

ISSUE SUMMARY

TO: Practice of Law Board  
FROM: Bobby Henry, WSBA Staff Liaison to POLB  
DATE: April 25, 2025  
RE: **UPL Complaints**

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INTRODUCTION

The Practice of Law Board has a three-prong mission: 1) educate the public about how to receive competent legal assistance, 2) recommend new avenues for persons not currently authorized to practice law to provide legal and law-related services, and 3) receive complaints alleging the unauthorized practice of law. As part of its goal-setting process for the coming years, the Practice of Law Board should consider its role in the 10-year Pilot Project to Test Entity Regulation as well as the purpose, appropriateness, and effectiveness of the Board's involvement in reviewing and referring unauthorized practice of law complaints.

RELEVANT RULE

GR 25(b) lists the board's responsibilities or functions. Subsection (3) provides:

The Board **may** receive complaints alleging the unauthorized practice of law in Washington by any person or entity. The Board will review and may refer complaints that allege harm to the public interest to appropriate enforcement agencies. Upon referring a matter to law enforcement or other agency, the Board may notify the complainant of such action in writing. [Emphasis added.]

BACKGROUND

Prior to 2015, the Board investigated instances of UPL and engaged in enforcement activities including sending cease and desist letters. In 2015, in response to concerns about the Board's UPL enforcement activities, the Court suspended the Board and created a work group to study the issues and make recommendations. The Court then instituted some changes when reinstating the Board including increasing its focus on educating the public and considering new avenues for nonlawyers to provide legal and law-related services and ceasing all enforcement activities except for receiving complaints alleging UPL and referring to appropriate authorities.

In addition, the GR 9 coversheet which accompanied the suggested amendments to GR 25 further clarified:

The proposed rule, consistent with the Court's July 2015 Order, eliminates the Board's responsibility to investigate unauthorized practice of law complaints and make determinations whether specific conduct constitutes the unauthorized practice of law.

## DISCUSSION

GR 25(b)(3) uses permissive language – “may” — when referring to receiving UPL complaints. Therefore, it appears to be within the Board’s purview whether to receive UPL complaints. Below are some considerations the Board should take into account when making this determination.

### 1. Impact of Referrals

Enforcement agencies have limited resources and are simply unable to pursue the vast majority of UPL claims. In 2015 the FTC, the AGO, and local law enforcement agencies shared with the work group that they lacked the resources to pursue UPL except in cases that affect a particularly large number of people or involve substantial harm. In 2023, at the Board’s UPL Summit, similar comments were made. The goal, as it was explained, is to protect the public from harm and the harm more likely stems from collateral crime such as fraud, harassment, and theft. While referrals may signal to enforcement agencies that some vetting was done, it is extremely unlikely that it would inform whether a matter is investigated and prosecuted.

### 2. Unforeseen Harm Due to Delay or Decisions Not to Refer

When a UPL complaint is filed with the board, there is a considerable delay in taking any action on the complaint. It can range from anywhere to a few weeks to a few months depending on whether the WSBA receives a prompt response, grants additional time for the respondent to reply, and on which board agenda the complaint is scheduled for. During this time, additional harm could occur. In addition, if any fees were paid it becomes less likely to be able to recoup fees as time progresses. It is also more difficult to investigate a matter the more time has elapsed between when the conduct occurred and when it is reported to an enforcement agency.

Besides the passage of time, taking no action on a complaint can also harm a complainant. As the rule states, the board may refer a complaint when it alleges “harm to the public interest.” Any complaint alleging UPL by a person not licensed to practice law is per se alleging harm to the public interest. Harm is not limited to financial harm. When someone is engaged in UPL, it harms the public in general because they are breaking laws upon which society relies, it can bring disrepute to the legal profession, and it can adversely affect a client’s matter. Considering the Board does not have investigative authority, when the board decides to take no action on a complaint it does so without all the facts and information. This could result in legitimate matters NOT being referred to an enforcement agency and potentially cause further harm.

### 3. Board and Staff Capacity in Relation to Impact

A considerable amount of time is spent seeking responses to complaints, organizing and summarizing complaints, and discussion of complaints at board meetings.

### 4. Potential Alternatives

In theory, the Board's involvement in addressing UPL claims is a worthy endeavor; in practice, the current framework is ineffective at best. Ultimately, the Board should reconsider its involvement in UPL matters and explore more efficient and effective ways to help the public avoid using legal services providers engaged in the unauthorized practice of law. The Board may want to consider new educational initiatives to better protect the public from UPL.

