



*Welcome!*

# WSBA REGULATORY SCHOOL

*October 28, 2024*

# AGENDA



---

Welcome to the Regulatory School

---

Regulatory System Structure & the Authority and Role of Each Participant

---

*Break*

---

Bias, Behavior and Decision-Making Pt. 1

---

*Lunch*

---

Bias, Behavior and Decision-Making Pt. 2

---

Adjudicative & Investigative Concepts & Troubleshooting

---

*Break*

---

Confidential and Public Information

---

Safety & Risk Management

---

*Closing*



# CHIEF JUSTICE STEVEN GONZÁLEZ



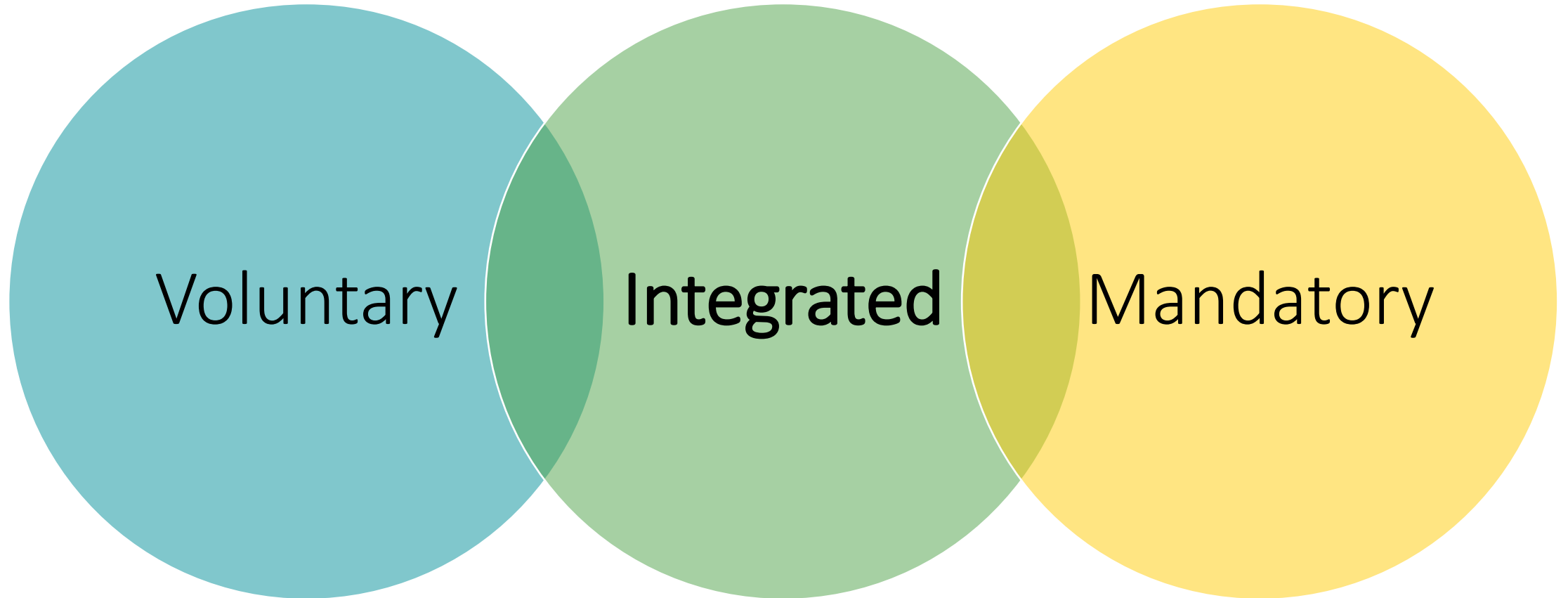
[https://www.courts.wa.gov/appellate\\_trial\\_courts/SupremeCourt/?fa=supremecourt.justices](https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.justices)



# WSBA MISSION STATEMENT

The Washington State Bar Association's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

# BAR ASSOCIATION STRUCTURES





## WASHINGTON SUPREME COURT

### ADMINISTERED BY THE WSBA



#### Court-Created Boards (Court-appointed)

- Access to Justice
- Disciplinary
- Limited License Legal Technician
- Limited Practice
- Mandatory Continuing Legal Education
- Practice of Law

#### Court-Created Boards (BOG-appointed)

- Bar Examiners
- Character and Fitness
- Law Clerk
- Client Protection

#### Other Discipline-Related Entities

- Hearing Officer List   
(Court-appointed)
- Disciplinary Selection Panel   
(Court-appointed)
- Adjunct Disciplinary Counsel Panel   
(Board of Governors-appointed)
- Discipline Advisory Round Table   
(joint venture of the WSBA and the Supreme Court)



### BOARD OF GOVERNORS (BOG)

#### BOG Committees

- Awards
- Budget & Audit
- Executive
- Legislative
- Nominations
- Personnel

#### WSBA Committees

- Continuing Legal Education
- Court Rules and Procedures
- Editorial Advisory
- Judicial Recommendation
- Legislative Review
- Pro Bono and Public Service
- Professional Ethics
- Small Town and Rural
- Washington Young Lawyers

#### Other

- Sections (29)
- Council on Public Defense
- Long-Range Strategic Planning
- Member Engagement Council
- Diversity, Equity & Inclusion Council\*

\* Includes both WSBA and BOG members

WSBA  
Foundation  
501(c)(3)

## Entity Chart

The WSBA operates under the delegated authority of the Washington Supreme Court to license the state's nearly 40,000 legal professionals.

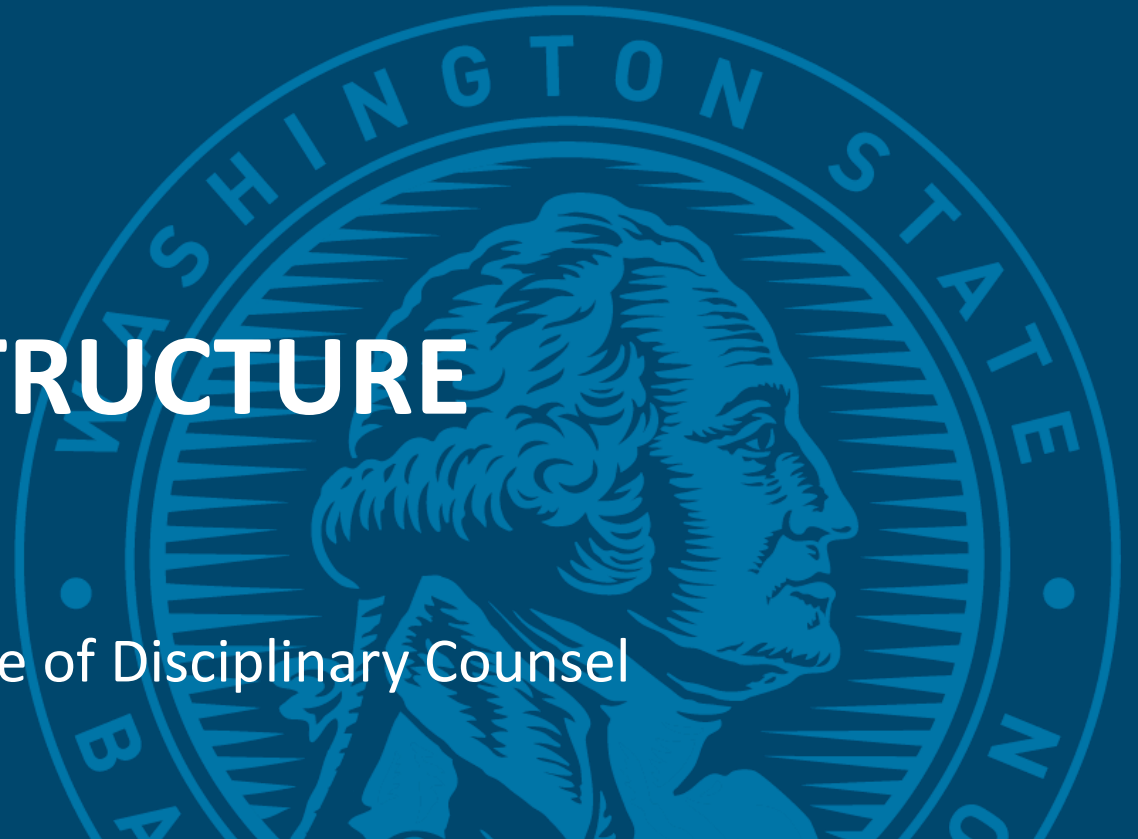
Created Oct. 25, 2019/Updated Aug. 18, 2022

# REGULATORY SYSTEMS STRUCTURE

Laurie Powers, WSBA General Counsel

Renata Garcia, WSBA Chief Regulatory Counsel

Kirsten Schimpff, WSBA Associate Director, Office of Disciplinary Counsel



# REGULATION OF THE PRACTICE OF LAW

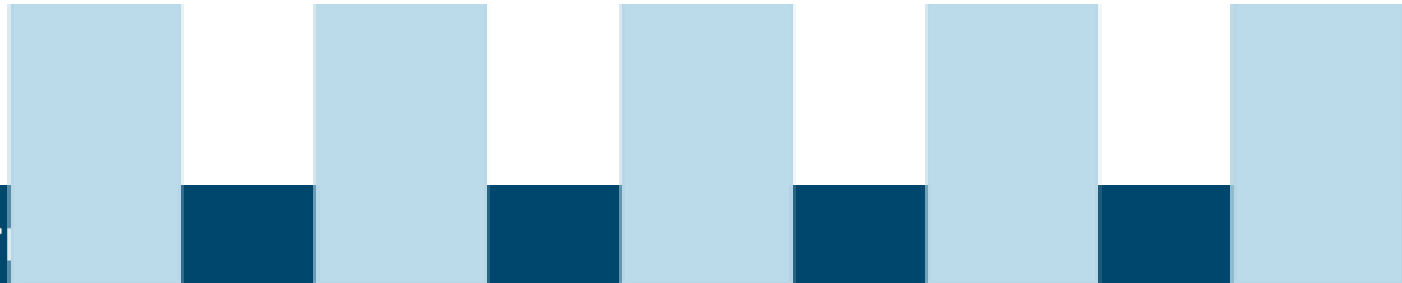


## GR 12

### REGULATION OF THE PRACTICE OF LAW

The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. The legal profession serves clients, courts, and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons and entities acting under the Supreme Court’s authority.

[Adopted effective September 1, 2017.]





# REGULATORY OBJECTIVES

## GR 12.1 REGULATORY OBJECTIVES

Legal services providers must be regulated in the public interest. In regulating the practice of law in Washington, the Washington Supreme Court's objectives include:

- (a) protection of the public;
- (b) advancement of the administration of justice and the rule of law;
- (c) meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;
- (d) transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections;
- (e) delivery of affordable and accessible legal services;
- (f) efficient, competent, and ethical delivery of legal services;
- (g) protection of privileged and confidential information;
- (h) independence of professional judgment;
- (i) accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs;
- (j) diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

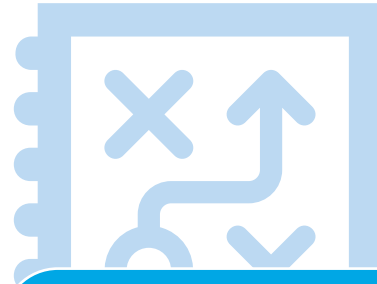
[Adopted effective September 1, 2017.]

# WSBA Purpose and Activities - GR 12.2



## 11 What's

GR 12.2 (a) delineates 11 stated purposes for WSBA's existence, including both its regulatory functions and role in promoting the independence of the judiciary, the effectiveness of the legal system, and the professionalism of legal practitioners.



## 23 How's

GR 12.2 (b) authorizes 23 specific activities that WSBA performs including its regulatory functions, and providing MCLEs, public education, and member services.



## 3 No's

GR 12.2 (c) specifies three things WSBA may not do – all related to taking positions on political and social issues and election efforts, with a limited exception regarding activities affecting the practice of law or the administration of justice.



Over 40,000 lawyers

86 LLLTs

909 LPOs

The WSBA is a mandatory regulatory and professional association agency operating under delegated authority of the Washington Supreme Court.

ADMINISTERED BY THE WSBA

Court-Created Boards (Court-appointed)

- Access to Justice
- Disciplinary
- Limited License Legal Technician
- Limited Practice
- Mandatory Continuing Legal Education
- Practice of Law

Court-Created Boards (BOG-appointed)

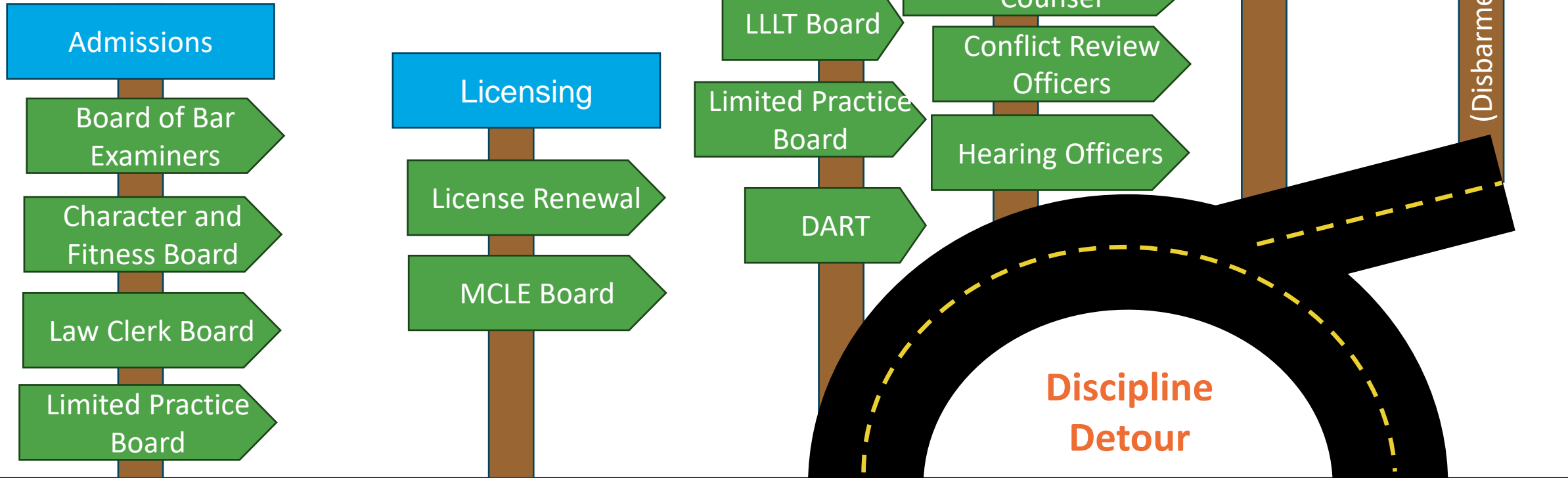
- Bar Examiners
- Character and Fitness
- Law Clerk
- Client Protection

