were considered and it was determined that if the Sections wished entry into a similar arrangement it should do so separate and apart from this policy was designed to address only Supreme Court Boards.

The policy was presented to the Board of Governors for first read at the [June 23-24, 2023](#). During that meeting, members of the Board of Governors raised questions about whether the policy was needed and how it would positively affect the status quo. There was also a specific concern included that Section 3.5 of the memo was effectively a change to the WSBA Bylaws. That concern has been addressed in the revised proposed policy. Nancy Hawkins again provided public comment in opposition to the proposed policy.

Intended Impact of the Policy

In recent memory, and perhaps beyond that, there has been periodic conflict and tension between WSBA and the Boards. These conflicts almost always relate to resources and decision-making authority and tension revolves around a central unanswered question: “to what extent are these entities independent from WSBA?” The Boards are created by the Supreme Court and “administered” by WSBA under GR 12.3, so they are clearly of a different character than entities created by the Board of Governors and fully governed by WSBA. And yet, they are funded by WSBA license fees, through a budget approved by the Board of Governors; much of their work is carried out by WSBA employees; volunteers are recruited, trained, and supported by WSBA processes and policies; and, crucially, they lack a separate legal identity that would enable them to open a bank account, enter into a contract, or be a party in a lawsuit. Examples of specific conflicts and questions that have arisen over the years are listed below. Most of these conflicts are minor, while others have been highly disruptive and public. These conflicts have touched nearly all, if not all, of the Boards.

Areas of Conflict/Question

- Are the Boards subject to the open meetings provisions of the WSBA Bylaws? Can they hold executive sessions for reasons other than those articulated by the WSBA Bylaws? Can they exclude staff from a meeting? Can they exclude their BOG liaison from a meeting?
- Are the Boards subject to the limitations of GR 12.2? Are the Boards subject to WSBA’s public comment policy? Can the Boards take public positions on federal policy or otherwise? Are Boards positions subject to review by WSBA prior to taking a public position?
- Can WSBA direct the Boards to not engage in an activity that it has determined may expose the organization to liability? In the case of a lawsuit, is WSBA liable for the actions of the Boards? Will WSBA defend and/or indemnify volunteers of the Boards? Are volunteers of the Boards considered WSBA volunteers and will insurance coverage extend to their actions?
- Are there any limits on the Board of Governors’ decision making over the Boards’ budgets? Can the Board reject any budget proposal for any reason? As a mechanism to direct the actions the Boards? To effectively defund the Boards?
- Do the Boards play a role in hiring or evaluating the staff assigned to support and carry-out their work?
- Can the Boards direct the actions of WSBA staff? Who decides the priorities of WSBA staff?
- Are there any limits on the Executive Director’s ability to direct the actions of staff assigned to support and carry-out the work of the Boards?
- Can the Board of Governors direct the Executive Director to intercede into the actions or work of the Boards?

- Do the Boards have access to other WSBA staff and resources (beyond the assigned staff liaison) such as graphic design, the ability to send emails to the membership, broadcast technology, or the ability to partner with WSBA CLE? Who decides the priorities for use of these resources?
- Who has final say over the proposed budget submitted to the Board of Governors for the Boards?
- Can the Boards use WSBA letterhead? Are they a required to use WSBA letterhead? Are they allowed to develop their own logos and/or letterhead?