Pilot Project: Entity Regulation									
	Design and Implementation	Maintenance and Growth							
	Year 1 (FY26)	Year 2 (FY27)	Year 3 (FY28)	Year 4 (FY29)	Year 5 (FY30)	Year 6 (FY31)	Year 7 (FY32)	Year 8 (FY33)	
Revenue									
Application Fees (\$1,000/\$500 NP)	\$14,000	\$34,000	\$34,000	\$19,500	\$19,500	\$19,500	\$14,500	\$10,000	
Annual Fees (\$5,000/\$2,500 NP)	\$47,500	\$185,000	\$322,500	\$400,000	\$477,500	\$555,000	\$612,500	\$657,500	
Total Revenue	\$61,500	\$219,000	\$356,500	\$419,500	\$497,000	\$574,500	\$627,000	\$667,500	
Expenses									
Outreach & Communication	\$10,000	\$10,000	\$8,000	\$6,000	\$4,000	\$2,000	\$2,000	\$2,000	
Investigation	\$9,600	\$22,400	\$22,400	\$12,800	\$12,800	\$12,800	\$9,600	\$6,400	
Staff Conference and Training	\$4,400	\$3,000	\$3,000	\$3,000	\$3,000	\$0	\$0	\$0	
Software Hosting	\$3,973	\$4,112	\$4,256	\$4,405	\$4,559	\$4,719	\$4,884	\$5,055	
Total Direct Costs	\$27,973	\$39,512	\$37,656	\$26,205	\$24,359	\$19,519	\$16,484	\$13,455	
Salary and Benefits	\$130,663	\$136,970	\$144,243	\$154,172	\$161,902	\$170,365	\$174,214	\$181,284	
Overhead	\$30,928	\$30,276	\$31,185	\$32,120	\$33,084	\$34,076	\$35,098	\$36,151	
Total Indirect Costs	\$161,591	\$167,247	\$175,428	\$186,293	\$194,986	\$204,441	\$209,312	\$217,435	
Income/(Loss)	\$ (128,064)	\$ 12,241	\$ 143,416	\$ 207,003	\$ 277,655	\$ 350,540	\$ 401,204	\$ 436,610	
Cumulative Income/Loss	\$ (128,064)	\$ (115,823)	\$ 27,594	\$ 234,596	\$ 512,252	\$ 862,792	\$ 1,263,996	\$ 1,700,606	

Pilot Project: Entity Regulation									
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Revenue									
Application Fees (\$2,000/\$1,000 NP)	\$28,000	\$68,000	\$68,000	\$39,000	\$39,000	\$39,000	\$29,000	\$20,000	
Annual Fees (\$5,000/\$2,500 NP)	\$47,500	\$185,000	\$322,500	\$400,000	\$477,500	\$555,000	\$612,500	\$657,500	
Total Revenue	\$75,500	\$253,000	\$390,500	\$439,000	\$516,500	\$594,000	\$641,500	\$677,500	
Expenses									
Outreach & Communication	\$10,000	\$10,000	\$8,000	\$6,000	\$4,000	\$2,000	\$2,000	\$2,000	
Investigation	\$9,600	\$22,400	\$22,400	\$12,800	\$12,800	\$12,800	\$9,600	\$6,400	
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Income/(Loss)	\$ (114,064)	\$ 46,241	\$ 177,416	\$ 226,503	\$ 297,155	\$ 370,040	\$ 415,704	\$ 446,610	
Cumulative Income/Loss	\$ (114,064)	\$ (67,823)	\$ 109,594	\$ 336,096	\$ 633,252	\$ 1,003,292	\$ 1,418,996	\$ 1,865,606	

ISSUE SUMMARY

TO: Practice of Law Board  
FROM: Bobby Henry, WSBA Staff Liaison to POLB  
DATE: April 25, 2025  
RE: **Entity Regulation Budget**

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At the Board's meeting on April 16, 2025, the Board recommended the following fees for entity regulation based on the budget projections in front of them at that time:

Fee Type	Entity Type	Fee Amount
Application Fee	General Entity (not ATJ Mission-Focused Entity)	\$1,000
	ATJ Mission-Focused Entity	\$500
Annual License Fee	General Entity (not ATJ Mission-Focused Entity)	\$5,000
	ATJ Mission-Focused Entity	\$2,500

The Board wanted to have a definition for the types of entities that would be assessed lower fees based on size, mission, profit, etc. WSBA staff has a proposal for the Board's consideration:

An "ATJ Mission-Focused Entity" is an entity with a primary mission of providing legal and law-related services to low income or low and moderate income individuals or households.

Since the last meeting, WSBA staff has researched investigation costs and included those costs in the revised proposed budget projections. Due to the investigation costs, there is also a projection model with application fees of \$2,000 for a general entity and \$1,000 for an ATJ mission-focused entity.

**Board Action Requested:**

- ☐ Define entities that will be eligible for the lower fees.
- ☐ Recommend application fees in light of the investigation costs.

## Entity Regulation Pilot Project

### Subcommittee Composition

Project Leads: Nikki Chen and/or Paris Eriksen will help schedule, attend, take notes and monitor tasks for all subcommittee meetings.

(!) Subcommittee Lead: at the Kick-Off Meeting for each subcommittee, please identify a subcommittee lead.