Other Discipline-Related Entities

- Hearing Officer List (Court-appointed)
- Disciplinary Selection Panel (Court-appointed)
- Adjunct Disciplinary Counsel Panel (Board of Governors-appointed)
- Discipline Advisory Round Table (joint venture of the WSBA and the Supreme Court)

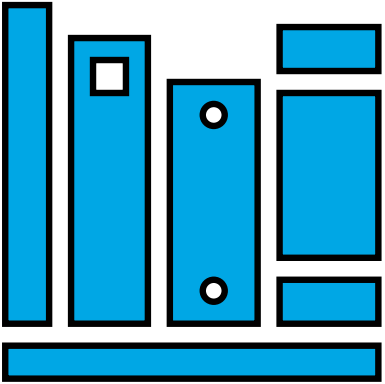
# WSBA's Regulatory Road

*Overseen by the WA Supreme Court*



----- Protection of the Public -----

# LAW CLERK PROGRAM



## Supreme Court

- Authorizes the program under APR 6

## Board of Governors

- Oversees the program as delegated by the Court

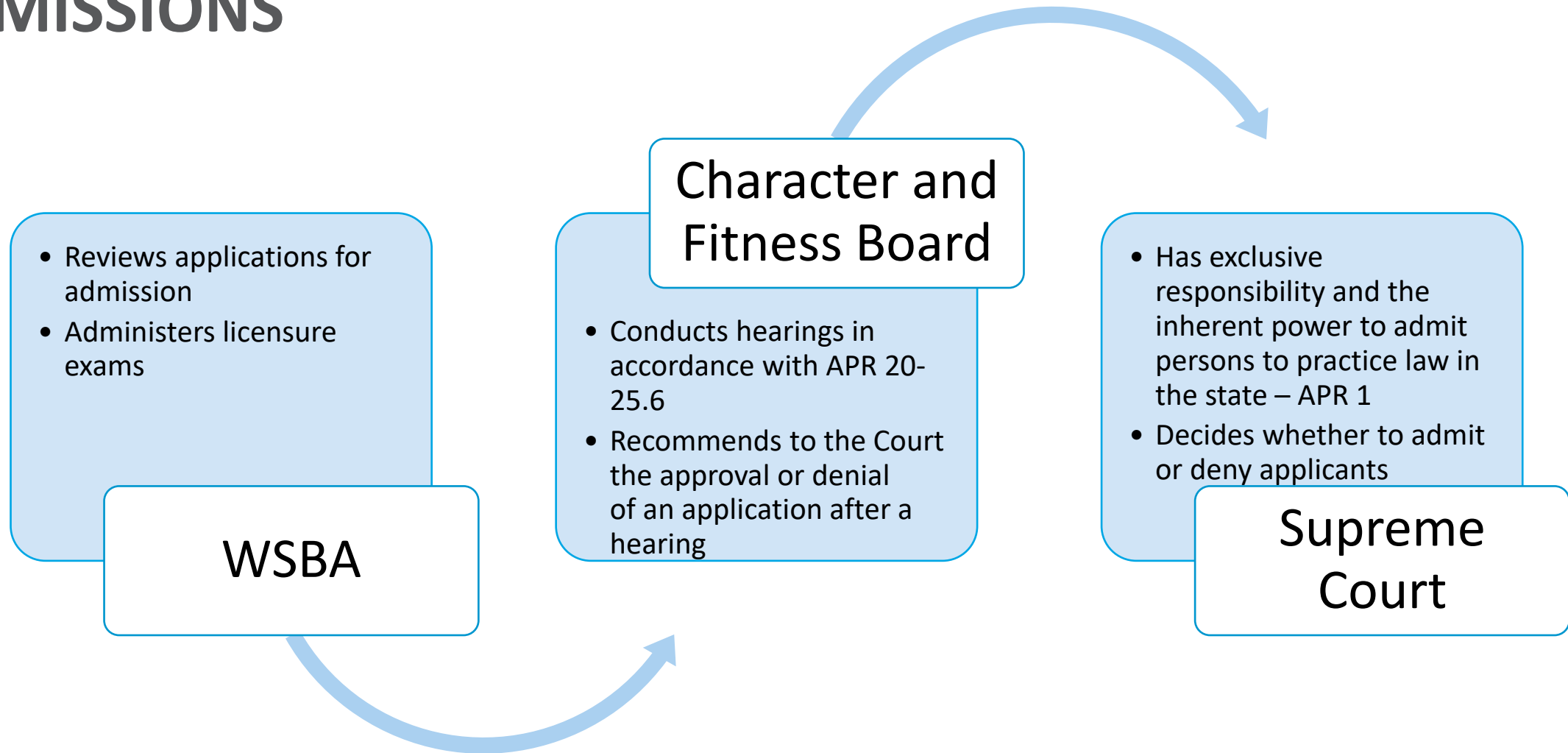
## Law Clerk Board

- Supervises the program, considers applications for enrollment, interviews and evaluates law clerks and tutors in the program, and certifies successful completion

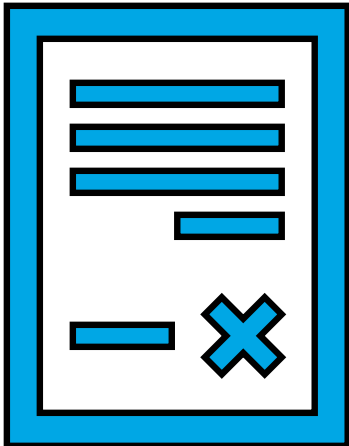
## WSBA

- Administers the program and provides administrative support to the Law Clerk Board

# ADMISSIONS



# LIMITED PRACTICE OFFICER LICENSE



## Washington Supreme Court

- Maintains authority over the LPO license

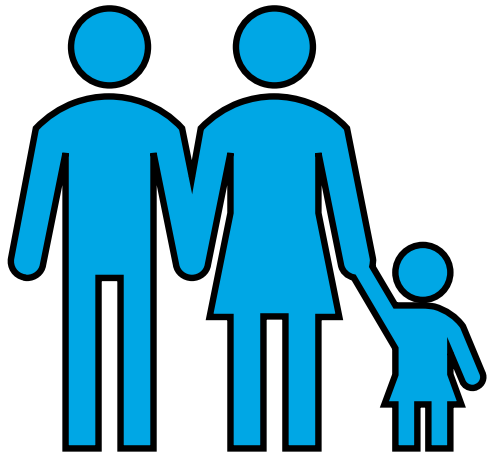
## Limited Practice Board

- Performs tasks as delegated by the Court in APR 12 and makes policy or rule recommendations to the Court
- Prepares and grades the LPO Examination
- Reviews and approves LPO Forms
- Handles resolution of grievances and discipline proceedings against LPOs in accordance with the Rules for Enforcement of LPO Conduct (ELPOC)

## WSBA

- Performs regulatory functions for the LPO license and provides administrative support to the Limited Practice Board

# LLLT LICENSE



## Washington Supreme Court

- Maintains authority over the LLLT license

## LLLT Board

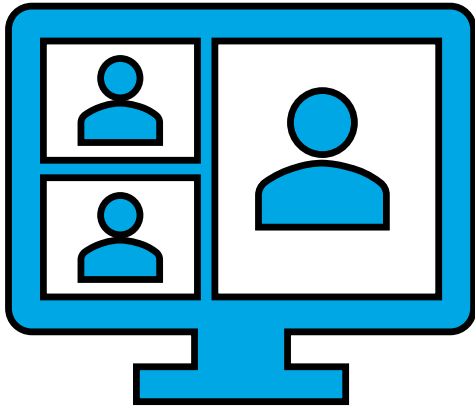
- Performs tasks as delegated by the Court in APR 28 and makes policy or rule recommendations to the Court
- Reviews and approves forms for use by LLLTs
- Handles resolution of grievances and discipline proceedings against LLLTs in accordance with the Rules for Enforcement of LLLT Conduct (ELLTC)

## WSBA

- Performs regulatory functions for the LLLT license and provides administrative support to the LLLT Board



# MCLE



## Supreme Court

- Maintains authority over MCLE
- Orders administrative suspensions and reinstatement to active

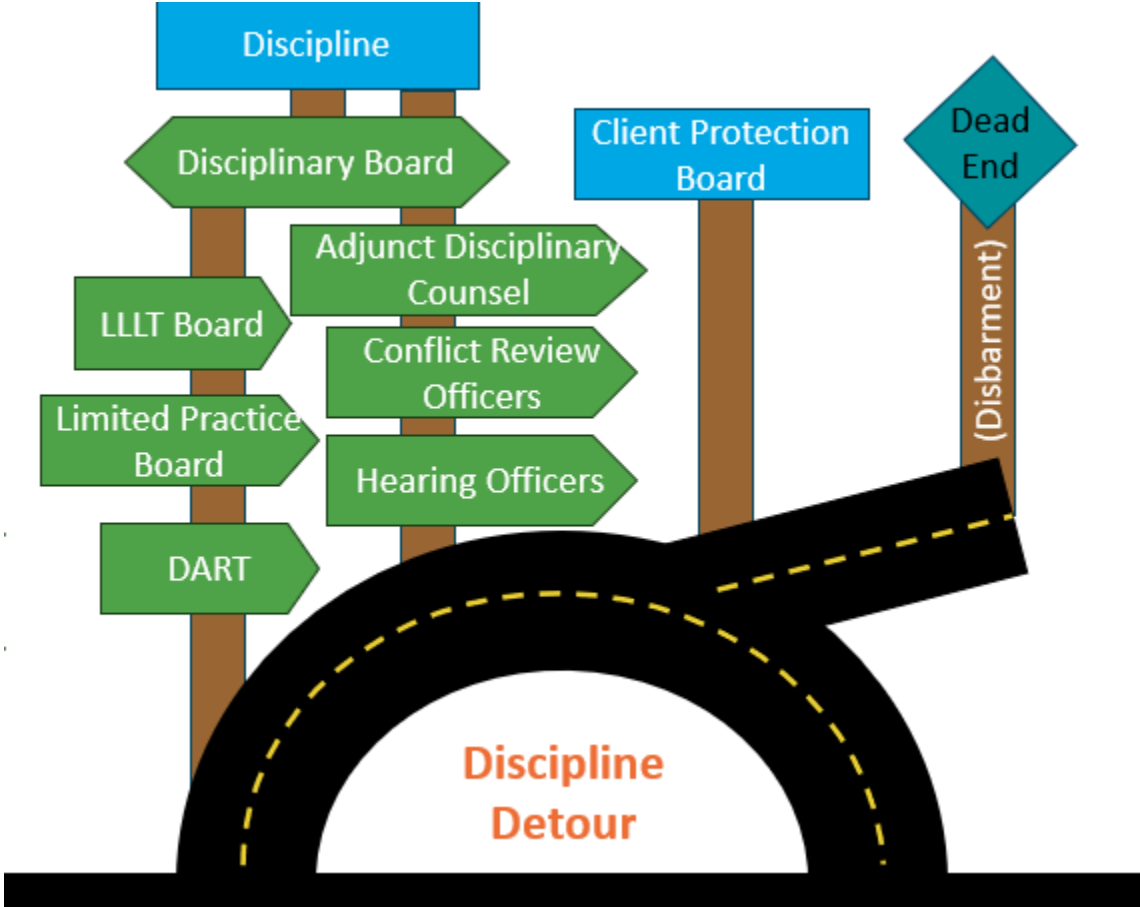
## MCLE Board

- Considers undue hardship petitions and conducts hearings on petitions
- **Proposes changes to APR 11** and guides the policies of the MCLE program under the supervision of the Court

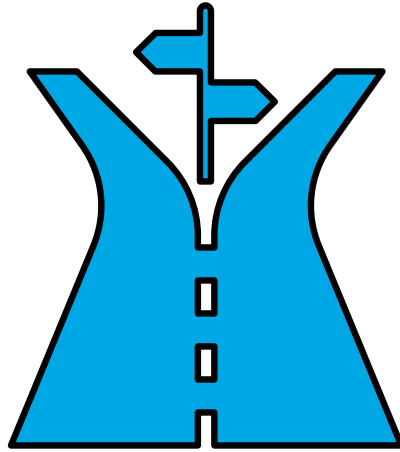
## WSBA

- Performs regulatory functions, including reviewing applications for CLE credit and member compliance
- Provides administrative support to the MCLE Board