Aspects of the Policy that Formalize Current Practice

- 3.0 establishes that WSBA is not limited in its ability to take actions to protect itself from liability.
- 3.1 establishes that Supreme Court Boards are subject to all applicable statutes, court rules, and orders.
- 3.2 establishes that WSBA and the Boards will work collaboratively to help the Boards to carry out their duties as set forth by their authorizing rules/orders.
- 3.3 establishes that the Boards may communicate with the public without prior authorization by the Executive Director of the BOG. Boards will not use WSBA letterhead, except in the case of regulatory communications.
- 4.0, 4.1, 4.2, and 4.3 establish that the Executive Director is responsible for assigning staff to each Board; that staff are WSBA employees subject to all WSBA personnel policies and the supervision of the Executive Director; and that Boards are not involved in the hiring of WSBA staff.
- 4.1 establishes that it is the Executive Director's responsibility to allocate staff resources based on each Board's projected workload and overall WSBA capacity.
- 4.2 establishes the nature of the relationship between the staff liaison and the Board. Specifically, that the staff liaison is not a member of the Board, does not vote, and does not impact quorum.
- 4.2 establishes that the staff liaison will facilitate access to other WSBA resources and that access to those resources is limited by WSBA's overall capacity.
- 4.2 establishes that the staff liaison is not responsible to direct the work of a Board.
- 4.4 establishes that appointments to the Boards are determined by their authorizing rule/order.
- 4.5 establishes the nature of the relationship between the BOG liaison and the Board. Specifically, that the liaison is not a member of the Board, does not vote, and does not impact quorum.
- 4.6 establishes that it's within the Boards' exclusive purview to make decisions about their internal structure and operations, unless otherwise defined by their authorizing order/rule.
- 5.0 establishes WSBA's duty to oversee and monitor the compliance of the Boards with their authorizing rules/orders.
- 5.0 establishes that the Boards are subject to GR 12.4, which relates to access to bar records.
- 5.1 establishes that the Boards shall submit annual reports to the Court and provide a copy to the Executive Director and Board of Governors.
- 6.2 articulates the process for a Board to request funding outside of the budget cycle.
- 7.0 establishes that WSBA can engage in activities or make resources available to support the Boards in their work, subject to WSBA's overall capacity.
- 8.1 establishes a duty on WSBA to cooperate with the Board and Court to provide and defend any immunity provided by a Board's authorizing court order/rule.

Aspects of the Policy that Shift Current Practice or Provide Clarity in Areas of Prior Conflict

- 3.0 defines the nature of the relationship between WSBA and the Boards. Specifically, the policy establishes that the boards are "independent" from WSBA and defines what that means.
- 3.3 establishes a duty on Boards to not knowingly engage in communications that would subject WSBA to liability and to seek prior input from the Executive Director if there is a reasonable question as to risk.
- 3.4 and 5.0 acknowledges that the Boards are subject to first amendment limitations on the use of compelled

license fees. Note that the policy does not make the Boards subject to the limitations of GR 12.2 or the WSBA Bylaws.

- 3.5 establishes a duty on the Executive Director to notify Boards when a WSBA proposed rule or policy change is pending that will have a direct affect on a Board's activities or functions.
- 3.6 establishes a duty on Boards to notify the Executive Director prior to taking any action that may expose the WSBA to liability.
- 4.3 encourages soliciting input from the Boards about the staff liaison's performance.
- 4.3 encourages soliciting input from the Boards about the skills and experiences required for the role.
- 5.2 establishes a conflict resolution process that calls on the Supreme Court to ultimately resolve disputes.
- 6.1 establishes that the budget for Boards is to be created collaboratively with the Board and the Executive Director (or designee) and that the Board of Governors cannot pass a budget for a Board without providing an opportunity for input by that Board.
- 6.3 provides guidance for establishing Board budgets. Specifically, that Boards should be funded at a level that ensures they can meet their functions and duties; that the Board of Governors has the authority to establish that budget; and that budgetary discretion cannot be used to interfere with a Board's independence as defined in section 3.0 of the policy.
- 6.4 establishes that a Board can engage in fundraising and will need to seek the approval of WSBA or the WSBF to accept and manage the funds. It also provides for an outside fiscal sponsor with the consent of WSBA or the Court.
- 8.2 establishes that the indemnification provided in the WSBA Bylaws to volunteers extends to members of the Boards.

