

WSR 24-05-011
RULES OF COURT
STATE SUPREME COURT
[February 7, 2024]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO GR ) NO. 25700-A-1566
12.2 (c)(2)—WASHINGTON STATE )
BAR ASSOCIATION: PURPOSES, )
AUTHORIZED ACTIVITIES, AND )
PROHIBITED ACTIVITIES )

The Board of Governors of the Washington State Bar Association, having recommended the suggested amendments to GR 12.2 (c) (2)—Washington State Bar Association: Purposes, Authorized Activities, and Prohibited Activities, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. 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.

DATED at Olympia, Washington this 7th day of February, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET
Suggested Additions and Amendments to
GENERAL RULES
Rule 12.2(c)(2)
Submitted by the Board of Governors of the Washington State Bar Association

A. Name of Proponent: Washington State Bar Association, Board of Governors

B. Spokespersons:

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C. Purpose: The purposes of this recommended rule change are (1) to eliminate the confusion between the language in GR 12.2(c)(2) and the U.S. Supreme Court's later language in Keller v. California State Bar, 496 U.S. 1, 110 S. Ct. 2228, 110 L.Ed 112 (1990); and (2) to de-

crease barriers to the WSBA effectively accomplishing its mission, as identified by its Equity and Disparity Work Group.

### Background

GR 12.2 sets forth the purposes of the Washington State Bar Association, including specification of activities that are expressly authorized and prohibited. The suggested amendment modifies and clarifies the section of GR 12.2 that sets forth the "Activities Not Authorized" for the Washington State Bar Association.

The WSBA Board of Governors created the Equity and Disparity Work Group in June 2020 with the goal of reckoning with the harsh reality that laws, policies, and procedures in the legal system have historically led to disparate and inequitable results that disproportionately harm people of color. The Work Group reviewed rules, regulations, and laws related to the practice of law and administration of justice with the purpose of identifying those that impede real justice and fairness and proposing solutions that mitigate harm caused by unjust rules and procedures.

The Equity and Disparity Work Group, led by former WSBA Governor Alec Stephens, identified GR 12.2 (c) (2) as one such rule. Fraught with confusing and undefined terms, the rule has impeded the WSBA from comprehensively pursuing its mission, having become an unintended barrier to some otherwise appropriate WSBA decisions and actions. WSBA member Laura Sierra served as chair of the subcommittee focused on GR 12.2 (c) (2) that developed this recommended change.

GR 12.2 (c) (2) currently states that the Washington State Bar Association will not take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice. The rules do not define any of the operative words: "political," "social issues," "related to or affect the practice of law," and "relate to or affect the administration of justice." Since its enactment, the WSBA has routinely analyzed organizational decisions, positions, and actions through the lens of GR 12.2 (c) (2) to ensure that the WSBA is not acting beyond its rule-defined authorization. But distinguishing the activities authorized by the rule from those that are prohibited has proven to be difficult. For example, GR 12.2 (b) (17) specifically authorizes the WSBA to maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns." Presumably most or all legislation addresses political or social issues. But repeated efforts to analyze whether legislation relates to or affects the practice of law or the administration of justice has shown the standard to be difficult to apply to actual decisions about whether the WSBA can take positions on such legislation. The Work Group identified examples of subject matters—including criminal law, civil rights laws, and environmental laws, among others—that do not manifestly relate to or affect the practice of law or the administration of justice, particularly if those concepts are interpreted narrowly. The process of navigating the GR 12.2 (c) (2) prohibitions has led to contentious and arguably inconsistent decision-making in such situations, meaning that the WSBA has been less effective in its pursuit of this portion of the WSBA mission.

The current language of GR 12.2 (c) (2) was adopted in 1987 in response to a lawsuit in California challenging integrated bar activities on First Amendment grounds. Three years later, the U.S. Supreme Court issued *Keller v. California State Bar*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed 112 (1990). *Keller* limited integrated state bar asso-

ciation activities to those germane to regulating the legal profession or improving the quality of the legal service available to the people of the state. *Keller*, 496 U.S. 1, at 13-14 (holding only germane bar activities are chargeable to members); see also *Lathrop v. Donohue*, 367 U.S. 820, 843, 81 S. Ct. 1826, 6 L. Ed. 1191 (1961).

As a result, in Washington State there are two similar but differently phrased standards that govern the appropriateness of the organization's decisions, positions, and actions. Under GR 12.2 (c)(2), WSBA cannot take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice. Under the First Amendment, the WSBA can only charge license fees for activities that are germane to regulating the legal profession or improving the quality of legal service available to the people of the State. Attempts to harmonize these standards have generated more confusion than reconciliation.

**Recommended Change**

The suggested amendment replaces the confusing and archaic GR 12.2 (c)(2) language with a reference to the ten regulatory objectives in GR 12.1 and the authorized purposes and activities listed in GR 12.2 (a) and (b). The revised GR 12.2 (c)(2) would prohibit the WSBA from taking positions on matters that do not relate to or affect the regulatory objectives of GR 12.1 or the purposes and authorized activities set forth in GR 12.2 (a) or (b). This will clarify and simplify the process of making decisions about what WSBA is prohibited from doing, since the Supreme Court has already delineated, with specificity, the objectives of regulating the profession, the purposes of the WSBA, and the activities that it is authorized to engage in.

Redline and clean versions of the amendments are attached.

**D. Hearing:** A hearing is not requested.

**E. Expedited Consideration:** Expedited consideration is not requested.

**F. Supporting Material:**

- None

GR 12.2

WASHINGTON STATE BAR ASSOCIATION: PURPOSES, AUTHORIZED ACTIVITIES, AND PROHIBITED ACTIVITIES

(a)-(b) [Unchanged.]

**(c) Activities Not Authorized.** The Washington State Bar Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions ~~on political or social issues which do not relate to or affect the practice of law or the administration of justice objectives of GR 12.1 or GR 12.2 (a) or (b);~~ or
- (3) Support or oppose, in an election, candidates for public office.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the state supreme court and appears in the Register pursuant to the requirements of RCW 34.08.040.