# DISCIPLINE SYSTEM

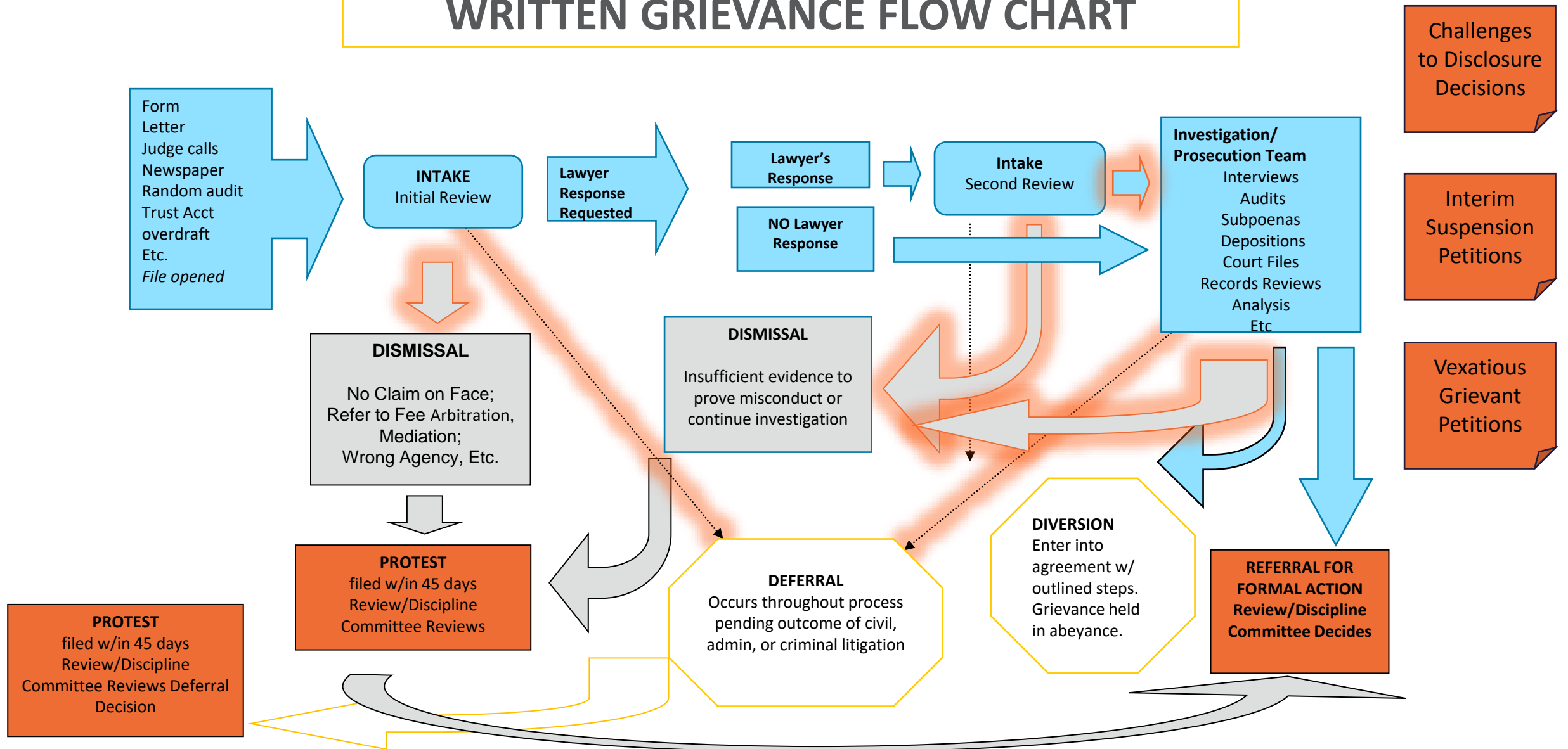


# PROTECTING THE PUBLIC



Disciplinary Selection Panel	
Disciplinary Selection Panel	ELC 2.2(e)
Adjunct Disciplinary Counsel	ELC 2.8 & 2.9
Conflicts Review Officers	ELC 2.7
Hearing Officers	ELC 2.5
Disciplinary Board	ELC 2.3 & 2.4
Limited Practice Board	APR 12
LLLT Board	(APR 28)
Client Protection Board	(APR 15)
Disciplinary Advisory Roundtable	
Supreme Court	

# WRITTEN GRIEVANCE FLOW CHART



# WHAT HAPPENS DURING FORMAL PROCEEDINGS

## REVIEW/DISCIPLINE COMMITTEES

- Review recommendations for proceedings
- Order matters to hearing

## HEARING OFFICER

- Conducts evidentiary hearings and other proceedings
- Conducts settlement conferences
- Approves stipulations to admonition and reprimand

## DISCIPLINARY/LP/ LLLT BOARD

- Intermediate appellate body
- Reviews hearing records and stipulations

## SUPREME COURT

- Administers the system
- Final appellate review
- Orders sanctions, interim suspensions, and reciprocal discipline

## APPLICABLE RULES

**Substantive Rules:** Rules of Professional Conduct (RPC), Limited Practice Officer Rules of Professional Conduct (LPORPC), Limited License Legal Technician Rules of Professional Conduct (LLLT RPC)

**Procedural Rules:** Rules for Enforcement of Lawyer Conduct (ELC), Rules for Enforcement of Limited Practice Officer Conduct (ELPOC), Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC)

**Sanction Guidelines:** American Bar Association Standards for Imposing Lawyer Sanctions

# THREE MAIN TAKEAWAYS

1. Public Protection
2. Delegated Authority & Supervision
3. Court has Plenary Authority



**QUESTIONS?**





The background of the slide is an abstract painting composed of numerous horizontal brushstrokes. The color palette is dominated by various shades of teal, turquoise, and light blue, with occasional strokes of white and pale yellow. The strokes vary in thickness and direction, creating a sense of movement and depth. The overall effect is a textured, layered composition that resembles a close-up of a painting in progress.

**BREAK**



# **BIAS, ETHICS, AND DECISION-MAKING**

## *PART ONE*

# WHO WE ARE

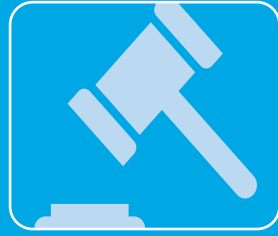
## Presenters:

**Diana Singleton** *(she/her)*  
Chief Equity and Justice Officer

**Elliott Schwebach** *(he/him)*  
EQUITY AND JUSTICE LEAD

## Slides Prepared by:

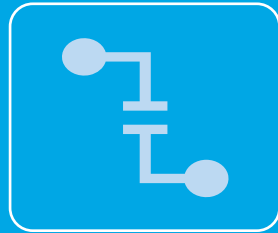
Saleena Salango *(she/they)*, Equity and Justice Lead  
Elliott Schwebach



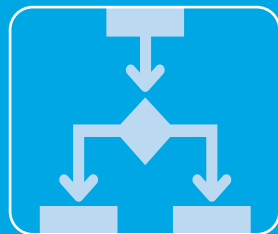
Overview: Bias & The Legal Landscape



The Nature of Bias



New Frameworks for Understanding Bias In Decision-Making



Anti-Bias Strategies

# QUICK POLL

Raise your hand if you have taken an implicit bias or diversity training in a work/volunteer setting.



# THE BAD NEWS

Research on effectiveness of antibias trainings show they fail to eliminate bias

(Schmader et. al. 2022)

Key pitfalls:

- Narrow focus on *awareness* of stereotypes or prejudice.
- Difficulty eliminating strong associations or beliefs.
- Biased behavior and decisions can happen in the absence of negative associations or active hostility.

# THE GOOD NEWS

While it's difficult to eliminate individual biased beliefs or attitudes altogether, we can prevent the *activation* or *expression* of bias in behavior/decisions.



# CHANGING OUR CONVERSATIONS ABOUT BIAS

## Common Tendencies

- Identifying malicious actors.
- Preoccupation with principles or intentions behind policies, practices, and decisions.

## Shifted Focus

- Interplay of policy, procedure, social norms, and behavior.
- Focus on **outcomes** of decisions and actions.
- How we explain those outcomes – and whether they contribute to racism and oppression.



# BIAS AND THE LEGAL LANDSCAPE

## History & Policy

- Professionalization of the law primarily emerged out of economic and social interests of wealthy elite lawyers.
- Exclusionary mechanisms justified through...
  - Surface principles.
  - Racist and oppressive ideas.

## Your Role In This Context

- Mitigate the transmission of these biases in your actions and decisions.
- Challenge and work towards collective change of policies and practices that contribute to exclusion and bias.

# THE NATURE OF BIAS

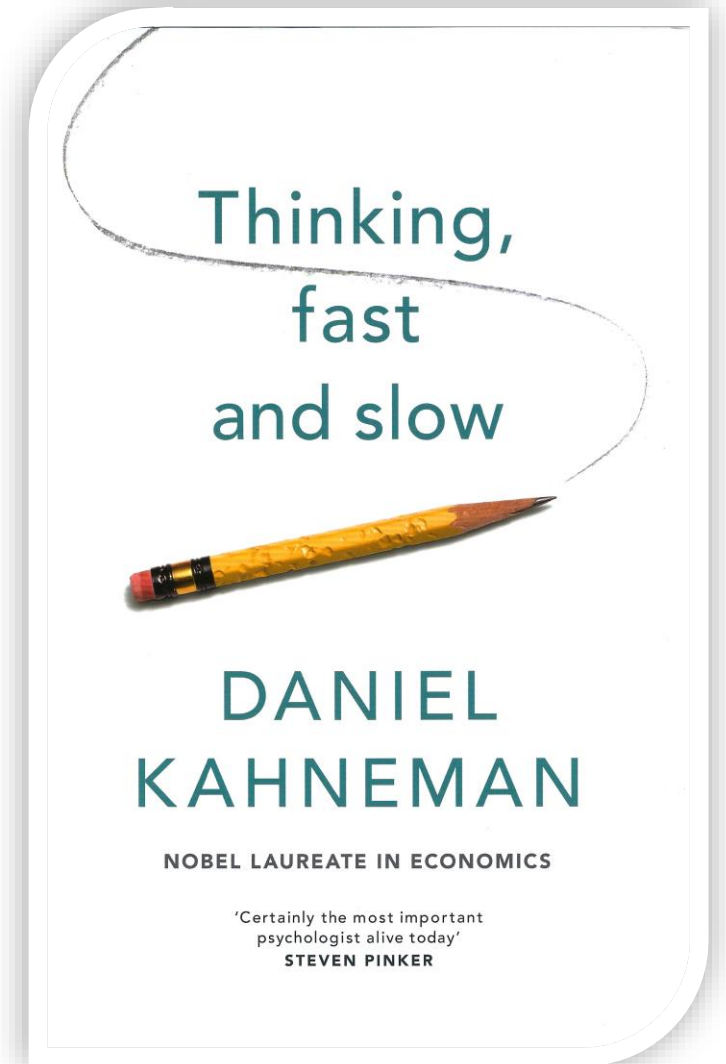


# BIAS: INNATE AND SOCIAL

Let's start with a riddle:



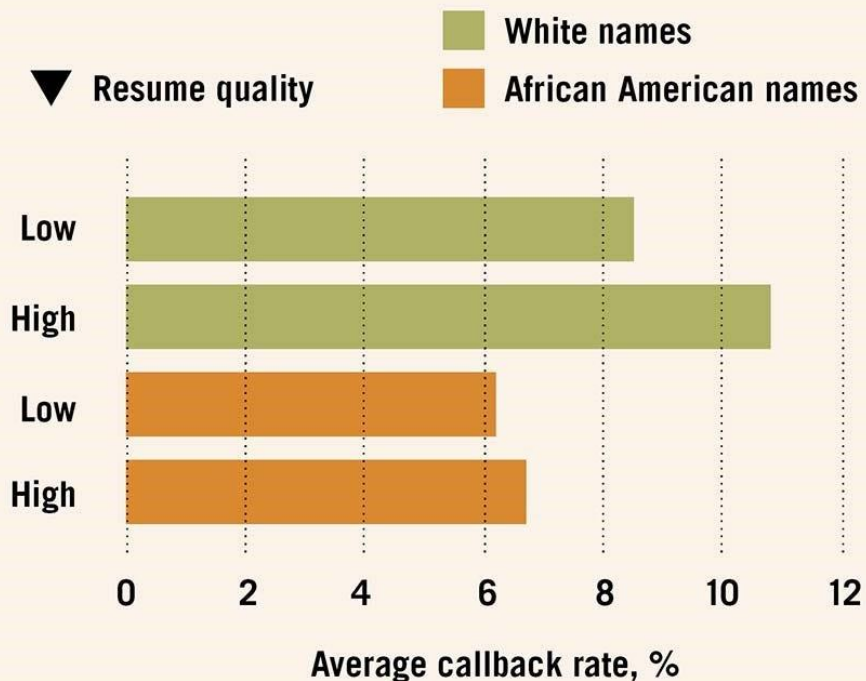
- What is “natural” and what isn’t?
- Innate biases or cognitive biases: heuristics
- “Judgmental shortcuts that generally get us where we need to go – and quickly – but at the cost of occasionally sending us off course” (Kahneman & Tversky)
- Examples: making decisions based upon information that is easily available (**availability heuristic**); making decisions based on “gut feelings” (**affect heuristic**); making decisions based on what just happened rather than trends over time (**recency bias**)
- These are natural!



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

## Racism in a resume

*Job applicants with African American–sounding names got fewer callbacks.*



Source: Bertrand and Mullainathan, 2004

- Social bias: learned and perpetuated through structural inequality and cultural conditioning.
- Assumptions about people that exist to serve privilege.
- These influence innate biases (heuristics).

# Stereotypes versus cognitive biases

## **Legitimizing Racial Discrimination: Emotions, Not Beliefs, Best Predict Discrimination in a Meta-Analysis**

**Cara A. Talaska · Susan T. Fiske · Shelly Chaiken**

**Abstract** Investigations of racial bias have emphasized stereotypes and other beliefs as central explanatory mechanisms and as legitimating discrimination. In recent theory and research, emotional prejudices have emerged as another, more direct predictor of discrimination. A new comprehensive meta-analysis of 57 racial attitude-discrimination studies finds a moderate relationship between overall attitudes and discrimination. Emotional prejudices are twice as closely related to racial discrimination as stereotypes and beliefs are. Moreover, emotional prejudices are closely related to both observed and self-reported discrimination, whereas stereotypes and beliefs are related only to self-reported discrimination. Implications for justifying discrimination are discussed.

# PREVALENT SOCIAL BIASES

- A brief introduction
- Example: race and racism
- Is race natural?