Areas of Potential Conflict that the Policy Does Not Address

- There is some lack of clarity about which entities are governed by GR 12.3. This policy does not clarify that further. Section 2.0 limits the scope of the policy to current and future "Supreme Court Boards administered by WSBA." This is narrower than GR 12.3 and also leaves some room for interpretation.
- The policy does not make the Boards subject to the WSBA Bylaws and does not address open meetings requirements, including whether a staff or BOG liaison can be excluded from an executive session.
- The policy does not specifically address how a Board might engage in activities that it is not prohibited from carrying out, but that a staff liaison would not be permitted to engage in given that employees are subject to all WSBA policies, all aspects of the WSBA Bylaws, and all laws, court rules, court orders, and policies affecting WSBA, including GR 12.2 and the WSBA Bylaws.
- The policy does not specifically state that volunteers serving on Supreme Court Boards are "WSBA volunteers," although it does provide for indemnification to the same extent as WSBA volunteers.

The areas of conflict not addressed proved to be too intractable to find consensus and ultimately may need to be considered in the future by the Task Force and/or ultimately answered by the Supreme Court. Instead, the policy seeks to bring clarity to the procedures and processes that often give rise to conflict, including staffing, budget, taking public positions, and assessing risk. For the most part, the policy makes explicit/formal what is already informally in practice, with a few exceptions highlighted above. Importantly, the policy also sets forth a process for resolving disputes. In so doing, the intent is to reduce conflict for staff and volunteers by establishing shared expectations about day-to-day processes and decision-making. While this step may feel modest, it should be noted that WSBA's position on the questions described above has shifted over time depending on the people involved, which has contributed to a lack of clarity.

Attachments

- June 8, 2023 Memo to the Board of Governors Re Proposed Policy for WSBA's Administration of Supreme Court Boards
- February 15, 2023 Memo to Board of Governors Re Proposed Policy for WSBA's Administration of Supreme Court Boards
- Proposed Policy for WSBA's Administration of Supreme Court Boards
- February 26, 2021 Executive Director Memo Re WSBA's Administration of Supreme Court Entities Background and Authority

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DRAFT

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Kyle Sciuchetti, Chair of the Task Force Administering Xenial Involvement with Court Appointed Boards
Terra Nevitt, Executive Director

DATE: June 8, 2023

RE: Proposed Policy for WSBA's Administration of Supreme Court Boards.

FIRST READ: Provide Feedback on Proposed Policy for WSBA's Administration of Supreme Court Boards

The Task Force Administering Xenial Involvement with Court Appointed Boards (TAXICAB) is seeking the Board of Governors' approval to propose the attached policy for WSBA's administration of Supreme Court boards to the Washington Supreme Court for adoption. This policy was presented for discussion at the March 3-4, 2023 BOG meeting and is now being presented for a first reading. Please review the attached materials for background and additional information about the proposal.

The policy has not changed since it was presented in March, however TAXICAB did engage in an equity analysis of the policy facilitated by WSBA Equity and Justice Lead Saleena Salango.

Equity Analysis

Members of TAXICAB met on Friday, March 10 to conduct an equity analysis of the attached proposal and the process by which it was developed. The committee discussed which groups the policy is intended to impact, which of those group is most impacted, who should be centered in considering the policy, and the process that was used to develop the policy and the extent to which impacted groups were included.

The Task Force members identified that the policy directly impacts the WSBA staff that work with Supreme Court Boards and the volunteers that serve on Supreme Court Boards and that if the policy is successful in facilitating the smooth operation of the Supreme Court Boards at WSBA it will also impact the public and the members who support the work through the license fee. The group identified that staff are among the most impacted by the policy and were engaged throughout the process to participate in TAXICAB meetings and provide input, though they were not among the voting members of the Task Force.

The Task Force will meet again following the June Board of Governors meeting to discuss any feedback from the Board.

Attachments

- February 15, 2023 Memo to Board of Governors Re Proposed Policy for WSBA's Administration of Supreme Court Boards
- Proposed Policy for WSBA's Administration of Supreme Court Boards
- Executive Director Memo Re WSBA's Administration of Supreme Court Entities Background and Authority

WASHINGTON STATE BAR ASSOCIATION

Office of the Executive Director
Terra Nevitt, Executive Director

TO: Task Force Team Administering Xenial Involvement with Court Appointed Boards
FROM: Terra Nevitt, WSBA Executive Director
DATE: February 26, 2021
RE: **WSBA's Administration of Supreme Court Entities Background and Authority**

Through Washington State [General Rule 12.3](#), the Supreme Court delegates to WSBA “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 rule and orders that authorize and regulate them, paying expenses reasonable 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.”

