

January 16, 2013

Re: Proposed Changes to APR 1(d)—Confidentiality

The WSBA is an “agency of the state.”(RCW 2.48.010); *The City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009)(Legislature determines if entity is an agency of the state); *Graham v. WSBA*, 86 Wn.2d 624, 627, 628, 548 P.2d 310 (1976)(The WSBA is a *public* corporation)(Emphasis added).

The proposed section APR(1)(d)(Confidentiality) violates the Public Records Act. The Washington State Bar Association (WSBA), as an “*agency*” of the state, is subject to the Public Records Act.

Furthermore, the WSBA had a recent opportunity to challenge this fact in a court of law and declined (see, for example, *WSBA v. Hiskes*—No. 39224-1-11). Frankly, then, it could not smell any worse than to watch the WSBA try, through the court rule process, to shield from Washington state citizens all records related, for example, to the Lawyers’ Fund for Client Protection Board or the Character and Fitness Board. The public has a vested interest in knowing the exact circumstances behind *all* licensing and regulatory issues, especially where the public has been victimized by the actions of a Washington state lawyer. In fact, the public clearly has a right to all WSBA communications and records that address the WSBA’s *public* regulatory function. Names and other identifying information may be redacted in appropriate circumstances.

Does the WSBA ever stop trying to circumvent rules or the law? I see the WSBA also is trying to de facto, once again through the court rule process, overturn a recent WSBA referendum rolling back dues. The manner in which the WSBA plays with the law and the rules would make me ashamed to be a WSBA member. This is the entity charged with regulating the legal profession in this state? The whole thing is a circus.

Yours Very Truly,

Michael Kaiser, JD.