

February 18, 2012

Chief Justice Barbara Madsen
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Judge Chris Wickham—Co-Chair of Board for Judicial Administration
Thurston County Superior Court
2000 Lakeridge Drive SW
BLDG 2
Olympia, WA 98502

Dear Chief Justice Barbara Madsen and Judge Chris Wickham:

I have served on the King County Bar Association's Judicial Evaluation Committee (2007-2008). I also have served on the King County Bar Association's Judiciary and the Courts Committee, where I participated with judges and other members of the committee in drafting new rules for King County Superior Court (2007-2008). I also have taught ethics to lawyers. I am extremely concerned about the Washington State Supreme Court's participation in the devious manner in which proposed new General Rule (GR) 12.4 is being put forth to the public. I also have other substantive ethical concerns. Furthermore, the involvement of the Board for Judicial Administration (BJA) in the workings of the formation of this proposed rule has raised concerns that aspects of this matter should be referred to the Washington State Commission on Judicial Conduct.

To begin with, on the cover sheet for this proposed rule, submitted by the Board of Governors of the Washington State Bar Association (WSBA), and appearing on the Washington Courts website, it states that the "Washington State Bar Association is not a state agency," as though that is a legal fact. However, the WSBA and many members of the BJA are well aware that the proposition that the WSBA is not a state agency is dubious and, at best, unquestionably open for substantial debate. See, for example: RCW 2.48.010 (WSBA is an "agency of the state" (emphasis added)); *The City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009) (Legislature determines if entity is state agency); *In the Matter of Banister*, 86 Wn.2d 176, 543 P.2d 237 (1975); *Graham v. WA*

State Bar Association, 86 Wn.2d 624, 627, 628, 548 P.2d 310 (1976)(The WSBA is a public corporation), a decision which of course also falls perfectly in line with the WSBA's tax practices, or perhaps I should say non-practices.

However, by the WSBA and the BJA stating, as a matter of fact, that the WSBA is "not a state agency," the WSBA and BJA, clearly with the Washington State Supreme Court's blessing, as the assertion appears on the Washington Courts website, are misleading a mostly unknowing public into accepting at face value that the WSBA is not a state agency, thus foreclosing an entire line of questions and comments that might arise. How convenient for the WSBA, BJA, and Washington State Supreme Court. How utterly dishonest and unethical as well. Privately funded or not, and in fact many state agencies are privately funded, the WSBA and its proponents are not above ethical expectations.

The WSBA Board of Governors and certain appellate judges also are well aware of circumstances around a Washington State Division II Court of Appeals case, *WSBA v. State of Washington Department of Retirement Systems, and Edward Hiskes (Hiskes)*, No. 39224-1-11 (2009), in which the WSBA tried to shield its employees' salary information from public disclosure under the Public Records Act, even in the face of the fact this purported "non-state agency," the WSBA, has employees participating in the state pension system. Initially, the trial court ruled against the WSBA and the WSBA appealed. Ultimately, however, the WSBA dropped its appeal, perhaps for reasons related to its latest attempted end-run around the process, and also the fact the state's brief completely deconstructed the WSBA's fallacious arguments that the WSBA was somehow above the law and beyond the reach of the Public Records Act. In fact, I am told members of the WSBA Board of Governors met during *Hiskes* and essentially held a separate hearing on the merits of the case, where, answerable to no one of course, the Board of Governors ruled against Hiskes, while at the same time of course dropping the appeal that had the potential for much more permanent ramifications.

Now, not much more than a year later, the WSBA, joined by the BJA and the Washington State Supreme Court, tries to piggyback the WSBA with the judiciary while presenting manifest, known, distortions and misrepresentations as a starting point or, in this case, head start. Those who were, quite frankly, repulsed by *Koenig*, or, to put it more mildly, in the words of local press, felt the Washington State Supreme Court "blew it," receive no comfort that the Washington legal establishment is not engaged in the highest form of deviousness by what is occurring around proposed GR 12.4. In addition, by getting the judiciary to sign off on the rule in advance, it makes it a *touch* more difficult for the public to challenge aspects of the rule through the actual normal legal process, does it not? Furthermore, the fact the BJA is even participating in the drafting of this rule raises ethical questions well beyond the gross misrepresentations and half-truths taking place. Do the members of the BJA all intend on recusing themselves from any court challenges related to GR 12.4? I think not, and I am certain the WSBA Board of Governors and others shared my opinion.

The public needs to begin to develop faith in the integrity of the legal establishment. For too long, in fact for at least half a millennium, not to overuse Shakespeare's quote from

Henry VI, Part II regarding doing away with lawyers, a substantive portion of the population has been disgusted by a substantive portion of the legal establishment and the "standing of the bar." (For quote, see *In re Belsher*, 102 Wn.2d 844, 850, 689 P.2d 1078 (1984) quoting *In re Eddleman*, 77 Wn.2d 42, 43, 459 P.2d 387 (1969). That does not of course ignore the fact that many people find the law interesting, see good work being done, and respect the power of the legal establishment.

I hope the Washington State Supreme Court, the BJA, and other relevant members of this discussion will look closely at the ethical issues unfolding in the proposed GR Rule 12.4, not how the public can be hoodwinked behind real and proverbial closed doors by at least one party, the BJA, whose members are supposed to stand for so much more. At the bare *minimum*, the period for comments should be re-started, the public should be presented with the full picture and story, and the BJA should disengage from the process.

Yours Very Truly,

A handwritten signature in cursive script, appearing to read "Michael Kaiser".

Michael Kaiser