The WSBA currently administers 6 such entities, described below. Over the years, challenges have arisen in terms of the application of GR 12.2 and other WSBA policies, budget and staff allocations, the ability to hire and direct staff, the scope and meaning of “administration”, conflicting policy objectives, and decision-making authority. One highly publicized example of some of these challenges was documented by the [ABA Journal](#) in 2015.

The **Access to Justice Board** was established by court order April 13, 1994, and was most recently [reauthorized on March 4, 2016](#). That order charges WSBA with the Board’s administration, including funding and staffing. It provides the Board of Governors with the responsibility of nominating members of the ATJ Board, which are appointed by the Supreme Court. The Order provides that the ATJ Board shall designate its chair and authorizes the ATJ Board to adopt its own operational rules pursuant to the enumerated powers and duties. The order requires the ATJ Board to file an annual report to the Supreme Court and the Board of Governors.

The **Disciplinary Board** first appears in the court rules in 1968 when the board is created and direct responsibility for disciplinary adjudication is transferred away from the Board of Governors. Currently, it is governed by rule 2.3 of the Rules for [Enforcement of Lawyer Conduct \(ELC\)](#), which outlines the Board’s composition, qualifications and some operations. Members are appointed by the Court “upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.” The Court also designates the Chair and Vice Chair, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. Other ELC indicate the functions of the Board. [ELC 2.2\(a\)\(1\)](#) directs the Board of Governors, through the Executive Director, to provide “administrative and managerial support” to the Disciplinary Board to perform its functions as specified by the rules. ELC 2.2(b) prohibits the Board of Governors and the Executive Director from reviewing Disciplinary Board decisions or recommendations in specific cases (among other limitations).

The **Limited License Legal Technician Board** was established through the adoption of rule 28 of the [Admission and Practice Rules \(APR\)](#) by court order on June 15, 2012. A second order was issued by the Court on July 11, 2012 ordering that the WSBA administer the operations of the LLLT Board, including providing “staff necessary to implement and support the operation of the APR 28 and the Limited License Legal Technician Board.” APR 28

provides that members of the LLLT Board are appointed by the Supreme Court. It charges the LLLT Board with recommending new practice areas for LLLTs, working with the Bar and other entities on LLLT examinations, approving education and experience requirements, establishing committees, establishing educational criteria, and “such other activities and functions as are expressly provided for in [the] rule.” APR 28 also charges the LLLT Board with proposing additional rules, regulations and amendments to the rule to the Court. WSBA is charged with providing “reasonably necessary administrative support for the LLLT Board.”

The **Limited Practice Board** was established by [APR 12](#). The rule outlines the duties and powers of the Limited Practice Board, including creating and grading Limited Practice Officer (LPO) examinations, approving forms for use by LPOs, as well as the board’s involvement in the investigation, hearing, and appeal procedures for handling grievances against LPOs. Members are appointed by the Supreme Court, as is the Board’s Chairperson. APR 12 provides that “The administrative support to the LP Board shall be provided by the Bar.”

The **Mandatory Continuing Legal Education Board** was established by [APR 11](#). Its members and chair are appointed by the Supreme Court. Among other things, APR 11 tasks the MCLE Board with reviewing and suggesting amendments to APR 11, adopting policies, approving MCLE activities, reviewing determinations or decisions made by WSBA regarding approval of activities, determining MCLE fees to defray the reasonably necessary costs of administering the MCLE rules, and waiving or modifying members’ compliance requirements. The MCLE Board also conducts hearings on member hardship petitions. The rule also provides that WSBA “shall provide administrative support to the MCLE Board.” Suggested amendments to APR 11 as well as policies to provide guidance in its administration are subject to review by the Board of Governors and approval by the Supreme Court.