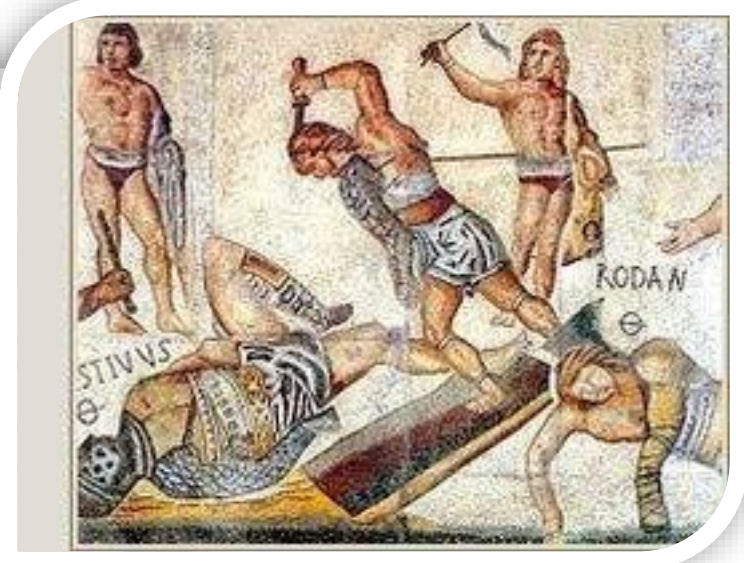


“The idea of race, in its modern meaning, does not have a known history before the colonization of America”  
(Anibal Quijano, “Coloniality of Power”)

[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

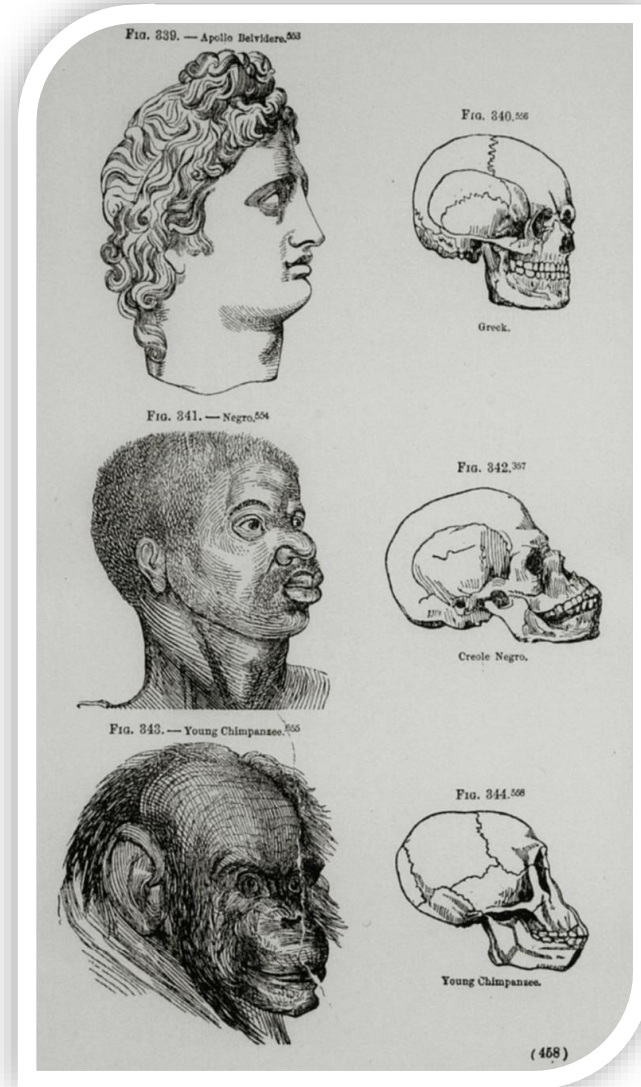


# CLASSICAL ROME V MODERN COLONIALISM



# ESSENTIALISM AND CIVILIZATIONAL PROGRESS

essentialism





LOOK  
LIKE YOU  
GIVE  
A DAMN

**NIVEA**  
FOR MEN

FACE BODY SHAVE

**RE-CIVILIZE  
YOURSELF**

**SHAVE GOOD - IT FEELS BETTER!**  
But real men know that what's absolutely imperative is looking good. Projecting confidence and sophistication is simple with the right sartorial choices. When you want to appear sharp and in command, the devil is in the details: the crisp collar, the sweater that sits perfectly at your shoulders and pants that fit with just the right choice of your feet.

**THE RE-CIVILIZING DOUBLE ACTION SHAVING GEL AND BALM** boost your crisp appearance by energizing your skin, adding a smoothness that people notice. Make your shave an even closer one by first cleansing with **RE-CIVILIZING FACIAL WASH** which refreshes your entire complexion and improves your skin. Afterward, you'll be the smoothest man in the room in three ways that count.



Facebook.com/NIVEAFORMEN

Some  
Notting Hill  
folk were  
born  
to dance.

Mark Lee  
Sales, Team Lead  
Hollywood Career School

Others to  
sell flats.

Jeremy Mortgage Williams  
Dedicated Flats Team Agent

Bold  
Cold  
Newport.  
Light on it.

Cool ain't Cold.  
Newport is.

Newport  
100's

Newport

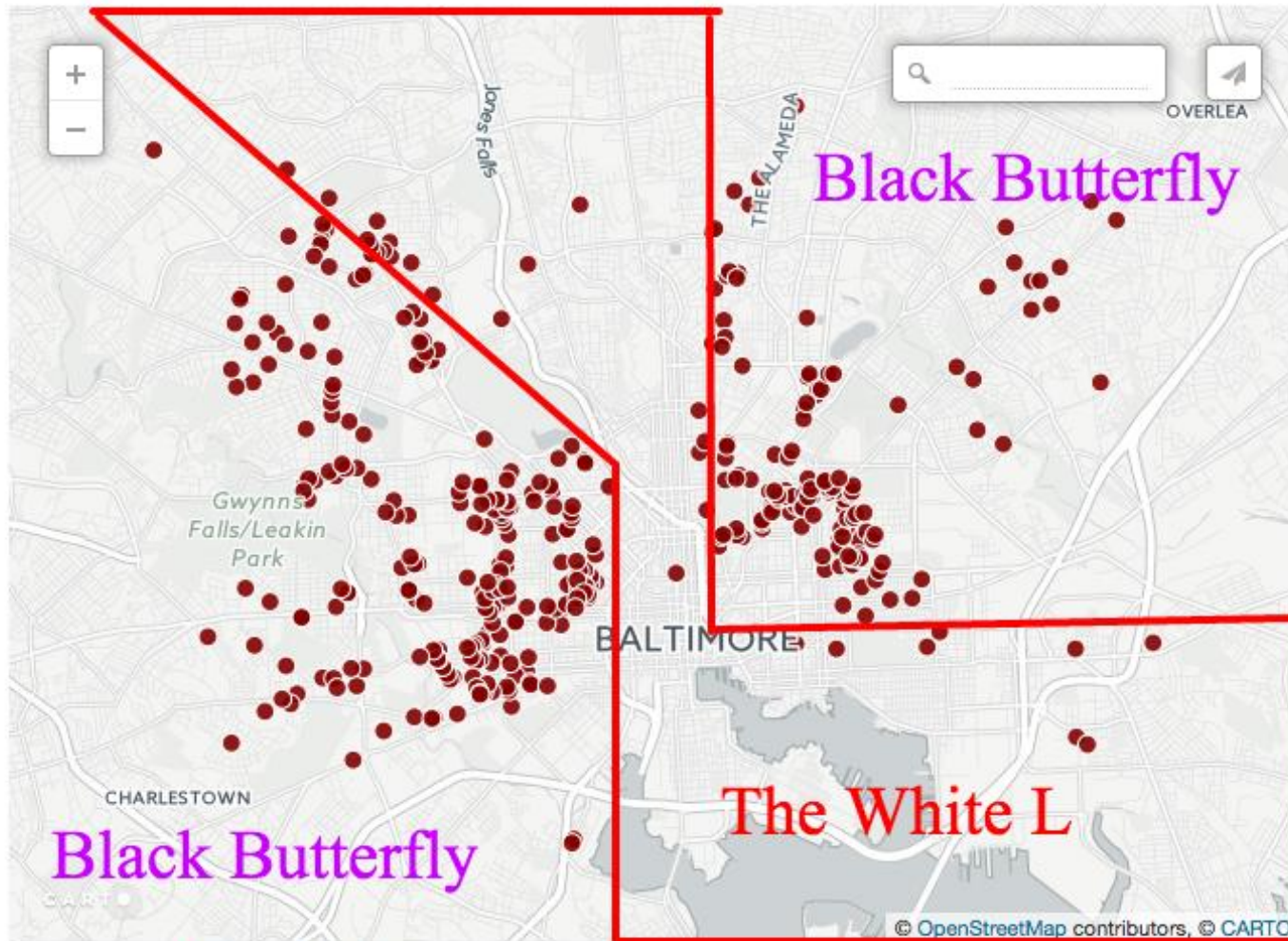
20 FILTER  
CIGARETTES  
MENTHOL 100's



## Purpose/Implications:

- **White privilege:** the material and symbolic benefits that accrue to those with white skin
- **Persistence of racial discrimination:**
  - economic (housing, income levels, jobs)
  - criminal (disparities in arrests, police brutality, drug charges)
  - educational (unchecked bias, Eurocentrism, whitewashed histories)
  - environmental (pollution, the arrangement of city space)
- **Mental health issues:** for all members of society

# Baltimore City Lead Paint Violation Notices 2006-2016



Map created by  Housing Policy Watch

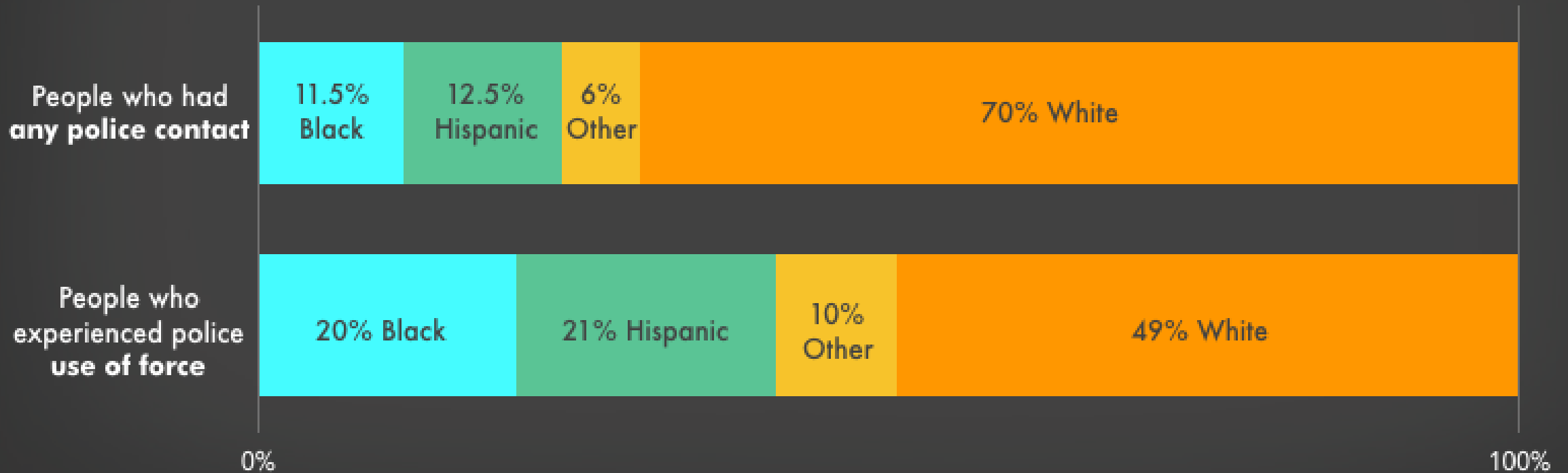






# Among individuals who have any contact with police, people of color disproportionately experience the use of force

Racial composition of people who reported having any contact with police in the past 12 months (as of 2015) compared to those who reported experiencing the threat or use of force by police in the past 12 months



# DEBRIEF

- How do we think about court rules from an anti-bias perspective? About your regulatory work in general?
- Other feelings or thoughts?



