

CAROL SMITH-MERKULOV
7540 Boston Harbor Road NE
Olympia, Washington 98506

360-280-6552

merkulov@ix.netcom.com

April 27, 2012

The Honorable Barbara A. Madsen
Chief Justice
Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Comments on proposed GR 12.4

Dear Chief Justice Madsen,

Thank you for the opportunity to comment on proposed GR 12.4. Please excuse my delay in commenting, but since I didn't see any notification in the WSBA Bar News or on the WSBA website, I only became aware of the request for comments when I was reading the 600+ pages of material for the April WSBA Board of Governor's meeting and found a slight reference to it on p. 109.

By way of background, I am currently an "inactive" member of the WSBA. After almost 30 years in the Attorney General's office, I retired in 2005. During my career I advised many state agencies on public records issues. To say that I am appalled by proposed GR 12.4 is an understatement.

First and foremost, the comment period needs to be extended and the WSBA ordered to publish the proposed rule, **in its entirety**, in the Bar News. I can assure you there will be more than 4 or 5 comments submitted to the Court, from WSBA members, members of the public and members of the media, once people become aware that the rule is being considered.

Next, to save some time, I adopt by reference the comments made by Michael Kaiser in his February 18, 2012, letter regarding the conduct of the WSBA in the *Hiskes* case as well as the WSBA's constant denial that it is a "state agency". The WSBA's actions in the *Hiskes* case were shameful and the WSBA's statement that the WSBA is not a "state agency" is simply untrue.

There is a way to short-circuit this entire issue. If the Court were to adopt a rule, which I sincerely hope it doesn't, GR 12.4 should read as follows:

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2012 APR 27 P 3:41
BY RONALD R. CARPENTER
CLERK

Policy, Purpose and Scope: It is the policy of the Washington State Bar Association to facilitate open and prompt access to Bar records. The Washington State Bar Association will comply with the intent and substance of Ch. 42.56 RCW in all respects.

A rule like this will force the WSBA to:

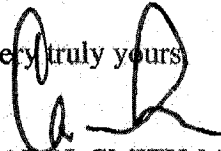
- respond promptly (unlike in the past),
- disclose properly (unlike in the past) and
- redact appropriately (unlike in the past -- a wonderful example of this is how the WSBA redacted expense documents for the 2011 trip to Maui -- see attached where the lodging amount was redacted)

Also, with such a rule in place there will be a mechanism for monetary punishment for failure to properly disclose records. Perhaps that will provide incentive to properly disclose and properly redact.

It's time for the WSBA to become transparent in its dealings with its members as well as the public. Rejecting the proposed rule is a step in that direction, one that is long overdue.

Thank you for considering my comments.

Very truly yours



CAROL SMITH-MERKULOV
WSBA #6287

2011 Expense Report



WSBA

Washington State Bar Association
1325 4th Avenue, Suite 600
Seattle WA 98101-2539
A/P desk 206-727-8274

To expedite your reimbursement, mail this form directly to your staff liaison at the WSBA. Liaison Name: Margaret Shane

Make check payable to: Stephen R. Crossland	Address: P.O. Box 566, Cashmere WA 98815
Signature: <i>[Signature]</i>	Date: 5/5/11
Signature printed: Stephen R Crossland	Bar #: 5083
Original, signed expense report required. See reverse side for summary of WSBA Expense Policies.	Check here if this is a new address from prior expense reports <input type="checkbox"/>
	Business phone: 509-782-4418
	E-mail address: steve@crosslandlaw.net (Only used to contact you if there are questions concerning this request.)

Meeting Date(s):		3/20-21/11					Category Totals
Board/Committee/Section/Event		Week on San					
Meeting Location (required)		Main					
Transportation	Auto Mileage Total (\$0.510 per mile)	miles	360	miles			
	Ground Transportation, Parking, Tolls		183.60				
	Receipt required if over \$25*		84.80				
	Air (coach/economy only) Detailed receipt required*		209.16				205.04
Lodging (up to \$150/night [\$180 in Seattle] + tax) Detailed receipt required*							
Meals: Detailed receipts required. Otherwise, the federal per diem rate for the meeting location may apply. *							
Breakfast (up to \$14 w/ receipt)							
Lunch (up to \$20 w/ receipt)							
Dinner (up to \$30 w/ receipt)							
Other Expenses (itemize):							
Totals							

* Original receipts required if available. Copies accepted if originals are not available.

Submitted by: <i>[Signature]</i>	For WSBA Use Only	Date: 05-12-11	<i>[Signature]</i>
Approved by: <i>[Signature]</i>	Date: 5/13/11	Rush Approval:	
Account Name	Account #	Dept.	Job Code
			Amount
			\$
			\$
			\$
Vendor #	Date Rec'd in AP	REC'D MAY 16 2011	To

OFFICE RECEPTIONIST, CLERK

To: Smith/Merkulov
Subject: RE: GR 12.4

RECEIVED 4-27-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Smith/Merkulov [<mailto:merkulov@ix.netcom.com>]
Sent: Friday, April 27, 2012 3:35 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Re: GR 12.4

Thanks you for your response. Attached is my two page letter and one page attachment.
Carol Smith-Merkulov

PS Could you please confirm that you received this? Thanks again.

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, April 27, 2012 10:55 AM
To: Smith/Merkulov
Subject: RE: GR 12.4

As long as you are within the comment period, you can either e-mail or send via mail a comment.

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Smith/Merkulov [<mailto:merkulov@ix.netcom.com>]
Sent: Friday, April 27, 2012 10:38 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: GR 12.4

As I was perusing the 600+ pages of the WSBA Board of Governors' materials for the meeting beginning today, I ran across a brief reference on page 109 to a proposed change to the public records disclosure policy of the WSBA. Since that was the first I had heard of such a proposed rule, (and I thoroughly read the Bar News as well as read the material on the WSBA website) I went to the Supreme Court website to read the proposed rule as well as the comments. As a long time advisor to numerous state agencies before my retirement, I am appalled at what is being proposed. So I would like to comment and would like to know if an email is sufficient or should I hand deliver a letter.

Thanks in advance for your assistance.

Carol Smith-Merkulov
WSBA # 6287