The **Practice of Law Board** was established by the Washington Supreme Court with the adoption of General Rule 25, effective September 1, 2002. Under the current version of the [rule](#), the Supreme Court appoints its members “after considering nominations from the Practice of Law Board and the Board of Governors.” The rule outlines the responsibilities of the Board, which include recommending to the Court “new avenues for persons not currently authorized to practice law to provide legal and law-related services that might otherwise constitute the practice of law as defined in GR 24.” Such recommendations must be forwarded to the Board of Governors for consideration and comment at least 90 days before transmission to the Court. The rule also charges WSBA with funding, administering and staffing the Practice of Law Board consistent with GR 12.

Joint Administration Policy Between the Washington State Bar Association and the Supreme Court Boards

1.0 Introduction

Under Washington State Court [General Rule 12.3](#), the Supreme Court (Court) delegates to the Washington State Bar Association (WSBA),

“[t]he 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.”

Supreme Court Boards (Boards) report directly to the Court. The duties and functions these Boards perform on behalf of the Court are important to the public, the Court, and WSBA and its members.

2.0 Scope

This policy applies to all current and future Supreme Court Boards administered by WSBA, including:

- Access to Justice (ATJ) Board
- Disciplinary Board
- Limited License Legal Technician (LLLT) Board
- Limited Practice Board
- Mandatory Continuing Legal Education Board
- Practice of Law Board

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3.0 Board Independence

Supreme Court Boards are created by and derive their authority from the Washington Supreme Court. ~~They are independent from WSBA in that they~~ Boards set their own priorities and goals ~~and~~ They determine how to carry out their duties and functions as authorized by the Supreme Court. Boards' independence does not limit WSBA's authority or responsibilities ~~ies~~ under GR 12.3 or to direct its own activities, including taking action to protect the WSBA from liability.

3.1 Effect of Court Rules and Statutes on Board or Committee Independence

Boards are subject to ~~all~~ Washington Statutes, and Washington court rules and orders, including such court orders or rules that authorized the Board, and which

JOINT ADMINISTRATION POLICY BETWEEN WSBA AND THE SUPREME COURT BOARDS

regulate each Board's duties and functions. This specifically includes GR 12.4 governing records and public access to records.

3.2 ~~Construing GR 12.3~~WSBA's Administration of Boards

WSBA recognizes that GR 12.3 provides each Board independence in terms of carrying out its activities consistent with any Court order or rule authorizing its existence. WSBA and the Boards will work cooperatively and maintain respect for the Boards' independence as needed to ensure that the Boards can carry out their duties and functions as authorized by the Supreme Court and that the WSBA can fulfill its duties under GR 12.3.

3.3 Communication with the Public

WSBA acknowledges that Boards have the authority to communicate with the public. Boards will not state that any communication is being made on behalf of WSBA. Boards will not use WSBA letterhead for any public communication. Boards will not knowingly engage in any communications that would subject the WSBA to liability. If there is a reasonable question as to the risk a communication might pose, Boards will seek input from the Executive Director prior to publishing or distributing the communication. The prohibition on using WSBA letterhead does not apply to communications related to regulatory matters.

3.4 Lobbying Activities

WSBA acknowledges that Boards, in order to carry out their mission, may take positions on matters of public interest. These positions may include communicating with federal, state, and local governmental and community leaders. Constitutional limitation on the use of compelled license fees apply to the Boards' activities to the extent that they are funded by license fees.