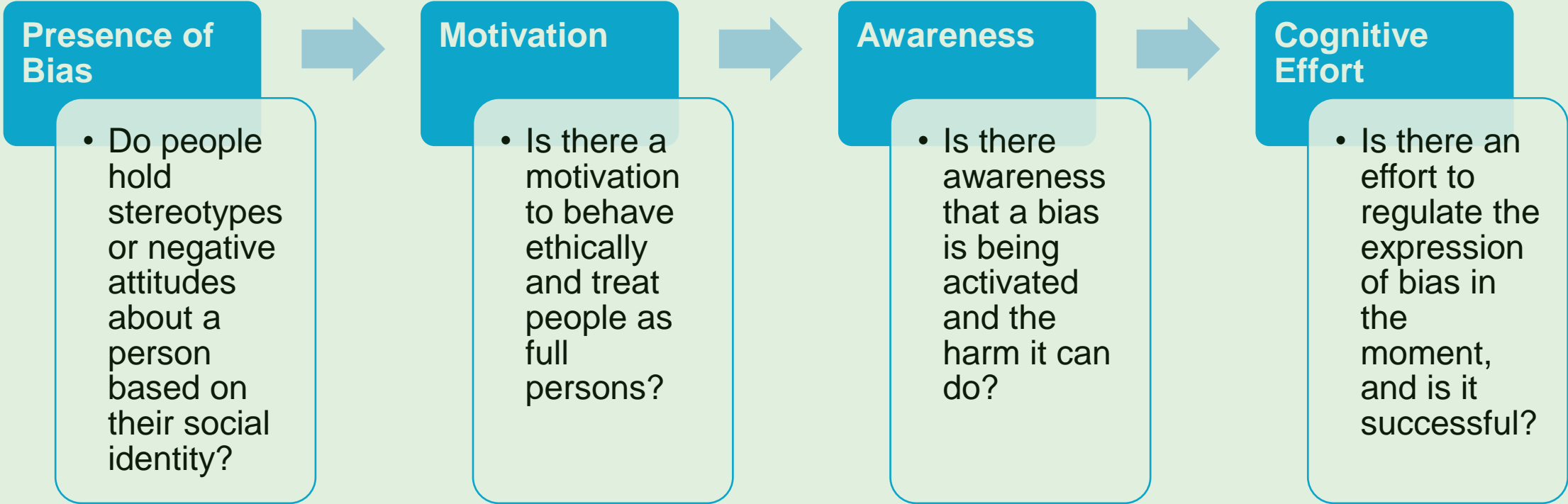


# LUNCH

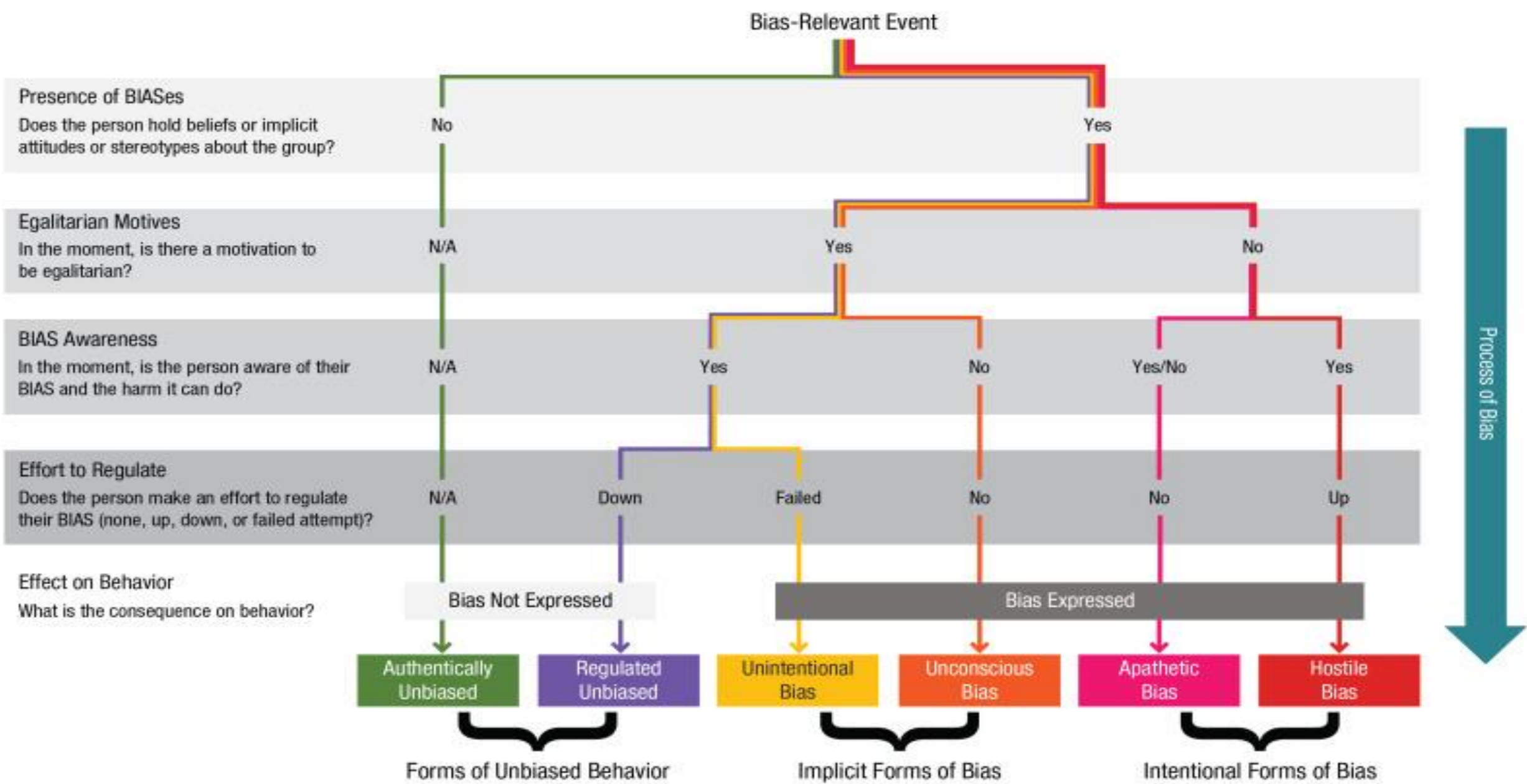
**NEW FRAMEWORKS FOR UNDERSTANDING BIAS  
IN DECISION-MAKING  
PART TWO**



# KEY FACTORS IN THE EXPRESSION OF BIAS



**Policies, Procedures, & Group Norms:** do they inhibit or justify expressions of bias?



# ANTIBIAS STRATEGIES





# ANTIBIAS STRATEGY #1:

Where possible, prevent activating stereotypes and negative associations altogether.

# KEY FACTORS IN THE EXPRESSION OF BIAS

## Presence of Bias

- Do people hold stereotypes or negative attitudes about a social group?
- Are those activated in that immediate moment?

## Motivations

- Do people have strong intrinsic motivation to act fairly and reduce bias?
- Are there strong influences discouraging people from acting fairly?

## Awareness / Care

- Is there awareness that negative attitudes are being activated in the moment?
- What level of care about potential the harms?

## Cognitive Effort

- Is there an effort to regulate the expression of bias in the moment?
- Is it successful?

Interventions here focus on preventing activating biases

## ANTIBIAS STRATEGY #2:

Proactively identify which rules, policies, or procedures are vulnerable to bias.

# SPOTTING OPPORTUNITIES FOR BIAS

## Rules / Policy

- Discretion
- Ambiguity
- Legal complexity
- Concentrated authority

## Procedure

- Process complexity
- Confusing decision-making structure
- Restrictive decision options
- Quotas or quantitative output requirements
- Limited data

## ANTIBIAS STRATEGY #3:

Center principles of fairness and equality over routines, agendas, and outputs.

# KEY FACTORS IN THE EXPRESSION OF BIAS

## Presence of Bias

- Do people hold stereotypes or negative attitudes about a social group?
- Are those activated in that immediate moment?

## Motivations

- Do people have strong intrinsic motivation to act fairly and reduce bias?
- Are there strong influences discouraging people from acting fairly?

## Awareness / Care

- Is there awareness that negative attitudes are being activated in the moment?
- What level of care about potential the harms?

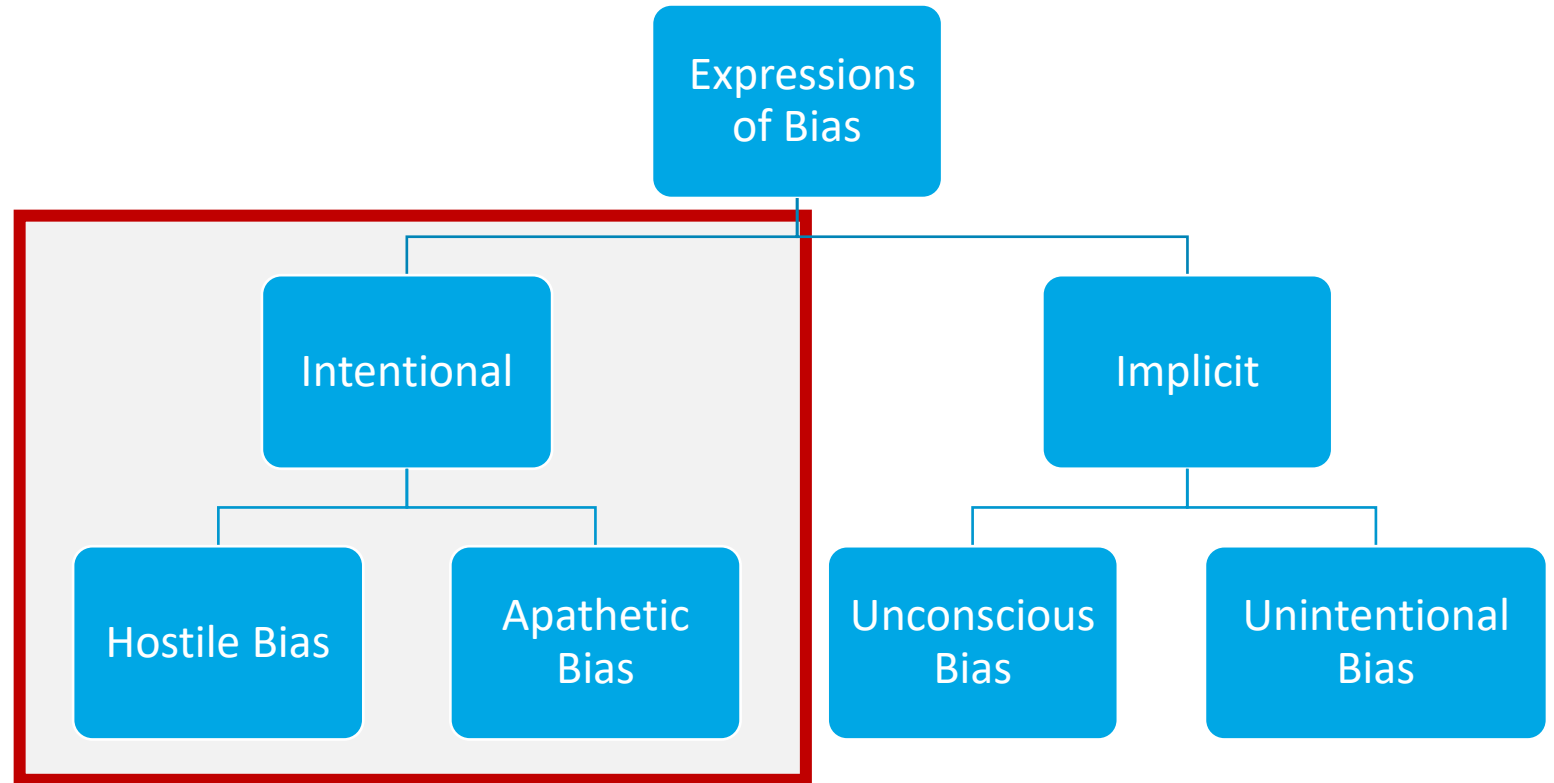
## Cognitive Effort

- Is there an effort to regulate the expression of bias in the moment?
- Is it successful?

Interventions here focus on preventing activating biases

Interventions here focus on empowering people to break bad habits so they can align actions and decisions with their principles

# FORMS OF BIAS



Developed by Schmader et al, 2022

# INTENTIONAL BIAS

Acting in ways that promote or permit unfairness because promoting fairness and equality are not their primary motivation

## Hostile Bias

A person is aware they hold negative associations, stereotypes, and prejudice – and they use them as justification to achieve a desired outcome.

## Apathetic Bias

A person is aware of negative associations, stereotypes, and prejudice being activated – but don't feel a compelling enough reason to counteract them.



# COGNITIVE FRAMING → INTENTIONAL BIAS

## Cognitive Distortion

Legal, procedural, or financial justification

Euphemistic language

Advantageous comparison

## Obscuring Agency

Displacement of responsibility

Diffusion of responsibility

Dissociation

## Minimization of Consequences

Distancing and avoidance

Dehumanization

Blame misattribution

# REMEDIES TO INTENTIONAL BIAS

## INDIVIDUAL

- Visualize how it **feels** to act in line with your values
- Growth mindset
- Build cognitive resilience and distress tolerance skills
  - Apathetic bias is heavily related to your fight, flight, freeze response to stress

## ENTITY

- Encourage breaks from status quo and tradition/authority
- Prioritize and reward accountability to ethics and values over agendas and outputs
  - Consider: Surfacing concerns about bias isn't an impediment to work – *it is the work*

## ANTIBIAS STRATEGY #4:

Build awareness of the associations and assumptions we have about social groups.

# KEY FACTORS IN THE EXPRESSION OF BIAS

## Presence of Bias

- Do people hold stereotypes, associations, or attitudes about a social group?
- Are those activated in that immediate moment?

## Motivations

- Do people have strong intrinsic motivation to act fairly and reduce bias?
- Are there strong influences discouraging people from acting fairly?

## Awareness

- Is there awareness that biases are being activated in the moment?
- What level of care about potential the harms?

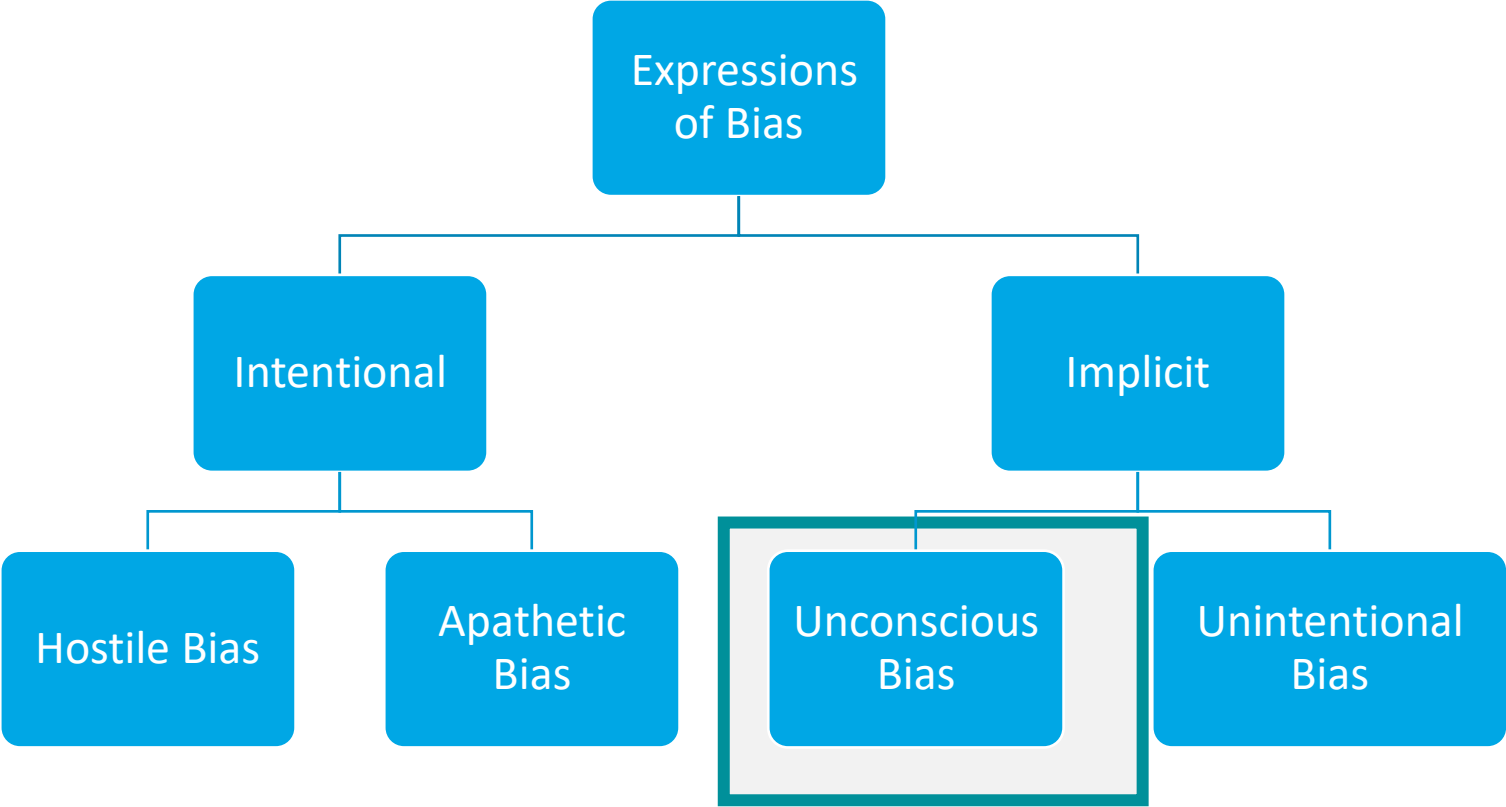
## Cognitive Regulation

- Is there an effort to regulate the expression of bias in the moment?
- Is it successful?