Name	Summary	Members	Key Deliverables
<b>Application</b>	Application Form Design, Content and Functionality	Jon Dawson (as needed) Renata Garcia Bobby Henry Consult POLB and OGC as needed	<ul style="list-style-type: none"> <li>Identify policy questions and conduct research to inform the development of the application.</li> <li>Develop application functional requirements for ILG.</li> <li>Implement application review and approval workflow – automate review and validation steps, if possible.</li> <li>Develop process for applicant review, investigation, recommendation, and authorization,</li> </ul>
<b>Budget</b>	Budget Development & Monitoring for FY26 and beyond	Renata Garcia Bobby Henry Tiffany Lynch (as needed) Consult POLB as needed	<ul style="list-style-type: none"> <li>Add funds to FY25 budget during reforecast.</li> <li>Outline budget and fee considerations, renewal cadence and requirements.</li> <li>Submit FY26 budget request including revenue from fees and any staff requests.</li> <li>Work with POLB in proposing fees (application and participation) for the BOG's approval and ultimate adoption by the Court.</li> </ul>
<b>Data</b>	Data Analysis and Security	Jon Dawson Bobby Henry Ziliang Huang (as needed) Craig Shank Ellen Reed (POLB)	<ul style="list-style-type: none"> <li>Build reporting and data collection and analytics systems.</li> <li>Identify and implement data security requirements.</li> <li>Ensure systems integrity and data privacy pass testing and meet WSBA standards.</li> </ul>

<b>Communication</b>	Communications, outreach and stakeholder engagement	Renata Garcia Bonnie Sterken Sara Niegowski Craig Shank (as needed, keep informed) Heather Sprouse	<ul style="list-style-type: none"> <li>• Wordmark/logo for the pilot project.</li> <li>• Identify comprehensive list of stakeholders and develop equitable stakeholder engagement strategy</li> <li>• Invite, monitor, review and perhaps respond to stakeholder input.</li> <li>• Host Listening Sessions</li> <li>• Marketing/outreach to existing businesses and potential applicants including law firms</li> <li>• Web presence</li> <li>• Communication Calendar</li> <li>• Issue press releases and other communications as needed.</li> </ul>
<b>Policy</b>	Policy research and development	Doug Ende Renata Garcia Bobby Henry Laurie Powers (optional) Nina Crosby POLB (as needed/TBD) EJT (TBD) Saleena Salango Murugeshwari Subramanian	<ul style="list-style-type: none"> <li>• Define risk and benefit assessment framework, developing scoring rubric.</li> <li>• Identify goals of monitoring</li> <li>• Identify which reforms to regulatory rules by entities</li> <li>• Identify public protection measures</li> <li>• Identify any limitations or conditions on entities</li> <li>• Staff: Draft Guide for Entity Applicants/Participants based on the above policy decisions regarding rules tested for regulatory reform, hypothesis to test the reform, risk/benefits rubrics,</li> </ul>
<b>Protection</b>	Public protection and enforcement	Doug Ende Thea Jennings Kirsten Schimpff	<ul style="list-style-type: none"> <li>• Draft complaint and grievance procedures</li> <li>• Draft complaint form</li> <li>• Audit? Random audit? Secret shopper?</li> </ul>



ISSUE SUMMARY

TO: Practice of Law Board  
FROM: Bobby Henry, WSBA Staff Liaison to POLB  
DATE: April 25, 2025  
RE: **Board Member Recruitment and Nominations**

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Background: GR 25 provides that the Practice of Law Board should have 13 members, with a minimum of five public members. Members serve for three-year terms and may serve up to two consecutive terms. Member terms align with the WSBA fiscal year which is October 1 – September 30. Ideally, terms should be staggered so that approximately one-third of the board changes over each year.

Board Roster: The board currently has three open positions, one member resigning in May, and two members whose terms end September 30. The staggered rotation of terms is off-balance with seven member positions ending September 30, 2027. Staff recommends realigning the cycles by moving vacant positions into the 2022-2025 term. The three “groups” would then be as follows:

Group 1 2022-2025 / 2025-2028

- Ellen Reed – Public (1<sup>st</sup> term)
- Craig Shank – LLP (1<sup>st</sup> term)
- Drew Simshaw – LLP (resigning May)
- Vacant – LLP
- Vacant – Public

Group 2 2023-2026

- Rory Hardy – LLP
- Ron Satterthwaite – LLP
- Michael Terasaki – LLP
- Vacant – Public

Group 3 2024-2027

- Lesli Ashley – LLP
- John Deweese – Public
- Murugeswari Subramanian – Public
- Aaron Vanderpol – LLP

That would leave only one partial term to fill for the 2023-2026 group. Staff also recommends forming a recruitment subcommittee of the board to review the applications and make recommendations to the full board for nominations. Volunteer applications open May 1, 2025.

Succession Planning: GR 25 provides that the Court may annually designate one member of the board as chair and one as vice-chair. It is best practice to have a vice-chair designated in case the chair is absent. WSBA staff is not aware of a vice-chair appointment for the POLB. Although the Board can decide that the vice-chair will succeed the chair, and nominate the vice-chair as chair the following year, a chair and vice-chair can instead be appointed each year. If the board wants members to be able to serve as chair for multiple consecutive years, then it should decide to appoint a chair and vice-chair each year rather than have the vice-chair succeed the chair.