3.5 WSBA Policy Changes

~~All~~ When there is proposed changes to a WSBA policy, a proposed adoptions of a new WSBA policy, or a WSBA proposal to change a Court rule, that the Executive Director believes will directly affect a Board's activities or functions, must be presented for a "first read" at least one meeting prior to the Board of Governors' meeting at which final action is taken. The Executive Director or their designee will notify the potentially affected Board(s) of the proposal as soon as is practicable ~~after the Board of Governors' first consideration of the proposal~~ and prior to final action, so each Board shall have the opportunity for comment with the Board of Governors, the Executive Director, and the Court. ~~For good cause shown under exceptional circumstances, the Board of Governors may take action without the two-step process required above, by an affirmative vote of two-thirds of the Board of Governors, however WSBA should take all reasonable steps to notify and seek input from the impacted Board(s).~~

3.6 Board Action

JOINT ADMINISTRATION POLICY BETWEEN WSBA AND THE SUPREME COURT BOARDS

When a Board is considering taking action that it believes may expose the WSBA to liability, the Board chair will take steps to ensure that the WSBA Executive Director receives notice of the proposed action. The notice will be given so that the WSBA will have adequate time to provide input into the Board's decision-making process.

4.0 Staffing

The Executive Director provides and manages staff for each Board.

4.1 Staff Liaison

The Executive Director shall assign a staff member to serve as a Staff Liaison to each Board. The Staff Liaison shall serve as the primary contact between the Board and WSBA. The Executive Director shall allocate additional staff time to support each Board in carrying out its duties and functions based on the projected workload for the Board and overall WSBA capacity.

4.2 Staff Liaison Responsibilities and Duties

The WSBA Staff Liaison will work with the Board and make available other WSBA resources as needed and available given WSBA's overall capacity.

The Staff Liaison is not a member of the Board. The Staff Liaison will not vote on matters before a Board that requires Board approval. The presence or absence of the Staff Liaison at any meeting does not affect the quorum for a meeting.

Although a Staff Liaison represents WSBA to the Board it is not the responsibility of the Staff Liaison to direct how the Board proceeds.

4.3 Staff Liaison and Support Personnel are WSBA Employees

Staff Liaisons supporting a Board are WSBA employees and will be hired and have their job performance evaluated per the WSBA Employee Handbook and other WSBA personnel policies.

When evaluating the performance of WSBA staff, the Executive Director, through their representative, should solicit feedback from each Board regarding the performance of the Staff Liaison and any supporting staff working with that Board.

The Board is not involved in the hiring of WSBA staff. However, with any employee whose primary or exclusive role is to support the duties and functions of a Board, WSBA should seek and may receive input from the Board as to skills and experience required for the role.

4.4 Board or Committee Membership

Each Board or Committee will add members to the Board and Committee per the Court rule or order that authorized and regulates the Board or Committee.

4.5 Board of Governors Liaison

JOINT ADMINISTRATION POLICY BETWEEN WSBA AND THE SUPREME COURT BOARDS

The WSBA President may appoint a liaison between the Board of Governors and a Board.

The Board of Governor Liaison is not a member of the Board. They will not vote on matters before a Board that require Board approval. The presence or absence of the Board of Governors Liaison does not affect the quorum for a meeting.

4.6 Internal Structure of a Board

Unless otherwise defined by the court order or rule which authorizes and regulates a Board, the internal structure, such as the creation of subcommittees and appointment of members to such subcommittees, designating a chair or sub-chairs, and other decisions about how the Board conducts its duties and functions, is the sole province of each Board.

5.0 Oversight and Compliance Monitoring

Consistent with GR 12.3, WSBA shall oversee and monitor the compliance of Court Boards with the court rules and orders which authorize and regulate it. This includes GR 12.4 and First Amendment limitations relating to use of compelled license fees.

5.1 Reporting to the Court and WSBA

Boards shall submit an annual report to the Court and submit a copy of the report to the Executive Director and the Board of Governors. Boards shall submit other reports as stated in the court rules and orders authorizing them.

If the court rule or order which authorizes or regulates each Board is silent on the structure of an annual report the Board shall decide the format of the report.

5.2 Resolving Compliance Issues

5.2.1 Good Faith Standard—First Attempt to Resolve

If the Staff Liaison has a good faith belief that a Board is not complying with the court rules or orders which authorize and regulate the Board, the Staff Liaison shall first attempt to resolve the matter with the Board.