Interventions here focus on preventing activating biases

Interventions here focus on empowering people to break bad habits so they can align actions and decisions with their principles

# FORMS OF BIAS



Developed by Schmader et al, 2022

# INDIVIDUAL ACTIVITIES FOR BUILDING BIAS AWARENESS

See your materials for  
complete instructions



## Implicit Association Tests

- Uncovering presence of negative associations with certain social groups



## Examining Your Circle of Trust

- Who are 5-10 people you most interact with and trust outside of your family? What identities do they hold? Who's missing?



## Stereotype Flip Test

- A mental exercise to test if assumptions hold when applied to another with different identity
- If no, then it is likely unfounded assumptions based on someone's identity.

## ANTIBIAS STRATEGY #5:

Use cognitive reframing skills and bias-challenging practices to downregulate biases and act in line with objective truths and values.

# KEY FACTORS IN THE EXPRESSION OF BIAS

## Presence of Bias

- Do people hold stereotypes, associations, or attitudes about a social group?
- Are those activated in that immediate moment?

## Motivations

- Do people have strong intrinsic motivation to act fairly and reduce bias?
- Are there strong influences discouraging people from acting fairly?

## Awareness

- Is there awareness that biases are being activated in the moment?
- What level of care about potential the harms?

## Cognitive Regulation

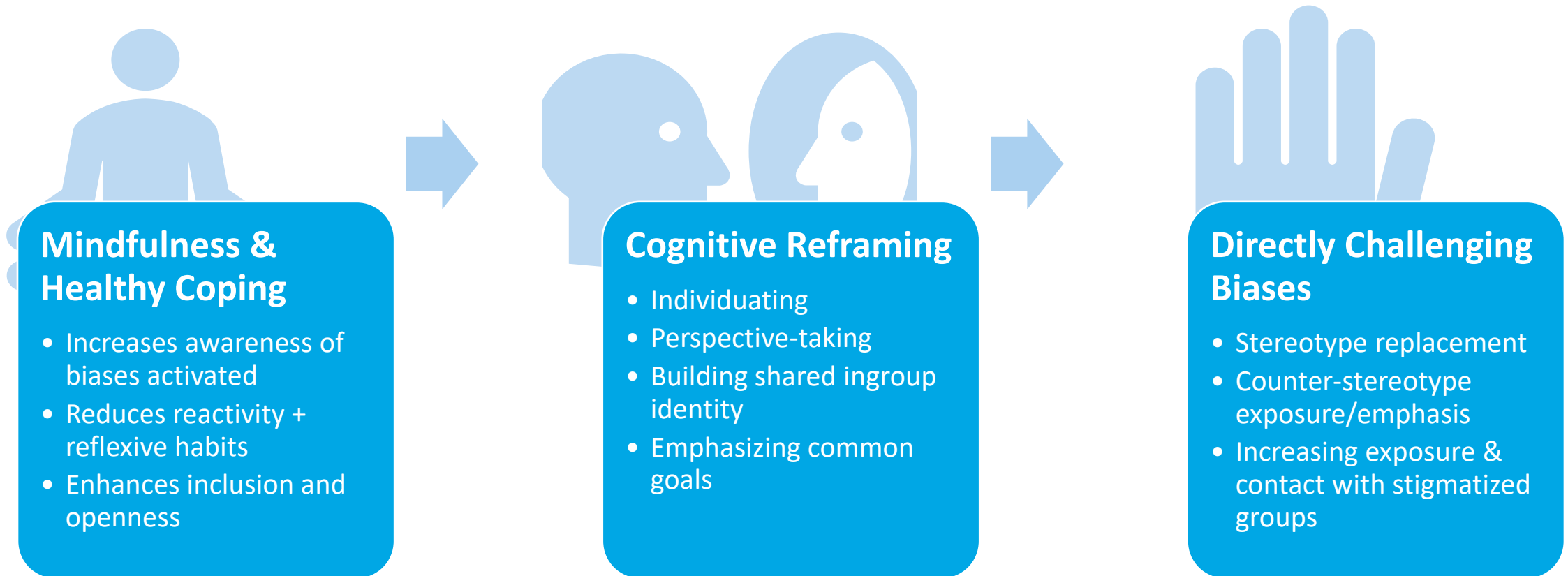
- Is there an effort to regulate the expression of bias in the moment?
- Is it successful?

Interventions here focus on preventing activating biases

Interventions here focus on empowering people to break bad habits so they can align actions and decisions with their principles



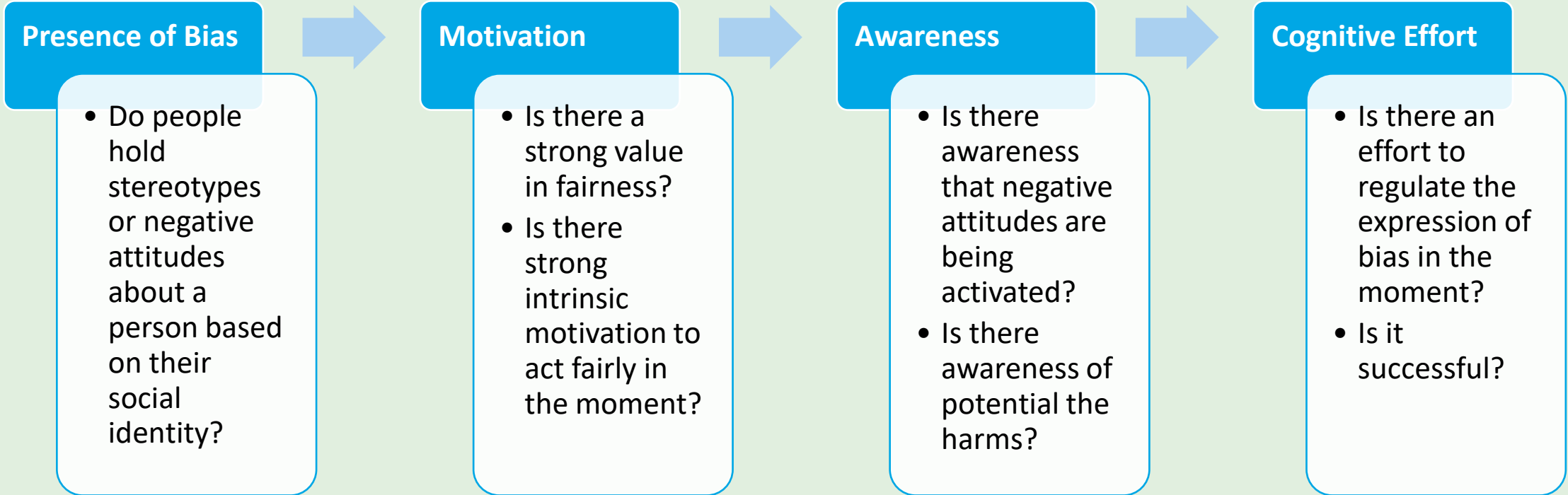
# COGNITIVE BIAS REGULATION SKILLS



## ANTIBIAS STRATEGY #6:

Increase the diversity of your entity and your leadership.

# KEY FACTORS IN THE EXPRESSION OF BIAS



**Policies, Procedures, & Group Norms:** do they inhibit or justify expressions of bias?

# DIVERSITY IN YOUR ENTITY

## Benefits

The mere *expectation* of social diversity primes individuals to

- ❖ Prepare better
- ❖ Be more diligent about behavior
- ❖ Be more open-minded

**More diversity is associated with**

- ❖ More thorough decision-making
- ❖ Greater accuracy and objectivity
- ❖ Enhanced creativity & innovation

## Challenges

**Efforts to increase diversity must be meaningful and coupled with inclusion**

- ❖ Inclusion: if people don't feel valued in the space, they are unlikely to stay
- ❖ The levels of diversity must be meaningful and broad (not tokenistic)

**Change resistance:**

- ❖ Often, increased thoroughness is perceived as a reduction of cohesion
- ❖ Ingroup favoritism prevents accessing full benefits of diversity

## ANTIBIAS STRATEGY #7:

Create inclusive norms that encourage active engagement to reduce bias.

# HOW NORMS SUPPORT ANTI-BIAS WORK

- Collective norms that support equality and inclusion tend to reduce the expression of biased belief and attitudes.
- Leadership and groups that openly interrupt or challenge expressions of bias can signal support and make it more likely that targets of that behavior continue to engage.
- Group norms can enhance motivation to act more fairly and engage in prejudice-breaking habits.

# INCLUSIVE NORMS

## Build power *with*, not power over

Acknowledge power differences

Expect discomfort

Cultivate a growth mindset

Clarify how decisions are made

Build trusting relationships

## Lead with purpose and values

Name and connect with shared values

Align process with values

Leave space for reflection

Create realistic plans

Center impact over intention

## Leverage diverse strengths for innovation

Embrace generative conflict

Allow both/and thinking

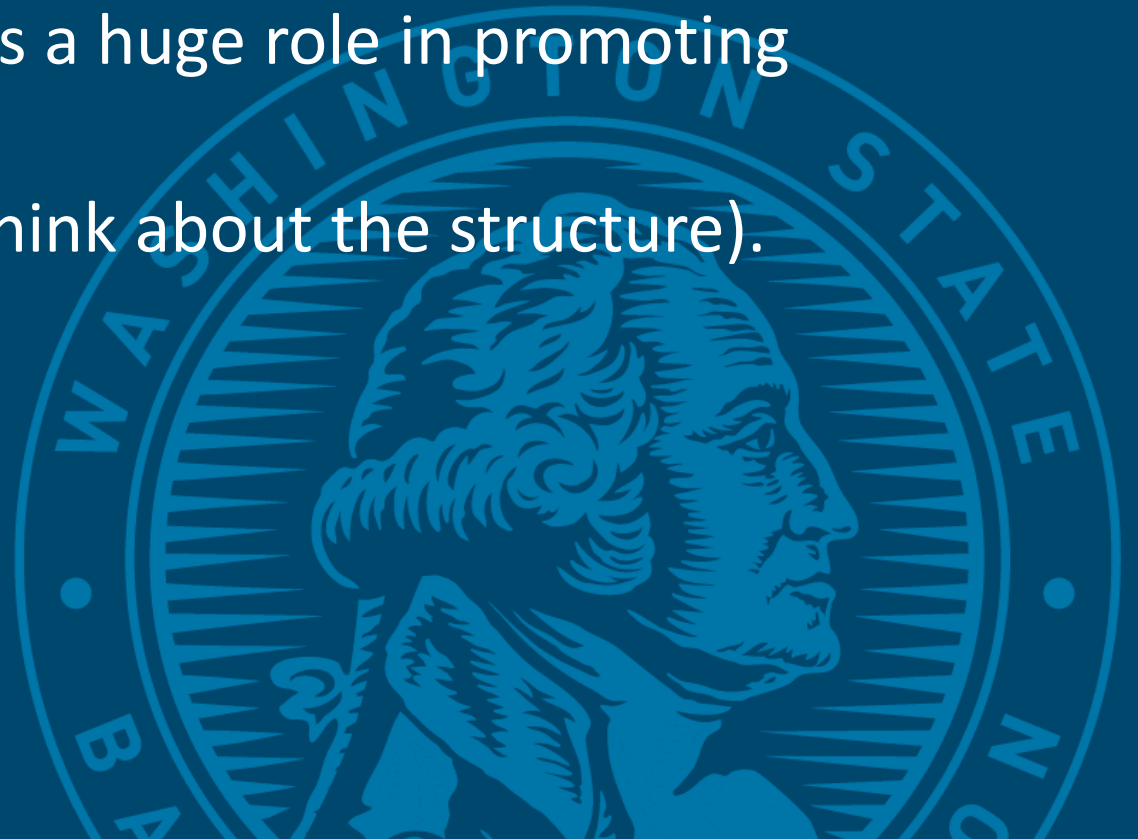
Try new ways of doing

Notice who's missing; seek them out

Notice, name, and build upon strengths

# KEY TAKEAWAYS

1. Social bias lives in structure and process.
2. Everyone has the capacity to be agents of change and break habitual biased behavior.
3. Norms, procedures, and framing has a huge role in promoting better decision-making.
4. Where possible, think big picture (think about the structure).





# VIDEO LIBRARY AND CONSULT PORTAL

**SALEENA SALANGO**  
(SHE/THEY)

EQUITY AND JUSTICE LEAD  
[saleenas@wsba.org](mailto:saleenas@wsba.org)

**DIANA SINGELTON**  
(SHE/HER)

CHIEF EQUITY AND  
JUSTICE OFFICER  
[dianas@wsba.org](mailto:dianas@wsba.org)

**ELLIOTT SCHWEBACH**  
(HE/HIM)

EQUITY AND JUSTICE LEAD  
[elliotts@wsba.org](mailto:elliotts@wsba.org).