5.2.2 Escalation to Executive Director

If resolution fails and/or if the Staff Liaison is unable to address the matter directly, the Staff Liaison shall report any perceived non-compliance issue to the WSBA Executive Director who should attempt to work directly with the Board to resolve the issue.

5.2.3 Escalation to the Court

If these parties cannot resolve the matter, it may be presented to the Court for resolution.

6.0 Budget and Expenditures

6.1 Annual WSBA Budget Process

JOINT ADMINISTRATION POLICY BETWEEN WSBA AND THE SUPREME COURT BOARDS

The Staff Liaison works collaboratively with the Board, and the Executive Director or their designee, to develop a budget that will allow the Board to fulfill its duties and functions, consistent with the rules and orders that authorize and regulate the Board.

The Board's budget will be submitted for approval to the Board of Governors as part of WSBA's overall budget.

WSBA and the Board of Governors cannot pass a budget for a Board without an opportunity for the Board to provide input to the WSBA and Board of Governors.

6.2 Funding Outside the Annual Budget Process

A Board may request additional funding outside of the budget cycle.

Such requests should be submitted to the Executive Director and will be considered by the Executive Director, the Budget & Audit Committee, or Board of Governors as authorized by WSBA Fiscal Policies & Procedures.

6.3 ~~Fully~~ Funding a Board Duties and Functions as Described by GR 12.3

All reasonable and necessary Board duties and functions as defined by each Board's court order or rule must remain funded at a level that ensures the duties and functions can be met. The Boards acknowledge that WSBA has the authority to establish the budget for the WSBA and the Boards. The WSBA acknowledges that this authority cannot be used to interfere with a Board's independence as defined in section 3.0.

6.4 Board Fundraising

A Board may seek additional funding, above and beyond the funding which WSBA provides, including grants for a particular duty or function from a government, private, or public sector entity.

If a Board raises such funds, then WSBA shall not reduce the budget of the Board because of the funds raised, unless it is for the same work.

As a Board is not a legal entity entitled to have and manage a bank account, the Board will need to seek the approval of WSBA, the Washington State Bar Foundation (WSBF), or with the approval of WSBA or the Court another appropriate entity to accept and manage such funds on behalf of the Board.

7.0 Other Actions

Consistent with GR 12.3, WSBA may engage in other activities that are necessary and proper to enable Boards to carry out their duties and functions consistent with the overall capacity of WSBA. This might include access to other WSBA resources and teams, including communication channels, design and publication services, website presence, financial analysis, WSBA technology, and continuing legal education.

8.0 Immunity & Indemnification

8.1 Immunity

JOINT ADMINISTRATION POLICY BETWEEN WSBA AND THE SUPREME COURT BOARDS

If a court order or rule that authorizes and regulates a Board extends immunity to the Board and the members serving on a Board, WSBA shall cooperate with the Board and the Court to provide and defend such immunity.

8.2 Indemnification from Lawsuits

WSBA Bylaw Article XIV indemnification applies to members of court created boards described by this policy to the same extent as volunteers appointed by the WSBA.

WASHINGTON STATE BAR ASSOCIATION

Office of the Executive Director
Terra Nevitt, Executive Director

TO: Task Force Team Administering Xenial Involvement with Court Appointed Boards
FROM: Terra Nevitt, WSBA Executive Director
DATE: February 26, 2021
RE: **WSBA's Administration of Supreme Court Entities Background and Authority**

Through Washington State [General Rule 12.3](#), the Supreme Court delegates to WSBA “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 rule and orders that authorize and regulate them, paying expenses reasonable 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.”

The WSBA currently administers 6 such entities, described below. Over the years, challenges have arisen in terms of the application of GR 12.2 and other WSBA policies, budget and staff allocations, the ability to hire and direct staff, the scope and meaning of “administration”, conflicting policy objectives, and decision-making authority. One highly publicized example of some of these challenges was documented by the [ABA Journal](#) in 2015.