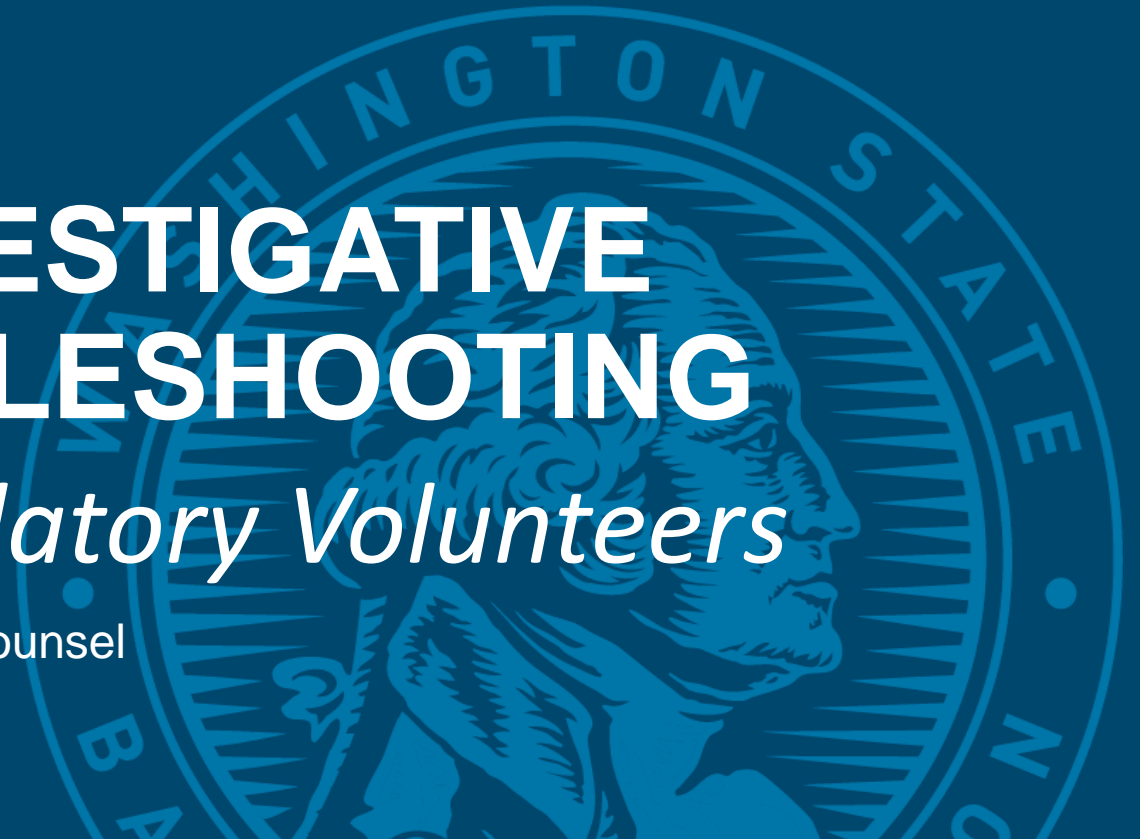
**QUESTIONS?**



# ADJUDICATIVE & INVESTIGATIVE CONCEPTS & TROUBLESHOOTING

*A Conversation with Regulatory Volunteers*

Moderated by Douglas Ende, WSBA Chief Disciplinary Counsel



# PANELISTS



**Fabio Ambrosio**  
Adjunct Disciplinary Counsel



**Knowrasa Patrick**  
Character & Fitness  
Board Chair (2020-21)



**Randolph O. Petgrave, III**  
Chief Hearing Officer



**Deborah A. Severson**  
Disciplinary Board Chair

Moderated by Douglas Ende, WSBA Chief Disciplinary Counsel

# CHARACTER AND FITNESS BOARD

The Character and Fitness Board deals with matters of character and fitness bearing upon qualifications of applicants for admission to practice law in the state of Washington or the rehabilitation of petitioners for reinstatement after disbarment. Upon referral from Bar counsel, it conducts hearings, prepares written findings, and makes recommendations to the Washington Supreme Court. The Board meets as frequently as necessary, generally meeting one day a month at the WSBA offices for hearings.

By Washington Supreme Court rules, hearings are confidential and not open to the public, except hearings regarding the character and fitness of petitioners for reinstatement after disbarment.

**ENABLING RULE:** Admission and Practice Rule (APR) 23

**COMPOSITION:** At least one lawyer, LLLT, or LPO from each congressional district and three community representatives

**QUALIFICATIONS:** Legal professionals must have active licenses and have been active for at least five years

# ADJUNCT DISCIPLINARY COUNSEL

Disciplinary counsel may assign a grievance to a member of the Adjunct Disciplinary Counsel (ADC) Panel for investigation under the supervision of the Office of Disciplinary Counsel. Members of the ADC Panel may be called upon to serve as volunteers in the discipline system in other capacities, such as:

- Serving as Special Disciplinary Counsel to represent the WSBA in the prosecution of a disciplinary case;
- Providing disciplinary counsel with an opinion on an area of law relevant to a disciplinary hearing or investigation;
- Providing disciplinary counsel with advice on an aspect of a pending disciplinary proceeding;
- Serving as a probation monitor following imposition of a disciplinary sanction;
- Serving as a file custodian.

**ENABLING RULES:** Rules for Enforcement of Lawyer Conduct (ELC) 2.9 & 5.3(c)

**COMPOSITION:** No limit in rules on size of ADC Panel; currently 29 ADC Panel members

**QUALIFICATIONS:** Must be actively licensed and have been active or judicial for at least seven years and have no record of disciplinary action

# CHIEF HEARING OFFICER AND HEARING OFFICERS

Hearing officers serve as adjudicators for, lawyer, LLLT, and LPO discipline hearings, conduct settlement conferences, review stipulations not involving suspension or disbarment, and perform other functions as set forth in the Rules for Enforcement of Lawyer Conduct (ELC). The Chief Hearing Officer also serves as an adjudicator, assigns cases, monitors hearing officer performance, hears motions for disqualification and other motions, advises hearing officers, and supervises hearing officer training.

**ENABLING RULE:** Rule for Enforcement of Lawyer Conduct (ELC) 2.5

**COMPOSITION:** As many as necessary to carry out functions effectively and efficiently; currently 22 hearing officers

**QUALIFICATIONS:** Must be actively licensed and have been active or judicial for at least seven years, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

# DISCIPLINARY BOARD

As a full board, the Disciplinary Board reviews hearing officer adjudicative decisions when a timely request for review or appeal is filed or *sua sponte* review is ordered, and automatically reviews stipulations for suspension or disbarment. The Board also reviews decisions and stipulations in disability matters. The Board's suspension and disbarment recommendations can be appealed to the Supreme Court. Even when not appealed, Board orders and decisions are transmitted to the state Supreme Court for final action. The Board holds public oral arguments in some appellate cases. In committees known as review committees, the Board reviews matters dismissed by the Office of Disciplinary Counsel when review is requested by the grievant, and it reviews the Office of Disciplinary Counsel's recommendations that matters be ordered to public hearing or that an admonition be issued.

**ENABLING RULES:** Rules for Enforcement of Lawyer Conduct (ELC) 2.3 and 2.4.

**COMPOSITION:** Not fewer than four nonlawyer members and not fewer than ten lawyers

**QUALIFICATIONS:** Lawyer members must be actively licensed and have been active or judicial for at least five years and have no record of public discipline.



## Thematic Question:



What is the core purpose of the regulatory role, and does your motivation for volunteering align with that purpose?

The background of the slide is an abstract painting composed of numerous horizontal brushstrokes. The color palette is dominated by various shades of teal, turquoise, and light blue, with occasional strokes of white and pale yellow. The strokes vary in thickness and direction, creating a textured, layered effect. The word "BREAK" is centered in the middle of the image in a clean, white, sans-serif font.

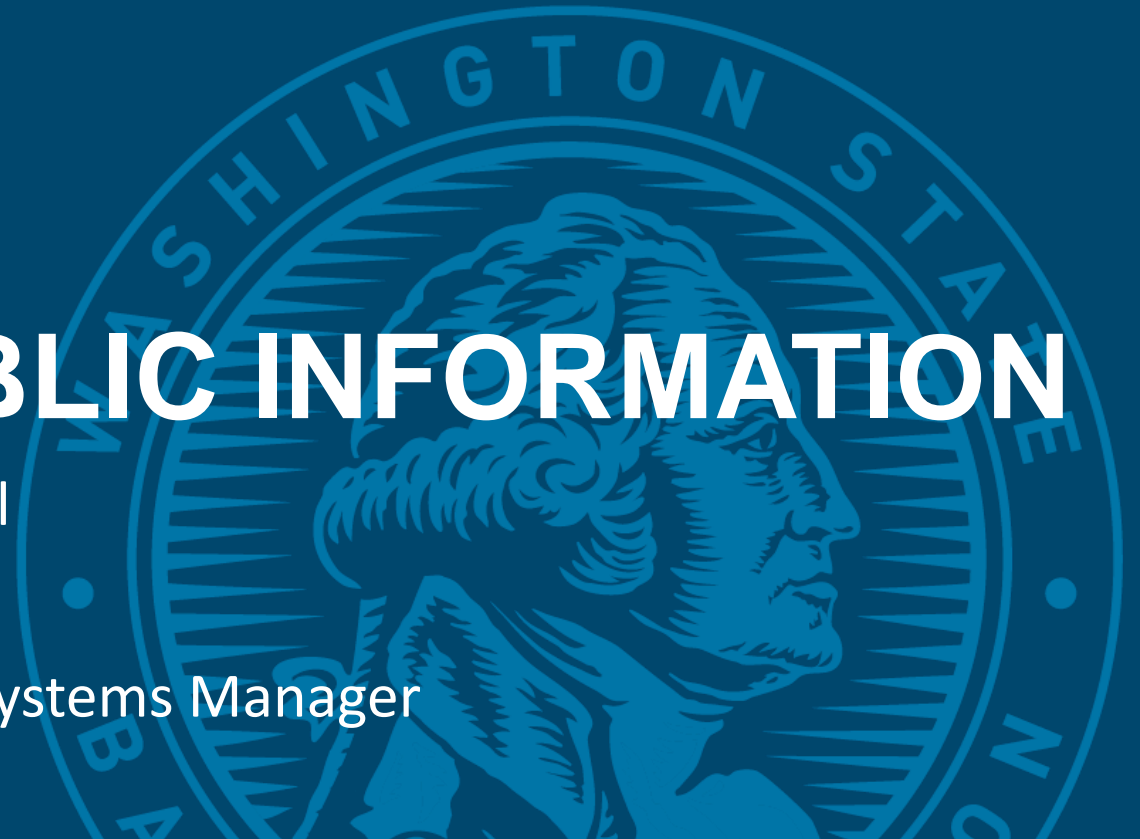
**BREAK**

# CONFIDENTIAL & PUBLIC INFORMATION

Nicole Gustine, WSBA Assistant General Counsel

Renata Garcia, WSBA Chief Regulatory Counsel

Rachel Agent, WSBA Disciplinary Program and Systems Manager



# PUBLIC BAR RECORDS



Assume that all written communication with WSBA staff will be subject to disclosure if requested.



For email correspondence with WSBA staff, use the email account that is your email address of record with WSBA, not a personal email address that you would like to remain private. An even better practice would be to open a separate email account for correspondence to and from the WSBA. Don't include other personal contact information, such as personal cell phone or home telephone numbers.



For volunteers who work at state agencies or municipalities subject to the Public Records Act, be aware that your work with WSBA may cause public records requests to be made to your place of employment. Your agency's public records officer may not be familiar with all of the confidentiality provisions and other exemptions that attach to Bar records. Therefore, the best practice would be to not use your public agency work email address for your board or committee work; instead, open a separate email account.



Keep your personal working papers regarding your Bar activities in your own possession.



Individuals seeking access to Bar records should not make records requests to you. Please ask them to make their request to: [PublicRecords@wsba.org](mailto:PublicRecords@wsba.org). Under Washington General Rule 12.4(e)(1), requests must be made in writing to WSBA's public records officer, and may not be made to other Bar staff or to volunteers serving on boards, committees, task forces, commissions, sections, councils, or divisions.

# REGULATORY CONFIDENTIALITY



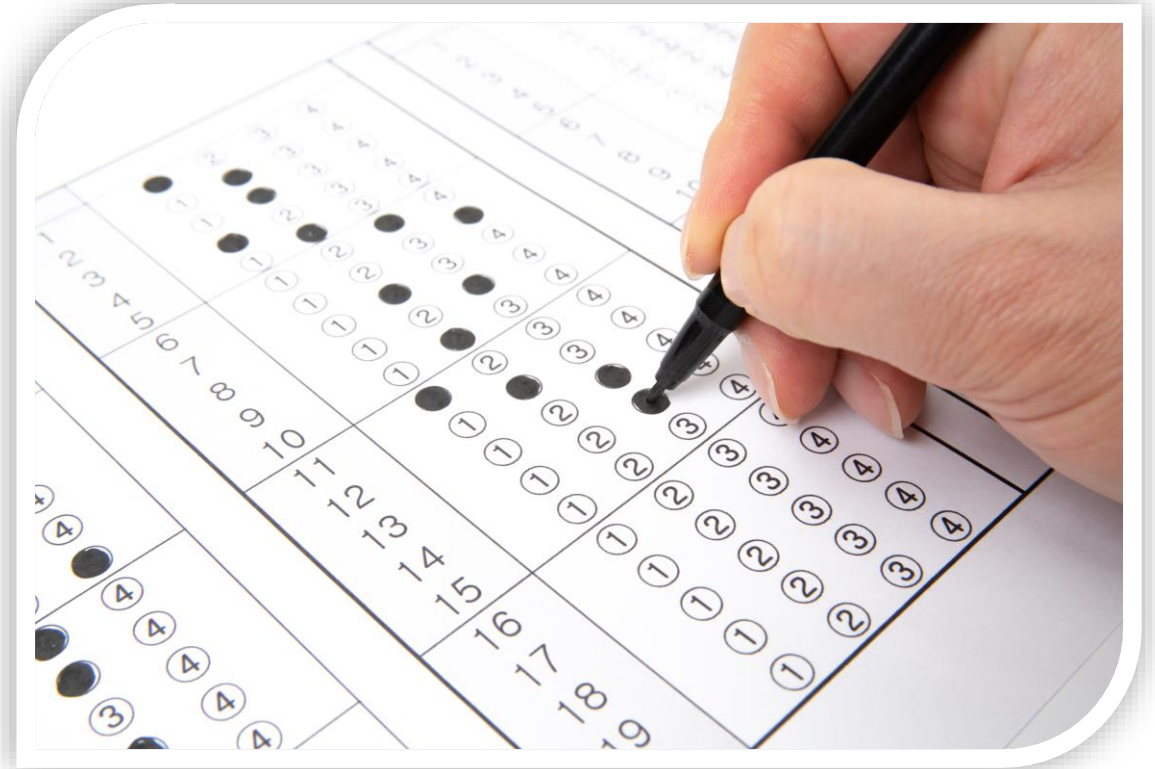
# ADMISSIONS

## Confidential

- Applications for admission – APR 1(d)(1)
- Character and fitness proceedings – APR 24.1(g)
- Exam questions and answers and other exam work product including manuals – APR 1(d)(2)

## Public

- Exam pass lists and stats – APR 4(b)
- Reinstatement after disbarment C&F proceedings – APR 25.3(d)