The **Access to Justice Board** was established by court order April 13, 1994, and was most recently [reauthorized on March 4, 2016](#). That order charges WSBA with the Board’s administration, including funding and staffing. It provides the Board of Governors with the responsibility of nominating members of the ATJ Board, which are appointed by the Supreme Court. The Order provides that the ATJ Board shall designate its chair and authorizes the ATJ Board to adopt its own operational rules pursuant to the enumerated powers and duties. The order requires the ATJ Board to file an annual report to the Supreme Court and the Board of Governors.

The **Disciplinary Board** first appears in the court rules in 1968 when the board is created and direct responsibility for disciplinary adjudication is transferred away from the Board of Governors. Currently, it is governed by rule 2.3 of the Rules for [Enforcement of Lawyer Conduct \(ELC\)](#), which outlines the Board’s composition, qualifications and some operations. Members are appointed by the Court “upon the recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel.” The Court also designates the Chair and Vice Chair, upon recommendation of the Board of Governors in consultation with the Disciplinary Selection Panel. Other ELC indicate the functions of the Board. [ELC 2.2\(a\)\(1\)](#) directs the Board of Governors, through the Executive Director, to provide “administrative and managerial support” to the Disciplinary Board to perform its functions as specified by the rules. ELC 2.2(b) prohibits the Board of Governors and the Executive Director from reviewing Disciplinary Board decisions or recommendations in specific cases (among other limitations).

The **Limited License Legal Technician Board** was established through the adoption of rule 28 of the [Admission and Practice Rules \(APR\)](#) by court order on June 15, 2012. A second order was issued by the Court on July 11, 2012 ordering that the WSBA administer the operations of the LLLT Board, including providing “staff necessary to implement and support the operation of the APR 28 and the Limited License Legal Technician Board.” APR 28

provides that members of the LLLT Board are appointed by the Supreme Court. It charges the LLLT Board with recommending new practice areas for LLLTs, working with the Bar and other entities on LLLT examinations, approving education and experience requirements, establishing committees, establishing educational criteria, and “such other activities and functions as are expressly provided for in [the] rule.” APR 28 also charges the LLLT Board with proposing additional rules, regulations and amendments to the rule to the Court. WSBA is charged with providing “reasonably necessary administrative support for the LLLT Board.”

The **Limited Practice Board** was established by [APR 12](#). The rule outlines the duties and powers of the Limited Practice Board, including creating and grading Limited Practice Officer (LPO) examinations, approving forms for use by LPOs, as well as the board’s involvement in the investigation, hearing, and appeal procedures for handling grievances against LPOs. Members are appointed by the Supreme Court, as is the Board’s Chairperson. APR 12 provides that “The administrative support to the LP Board shall be provided by the Bar.”

The **Mandatory Continuing Legal Education Board** was established by [APR 11](#). Its members and chair are appointed by the Supreme Court. Among other things, APR 11 tasks the MCLE Board with reviewing and suggesting amendments to APR 11, adopting policies, approving MCLE activities, reviewing determinations or decisions made by WSBA regarding approval of activities, determining MCLE fees to defray the reasonably necessary costs of administering the MCLE rules, and waiving or modifying members’ compliance requirements. The MCLE Board also conducts hearings on member hardship petitions. The rule also provides that WSBA “shall provide administrative support to the MCLE Board.” Suggested amendments to APR 11 as well as policies to provide guidance in its administration are subject to review by the Board of Governors and approval by the Supreme Court.

The **Practice of Law Board** was established by the Washington Supreme Court with the adoption of General Rule 25, effective September 1, 2002. Under the current version of the [rule](#), the Supreme Court appoints its members “after considering nominations from the Practice of Law Board and the Board of Governors.” The rule outlines the responsibilities of the Board, which include recommending to the Court “new avenues for persons not currently authorized to practice law to provide legal and law-related services that might otherwise constitute the practice of law as defined in GR 24.” Such recommendations must be forwarded to the Board of Governors for consideration and comment at least 90 days before transmission to the Court. The rule also charges WSBA with funding, administering and staffing the Practice of Law Board consistent with GR 12.