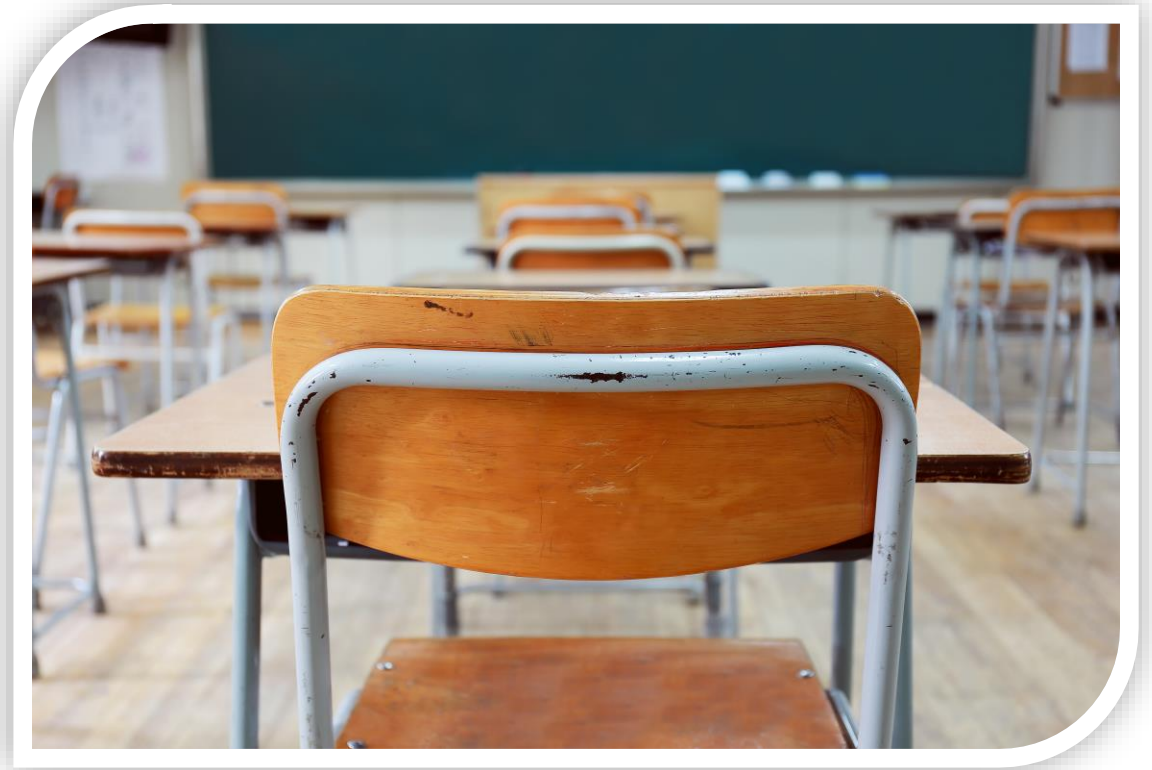
# MCLE

## Confidential

- Individual MCLE records – APR 11(k)
- MCLE petitions and hearings – APR 11(k)

## Public

- CLE Audit reports



# MEMBER DATA

## Public

- Name, license number, mailing address, telephone number, email address, membership status, date of admission (Legal Directory – APR 13, APR 26, GR 12.4, ELC/ELLTTC/ELPOC)
- Practice area and languages spoken are also public when provided
- Member license status history - GR 12.4
- Aggregate membership demographics report – GR 12.4(2)

## Confidential

- Everything else, including voluntarily provided demographic information

Member Type	In WA State	All
Attorney - Active	26,521	34,193
Attorney - Honorary	450	506
Attorney - Inactive	2,674	5,814
Attorney - Pro Bono	114	119
Judicial	632	661
LLLT - Active	74	75
LLLT - Inactive	9	10
LLLT - Pro Bono	1	1
LPO - Active	697	710
LPO - Inactive	179	201
	31,351	42,297



# DISCIPLINARY CONFIDENTIALITY

ELC / ELPOC / ELLTC 3.2(a)

**All disciplinary information that is not public information as defined in rule 3.1(b) is confidential...**

# DISCIPLINARY CONFIDENTIALITY

ELC & ELPOC 3.1(b) / ELLTC 3.1(a)

## Public Disciplinary Information

*(Examples of key provisions)*

- Pending disciplinary proceedings
- Disciplinary sanctions
- Admonitions issued after January 1, 2014
- Interim Suspensions

# DISCIPLINARY CONFIDENTIALITY

ELC / ELPOC / ELLTC 3.4

## Release or Disclosure of Otherwise Confidential Information

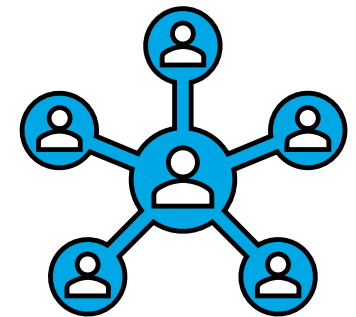
*(Examples of key exceptions)*

- Investigative disclosure
- Release based upon a respondent's waiver
- Cooperation with law enforcement and disciplinary authorities
- Other counsel or officers: Chief Hearing Officer, Disciplinary Selection Panel, Conflict Review Officers, Adjunct Disciplinary Counsel
- Except as prohibited by rule 3.2 [protective orders] court order, or other law, the **grievant, respondent lawyer, or any witness** may disclose any information in their possession regarding a disciplinary matter, but this disclosure does not make the information public

# HYPOTHETICAL #1

You are a member of the Character and Fitness Board and see an applicant's social media post about their challenges being admitted to the bar.

Can you respond to the post to correct misstatements about the process?



# HYPOTHETICAL #1



No.

Disclosure by the applicant does not waive your confidentiality obligations under APR 1(d). Under APR 23.1(d), you are also not allowed to offer your opinion to the applicant. Instead of getting involved, simply inform your staff liaison.

## HYPOTHETICAL #2

You are an Adjunct Disciplinary Counsel assigned to review a grievance and you receive a call from a reporter requesting an update on the status of the file. The reporter states that they received a copy of the grievance from the grievant.

Can you provide an update?



## HYPOTHETICAL #2

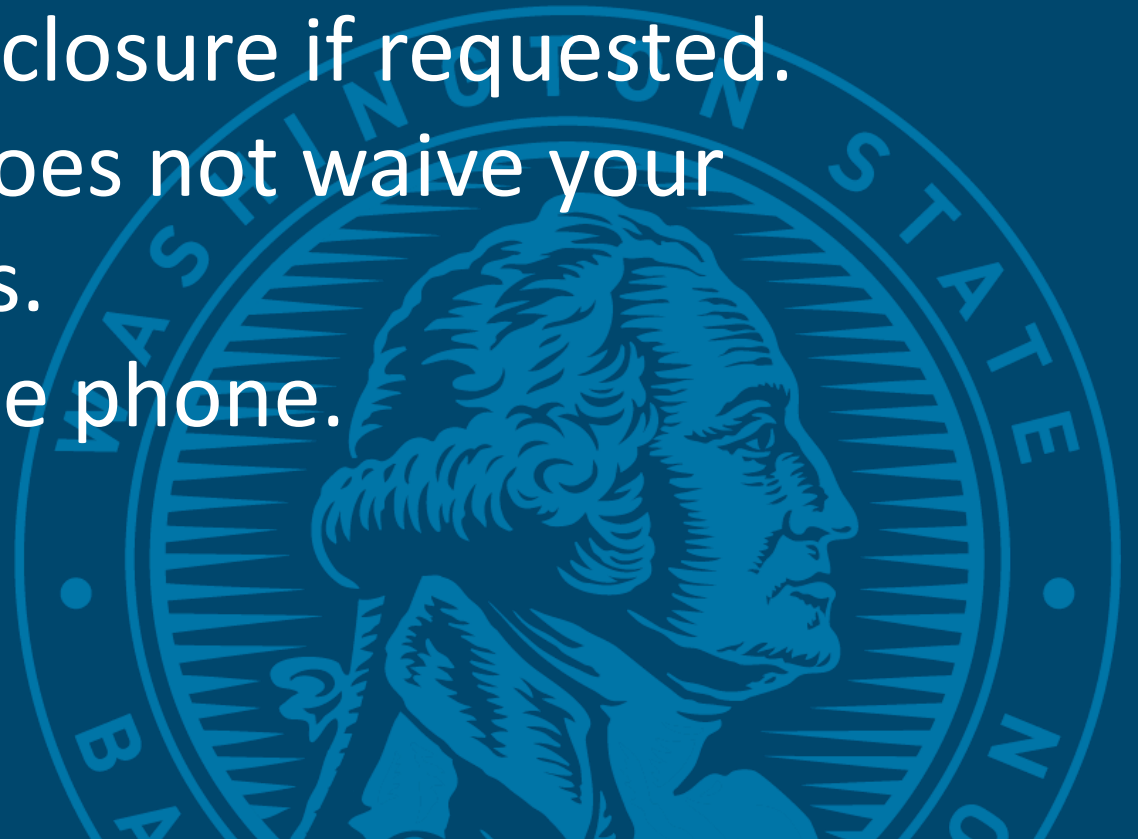


No, you can neither confirm nor deny that the grievance exists.

Inform the caller to direct their question to the WSBA Communication's Department and reach out to your staff liaison.

## KEY TAKEAWAYS

1. Assume that all written communication with WSBA staff will be subject to disclosure if requested.
2. Disclosure by any party does not waive your confidentiality obligations.
3. When in doubt pick up the phone.





**QUESTIONS?**



# SAFETY & RISK MANAGEMENT

Lisa Amatangel, WSBA Associate General Counsel



# GOALS

1. Identify WSBA Regulatory Volunteer risks
2. Consider best practices and resources



# KEY TAKEAWAYS

1. Your safety is paramount
2. WSBA is here to support you

“In general, the Washington State Bar Association strives to: . . .

- Foster and maintain **high standards of competence, professionalism, and ethics** among its members; . . .
- Foster **collegiality** among its members and **goodwill** between the legal profession and the public; . . .
- Administer admission, regulation, and discipline of its members in a manner that **protects the public** and **respects the rights** of the applicant or member.”

GR 12.2(a)(4), (5) and (7)

# DISCONTENTED GRIEVANTS/RESPONDENTS/APPLICANTS/OTHERS



- You filthy ----- . May you be paralyzed and blind.
- I want you to know that I think you are a coward and a disgrace to your profession . . . You are a disgrace to women and children . . . You suck at your job, you failed.
- This system is a farce. You could save the Bar money by hiring monkeys and buying them stamps.
- You people are so pathetically corrupt you disgust me with all your documented injustices. F--- you pigs.

# RECURRING RISKS OF REGULATORY WORK:



Unsolicited communications



Grievances



Negative online reviews



Lawsuits



Threats

## Governing Rules and Procedures:

- Applicable Court Rules (e.g., ELC, APR, RPC)
- WSBA Bylaws, Policies and Procedures
- Other Governing Rules (e.g., entity bylaws, charter, procedures)

## WSBA Resources:

- Liaison(s) and other staff support
- WSBA.org (information re entities, volunteer toolbox, etc.)
- Ethics Line
- Practice Management
- Member Wellness



# 1) UNSOLICITED EMAIL/VOICEMAIL

## Best Practice:

- Do NOT respond
- If safety at issue – **call 911**
- Thereafter, notify liaison\*

\*Liaison may forward to point person, safety team, OGC, etc.



# 2) GRIEVANCES

[HTTPS://WWW.WSBA.ORG/FOR-LEGAL-PROFESSIONALS/PROFESSIONAL-DISCIPLINE/RESOURCES-FOR-LAWYERS](https://www.wsba.org/for-legal-professionals/professional-discipline/resources-for-lawyers)

HOME | FOR LEGAL PROFESSIONALS | PROFESSIONAL DISCIPLINE | RESOURCES FOR LAWYERS



Updated: Nov. 9, 2023

## Frequently Asked Questions

Questions about responding to a grievance?

Read [Responding to a Grievance](#) and [The Letter from the WSBA Marked Confidential](#).



## FAQ:

Excerpt from Washington State Bar News August 2009: “The Letter from the WSBA Marked Confidential”:

**Mark:** What should a lawyer do if he or she is asked to respond to a grievance? What should a lawyer not do?

**Doug:** The thing to do is very simple: respond. I would elaborate by saying respond promptly and truthfully. And I guess the thing not to do is ignore the problem and hope it goes away. Lawyers have an affirmative duty to promptly respond to inquiries and requests for information under the Rules for Enforcement of Lawyer Conduct

### 3) NEGATIVE REVIEWS – POTENTIAL RESPONSES

- **None:** Minimize additional posts and attention
- Seek to have it removed
  - Process varies by host, can be lengthy
  - More likely to succeed if not a client or former client
- Provide a simple response, *e.g.*:
  - This is not a client or former client
  - Professional obligations do not permit a substantive online response
- **Caveat:** Attorney's duty to maintain confidentiality may significantly limit what you may say or do in response to online criticism.



## 4) LAWSUITS

1. “The Bar **shall provide indemnification to qualified indemnities** for liabilities arising out of **qualified actions.**”
  - A “**qualified indemnitee** is a person who . . . is serving at the request or appointment of the Bar as a member of any board, committee, task force, or other WSBA entity.”
  - “A **qualified action** is an action in good faith within the course and scope of the authority expressly or impliedly delegated by applicable Supreme Court Rule, policy adopted by the Board of Governors, or by the Executive Director”.
  - “**Each qualified indemnitee who is a party to**, or is threatened to be made a party to, or is involved in **any threatened, pending, or complete claim, action, suit or proceeding . . . by reason of the fact that the indemnitee . . . is, or was, . . . a member of a board, committee, task force, or other WSBA entity . . . shall be defended, indemnified, and held harmless by the Bar against all expenses, liability, and losses** (including, but not limited to, attorneys’ fees, judgments, fines, and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith.” WSBA Bylaws, XIV.
2. **Promptly notify liaison** of any litigation threat or complaint received;
3. OGC and/or outside counsel will reach out regarding service and next steps.



## 5) THREATS – PROTECT PERSONAL INFORMATION

- **Assess** availability of personal information
- **Reduce** access to personal information
- **Separate** personal and professional



## 5) THREATS - INTRUSIVE/AGGRESSIVE BEHAVIOR

- If in danger: **Get to safety and call 911.**
- When possible, notify liaison

# 6<sup>TH</sup> FLOOR SAFETY

## Safety Information

- Safety Team
- Building Security
- Onsite cameras and alarms

## Know the Space

- Closest Exits
- Floor Wardens
- Building Management Announcements



**QUESTIONS?**





# CLOSING

**TERRA NEVITT, WSBA EXECUTIVE DIRECTOR**

**DOUG ENDE, WSBA CHIEF DISCIPLINARY COUNSEL**



*Thank You!*  
We appreciate your hard work.